$6.00

Canon Mahoney needs little introduction to English-speaking clergy anywhere. For over twenty years he answered almost every question submitted to the *Clergy Review*, not only in matters moral and canonical, a wide enough field in themselves, but on points of liturgy, rubrics, and even church music. His readers soon learned to trust him, and with good reason. Genuinely humble in his estimate of his own authority, he was indefatigable in seeking and verifying the opinions of others, patient in checking them against the sources and the facts, and prudent in drawing his conclusions. The result was that few writers of his kind carried greater authority, either at home or abroad. His answers were well informed, nicely balanced, reliable. Two selections of these answers have already been published, in 1944 and 1948, under the title *Questions and Answers*. In *Priests' Problems*, a selection of those which he wrote between these dates and his death, in 1954, is presented in easily accessible form. Within its orderly framework the book houses a wide variety of topics. It caters not only for priests who want a prompt answer to an immediate problem arising out of the confessional or parish work, but also for those who prefer to revise their theology in this indirect and practical fashion, rather than in indigestible slabs from their dog-eared textbooks. This is a book one can pick up for a quarter-of-an-hour's profitable reading or settle down to for hours of solid study. It has the added distinction of being edited by Fr McReavy of Ushaw College. As Canon Mahoney's successor on the *Clergy Review* he brings to this task the identical qualities which imparted such authority to the previous collections.

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PRIESTS' PROBLEMS

Being answers to a large variety of questions on points of moral, canonical, liturgical and rubrical interest

By
the late
CANON E. J. MAHONEY, D.D.

Selected and edited by
REV. L. L. McREAVY, J.C.D., M.A.

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EDITOR'S NOTE

For twenty-two years, the late Canon Mahoney's monthly replies to moral, canonical, rubrical and liturgical questions, sent in by the clergy, were a most valuable and popular feature of *The Clergy Review*, and twice, in response to widespread demand, he published a selection of them in book-form. The first volume, published in 1944 and entitled *Questions and Answers: The Sacraments*, dealt exclusively with questions relating to this one subject, whereas the second, published in 1948 with the subtitle *Precepts*, comprised replies on all the other subjects on which his expert opinion had been sought. Meanwhile his oracular ministry to the clergy continued unabated, so that, when he died on 7 January, 1954, he left behind him more than enough fresh answers to fill a further volume. It was eventually suggested that these also should be sifted and classified for publication in a readily accessible form. That is the purpose of this present volume which, while avoiding useless repetition of points adequately elucidated in the first two volumes, covers the whole range of topics with which they were together concerned.

In selecting and editing the answers here comprised, I have tried to interpret the wishes of the esteemed author, making such corrections as were required by subsequent developments, and adding occasional notes to answers which I felt that he would probably have modified or supplemented. The answers have been arranged more or less in the order of the Code of Canon Law, because it provides a logical and familiar framework of division. To facilitate easy consultation, there is not only a complete and classified list of answers in the Table of Contents, but also a Code index (for those who begin their quest by consulting the text of the law) and an alphabetical index of topics. Thirty-seven of these answers date from the period 1945–1947; being concerned with sacramental topics, they fell outside the scope of the author's second volume. All the rest were composed between 1948 and his death.

L. L. McREAVY

Ushaw College, Durham
8 February, 1957

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ABBREVIATIONS

A.A.S. = *Acta Apostolicae Sedis*. Commentarium Officiale. (Romae, Typis Polyglottis Vaticanis.)

Addit. et Variat. = The section at the beginning of the current *Missale Romanum* entitled "Additiones et Variationes in Rubricis Missalis".

Apollinaris = *Apollinaris*, Commentarium Iuris Canonici. (Romae, Pontificium Institutum Utriusque Iuris, Piazza S. Apollinare, 49.)

Bouscaren, *Digest* = *The Canon Law Digest*. Officially published Documents Affecting the Code of Canon Law. 3 volumes. By T. Lincoln Bouscaren. (Bruce Publishing Company, Milwaukee, U.S.A.)

Caerem. Epp. = *Caeremoniale Episcoporum*. (Marietti, 1935.)

Clementine Instruction = *Instructio Clementina* pro Expositione SSmi Sacramenti Occasione XL Horarum (1731). Printed with annotations in Vol. IV of Decreta Authentica S.R.C. English translation by Rev. J. O'Connell. (Burns Oates, 1927.)

Code Commission = Pontificia Commissio ad Codicis Canones Authentice Interpretandos.

Collat. Brugen. = *Collationes Brugenses*. (Seminarium Episcopale, Bruges.)

De Defectibus = Introductory section of *Missale Romanum* entitled "De Defectibus in Celebratione Missarum Occurrentibus".

Denz. = *Enchiridion Symbolorum Definitionum et Declarationum De Rebus Fidei et Morum*. By H. Denzinger. (Herder.)

Dict. Droit Canon. = *Dictionnaire de Droit Canonique*. (Paris, Letouzey et Ané.)

Dict. Théol. = *Dictionnaire de Théologie Catholique*. (Paris, Letouzey et Ané.)

E.T.L. = *Ephemerides Theologicae Lovanienses*. (18 Rue de Récollets, Louvain.)

Fontes = *Codicis Iuris Canonici Fontes*. Vols. I–VIII. (Rome, Typis Polyglottis Vaticanis, 1926–39.)

Ius Pontificium = *Ius Pontificium* seu Ephemerides Romanae ad Canonicas Disciplinas Spectantes. (Romae, Via Monteselva 3.)

N.K.S. = Nederlandsche Katholieke Stemmen. (Zwolle, J. M. W., Flanders.)

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Ordo Administrandi = *Ordo Administrandi Sacramenta*. . . . ex Rituali Romano Extractus Nonnullis Adiectis ex Antiquo Rituali Anglicano. (Burns Oates, 1915.)

Periodica = *Periodica de Re Morali Canonica Liturgica*. (Romae, Univ. Gregoriana.)

Enchiridion Indulgentiarum = *Enchiridion Indulgentiarum: Preces et Pia Opera* In Favorem Omnium Christifidelium vel Quorundam Coetuum Personarum Indulgentiis Ditata et Opportune Recognita. (Typis Polyglottis Vaticanis, 1952.)

Propaganda = Sacra Congregatio de Propaganda Fide.

Q.L.P. = *Questions Liturgiques et Paroissiales*. (Abbaye du Mont César, Louvain.)

Rit. Celebr. Miss. = Introductory section of *Missale Romanum*, entitled "Ritus Servandus in Celebratione Missae".

Rituale Romanum. References are to the *editio typica* authorised by Pope Pius XII and published in 1952. (Typis Polyglottis Vaticanis.)

Ritus Servandus = *Ritus Servandus in Solemni Expositione et Benedictione Sanctissimi Sacramenti*. (Burns Oates.)

Rubricae Generales = Introductory section of *Missale Romanum*, entitled "Rubricae Generales Missalis".

S.C.Conc. = Sacra Congregatio Concilli.

S.C.Consist. = Sacra Congregatio Consistorialis.

S.C.Indulg. = Sacra Congregatio Indulgentiis Sacrisque Reliquiis Praeposita.

S.C.Relig. = Sacra Congregatio de Religiosis.

S.C.Sacram. = Sacra Congregatio de Disciplina Sacramentorum.

S.Off. = Suprema Sacra Congregatio Sancti Officii.

S.Poenit. = Sacra Poenitentiaria Apostolica.

S.R.C. = Sacra Congregatio Sacrorum Rituum. The numeral refers to its *Decreta Authentica*, Vols. I–VI. (Typis Polyglottis Vaticanis, 1898–1927.)

Sylloge = *Sylloge Praecipuorum Documentorum Recentium Summorum Pontificum, etc.* Ad Usum Missionariorum. (Typis Polyglottis Vaticanis, 1939.)

Theol. Moralis = Manual of Moral Theology variously entitled *Compendium*, *Institutiones*, *Summa*, *Summula*, or *Manuale*.

Westm. = *Decreta Quattuor Conciliorum Provincialium Westmonasteriensium 1852–1873*. (Burns Oates, out of print.) Translation, "The Synods in English", by Rev. R. E. Guy, O.S.B. (Stratford-on-Avon, 1886.)

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I. SOME GENERAL PRINCIPLES OF CANON LAW

I. COUNSELS IN THE CODE

Is it rightly held that all the canons of the Code are, in some sense or other, "laws" binding in conscience? If not, why are they included in what is commonly referred to as a Code of Canon Law? Civil codifications appear to be restricted to enactments which are of binding force.

i. It requires no very profound acquaintance with the Code to discern that many of the canons are not precepts in the strict sense but merely counsels or directive rules and suggestions. This is evident from the words occasionally used such as *suadendum* in canon 859, §3, which urges the faithful to make their Easter communion in their own parish, or in canon 864, §2, which recommends Viaticum even though Holy Communion had already been received the same day; or such words as *optandum*, as in canon 1345, which affirms the desirability of a short sermon at every Mass on Sundays and holy days. Often in the same canon statements are found which are respectively precepts in the strict sense, or permissions to do certain things, or merely counsels. Thus Canon 530 reads: "§1. Omnes religiosi Superiores districte vetantur. . . . §2. Non tamen prohibentur subditi quominus libere ac ultro aperire animum suum Superioribus valeant; imo expedit ut ipsi filiali cum fiducia Superiores adeant. . . ." Sometimes a word which is something less than a precept in meaning causes difficulty of interpretation, as for example *curandum*.[1]

ii. This characteristic is not something peculiar to the Code but is found in previous collections and in the *Corpus Iuris*. The explanation given by Suarez seems quite adequate: ". . . nomine legis interdum comprehendi totam dispositionem, seu providentiam legislatoris circa gubernationem subditorum, et sic ad illum pertinent non tantum praecepta dare, sed etiam consilia de iis quae meliora sunt. . . . In hoc ergo sensu non male dixit illa Glossa legem non tantum praecipere, sed etiam consulere, quamvis re vera id non faciat formaliter, ut lex, sed concomitanter. Addo praeterea, quando lex consulit unum, effectus sequitur alius, nimirum, ut illud opus quod consulitur iure prohiberi non possit, nec tanquam malum

[1] Ferreres, *Casus*, 1, §83.

refutari, et quoad hoc dici potest illa retinere vim legis, et obligare."[1] The concluding words are the best explanation of a canon such as 530 quoted above. Unless the law permitted subjects to open their consciences to superiors, the definite prohibition against superiors inducing their subjects to do so would almost certainly be interpreted by some to mean that it was inadvisable for subjects to act in this way.

2. PROMULGATION OF PAPAL LAWS

Are we allowed, and if allowed are we bound, to accept the directions of the Holy See before being informed of them by local Ordinaries? Two recent documents illustrate the query: (a) the new rules on the Eucharistic fast; (b) the dispensation from abstinence on 1 *May*, 1953.

Canon 8, §1: Leges instituuntur, cum promulgantur.

Canon 9: Leges ab Apostolica Sede latae promulgantur per editionem in Actorum Apostolicae Sedis commentario officiali, nisi in casibus particularibus alius promulgandi modus fuerit praescriptus; et vim suam exserunt tantum expletis tribus mensibus a die qui *Actorum* numero appositus est, nisi ex natura rei illico ligent aut in ipsa lege brevior vel longior vacatio specialiter et expresse fuerit statuta.

i. Promulgation is the publication of a law, in the name and authority of the legislator, and is not to be confused with its diffusion, notification or divulgation, which means that it has been brought to the notice of individuals within the community for which the law has been promulgated. The diffusion is quite often effected, especially in the case of important laws, by an official communication from the local Ordinary, either in a diocesan journal or by postal circular, methods which offer as much certainty as can be expected in human affairs. It is an error, nevertheless, to maintain that no papal law is effective until its notification by the local Ordinary, the error of confusing promulgation with notification; and a still more grievous error to maintain that, to have any validity as laws, papal enactments require the consent of local Ordinaries or of the civil ruler.

Notification that a papal law has been promulgated may also reach us through other channels, far less certain and reliable than a communication from local Ordinaries, and among these methods the Press, both religious and secular, holds a most prominent place. This kind of notification is less certain and reliable because it

[1] *De Legibus*, I, xiv, 11; *Vives*, Vol. VI, p. 58.

may have been picked up by radio with all the hazards of the process; or translated into the vernacular with resultant changes of meaning; or printed with such haste as to make reasonable accuracy unlikely. Thus, many journals wrongly announced in 1946 that the assistant priests of a parish could confirm the dying, and at the beginning of 1953 the description of the sick who could benefit by the new rules scarcely made sense in some versions. Though a correct answer to the above query is not easy to formulate, we suggest the following: an individual is allowed in matters which are favourable to accept notification of a papal enactment from a reputable newspaper without waiting for a communication from the Ordinary; in matters which add to his obligations an individual may likewise accept information from the Press, but he is not bound to do so, and may elect to await notification from the local Ordinary or from some other quite certain channel. To justify these different reactions to news of papal enactments, according to their favourable or unfavourable character, would mean adventuring into the realm of probabilism which we decline to do; instead, the answer suggested will be applied to the instances cited.

ii. The Constitution *Christus Dominus*, which appeared first in *L'Osservatore Romano*, 11 January, 1953, was promised for promulgation in *A.A.S.*, 16 January, 1953, and was therefore notified as an important piece of news before promulgation. The two texts of the Instruction were not identical in many particulars, and some Press versions in English made from that in *L'Osservatore* contained error. In some dioceses, such as Lancaster, the Latin text from *L'Osservatore* was sent by the Ordinary to the clergy; elsewhere the Ordinary notified the clergy in due course of its provisions and instructed them to inform the laity; in all these instances the Constitution promulgated 16 January was notified officially and was certainly binding from the time of notification. For the generality of the faithful its provisions were favourable and could be used from 16 January by all who relied merely on a Press notification. For some classes such as nurses, and for some countries such as France, its provisions were to some extent unfavourable: the persons affected were entitled to continue the use of their indults until certain notification of the Constitution reached them and they could know with certainty that their indults had been withdrawn. Moreover, though promulgation was promised for 16 January, the number of the *A.A.S.* containing it reached most people in these parts early in February. The wisdom of the three months' interval of canon 9 is obvious, and it is exceptional for it to be dispensed with, as happened on this occasion.

iii. The relaxation of Friday abstinence on 1 May, 1953 was not a law but an administrative decree which, after appearing in the Press, was printed in *A.A.S.*, dated 27 April, 1953. It was a favourable enactment and was acted upon quite rightly by all who happened to see it in reputable newspapers. In a matter of minor consequence and applying only to this year, there was no need to be scrupulous about verifying the texts: in fact, if one waited till seeing it in *A.A.S.*, even assuming its appearance on 27 April, 1953, the information would have been obtained too late to be of any use.

3. WHICH LEGAL INTERPRETATIONS ARE RETROSPECTIVE?

Unless the legislator expressly declares that he wills his interpretation or legal decision to be retrospective, how is one to know whether it is so or not? The matter is of importance for deciding on the validity of acts performed before an authentic legal interpretation is given.

Canon 10: Leges respiciunt futura, non praeterita, nisi nominatim in eis de praeteritis caveatur.

Canon 17, §2: Interpretatio authentica, per modum legis exhibita, eandem vim habet ac lex ipsa; et si verba legis in se certa declaret tantum, promulgatione non eget et valet retrorsum; si legem coarctet vel extendat aut dubiam explicet, non retrahitur et debet promulgari.

i. The question arises quite often in decisions of the Code Commission interpreting some canon of the Code, and the distinction in canon 17, §2, between an interpretation which is "declarativa" and one which is "explicativa" chiefly arises when, subsequent to some authentic interpretation, the commentators are not agreed whether it solved a doubt, in which case it is not retrospective, or whether it merely declared some point which was already in itself certain from the words of the existing law, in which case it is retrospective. The interpretation is declarative when its effect is that people who did not understand the law before understand it now; it is explanatory when its effect is to bring to light something which before was obscure.[1]

ii. The difference between these two notions is often very ill-defined, and we are recommended to consult the commentators in order to discover whether some point or application of a law is doubtful, because if it is some will then hold one view and others the exact opposite. But it may happen that a respectable number of commentators are themselves in agreement that a law is doubtful,

[1] Cicognani, *Canon Law*, p. 602.

or they may even agree that a given interpretation of the Code Commission is the resolution of a doubt, and yet these views may prove to be wrong. Thus, the interpretation given 20 July, 1929, deciding that the exception in the latter part of canon 1099[1] applied even to the child of a mixed marriage, contradicted the common teaching of practically all the canonists,[2] therefore it seemed that the Commission's interpretation was at least the solution of a doubt. On the contrary, the reply of 25 July, 1931, stated that the previous interpretation was declarative.[3]

iii. Since one cannot with confidence rely on the commentators for discovering whether an interpretation is declarative or not, the remedy is for the legislator to state clearly what his will is in the matter, as happened in the Commission's reply, 25 July, 1931. The same applies to the question of local laws which may or may not affect travellers: the commentators often disagree in deciding whether such laws have or do not have a relation to public order, which is the criterion in canon 14, §2, for discovering whether travellers are bound by them or not. The remedy for the uncertainty is for the legislator to state that travellers must obey the law, as the Malines Provincial Council (1937) does in n. 176, which includes travellers in the prohibition against clerics frequenting theatres.[4]

4. INTERPRETATION OF CONCILIAR LAWS

On the theory of interpreting laws, does the individual Ordinary enjoy the right of authentically interpreting for his diocese the superior law of a Provincial Council?

Canon 17, §1: Leges authentice interpretatur legislator eiusve successor et is cui potestas interpretandi fuerit ab eisdem commissa.

§2. Interpretatio authentica, per modum legis exhibita, eandem vim habet ac lex ipsa. . . .

§3. Data autem per modum sententiae iudicialis aut rescripti in re peculiari, vim legis non habet et ligat tantum personas atque efficit res pro quibus data est.

Canon 291, §2: Decreta Concilii plenarii et provincialis promulgata obligant in suo cuiusque territorio universo, nec Ordinarii locorum ab iisdem dispensare possunt, nisi in casibus particularibus et iusta de causa.

[1] Observe that this "comma" is now deleted from the Code: *Motu Proprio*, 1 August, 1948; *The Clergy Review*, 1948, XXX, p. 341.
[2] *Ius Pontificium*, 1929, p. 195: "communem iurisperitorum interpretationem funditus subvertit"; for the names cf. *Apollinaris*, 1930, p. 303.
[3] *Periodica*, 1932, p. 45.
[4] *The Clergy Review*, 1946, XXVI, p. 266.

S.C.C., 19 February, 1921; *A.A.S.*, 1921, XIII, p. 228: Exploratum hodie apud omnes est ad potestatem legislativam Episcoporum pertinere ut legibus suis quasi perficiant quod ius commune reliquerit minus definitum et sancitum, ita ut nihil ab ipsis contra ius commune vel eius directionem statui possit.

i. "Unde ius prodiit, interpretatio quoque procedat" is an ancient canonical axiom, which clearly excludes the possibility of an authentic interpretation issuing from an ecclesiastical authority other than that which made the law. Toso is the only canonist we have discovered who appears to teach the contrary: "Eodem modo, quo R.P. cunctas ecclesiasticas leges, Ordinarii locorum, singillatim aut una simul, leges a se latas authentice interpretantur, sive singillatim tulerint (in Synodo diocesano vel extra Synodum), sive coniunctim in Concilio plenario aut provinciali."[1] This is incorrect, in so far as the individual episcopal interpretation is of a higher, e.g. a provincial, law, unless the writer's words are to be understood in the sense explained below, ii, (*d*). For if the interpretation is authentic it has the force of law, and would accordingly bind wherever the provincial law binds, including places outside the jurisdiction of the individual Bishop, a consequence which is clearly untenable; unless of course the Bishop has been lawfully appointed to give an authentic interpretation, as sometimes happens with conciliar legislation, in much the same way as the *Code Commission* has been appointed for the laws of the Code, "cui uni ius erit Codicis canones authentice interpretandi".[2]

ii. Provided, however, that it is not thought to extend to an authentic interpretation as defined in canon 17, §2, the episcopal power relating to conciliar legislation, limited to subjects within his jurisdiction, is very considerable, and may be summarised as follows:

(*a*) He may, from canon 291, §2, dispense the conciliar law in individual cases and for a just reason.[3]

(*b*) He may, from canon 17, §3, give a judicial decision which interprets the law for an individual case; or he may let it be known that his decision on any individual case will be according to this interpretation of the conciliar law. It follows, as Brys correctly states: "Ipsis (singulis Episcopis) tantum competit jus (concilii provincialis) interpretandi authentice in casibus particularibus, quia ipsorum curae est commissa potestas applicandi in judicio."[4]

(*c*) He may, also, on the usual principles of customary law,

[1] *Commentaria Minora*, p. 56.
[2] *Motu Proprio*, 15 September, 1917, printed at the beginning of the Code.
[3] *The Clergy Review*, 1943, XXIII, p. 279. [4] *Compendium*, I, §229.

authentically declare and sanction for his diocese the existence of a custom contrary to the higher law.[1]

(*d*) He may, finally, provided nothing is enacted which is manifestly contrary to conciliar legislation, solve doubts existing therein by making diocesan laws: "Praeterea poterunt Ordinarii . . . si id exigat gubernationis necessitas, dubia dirimere, non quidem per modum authenticae interpretationis legis conciliaris, sed per modum legis diocesanae, quam semper ferre possunt ad boni communis exigentiam, dum certo contraria non fuerit legibus conciliaribus."[2]

Examples of the use of this episcopal power in one or other of the ways above indicated would be, for example, decisions given on the meaning of "spectaculum in publicis theatris" of *IV Westm.*, xi, 9, or of "aedificia . . . nec non alia ad ecclesiam pertinentia" of *I Westm.*, xxv, 4, or "famulae . . . sint provectioris aetatis" of *I Westm.*, xxiv, 4.

5. THE CLAUSE "AD MENTEM"

Where can one find a full explanation of the various clauses which the Roman Congregations are accustomed to use in their replies, e.g., "et amplius" "in decisis"? In particular I seek an explanation of the clause "ad mentem",

The point is explained by the more voluminous canonists in their commentaries on Rescripts, canon 36–62, e.g. Van Hove, *De Rescriptis*, §86. The fullest description known to us is in *Dictionnaire de Théologie Catholique*, s.v. "Clauses Apostoliques", II, col. 19–42, by Dr Ortolan.

The commonest reply is "affirmative" or "negative" with nothing further. The Congregations represent the Pope, the supreme legislator, who is under no obligation to give reasons for any law or decision made. Nor does it follow that an affirmative reply is to be taken as endorsing the reasons alleged in a petition, or as accepting the arguments used by the advocates or others who may have been employed by a Congregation in studying the question.

Occasionally, however, it seems good to a Congregation to elucidate the reply, whether affirmative or negative, and this is done by giving the explanation after the words "mens est" or "ad mentem" or "iuxta modum". Quite frequently the "ad mentem" clause is for the private instruction of the petitioner and does not appear in the printed collections. The reason for this is given in a

[1] Ryan, *Principles of Episcopal Jurisdiction*, p. 135, quoting Rotal decisions.
[2] Michiels, *Normae*, 1949, I, p. 504, quoting Rodrigo, *De Legibus*, n. 380.

useful note on the clause "ad mentem", contained on p. 397 of the Acts and Decrees First Maynooth Synod (1900): "Non raro, publicata *affirmativa* vel *negativa* responsione, tamen mens remanet secreta, quando nempe haec non attingit meritum quaestionis, sed potius aequitatem aut prudentiam executionis, seu aliud facti peculiare adiunctum; imo aliquando nulla datur responsio, sed tantum decernitur 'ad *vel* iuxta mentem'."

Frequently, nevertheless, the "ad mentem" clause is published, and a good example may be seen in the reply *S.R.C.*, 4 August, 1922, n. 4375, on the Dialogue Mass,[1] which gave the "ad mentem" without any affirmative or negative reply.

6. CHANCELLOR AND DISPENSATIONS

A priest, after his petition for a dispensation was refused by the chancellor, succeeded in obtaining it from the bishop, without mentioning the chancellor's refusal. Is this episcopal grant invalid from canon 44, §2*?*

Canon 11: Irritantes aut inhabilitantes eae tantum leges habendae sunt, quibus aut actum esse nullum aut inhabilem esse personam expresse vel aequivalenter statuitur.

Canon 19: Leges quae poenam statuunt, aut liberum iurium exercitium coarctant, aut exceptionem a lege continent, strictae subsunt interpretationi.

Canon 44, §2: Gratia a Vicario Generali denegata et postea, nulla facta huius mentione, ab Episcopo impetrata, invalida est. . . .

i. If the chancellor, using his native function of canon 372, was simply recording and transmitting a decision of the vicar general, the subsequent dispensation obtained from the bishop is clearly invalid from canon 44, §2, unless the episcopal dispensation was granted *motu proprio*, as some commentators note.[2] Frequently, however, especially in small dioceses, the chancellor is given delegated jurisdiction for dispensing certain impediments within the limits permitted by the law,[3] and he may even use these delegated powers more widely than the vicar general uses his ordinary powers. The system is open to some objections but it is, in given circumstances, a reasonable arrangement, especially when the chancellor is also the bishop's secretary. The point to observe is that, unlike the vicar general, the chancellor enjoys no jurisdiction from his office, and the powers which are conveniently given to him could equally be delegated by the bishop to any other priest.

[1] *The Clergy Review*, 1941, XX, p. 454.
[2] Coronata, *Institutiones*, I, §63; Maroto, *Institutiones*, §285.
[3] *The Clergy Review*, 1948, XXIX, p. 183.

ii. Some are of the opinion that the rule of canon 44, §2, applies also to a refusal by the chancellor,[1] since the reasons for the rule in the case of a vicar general are similar in the case of a chancellor. We cannot agree that this is so except, perhaps, where the bishop has made this provision expressly in delegating the chancellor. In the common law it seems to us, from canons 11 and 19, that the restriction on the bishop's power of validly issuing a dispensation must be limited to the case of the vicar general provided for in canon 44, §2. Within the limits fixed by the law the vicar general as an Ordinary forms, as it were, one person or one tribunal with the bishop of the diocese, which is the reason usually given for the rule of canon 44, §2; but this notion cannot be extended, it seems, to the bishop's delegate, even when he is the chancellor, for as such he enjoys no ordinary jurisdiction at all, and there is nothing to prevent the bishop delegating any number of persons. There is, within its legal limits, between the jurisdiction of the vicar general and that of the bishop, a certain equality which is wholly lacking in the bishop's delegate. Hence, owing to the superiority in power of the Roman pontiff, a dispensation refused by any Ordinary is validly granted by the Pope even though the first refusal is not mentioned.[2]

An argument in favour of the view we are rejecting might be drawn from the practice of Vicars and Prefects Apostolic, who are denied a vicar general yet may appoint a delegate enjoying all the powers of a vicar general.[3] The commentators usually apply to this "delegate" the rule of canon 44, §2.[4] Except that the "delegate" is not called a "vicar general", he enjoys all the prerogatives granted by the Code to the vicar general, including necessarily that contained in canon 44, §2. The only adequate reply to this contention is that the "Vicarius Delegatus" of missionary countries, who is the equivalent of "Vicarius Generalis" in other places, enjoys ordinary jurisdiction because it is attached to an office; his title "Delegatus" which has occasioned certain difficulties[5] does not mean that he enjoys merely delegated jurisdiction, for the practice of appointing a delegate "ad universitatem causarum" was common on the missions before the letter from *Propaganda*, 8 December, 1919, authorised for the missions a "Vicarius Delegatus" with all the prerogatives of a "Vicarius Generalis" in other places. The faculties which a diocesan residential bishop may give to the chancellor are

[1] *The Jurist*, 1949, p. 417.
[2] Cicognani, *Canon Law*, p. 720.
[3] *Propaganda*, 8 December, 1919; Bouscaren, *Digest*, I, p. 144.
[4] Michiels, *Normae*, II, p. 387; Payen, *De Matrimonio*, I, §760; Berutti, *Institutiones*, I, §99.
[5] *Apollinaris*, 1933, p. 196.

always delegated and are never due to the office of chancellor as such.

To sum up the opinion we have defended: Canon 44, §2, establishes an exception to the free exercise of a bishop's power, and must be strictly interpreted as applying only to refusal on the part of one who as the bishop's *alter ego* enjoys ordinary jurisdiction; the exception cannot be applied to the bishop's delegate who enjoys only delegated jurisdiction.

This is not to say that silence about the first refusal is to be commended; on the contrary, respect both for the delegated chancellor and the delegating bishop requires a mention of the refusal.

7. INADEQUATE CANONICAL CAUSE FOR DISPENSATION

In forwarding petitions for dispensations from marriage impediments we all know that the reason really is that the parties are in love with each other. Knowing this to be insufficient as a canonical reason, others are added such as "periculum matrimonii civilis". Suppose, however, that this alleged cause is not a true one, and nevertheless a dispensation from difference of worship is thereby obtained from the Ordinary, is the marriage valid? If not, what should one do about it?

Canon 81: A generalibus Ecclesiae legibus Ordinarii infra Romanum Pontificem dispensare nequeunt, ne in casu quidem peculiari, nisi haec potestas eisdem fuerit explicite vel implicite concessa. . . .

Canon 84, §1: A lege ecclesiastica ne dispensetur sine iusta et rationabili causa, habita ratione gravitatis legis a qua dispensatur; alias dispensatio ab inferiore data illicita et invalida est.

§2: Dispensatio in dubio de sufficientia causae licite petitur et potest licite et valide concedi.

i. The dispensation, and therefore the marriage, is invalid if granted by an episcopal curia without a canonical cause. Local Ordinaries enjoy either from the common law in emergencies or by papal indult the faculty of dispensing certain impediments provided a just cause exists, and it is altogether wrong for a priest to get scrupulous about the validity of these curial acts. Both from canon 84, §2, which sanctions doubtfully sufficient causes, and from the rule of canon 1014 declaring marriage to enjoy the favour of law in matters relating to the validity of the contract, it should normally be taken for granted that marriages contracted with a curial dispensation are valid; moreover, it is an ancient principle that any juridical act, such as granting a dispensation, must usually be

regarded as validly performed, and the law should be interpreted as widely as possible in order to sustain the validity of these acts In cases such as that outlined in the question, one could without much difficulty decide that, when people are very much in love, there is always some danger of a civil marriage if a dispensation is refused. It is the rarest thing for a marriage contracted with a dispensation to be subsequently declared invalid owing to the insufficiency of the canonical cause.

ii. But, though rare, it can happen. A good example exists in a Rotal decision, 3 March, 1942,[1] which declared the invalidity of a marriage contracted with a dispensation from difference of worship issued by the Paris Curia.[2] Incredible though it may appear, the only cause alleged was that the parties were in love: "In petitione dispensationis a parocho sponsorum ad Curiam Parisiensem missa tamquam unicum motivum dispensandi adducitur 'Amour'. At 'amor' contrahentium neque ab ullo elencho causarum canonicarum neque ab ullo Auctore agnoscitur uti causa canonica dispensandi. . . . Curia autem Parisiensis contenta erat illa causa, nam absque ulla inquisitione, a tergo petitionis scribens imploratam dispensationem concessit. . . . Si Praelati infra Romanum Pontificem super impedimento disparitatis cultus, in quo Ecclesia tam aegre dispensare solet, dispensare valerent ob merum 'amorem', verum vel putatum, contrahentium, tota legislatio Ecclesiae quoad hanc rem tanti momenti in irritum redderetur: hoc autem Ecclesia nunquam admittere potest neque admittit."

iii. In the above case outlined in the question, we think that nothing need be done for the reasons given in (i). The marriage should be presumed valid, and the question about the validity of the dispensation should be left dormant, unless the marriage becomes wrecked and it appears advisable to seek a declaration of nullity: we think it would not succeed.

Before the event, however, when sending petitions for dispensation from diriment impediments, the priest should put more than one canonical cause,[3] if such exist; when "periculum matrimonii civilis" is doubtful, he should state so in the petition; if it is not merely doubtful but non-existent, and no other canonical cause can be presented, it is theoretically possible for the Holy See, not for the local Ordinary, to grant a valid dispensation without one. We have

[1] *R.D.*, 1942, XXXIV, p. 123.
[2] The decision was reversed 14 January, 1951; *A.A.S.*, 1951, XLIII, p. 316, vii.
[3] Ordinaries sometimes refuse to accept "periculum matrimonii civilis" without any additional cause, e.g. Glasgow, Synod IV, 1946, n. 166; they are well within their right, since they are not bound to use the faculties granted by the Holy See, and it is well known that this particular cause is often lightly alleged.

no experience of this ever happening in practice, but it is always open to the petitioners and to the priest acting for them to request the Ordinary to seek dispensation from the Holy See for whatever reasons can be alleged, even though they are not included in the books and in the lists as just canonical causes.

8. PLURALITY OF QUASI-DOMICILE

Is it possible for a person to have more than one quasi-domicile?

Canon 92, §1. Domicilium acquiritur commoratione in aliqua paroecia . . . quae commoratio vel coniuncta sit cum animo ibi perpetuo manendi, si nihil inde avocet, vel sit protracta ad decennium completum.

§2. Quasi-domicilium acquiritur commoratione uti supra, quae vel coniuncta sit cum animo ibi manendi saltem ad maiorem anni partem, si nihil inde avocet, vel sit reapse protracta ad maiorem anni partem.

There has always been some unwillingness on the part of lawyers to admit simultaneous plurality even of domicile, since this would seem to be almost a recognition of bi-location. The civil law in most places preserves the principle of one domicile for purposes of social security, such as voting, but even so the conditions of modern life have imposed exceptions. The canon law considers not so much the locality as the relations of a person to the locality, and is more concerned with personal individual rights than with social security; this tendency, which may be called "personalist", logically led to the recognition, in canon law, of a plurality of domicile, and we find the law codified accordingly under the title *De Personis*.[1]

The conditions for acquiring a quasi-domicile are less strict than for a domicile, but the effects of both, one or two matters apart, are identical,[2] and one would expect to find, once the notion of quasi-domicile became established, that the notion of a plural quasi-domicile would also be admitted. Pre-code writers, however, whilst recognising the possibility of a legal quasi-domicile existing together with a voluntary one, would not admit the existence of a plural voluntary quasi-domicile,[3] for the criterion "greater part of the year" seemed inapplicable to two places, since the choice of the second appeared to terminate the first. There are post-Code commentators who retain this outlook, but a large number of them,

[1] *La Théorie du Domicile et l'Equité Canonique*, Lefèbvre in *E.T.L.*, 1946, p. 114.
[2] *The Clergy Review*, 1945, XXV, p. 519.
[3] E.g. d'Annibale, *Theol. Moralis*, I, §84, n. 23.

if not the majority, have no difficulty in accepting plurality even of voluntary quasi-domicile. One quotation will suffice both for establishing this point and as a summary of the whole situation: "Plura quasi-domicilia in iure decretalium fere communi auctorum sententia non admittebantur. Post Codicem tamen nulla est ratio, ob quam quasi-domicilium necessarium cum alio quasi-domicilio libero simul non existant; unanimiter hoc admittunt auctores, iis exceptis qui immerito ipsam existentiam quasi-domicilii necessarii negant. . . . Neque est dubium quasi-domicilium, per animum manendi acquisitum, cum alio, quod sine animo, per solam protractam commorationem acquiritur simul adesse posse; etiam hic consentiunt auctores . . . Dubium solum movebatur a P. Vermeersch, quem secutus est P. Vidal, an possit quasi-domicilium, quod per animum ultra semestre manendi acquiritur, simul cum alio quasi-domicilio, *eodem modo acquisito* subsistere. Praedicti auctores respondent negative, asserendo per animum alibi ultra semestre manendi, primum quasi-domicilium solutum esse; nos, cum P. Maroto, censemus in tali casu primum quasi domicilium non solvi. . . . Censemus ergo duo quasi-domicilia, per animum ultra semestre in loco manendi acquisita, simul persistere posse."[1]

The reason for this view, which we think correct, is in canon 95: "Domicilium et quasi-domicilium amittitur discessione a loco cum animo non revertendi . . ." which *teste* Maroto[2] was finally chosen by the redactors in place of the suggested reading: "quasi-domicilium autem amittitur quoque discessione a loco per sex menses completos, non obstante revertendi animo". This reading represented, it appears, the pre-Code interpretation, since it was then held that the contrary action of a protracted absence terminated a quasi-domicilium, and extinguished, as it were, the intention of returning. The law of the Code excludes this interpretation and recognises the same principle for terminating both domicile and quasi-domicile. Accordingly, a person studying in Rome, for example, acquires there a quasi-domicile immediately on arriving; if he has to go to Naples for six months and a day to recuperate after a serious illness, intending nevertheless to return to Rome when well, he acquires a second quasi-domicile immediately on arriving at Naples.

9. INTERNAL NON-SACRAMENTAL FORUM

It would help one to understand the meaning of this forum if an unqualified affirmative answer could be given to the following question: may a confessor,

[1] Vindex in *Jus Pontificium*, 1926, VI, p. 51. Cf. also in the same sense *E.T.L.* loc. cit.
[2] *Institutiones*, I, §413.

in using his faculties for dispensing a marriage impediment or absolving from censure, provided the penitent is willing to give his name outside the confessional, secure that the confessor's dispensation or absolution is operative in the internal non-sacramental forum?

Canon 202, §2: Potestas collata pro foro interno exerceri potest etiam in foro interno extra-sacramentali, nisi sacramentale exigatur.

§3: Si forum, pro quo potestas data est, expressum non fuerit, potestas intelligitur concessa pro utroque foro, nisi ex ipsa rei natura aliud constet.

Canon 1047: Nisi aliud ferat S. Poenitentiariae rescriptum, dispensatio in foro interno non sacramentali concessa super impedimento occulto, adnotetur in libro diligenter in secreto Curiae archivo de quo in can. 379 asservando, nec alia dispensatio pro foro externo est necessaria, etsi postea occultum impedimentum publicum evaserit; sed est necessaria, si dispensatio concessa fuerat in foro interno sacramentali. Cf. can. 991, §4, for a similar rule about irregularity.

Canon 2251: Si absolutio censurae detur in foro . . . interno, absolutus, remoto scandalo, potest uti talem se habere etiam in actibus fori externi; sed, nisi concessio absolutionis probetur aut saltem legitime praesumatur in foro externo, censura potest a Superioribus fori externi, quibus reus parere debet, urgeri, donec absolutio in eodem foro habita fuerit.

An affirmative answer cannot be given to the above question, since the jurisdiction of a confessor *qua talis* is usually limited to the sacramental forum in which everything transacted is subject to the most inviolable law of secrecy. We say *qua talis* because in given circumstances the common law does extend his jurisdiction beyond the confessional, e.g. the confessor of canon 1044 may, in the absence of the parish priest, automatically become the "alius sacerdos" of canon 1098; or a confessor absolving a person in danger of death may enjoy wider jurisdiction from canon 882.[1] In such cases, and in these alone, the confessor may act as suggested in the above question. In other cases, where his jurisdiction for the internal sacramental forum is not amplified either by the common law or by indult, the most he can do, if he judges it expedient, is to advise the penitent to approach the appropriate authority in order to secure the effects of absolution or dispensation for the internal non-sacramental forum, as described in canon 2251.

The procedure, including the limitations of simple confessors, is illustrated by the rules which appear during Jubilees when it is the

[1] This does not extend to the external forum. *Code Commission*, 28 Dec., 1927.

custom to give Jubilee confessors additional faculties over a limited number of cases. In the *Monita*, n. I, issued by the Sacred Penitentiary[1] for their guidance during 1950 we read: "Simplices confessarii his facultatibus in sacramentali confessione tantum uti possunt; poenitentiarii vero etiam in foro interno extra-sacramentali, dummodo de peculiaribus facultatibus ne agatur pro quibus sacramentalis confessio expresse requiratur." The *Monita* of the 1925 Jubilee were more informative about the procedure to be observed by Penitentiaries when absolving in the internal forum, even from public censures: ". . . ad huius vero Officium poenitentem dirigant cum suo de impertita a se censurae absolutione testimonio, in quo quidem poenitentis nomen, cognomen, dioecesim et censuram, in quam inciderat, publicam, cum plena eius venia, conscripserint. Officium autem S. Poenitentiariae poenitentem ad Ordinarium remittet, tradito Rescripto, quo testificabitur illum fuisse a publica eiusmodi censura in foro sacramentali absolutum, ut possit, ad can. 2251, haberi tamquam absolutus in foro externo. . . ."[2]

A similar procedure could be followed by a parish priest absolving, in the circumstances of canon 1045, from an occult impediment of consanguinity arising from illicit intercourse of the person's forebears, when for obvious reasons a dispensation cannot be sought in the external forum, and for prudential reasons a dispensation in the sacramental forum alone is judged unsafe and inexpedient. The parish priest may dispense in the internal non-sacramental forum, but the confessor *qua talis* may not, since his faculty is limited from canon 1044 to sacramental confession.

In ascertaining the exact extent of faculties enjoyed, the preposition "in" denotes the mode of their exercise, whereas "pro" denotes their juridical effect. Whether their exercise is limited to the sacrament of Penance may often be discerned, as in the concluding words of canon 1044, from the very explicit words employed; or the same may be implied from the context which refers to a confessor, not to a priest, as in the *pagella* of diocesan faculties which is common in this country, e.g. "Quo autem fructuosius Confessarii munus obeas, facultates sequentes in foro conscientiae exercendas tibi tribuimus."

10. DELIBERATE USE OF "COMMON ERROR" JURISDICTION

In a certain church a number of visiting priests kneel in the church to make their thanksgiving after Mass. Are they justified in hearing the confessions of the faithful, when requested, even though they lack faculties in this or any

[1] *A.A.S.*, 1949, XLI, p. 513. [2] 1924, XVI, p. 337, ad VI.

other diocese, and even though there may be other priests available, properly approved, who could easily be asked? The alleged justification is that people in general think that all priests are able to hear confessions anywhere.

Canon 209. In errore communi . . . iurisdictionem supplet Ecclesia pro foro tum externo tum interno.

Canon 872. Praeter potestatem ordinis, ad validam peccatorum absolutionem requiritur in ministro potestas iurisdictionis, sive ordinaria sive delegata, in poenitentem.

Canon 874. Iurisdictionem delegatam ad recipiendas confessiones quorumlibet sive saecularium sive religiosorum confert sacerdotibus tum saecularibus tum religiosis etiam exemptis Ordinarius loci in quo confessiones excipiuntur. . . .

Canon 2366. Sacerdos qui sine necessaria iurisdictione praesumpserit sacramentales confessiones audire est ipso facto suspensus a divinis. . . .

The view which justifies hearing confessions in the above circumstances is often followed in practice. We think unhesitatingly that it is a wrong view, because it nullifies the principle requiring jurisdiction, as well as holy orders, for the valid absolution of sin, a principle which is dogmatic and not merely canonical.

Its origin, no doubt, is in the now generally accepted doctrine that a "common error" title to jurisdiction can exist *de iure*, and that the title is verified even when the priest using it is well aware that he lacks any other title.[1] The conditions in which "common error" exists are in much dispute, but assuming that it does exist every writer on the subject requires a grave reason to justify its use knowingly, and this is clearly lacking in the case set out above.

There is considerable agreement that the censure is not incurred if the confessor has a grave reason for hearing confessions on the title of "common error", and the commentators are often content to leave it at that.[2] Others imply, or expressly state, that the censure is incurred if there is no grave reason,[3] since the Church grants this jurisdiction not in favour of the priest but of the faithful; the confessor may not with impunity force the Church, as it were, to concede this extraordinary kind of jurisdiction, unless a grave reason justifies him.

The view, however, may be held with probability that knowingly absolving in "common error" for merely a slight reason is not in itself a grave sin.[4] This really gets to the root of the matter, for if

[1] *The Clergy Review*, 1946, XXVI, p. 432; 1941, XXI, p. 237.
[2] Beste, *Introductio*, p. 985. [3] Chrétien, *De Poenitentia*, §§210, 224.
[4] Cappello, *De Poenitentia* (1946), §343; Iorio, *Theol. Moralis* (1947), III, §424.

it is not a grave sin it follows inevitably from canon 2242, §1, that the censure is not incurred.

One can appreciate the theological or canonical gymnastics which lead to this conclusion whilst, at the same time, condemning the practice outlined. The priests in question are breaking the law, and though in conscience they may hold themselves guiltless of grave sin, the authorities of the external forum are entitled to regard them as censured if they so decide: the remedy for the delinquent confessor would then be either to seek absolution or to prove, to the satisfaction of the external forum, that no penalty has been incurred. Therefore, it is for the rector of the church, who may be aware that these practices are going on therein, to direct the confessors that they must cease, and he should have recourse to the local Ordinary if his directions are not obeyed.

II. CLERICS AND PASTORS

11. DISCARDING CLERICAL DRESS

What is the obligation in conscience of always wearing clerical dress? Are there any canonical sanctions attached to this law? I have in mind the position of a priest who discards clerical attire during his annual holiday.

Canon 136, §1: Omnes clerici decentem habitum ecclesiasticum, secundum legitimas locorum consuetudines et Ordinarii loci praescripta deferant. . . .

Canon 188.7: Ob tacitam renuntiationem ab ipso iure admissam quaelibet officia vacant ipso facto et sine ulla declaratione, si clericus: . . . Habitum ecclesiasticum propria auctoritate sine iusta causa deposuerit, nec illum, ab Ordinario monitus, intra mensem a monitione recepta resumpserit. (For minor clerics see also canon 136, §3.)

Canon 2379: . . . clerici autem maiores, salvo praescripto canon 188.7, ab ordinibus receptis suspendantur, et si ad vitae genus a statu clericali alienum notorie transierint, nec, rursus moniti, resipuerint, post tres menses ab hac ultima monitione deponantur.

S.C. Conc., 28 July, 1931; *A.A.S.*, 1931, XXIII, p. 336: . . . decentem habitum ecclesiasticum publice semper, non excepto tempore vacationum aestivarum, deferant, habitum scilicet, quem legitima consuetudo et Ordinarii loci praescriptum in propria regione ordini clericali congruentem agnoverint.

i. In conscience the obligation of wearing clerical dress is a grave one, that is to say its non-observance is a mortal sin, a conclusion to be drawn from the grave penalties attached, and still more from the purpose of the law. Its violation easily means, as the Sacred Congregation notes, that the faithful will lose their respect for the clergy, and that the clergy will expose themselves to conduct unbecoming their state and to the danger of abandoning it altogether.

It is, nevertheless, unanimously and very reasonably admitted by all the authorities that this law, grave in itself, does admit smallness of matter in respect to the period during which it is not observed, though it would be unreasonable to expect unanimity in determining this period. We cannot find anyone who permits a continuous period of more than six days, and although St Alphonsus

is occasionally credited with this estimate it appears that Lacroix[1] first suggested it, and he is followed by many modern commentators.[2] It is assumed, of course, even during this short period, that there is no other evil circumstance, and even so an Ordinary is within his right in enforcing the law.

ii. In the common law the sanctions are *ferendae sententiae* to the extent, at least, that they are not applicable until the stated time has elapsed after receiving the Ordinary's monition, which is the mildest kind of penal measure in the Code.[3]

Local law is sometimes stricter, as in Malines:[4] "Si quis clericus, in maioribus ordinibus constitutus, vestibus laicalibus ad finem inhonestum indutus in publicum prodit, ipso facto suspensionem a divinis incurrit," a measure which is rightly interpreted by Belgian canonists to apply only to a grave breach of the law, as explained above.[5] We do not know of any English diocesan law applying a sanction of this kind. Our provincial law merely directs that a priest not attired as a cleric must not be allowed to say Mass or assist at any divine office.[6]

iii. Discarding clerical dress is forbidden "propria auctoritate sine iusta causa", as in canon 188. Apart from times of persecution it is not easy to estimate what the just cause will be, but we can imagine that certain kinds of illness may demand a complete relaxation scarcely attainable when dressed as a cleric, in which case the necessary permission could rightly be sought from one's own Ordinary.

12. PRIEST PRACTISING MEDICINE

What are the limits of the law forbidding the practice of medicine to priests and religious? It does not, one supposes, forbid the activities of an infirmarian in a religious house. But may a priest possessing a medical degree prescribe for a member of his household instead of calling in a general practitioner?

Canon 139, §1: Ea etiam quae, licet non indecora, a clericali tamen statu aliena sunt, vitent. §2: Sine apostolico indulto medicinam vel chirurgiam ne exerceant. . . .

Canon 985: Sunt irregulares ex delicto. . . . 6. Clerici medicam vel chirurgicam artem sibi vetitam exercentes, si exinde mors sequatur.

[1] *Theol. Moralis*, I, §672.
[2] Vermeersch-Creusen, *Epitome*, I, §254; Loiano, *Institutiones*, III, §504; *Collat. Brugen.*, 1935, p. 113; Iorio, *Theol. Moralis*, II, §990; Brys, *Iuris Canonici Compendium*, I, §327; Davis, *Moral and Pastoral Theology*, IV, p. 298.
[3] Canons 2307, 2309.
[4] *Conc. Prov.*, 1920, n. 131.4.
[5] Claeys-Bouuaert, *Manuale Iuris Canonici*, I, §292.
[6] *Westm.*, IV, xi, 13.

i. St Luke practised this profession and many examples in the early Church could be cited of priests and bishops who did the same. The first prohibition is in canon 5 of the Council of Clermont held in the year 1130, against monks who left their monasteries to study medicine, and the rule was gradually extended to all clerics. The reasons for this law are, firstly, to prevent them from engaging in a secular pursuit, especially if exercised for gain, which might deflect them from their sacred calling; secondly, as a protection for the virtue of chastity; and, thirdly, the irregularity of canon 985. There seems no foundation for the view that the law is also aimed at protecting the honour and interests of the medical profession.[1]

ii. The casuistical interpretation of the law resembles that used in interpreting the law against clerics engaging in trade, but there is no *l.s.* penalty attached to it. Everyone is agreed that the law does not apply to the gratuitous treatment of minor complaints and injuries, such as occur in any household, and which are dealt with by an infirmarian in a college or religious house, or maybe by a village priest from motives of charity; nor obviously does this positive law apply to sudden emergencies when, in the absence of a professional man, anyone is bound to come to the assistance of his neighbour in bodily necessity. It is the exercise ("exerceant") which is forbidden, not the acquisition of medical knowledge or medical degrees, and the word implies a certain frequency or repetition. Briefly the limits of the law may be determined by three terms: "exercitium", "ex professo", "ad quaestum",[2] and the most liberal interpretation we have examined is that of Beste: ". . . clerici ex professo et ad quaestum se devovere inhibentur arti medicae et chirurgicae, nam exercitium dicit praxim habitualem et frequentem. . . . Quare praesenti textu iuris clerici non vetantur consilium gratuitum dare aegrotis, aut curam et assistentiam scientificam praestare membris propriae familiae vel communitatis familiaribus et amicis; aut curam ex professo suscipere infirmorum alienorum, si ex instituto nosocomia administrent; aut in casu necessitatis vel caritatis chirurgiam agere, dummodo ab incisionibus et adustionibus periculosis se abstineant."[3]

iii. Since, with the exception of canon 985.6, the law has no *l.s.* sanction, it will be for the Ordinary to coerce a cleric into observing it by applying any appropriate *f.s.* penalty, which leaves on the margins a wide latitude for the conscience of the individual cleric in deciding whether he is breaking the law or not. Indults are frequently obtained, under certain conditions and restrictions, for

[1] Brunini, *Clerical Obligations of Canons* 139 *and* 142, p. 12.
[2] *Collationes Brugenses*, 1935, p. 364.
[3] *Introductio*, ad can. 139.

missionary clergy and religious to practise medicine in a measure forbidden by the common law. In 1628 a Douay priest, Charles Clemer, obtained an indult "quod huiusmodi praetextu facilior ei futurus sit aditus ad administranda Sacramenta catholicis anglis, et ad convertendos haereticos, praesertim in mortis periculo constitutos".[1]

iv. Canon 985 offers a little difficulty in its correct application. In pre-Code law what is now classed in n. 6 as irregularity "ex delicto" used to be regarded as "ex defectu lenitatis"; irregularity is an impediment not a penalty or a censure, but the notion of *delictum* always carries with it a penalty. One commentator writes of canon 985.6: "Delictum tamen non est, cum poena non imponatur, sed antiquum nomen servat."[2] Cappello gives the common interpretation that this irregularity is incurred by the grave sin of breaking the law of canon 139, §2, which is therefore properly classed as "ex delicto". It is not incurred, accordingly, if the patient's death follows medical treatment given by a cleric in the cases mentioned above (ii), or by one enjoying an indult, even though there was grave negligence in prescribing the wrong treatment. Cappello holds that this law applies equally to religious who are not clerics, from the rule of canon 592; others, relying on canon 2219, §3, think that it affects only clerics.[3]

13. CLERICS AS LOCAL COUNCILLORS

What is the law regarding clerics offering themselves for election as local councillors?

Canon 139, §4: Senatorum aut oratorum legibus ferendis, quos *deputatos* vocant, munus ne sollicitent neve acceptent sine licentia Sanctae Sedis in locis ubi pontificia prohibitio intercesserit; idem ne attentent aliis in locis sine licentia tum sui Ordinarii, tum Ordinarii loci in quo electio facienda est.

Code Commission, 25 April, 1922, II: An Ordinarii locorum in concedenda licentia sacerdotibus qui se candidatos ad deputatorum comitia sistere cupiunt, potius difficiles quam faciles se praebere debeant. *Resp.* Affirmative ad primam partem, negative ad secundam.

The canon cited deals with various pursuits which, though not indecorous, are somewhat unsuited to the clerical profession. Permission must be obtained from the Holy See in countries such as Italy, where there exists a papal prohibition against clerics assuming

[1] *Fontes*, n. 4439.
[2] Regatillo, *Jus Sacramentarium*, §961; Bryce, *Compendium*, II, §1114.
[3] Regatillo, *Institutiones*, I, §255.

these civil offices. Elsewhere the Ordinary's sanction suffices, and the answer to be expected will usually be a negative one, unless special reasons exist affecting the welfare of Catholics. A later reply of the Code Commission, 15 March, 1927, strengthened the powers of the Ordinaries in stopping any political activity on the part of clerics which was not in conformity with the instructions of the Holy See.

14. ADMINISTRATOR OF VACANT PARISH

Is there any limit to the period during which a parish may be in charge merely of an administrator? Cases are fairly common where parishes are left to the care of an administrator for two years or more.

Canon 155: Officiorum provisio cui nullus terminus fuit speciali lege praescriptus, nunquam differatur ultra sex menses utiles ab habita notitia vacationis, firmo praescripto can. 458.

Canon 458: Vacanti paroeciae curet loci Ordinarius providere ad normam can. 155, nisi peculiaria locorum ac personarum adiuncta, prudenti Ordinarii iudicio, collationem tituli paroecialis differendam suadeant.

Canon 1432, §3: Si Ordinarius intra semestre ab habita certa vacationis notitia beneficium non contulerit, huius collatio devolvitur ad Sedem Apostolicam, salvo praescripto can. 458.

i. The six months' *tempus utile* of canon 155 means that, after it has elapsed, the Holy See alone can validly appoint a parish priest. On the other hand, canons 155 and 1432, §3, as well as many other official texts, place the parochial benefice in an exceptional position, in so far that it is for the Ordinary to decide whether the appointment of a parish priest may be deferred beyond six months. The result is that the rule of canon 1432, §3, is scarcely ever applicable, as most of the commentators note, since it must be assumed that the Ordinary has a just reason for delaying the appointment.

ii. Nevertheless there are one or two important decisions which clarify the meaning of "peculiaria locorum ac personarum adiuncta". The first is a decree of the Congregation of the Council, 14 November, 1916,[1] which declared that the conditions of the war not only justified but urged delay in appointments to vacant parishes; the same Congregation, 26 February, 1919,[2] revoked this war-time provision. We are not aware of any similar documents existing for the period of the Second World War.

A further decision, given by the Codex Commission, 24 November,

[1] *A.A.S.*, 1916, VIII, p. 445; *Periodica*, 1919, VIII, p. 142.
[2] *A.A.S.*, 1919, XI, p. 77; *Periodica*, 1921, X, p. 60.

1920,[1] was to the effect that the appointment does not pass to the Holy See when the Ordinary's failure to appoint is due to an absolute lack of subjects.

A more recent reply of the same Commission, 3 May, 1945,[2] decided that the economic necessities of a diocese are not included in the words *peculiaria*, etc., of canon 458.

iii. For the meaning of the phrase, which is only partly explained by the official documents, we must turn to the commentators, particularly the more recent ones on the last reply of the Code Commission.[3] It is rightly held that the phrase in canon 458 refers to the circumstances of the parish, not of the diocese, and that the law has chiefly in view the good of the parish which is being denied a parish priest. Canon 1481 sanctions during a vacancy the custom of devoting parochial revenues, superfluous to those required for the support of an administrator, to the general needs of the diocese, a rule which obviously favours episcopal delay in the appointment of a parish priest but is now inapplicable beyond a period of six months.

Reasons which do come within the phrase *peculiaria*, etc., of this canon are, for example, the lack of a priest exactly suited for the position; the necessity of paying off a parochial debt, or of erecting a parish school; or the wish of the Ordinary to make known his displeasure with the parishioners.

iv. Our correspondent had the impression that, after administering the parish for six months, he had the right to be appointed parish priest. This is not so, of course, though it is the common practice to appoint a priest first as administrator with a view to ascertaining whether he is fitted for the work of that particular parish. The contention, however, is correct that an administrator should not usually be placed in a parish for more than six months, but there are many reasons justifying a longer period, all of which depend on the Ordinary's prudent judgement within the limits of the official decisions mentioned above.

15. "MISSA PRO POPULO" DAYS

Since the obligation of the parish priest appears to be in principle the equivalent of the obligation of the faithful to assist at Mass, why does his obligation continue on suppressed feasts? Why does the list differ in various dioceses even when it is certain that no indult has been obtained?

[1] *A.A.S.*, 1920, XII, p. 577; *Periodica*, loc. cit., p. 252.
[2] *A.A.S.*, 1945, XXXVII, p. 149; *The Clergy Review*, 1946, XXVI, p. 48.
[3] *Apollinaris*, 1947, XX, p. 38; *Irish Ecclesiastical Record*, 1946, LXVII, p. 52; *Ephemerides Iuris Canonici*, 1946, p. 121.

The number was explained very fully and clearly by Dr Hanrahan in *The Clergy Review* in the course of a commentary upon a reply received by the Archbishop of Liverpool from the Sacred Congregation of the Council, 19 July, 1941.[1]

i. The principle of the obligation is that the parish priest, in return for his support from the people's contributions or from his parochial benefice, should apply a certain number of Masses for his people; the obligation is not actually equivalent to that of assisting at Mass which is binding upon all the faithful, clergy as well, even those who are not parish priests. For the latter obligation has for its purpose the worship of God, to give God *His* due, whereas the former is concerned with giving the people *their* due. It is true, nevertheless, that the two obligations used to coincide on the same days: there were formerly many days of obligation which are now suppressed as such, and are known as "days of devotion"; but, from canons 339, §1, and 446, §1, the parish priest's obligation of offering Mass for the people continues on these suppressed feasts, whereas the laity's obligation of assisting at Mass on these days has been discontinued. The ultimate reason for this is the will of the legislator: the admitted duty of the parish priest is specifically and numerically determined. Regatillo,[2] who is well-informed on such matters, gives another reason for the rule of the Code as explained in later replies, 17 February, 1918, and 28 December, 1919. Many dioceses possess an indult by which a stipend may be taken by a parish priest for his second Mass on days when the first is offered for the people, provided the offering is sent to the bishop for the support of the Seminary: Regatillo states that certain bishops petitioned the Holy See to retain the suppressed feasts as days when Mass has to be offered for the people, precisely in order that their Seminaries should benefit by the indult.

ii. The list differs in various dioceses, either because some have an indult permitting a reduction in the number, or because the feasts of local and diocesan patrons differ, or even because the compiler of the Ordo has made a mistake or is unaware of the reply given to Liverpool in 1941. In any event, a parish priest satisfies his obligation in justice by offering these Masses on the days indicated officially in his local calendar or directory.

16. PAROCHIAL VISITING

Some priests, whilst zealous in all other respects, neglect the systematic visiting of the people in their homes, relying on the view that there is no strict

[1] *The Clergy Review*, 1941, XXI, p. 362.
[2] *Interpretatio et Jurisprudentia* C.I.C., p. 82.

obligation to visit the people in this way, and that neglect is not a grave sin. Is there an obligation binding the parochial clergyy, and if so what constitutes a grave sin of omission?

Canon 467, §1: Debet parochus . . . suas oves cognoscere et errantes prudenter corrigere. . . .

Canon 470, §1. . . . etiam librum de statu animarum accurate conficere pro viribus curet. . . .

Systematic house-to-house visiting, at least in the conditions of the Church in this country, is usually considered by experienced priests to be a most powerful means of preserving Catholic faith and practice amongst the people. Priests of the older generation were accustomed to perform this office with great fidelity, and the writer's earliest recollection as a newly ordained priest attached to a parish is of the parish priest (Rev. Thomas Moloney of the Westminster diocese) making his daily visits as a matter of course, in much the same way as he would observe any other obligation such as reciting the Breviary.

It is an exacting and wearying task which is often the matter of exhortation, whether on the part of bishops[1] or of spiritual writers.[2] The question, however, which we have to answer is whether this excellent practice is of grave obligation.

(i) We have discovered no explicit direction of the common law requiring the parochial clergy to visit systematically the houses of their parishioners, except of course when sickness or some other definite reason demands it.[3] It might appear, at first sight, to be implied in canons 467, §1 and 470, §1, as a means to an end. But it must be admitted, on reflection, that though a useful means it is not a necessary one: there are parts of the Church, predominantly and devotedly Catholic, where it is not the practice[4] and it cannot be said that the common law in these two canons necessarily orders everywhere a house-to-house visitation.

It could be maintained, nevertheless, that in countries such as England and America, the law of these canons can only be observed by a systematic visitation, and there are not wanting moral theologians who draw this conclusion.[5] For the most part, neither the moral theologians nor the canonists commenting upon these canons or upon the duty of residence do more than strongly recommend

[1] e.g. *Cardinal Vaughan*, Snead-Cox, I, p. 389; *Westminster Synod*, XXXVI, 1897, p. 14.
[2] e.g. *The Clergy Review*, 1943, XXIII, p. 109.
[3] Cf. op. cit. XXIV, 1944, p. 330.
[4] *Irish Ecclesiastical Record*, XXIX, 1927, p. 510.
[5] Tanquerey, *Theol. Moralis*, III, §1109.

parochial visiting as a means for knowing the people—*oves cognoscere*—which is declared by the Tridentine decree, Sess. XXIII, cap. i, *de ref.* to be of divine law.

(ii) What the common law leaves undetermined it is for local law to make precise in the measure judged necessary by the episcopate. The Westminster Provincial Councils require parochial visiting as a means for preparing the *liber status*,[1] and diocesan legislation often does so much more explicitly, e.g. *Liverpool*, Synod XXIII, 1945, n. 56: ". . . edicimus et declaramus omnes sacerdotes, quibus cura animarum commissa est, ad hanc consuetudinem vera obligatione teneri, ita ut negligentia notabilis graviter esset peccaminosa." *Nottingham*, Synod 1946, n. 25: "House-to-house visitation is the . . . duty of the parish priest. . . . Even when he has to discharge this duty through others, the parish priest is primarily responsible for its fulfilment." *Middlesbrough*, Statuta 1933, nn. 47 and 62, requires the visiting to be frequent and systematic. Similar legislation may be found in the local laws of other countries, as in *Malines*, Statuta 1924, n. 109. Collections of local laws are not easy to consult, and frequently they are not even printed, but our impression is that some explicit positive local law requiring parochial visitation exists in most countries which are not predominantly Catholic. The law varies in its expression, and in one American diocese[2] the obligation is declared to recur annually and its neglect to be a grave matter.

(iii) Though we are always loth to multiply grave obligations for the clergy, it is certain that episcopal laws may bind *sub gravi*;[3] that the bishops are within their rights in determining more closely the common law of canons 467 and 470; and that these local laws, where they exist, are to be interpreted on the usual canonical principles. It is for the clergy of each diocese to obey their own local law, which does not however extend to other dioceses that have no written law on the subject, except in so far as custom has itself created a law, or in the measure necessary for the observance of canons 467 and 470.

17. TENURE OF "VICARIUS PAROECIALIS"

From canon 471 this type of vicar approximates in nearly every respect to a parish priest, and his presentation is said to be perpetual if he is not a religious. Does this perpetuity mean that he is, as regards stability, in the position of an immovable parish priest?

[1] *I Westm.* Dec. xxv, 2; *IV Westm.* Dec. x, 9.
[2] Crookston, *Statutes*, 1923, n. 65.
[3] Cf. *The Clergy Review*, 1937, XIII, p. 267.

Canon 471, §1: Si paroecia pleno iure fuerit unita domui religiosae, ecclesiae capitulari vel alii personae morali, debet constitui vicarius, qui actualem curam gerat animarum, assignata eidem congrua fructuum portione, arbitrio episcopi.

§3: Vicarius si sit religiosus est amovibilis sicut parochus religiosus de quo in can. 454, §5; ceteri omnes vicarii ex parte praesentantis sunt perpetui, sed ab Ordinario possunt, ad instar parochorum, removeri, monito eo qui praesentavit.

The question relates to a moral person, such as a Cathedral chapter or college, which includes a number of priests, one of whom has to be appointed to the actual care of souls in the parish united *pleno iure* to the moral person. Canon 454, §2, expressly recognises the force of customs and privileges in this rather unusual situation, and they apply equally in our view to §3 of the canon. The secular parochial vicar is as near as may be the equivalent of a parish priest, and approximates to the degree of stability enjoyed by such. It seems to us that the perpetuity mentioned in the canon refers chiefly to the act of the moral person in appointing a vicar: its head, say the provost of the chapter, may not change the appointment at will. The local Ordinary may do so "ad instar parochorum" which means, according to Fanfani, that the Ordinary may institute the vicar either as an immovable or as a movable priest in charge, and the process of removal will apply respectively as in Book IV, 3, of the Code.[1] But lawful custom or privilege in a given instance may deprive the parochial vicar of this stability: for example, where it is the custom for the members of a chapter or college to accept nomination for a year, as might happen when it is thought desirable that each member should have a term of office in rotation.[2]

18. VICARIOUS JURISDICTION OF "SUPPLY" PRIEST

A parish priest called away suddenly owing to the death of a relative appoints as his supply a priest from another diocese who is staying in the parish. Does this "locum tenens" *possess faculties for confessions and marriages, or must he receive them from the local Ordinary?*

Canon 465, §4: . . . cum absentia ultra hebdomadam est duratura, parochus, praeter legitimam causam, habere debet Ordinarii scriptam licentiam et vicarium substitutum sui loco relinquere ab eodem Ordinario probandum. . . .

§5. Si parochus repentina et gravi de causa discedere atque ultra hebdomadam cogatur abesse, quamprimum per litteras Ordinarium

[1] Fanfani, *De Iure Parochorum*, §449.
[2] Cf. Brys, *Iuris Canonici Compendium*, I, §576, f.n. 2.

commonefaciat, ei indicans causam discessus et sacerdotem supplentem, eiusque stet mandatis.

§6. Etiam pro tempore brevioris absentiae parochus debet fidelium necessitatibus providere, maxime si id peculiaria rerum adiuncta postulent.

Canon 474. Vicarius substitutus qui constituitur ad normam can. 465, §§4, 5, et can. 1923, §2, locum parochi tenet in omnibus quae ad curam animarum spectant, nisi Ordinarius loci vel parochus aliquid exceperint.

Code Commission, 14 July 1922, V, ad 4: Utrum vicarius seu sacerdos supplens de quo in cit. can. 465, §5, id possit (i.e. licite et valide assistere matrimoniis) ante approbationem Ordinarii. *Resp.* Affirmative, quoadusque Ordinarius, cui significata fuerit designatio sacerdotis supplentis, aliter non statuerit.

i. If we assume that the parish priest expected to be away for more than a week and appointed the supply accordingly, there can be no doubt that he enjoys ordinary vicarious jurisdiction until such time as the Ordinary removes him. Thus Claeys-Bouuaert: "In casu repentinae absentiae, substitutus per solam parochi designationem obtinet illam iurisdictionem simul cum ceteris ad curam animarum facultatibus, usquedum per formalem Ordinarii decisionem removeatur."[1] It may be, as many think, unlawful to appoint in this way a priest from another diocese, and diocesan laws may be quite explicit on the matter, but the appointment is, on principles of the common law, valid. In any case, it is open to the Ordinary on being informed to set the appointment aside and send someone else as a supply priest.

ii. If the supply priest is appointed by the parish priest for less than a week, according to the terms of canon 465, §6, he is certainly not the equivalent of "vicarius substitutus", and therefore does not obtain ordinary jurisdiction by virtue of his appointment. He must get it by delegation from the Ordinary as in canon 874, §1.[2]

iii. The Ordinary's approbation of the appointment of a supply is clearly necessary for its validity in the normal absences dealt with in §4 of canon 465, a conclusion which is supported, as regards assistance at marriage, by the *Code Commission*, 14 July, 1922, V, ad 2.

In the emergency dealt with in §5 of the same canon it is evident that, for the two or three days elapsing between the parish priest's notification and the Ordinary's reply, the appointment is valid and lawful. It would seem, therefore, that the Ordinary's positive ap-

[1] *Jus Pontificium*, 1937, p. 80. Cf. also Fanfani, *De Iure Parochorum*, §263, B, 4 (probabiliter); Bouscaren-Ellis, *Canon Law*, p. 211; *Collationes Brugenses*, 1923, p. 409.
[2] Fanfani, loc. cit. Bouscaren-Ellis, op. cit., p. 212.

probation is not strictly necessary for the validity of the appointment in the emergency of §5: the parish priest might inadvertently omit to send the notification, or it might never reach its destination.[1] If the parish priest expected to be away for less than a week, and appointed the supply accordingly, it might happen that his absence nevertheless becomes extended beyond a week. In our opinion the supply of §6 will then become that of §5 automatically, and will be subject to the law as explained in (i). The commentators are not very informative on some of these points, and it will be necessary to have recourse to canon 209 in doubtful cases of supplies who lack the confirmation of the Ordinary.

19. ASSISTANT'S APPOINTMENT "AUDITO PAROCHO"

Consultation with the parish priest before an assistant is assigned to him is unusual in this country, there being presumably a custom to the contrary. In places where there is no such contrary custom is the appointment "inaudito parocho" *invalid?*

Canon 476, §3: Non ad parochum, sed ad loci Ordinarium, audito parocho, competit ius nominandi vicarios cooperatores e clero saeculari.

Canon 105: Cum ius statuit Superiorem ad agendum indigere consensu vel consilio aliquarum personarum: 1.Si consensus exigatur, Superior contra earundem votum invalide agit; si consilium tantum, per verba, ex. gr.: *de consilio consultorum*, vel *audito Capitulo*, *parocho*, etc., satis est ad valide agendum ut Superior illas personas audiat; quamvis autem nulla obligatione teneatur ad eorum votum, etsi concors, accedendi, multum tamen, si plures audiendae sint personae, concordibus earundem suffragiis deferat, nec ab eisdem, sine praevalenti ratione, suo iudicio aestimanda, discedat;

S.C. Conc., 13 November, 1920; *A.A.S.*, XIII, p. 43: "In archidioecesi Zagabriensi habetur consuetudo centenaria nominandi vicarios cooperatores *inaudito parocho*. Consuetudo orta est ob penuriam sacerdotum et ob expeditiorem administrationis modum. Quaeritur: utrum huiusmodi consuetudo tolerari possit? *Resp.* Standum dispositioni codicis, c. 476, §3.

i. The words *audito parocho* are all that remain in our modern law of the more ancient principle that it is for the parish priest to make the appointment, a principle sustained by the Council of Trent[2] which empowered the bishops, whenever necessary, to compel

[1] Cappello, *Periodica*, 1930, p. 5, n. 13.
[2] Sess. xxi, c, 4 de ref.; Waterworth, p. 147.

parish priests to appoint assistants. Since that time the law has progressively and very decisively favoured the bishops, so that by the end of the nineteenth century it was customary nearly everywhere for the bishops to nominate the assistants, a custom which the canonists on the eve of the Code agreed was a lawful one. The Code canonised the existing custom whilst preserving merely a relic of the parish priest's ancient right in the words *audito parocho* of canon 476.

ii. The observance of this clause is held by some to be necessary for the validity of an appointment[1] and by others, with whom we agree,[2] to be unnecessary. Whatever view is favoured, it is agreed that the validity of the subsequent acts of the assistant priest cannot be questioned.[3]

iii. The only point remaining for discussion is whether the clause *audito parocho*, which in the common law is to be observed at least for the lawfulness of an episcopal appointment, has itself disappeared in many places owing to its abolition by a contrary custom. The reply, 13 November, 1920, which confirms the common law in the Archdiocese of Zagreb, must be limited to that place alone. As explained in the "animadversions" issued with the reply, a custom of not consulting the parish priest is nowhere reprobated in the Code, and may therefore be tolerated from canon 5; it was held, however, that the Ordinary of that place, from the fact of his raising the question, judged that this contrary custom could be corrected, and the reply accordingly confirmed the common law against the contrary custom. Michiels states that he has seen a reply of the same Congregation, sent to the Bishop of Seckau, 8 June, 1927, which was in a sense contrary to that given to the Archbishop of Zagreb in 1920.[4] Our conclusion is that it is for the Ordinary of each place to make a decision whether the custom, if it exists, should cease. Actually, from the parish priest's point of view, the question is not of great consequence, for the common law of the Code permits the Ordinary to make the appointment after hearing the parish priest, even though an assistant is unwelcome to him. But would anyone criticise those parish priests who firmly maintain the rights given to them in the common law, unless it is certainly established that local custom has abolished them?

[1] e.g. Ojetti in *Jus Pontificium*, 1927, p. 13.
[2] Boudinhon, pp. cit. 1928, p. 28; *The Clergy Review*, 1940, XVIII, p. 67.
[3] Canons 15 and 209.
[4] Quoted in *l'Ami du Clergé*, 1948, p. 318. This article and an earlier one, 1926, p. 504, should be studied by those interested in the legal points involved.

III. RELIGIOUS

20. EXEMPT ORDERS AND CONGREGATIONS

What difference, if any, is there between the privilege of exemption enjoyed by an Order of solemn vows (e.g. Benedictines) and by a Congregation of simple vows (e.g. Redemptorists) as regards the episcopal visitation?

Canon 488.1 . . . veniunt nomine . . . religionis exemptae, religio sive votorum sollemnium sive simplicium, a iurisdictione Ordinarii loci subducta.

Canon 512, §2.2: Ordinarius loci . . . quinto quoque anno visitare debet. . . . Singulos domos Congregationis clericalis iuris pontificii etiam exemptae, in iis quae pertinent ad ecclesiam, sacrarium, oratorium publicum, sedem ad sacramentum poenitentiae.

Canon 615: Regulares . . . ab Ordinarii loci iurisdictione exempti sunt, praeterquam in casibus a iure expressis.

Canon 618, §1: Religiones votorum simplicium exemptionis privilegio non gaudent, nisi specialiter eisdem fuerit concessum.

If either category of religious have a parish, it is subject to episcopal control and visitation, and there appears to be no difference between them in this respect. The question relates to religious as such, not to those who are also serving parish churches. The intrinsic difference between the two categories is that an Order enjoys exemption by the common law of canon 615, whereas a Congregation enjoys it only when it is expressly granted. The external effects certainly differentiating the two, so far as we can discover, are in canon 512, §2.2, the directions of which apply to Congregations but not to Orders. It is not certain whether exempt Congregations are included in the law of canon 533, §1, 3, regarding the necessity of episcopal intervention in respect of certain funds and legacies. In other ways the two classes of exemption appear to be identical in the law of the Code, though there is always the possibility of exceptions, indults and what not, affecting both religious and ordinaries. The presumption in the case of an Order is that exemption is established; in the case of a Congregation the presumption is the opposite.[1]

The first Congregation to be granted the exemption, substantially

[1] *Commentarium pro Religiosis*, 1943, p. 145; *Collationes Brugenses*, 1948, p. 352.

at least, of the regular Orders was that of the Passionists in 1781; the extension of this privilege to the Redemptorists was confirmed by Pius VI in the same year. A more recent example is that of the Salesians in 1875.[1]

21. PUBLIC PROFESSION AND ENCLOSURE

In convents of "moniales", for example the Carmelites, is it in order for postulants to leave the enclosure for the purpose of having the ceremony of clothing in the adjoining chapel, which is not in the enclosure?

Canon 540, §3: In monasteriis monialium adspirantes, dum postulatum peragunt, lege clausurae tenentur.

S.C. Relig., 6 February, 1924; *A.A.S.*, 1924, XVI, p. 96, III, 1, e: Quamvis adspirantes ad habitum religiosum, dum postulatum peragunt, lege clausurae teneantur (cf. can. 540, §3) tamen libere et absque licentia Sanctae Sedis e Monasterio egredi possunt, quando ad saeculum sponte eas redire aut a Superioribus dimitti contingat; et idem de novitiis dicendum, aut de professis votorum temporariorum, quando vota expiraverint, vel legitime dimissae fuerint. 2, d: Si vestitioni vel professioni Monialium Episcopus vel alius sacerdos praesit, neque ipsis clausuram ingredi neque postulanti aut professurae ex ea egredi licet.

The custom recorded by our correspondent is fairly common, at least in this country. It is clearly a departure from the law of canon 540, §3, which is explicitly reaffirmed in the Instruction on Enclosure, 6 February, 1924. This non-observance of the law is more easily tolerated, seeing that novices and postulants are not liable to the censure of canon 2342.3.[2] One could say, moreover, that the practice, though against the common law, is justified by a contrary custom, which in this instance is reasonable and rarely causes any adverse comment.

Schaefer, one of the most considerable authorities on the subject, quotes with approval the opinion of Fanfani: "Non videtur improbandus mos, quo postulantes, finito postulatu, ad horam e clausura egrediantur ut sollemniter habitum novitiarum in ecclesia recipiant, et dein qua novitiae in clausuram recipiantur. Iste mos rationabilis apparet respectu parentum et propinquorum."[3] Unfortunately Fanfani has revoked this view in the latest edition of his commentary[4] and now teaches exactly the opposite, relying on

[1] *Ephemerides Theologicae Lovanienses*, 1946, p. 142.
[2] Cf. *The Clergy Review*, 1949, XXI, p. 120.
[3] *De Religiosis* (1947), §1172.
[4] *De Religiosis*, §310, Corol. III.

the 1924 Instruction. Neither the canon nor the Instruction abolishes contrary customs, and in our view the departure from the common law can be justified from canon 5, as Schaefer implies.

22. RELIGIOUS VOCATION AND PARENTAL NEED

How is a girl to be advised who wishes to enter religion of simple vows but foresees that her mother will need her support in a few years time? The mother is willing to leave it to divine Providence, but is there not a natural obligation on the girl's part to support her parent?

Canon 542.2: Illicite, sed valide admittuntur: . . . filii qui parentibus, idest patri vel matri, avo vel aviae, in gravi necessitate constitutis, opitulari debent, et parentes quorum opera sit ad liberos alendos vel educandos necessaria.

i. The conflict between a religious vocation and the duty of supporting parents is solved by this canon in favour of the latter obligation, since it is of the natural law and must take precedence over a call to the religious state. Discussions and doubts may arise in defining "grave" necessity, which is something on the one hand much less than that which is "extreme", i.e. danger to life, and on the other hand much more than "common" necessity, i.e. that which the poor in general experience. It may also be questioned whether the rule applies not only to parents but to a brother or sister in grave necessity.[1] But there is no real problem except when the grave necessity is existing at the moment when a decision has to be made. Thus a parent may be able to support herself by working, but it is foreseen that in a few years time she will be unable to do so; it is certain that the possibility of grave necessity at some future time is not within the terms of this canon, though a daughter may well weigh this point in coming to a decision about entering religion, which must be an entirely free choice. In the above case, as stated, the mother has rightly surrendered whatever future claim she may have, but even if she had not done so the girl can lawfully and validly enter the novitiate.

ii. The girl, let us suppose, enters, is professed, and her mother after a few years is in grave necessity. A solution of the problem is suggested by Ferreres which appears to be correct: "Congregatio tenebitur vel subsidium conveniens tribuere matri vel curare ut (filia) indultum exclaustrationis obtineat pro tempore necessario ad subveniendum matris necessitatibus. Hoc enim postulat non modo mens Ecclesiae sed etiam ipsum ius naturale."[2] There is no

[1] On these points cf. Schaefer, *De Religiosis*, §807.
[2] *Casus*, II, §133.

obligation on the part of the professed religious to get dispensed from her vows, except, perhaps, when her mother's necessity is "extreme", which supposes that there is no other way of bringing her the necessary assistance. The remedy of exclaustration is justified by any grave cause; the alternative of the religious institute paying for the mother's support is to be expected whenever it seems preferable to losing the services of the religious by exclaustration.

23. "MONIALES": NECESSITY OF DOWRY

Is not the canonical requirement of a dowry, for religious women of solemn vows, nowadays somewhat of a dead letter? It seems at least to be the rule rather than the exception for postulants to be received without a dowry.

Canon 547, §1: In monasteriis monialium postulans afferat dotem in constitutionibus statutam aut legitima consuetudine determinatam. §4: Dos praescripta condonari ex toto vel ex parte nequit sine indulto Sanctae Sedis, si agatur de religione iuris pontificii; sine venia Ordinarii loci, si de religione iuris dioecesani.

i. From §3 of the above canon the matter of dowry in institutes of simple vows is settled by their constitutions, and many of these bodies forgo the ancient practice because the sisters earn their own support by teaching or nursing. The question is therefore restricted in practice to the contemplatives who are unable to devote sufficient time to occupations which are materially productive.

ii. If, in the case of *moniales iuris pontificii*, postulants are accepted without dowries, this must be by virtue of an indult from the Holy See, which could be obtained, no doubt, not only for single instances but for use habitually, provided the support of the nuns is derived adequately from some source other than a dowry. Thus, in Spain, it appears to be the custom for these convents to receive gifts and legacies from the faithful, the revenue of which is used for the support of the nuns; they are called *dotes perpetuae* and resemble the burses which exist in some seminaries for the education of students to the priesthood: when one leaves the burse is used for another. Regatillo prints a private document from the Congregation of Religious, 24 January, 1930, sanctioning this method in principle but directing that money gifts of this kind should in future be erected into "foundations" and not called *dotes perpetuae*; henceforth, those lacking a dowry may be accepted on one of these foundations, and are *ipso facto* deemed to be dispensed from the law of canon 547.[1]

[1] *Interpretatio et Iurisprudentia*, p. 169.

24. EXAMINATION BEFORE RELIGIOUS PROFESSION

Is the examination directed by canon 552 *necessary for a valid religious profession?*

Canon 11: Irritantes aut inhabilitantes eae tantum leges habendae sunt, quibus aut actum esse nullum aut inhabilem esse personam expresse vel aequivalenter statuitur.

Canon 552, §1: Religiosarum etiam exemptarum Antistita debet Ordinarium loci, duobus saltem mensibus ante, certiorem facere de proxima admissione ad novitiatum et ad professionem tum temporariam tum perpetuam sive sollemnem sive simplicem.

§2. Ordinarius loci . . . exploret . . . an sciat quid agat; et, si de pia eius ac libera voluntate plane constiterit, tunc adspirans poterit ad novitiatum vel novitia ad professionem admitti.

In all religious institutes of women, including those who are exempt in certain other matters from the Ordinary's jurisdiction, the superior is bound by canon 552 to warn the local Ordinary two months before a subject's religious profession, in order that the Ordinary or his delegate may carefully investigate whether temporary or perpetual profession is being made freely and with sufficient knowledge. That this is a grave law is evident from its nature and from the penalty, privation of office, which the Ordinary has the right to inflict, from canon 2412, §2, on a religious superior who violates it.

Evasion of the law does not, however, invalidate religious profession. This is evident from the general principle of canon 11, and from canon 572, which enumerates the six requirements for valid profession, amongst which the previous examination of canon 552 is not mentioned. Hence Schaefer: "Per se ista exploratio ad validitatem admissionis non est necessaria nec requiritur ad validitatem vel novitiatus vel professionis. Agitur de lege mere prohibitiva. Ex parte Antistitae autem admissio ad novitiatum et professionem, omissa exploratione, est illicita, si Ordinarium loci non tempestive certiorem fecit. Hoc in casu can. 2412 vim suam exercet."[1]

25. RELIGIOUS PROFESSION: DISPOSAL OF PROPERTY

From canon 574, §1, *perpetual profession of all religious must be preceded by temporary profession for a period of three years. But canon* 569, §1, *assumes that there are still religious who forgo three years' temporary profession,*

[1] *De Religiosis*, §864.

since it refers to novices making perpetual profession. How is this conflict between the two canons to be explained?

Canon 569, §1. Ante professionem votorum simplicium sive temporariorum sive perpetuorum novitius debet, ad totum tempus quo simplicibus votis adstringetur, bonorum suorum administrationem cedere cui maluerit et, nisi constitutiones aliud ferant, de eorundem usu et usufructu libere disponere.

Canon 574, §1. In quolibet Ordine tam virorum quam mulierum et in qualibet Congregatione quae vota perpetua habeat, novitius post expletum novitiatum, in ipsa novitiatus domo debet votis perpetuis, sive solemnibus sive simplicibus, praemittere, salvo praescripto can. 634 (transitus ad aliam religionem), votorum simplicium professionem ad triennium valituram, vel ad longius tempus, si aetas ad perpetuam professionem requisita longius distet, nisi constitutiones exigant annuales professiones.

i. There is admittedly a conflict between these two canons which is fully discussed by Schaefer,[1] who suggests various methods of harmonising them. Some think the words "sive temporariorum sive perpetuorum" of canon 569, §1, were left in the canon by an oversight: the preparatory schema on religious did not contain the firm universal regulation of canon 574 which requires temporary profession to precede that which is perpetual. Others think that the act of ceding the administration of temporal goods must be repeated when perpetual profession is made, an unlikely explanation since the religious of temporary vows is a professed religious not a novice as stated in the canon, and there should be no period between temporary and perpetual profession when the religious, albeit for a few minutes only, ceases to be a professed religious and becomes a novice again. (Canon 577, §1.)

ii. Schaefer's own explanation, which is followed by other commentators,[2] seems to be the most acceptable. It is that the Society of Jesus and the Sisters of the Sacred Heart enjoy a privilege by which their members, on concluding the novitiate, immediately make perpetual profession. The law of canon 574 does not abrogate existing privileges, and therefore the privilege of disregarding the direction of canon 574 still continues; the Code Commission is said to have expressly declared that the privilege of these two bodies continues. The apparent conflict between the two canons is then easily explained: the reference to temporary vows in canon 569 has in mind the common law of canon 574, whereas the reference to perpetual vows has in mind the privilege.

[1] *De Religiosis*, §921.

[2] E.g. Beste *Introductio*, ad can. 569.

26. TRADING FORBIDDEN TO WOMEN RELIGIOUS

Does the law against trading and allied pursuits apply not only to clerics, secular and religious, but also to women religious?

Canon 142: Prohibentur clerici per se vel per alios negotiationem aut mercaturam exercere sive in propriam sive in aliorum utilitatem.

Canon 490: Quae de religiosis statuuntur, etsi masculino vocabulo expressa, valent etiam pari iure de mulieribus, nisi ex contextu sermonis vel ex rei natura aliud constet.

Canon 592: Obligationibus communibus clericorum de quibus in can. 124–142, etiam religiosi omnes tenentur, nisi ex contextu sermonis vel ex rei natura aliud constet.

There is some reason for doubting, perhaps, whether women religious are bound by this law. For many of the commentators fail expressly to draw the logical conclusion from a comparison between the three canons cited above, although we are not aware of anyone who excludes women religious from the law. Those who are writing expressly for religious draw no distinction in the application of the rule,[1] and give the usual casuistical explanations discussed by writers explaining the law for clerics. Bastien in particular, whose work is largely quoted for all matters relating to women religious of simple vows, expressly notes: "Le commerce proprement dit est défendu aux religieux de l'un et l'autre sexe. . . ."[2] The law applies equally, from canon 679, §1, to women living in community without vows, a state of life dealt with in canons 673–681, even though canon 673 states that such persons are not, properly speaking, "religious". Everything, accordingly, which affects clerics in the recent strengthening of canon 142 with a censure *l.s.*[3] affects religious of both sexes, and the document includes, as we should expect, the newly formed Secular Institutes, whose members are neither religious nor persons living in community without vows.

27. RELIGIOUS SUPERIOR FORBIDDING HOLY COMMUNION

A chaplain to a religious community of men, with perpetual vows but not in Holy Orders, is informed by the superior that, relying on canon 595, §3, *a subject has been forbidden to receive Holy Communion. If this person nevertheless presents himself at the altar rail, what should the chaplain do?*

Canon 853: Quilibet baptizatus qui iure non prohibetur, admitti potest et debet ad sacram communionem.

[1] E.g. Creusen, *Religious Men and Women in the Code*, §269.
[2] *Directoire Canonique*, §373.
[3] *S.C. Conc.*, 22 March, 1950; *The Clergy Review*, 1950, XXXIV, p. 56.

Canon 855, §1: Arcendi sunt ab Eucharistia publice indigni, quales sunt excommunicati, interdicti manifestoque infames, nisi de eorum poenitentia et emendatione constet et publico scandalo prius satisfecerint.

§2. Occultos vero peccatores, si occulte petant et eos non emendatos agnoverit, minister repellat; non autem si publice petant et sine scandalo ipsos praeterire nequeat.

Canon 595, §3: Si autem post ultimam sacramentalem confessionem religiosus communitati gravi scandalo fuerit aut gravem et externam culpam patraverit, donec ad poenitentiae sacramentum denuo accesserit, Superior potest eum, ne ad sacram communionem accedat, prohibere.

i. Canon 595, §3, repeats in almost identical words the definition of a superior's power of prohibiting Holy Communion contained in *S.C.Ep.et Reg.*, 17 December, 1890, ad V.[1] The religious canonists best qualified to comment upon the rule are not agreed on the meaning to be given to the word "grave" in this context. Vermeersch-Creusen,[2] defines it as including faults which are not grave in the theological sense of mortal sin: e.g. open and calculated disobedience or quarrelling. There is something to be said for this view, inasmuch as a religious like anyone else is already bound by the common law of canon 856 to go to confession before Holy Communion if conscious of grave sin. Nevertheless we agree with the milder view of Schaefer[3] that by "grave" is meant mortal sin, an opinion based on the general principle "odiosa sunt restringenda". It is a matter relating here to the external forum and guilt is to be calculated from the external evidence, on the principle of canon 2200, §2, although in the internal forum of conscience the person might, for a variety of reasons, be excused from grave sin.

ii. We cannot find any author who discusses the chaplain's obligations in the matter. Since it is not for him to intervene in the internal arrangements of the religious family and the laws governing them, we think that he should disregard the superior's information, and publicly refuse Holy Communion to a member of the community only in the event of that member coming within the common law of canon 855, §1. This is verified neither in a case where the fault is less than grave sin, nor even necessarily in a case where it is certainly grave sin; but only where the delinquent is publicly known to be unworthy of receiving Holy Communion in the sense defined in that canon. Moreover Vermeersch-Creusen, though perhaps as a consequence of his view on the meaning of "grave" in canon 595,

[1] *Fontes*, n. 2017.
[2] *Epitome*, I, §751.
[3] *De Religiosis*, §1145.

teaches that the superior's prohibition is not *per se* binding under pain of sin.

iii. It is a rule of *The Clergy Review* not to air difficulties without also, so far as is possible, suggesting a solution or a remedy. The conflict, as it were, between the superior's prohibition and the chaplain's duty as a minister of the Holy Eucharist would exist in practice owing to the lack of a confessor able to receive this person's confession. The situation should not in these days arise, for the Instruction *S.C.Sacram.*, 8 December, 1938,[1] directs that where frequent Communion is the practice, facilities for confession should also be given. Therefore, in many dioceses, the chaplain saying Mass for a community is also given faculties for hearing confessions, even though he may not possess them from canon 522.

We may suppose, finally, for the sake of argument, that the delinquent is loth to go to confession before communicating, whether facilities exist or whether they do not, relying on the common law of canon 901 and of canon 856 which requires confession before Holy Communion only when one is conscious of mortal sin. He is bound in our opinion to obey the superior's command, and his remedy is in recourse to a higher superior, pending which he should on a principle of religious obedience refrain from receiving Holy Communion.

28. PAPAL ENCLOSURE AFFECTING NUNS

In some convents of nuns (moniales) with apparently solemn vows, the rules about the enclosure seem to be less strictly observed than in other convents of the same Order. Also, in one and the same convent, some nuns observe the law more strictly than others. Is there any legal explanation, or is it due merely to human frailty?

The principle is that a religious Institute without solemn vows is governed by a law of enclosure (canon 604) which is far less rigid than the enclosure which applies to an Order with solemn vows (canons 597–603); in the latter case the law is sanctioned by the excommunication of canon 2342.3, and, whilst allowing of course for human frailty and negligence, it will be found that exceptions can easily be accounted for on legal grounds.

(i) In one and the same convent, some of the professe religious will not have made their solemn profession, since three years of simple vows must precede this act. Exceptions which used to exist,

[1] *The Clergy Review*, 1939, XVII, p. 111; 1940, XVIII, p. 167; *Periodica*, 1939, p. 317.

whether in the form of permitting simple vows for longer periods, or of making solemn profession immediately after concluding the novitiate, were abolished by the decree *Perpensis*, 3 May, 1902,[1] which has been incorporated in canon 574 of the Code. Religious in these convents who have not yet made their solemn profession are not liable to the censure of canon 2342.3, and though bound to keep the papal enclosure on a principle of religious obedience, it might easily happen that adequate reasons exist in their case for leaving the enclosure, which would not be adequate in the case of the solemnly professed.

(ii) Moreover, the whole community, though belonging to an Order which is of solemn vows, may actually make merely simple profession. This is very often the case with communities which trace their origin to France and Belgium, since in those countries for over a century, owing to local conditions, the papal enclosure (and the corresponding solemn profession) was suspended. The reasons justifying this departure from the common law ceased, but the rule of merely simple profession continued both in the mother country and in foundations made elsewhere, because it had been fully sanctioned by the Holy See. If any of these communities desire to resume the solemn profession (and the papal enclosure) which is proper to their Order, they must obtain permission from the Holy See, which many have done. All the texts relating to this rather tangled condition of things may be seen in *The Clergy Review*, 1931, I, p. 658. Differences of observance are easily accounted for, and in any individual case one can discover from the superiors whether the vows are solemn or not: if they are solemn, the papal enclosure in principle exists together with the appropriate sanction.

(iii) Lastly, there is always the possibility of a given community having obtained an indult or privilege putting them outside the common law. Schaefer mentions a case where Religious of simple vows obtained the privilege of papal enclosure.[2] More often, we imagine, the indult releases a community which normally should be of solemn vows from observing the papal enclosure, not indeed for public reasons affecting all such communities as in (ii), but for private and special reasons. In one instance, for example, where the religious of solemn vows were engaged in teaching, it was found necessary repeatedly to seek dispensations from the law of papal enclosure, and to obviate this the Holy See decided that, in future, the nuns should make perpetual simple profession, whilst retaining in all other respects the condition of "moniales".[3] Everything is

[1] *Fontes*, 2039.
[2] *De Religiosis* (1947), §1164, n. 291.
[3] Op. cit. §1185.

possible with an indult, but we do not know of any modern instance of nuns being released habitually from the law of papal enclosure whilst retaining the profession of solemn vows. Some German Ursulines used to have this arrangement, but the Holy See declined to confirm their Constitutions on this point: the privilege was said to have been granted orally by Benedict XV. Cf. *Dict. Droit. Canon.*, III, col. 898.

EDITORIAL NOTE.—The distinction to which the author refers in (ii) is unlikely to survive except by special indult in extraordinary cases. Pius XII, in art. III, n. 92 of his Apostolic Constitution, *Sponsa Christi*, of 21 November, 1950 (*A.A.S.*, 1951, XLIII, p. 5 ff.), declared: "Monasteria omnia in quibus vota tantum simplicia nuncupantur, votorum solemnium instaurationem impetrare poterunt. Quinimmo, nisi prorsus graves obsint rationes, eadem iterum suscipere curabunt." Apparently the desired degree of uniformity has since then been achieved, because, on 25 March, 1956, the Congregation of Religious issued an Instruction, "Circa monialium clausura" (*A.A.S.*, 1956, XLVIII, p. 512 ff.), in which, after explaining that the experience gained since *Sponsa Christi* now enabled it to settle the matter of enclosure "ex integro", it proceeds to expound the revised rules in detail.

29. ECCLESIASTICAL SUPERIOR: PAPAL ENCLOSURE

Is the ecclesiastical superior, the Ordinary's delegate, forbidden to enter the enclosure of religious with solemn vows?

Canon 600: Intra monialium clausuram nemo . . . admittatur . . . exceptis personis quae sequuntur:

1. Ordinario loci aut Superiori regulari, monasterium monialium visitantibus, vel aliis visitatoribus ab ipsis delegatis licet clausuram ingredi dumtaxat inspectionis causa, cautoque ut unus saltem clericus vel religiosus vir maturae aetatis eos comitetur. . . .

S.C. Relig., 6 February, 1924; *A.A.S.*, XVI, p. 96. III, 2 (b). Pro sola igitur visitatione *locali* peragenda visitatori clausuram ingredi licet. Visitatio *personalis* extra clausuram ad crates fieri debet. Nec Ordinario aut superiori regulari aut visitatori extra actum visitationis ratione officii clausuram ingredi fas est.

(c) Causa explorationis, quae ante vestitionem et utramque professionem ab Ordinario loci vel eius delegato fieri debet, nec non pro electione antistitae, Ordinarius loci aut eius delegatus clausuram ingredi non debet (can. 506, §2; 552, §2).

There are some communities of religious women who, by their rules and constitutions, make profession of solemn vows, but by papal indult are permitted to make simple vows only.[1] These nuns, though *moniales* in other respects, are not subject to the very strict rules of papal enclosure contained in canons 597 and following;[2] the simpler enclosure of religious Congregations, as in canon 604, applies to them, and their superior may admit any persons for a just and reasonable cause. In the last few years, certain communities have returned to the condition of making solemn profession. It is for the ecclesiastical superior to discover in each case what the status of the nuns really is: if they have made profession of solemn vows, the rules of papal enclosure automatically follow unless relaxed by a papal indult.

It is quite clear from *S.C. Relig.*, 6 February, 1924, that the ecclesiastical superior, namely the Ordinary's delegate, may not enter the enclosure on the business of his delegation except for the purpose of a local inspection, and even then he must be accompanied by a cleric or religious of mature age. Local inspection covers such matters as oratories, if there are any within the enclosure, or seeing that the buildings are kept in proper condition.

The ecclesiastical superior is subject to the censure *l.s.* of canon 2342, 1, like any other person entering the enclosure without permission.[3]

30. RELIGIOUS "PAROCHUS" AND LOCAL ORDINARY

What is the force of the genitive "communitatis religiosae" at the end of canon 630, §4? Does it mean "belonging to" in the strict sense of ownership? And why does the canon appoint the local Ordinary as the immediate administrator of funds destined for the upkeep of a parish church which does not "belong to" the religious but is served by them?

Canon 630, §4: . . . eidem (religioso qui paroeciam regit sive titulo parochi sive titulo vicarii) licet eleemosynas in bonum paroecianorum . . . administrare . . . salva semper vigilantia sui Superioris; sed eleemosynas pro ecclesia paroeciali aedificanda, conservanda, instauranda, exornanda accipere, apud se retinere, colligere aut administrare pertinent ad Superiores, si ecclesia sit communitatis religiosae; secus ad loci Ordinarium.

i. The genitive in this context means, firstly and indisputably, ownership. The religious have built, let us suppose, with religious

[1] For the origin of this situation cf. *The Clergy Review*, 1931, I, p. 658.
[2] *Code Commission*, 1 March, 1921.
[3] Schaefer, *De Religiosis*, §355, and the commentators generally.

funds a church which is used as a parish church and one of the religious community is appointed parish priest or vicar; money destined for its upkeep is to be administered by the religious superiors; the situation is analogous to that of canon 415 where a cathedral is used as a parish church, and the funds for its upkeep are administered not by the parish priest but by the chapter.

Some apply this genitive to the case of a church which, though not owned by the religious, is committed permanently to their care, as would be the case when a parish is incorporated or united *pleno iure* to a religious house.[1] Other religious canonists do not admit this contention and require the meaning of the genitive to be exclusively ownership or proprietary rights.[2] Secular canonists usually hold this view.[3] The *Code Commission*, 25 July, 1926, IV, confirmed canon 630, §4, without deciding the point at issue.

ii. "Secus ad loci Ordinarium" is equally difficult to interpret. The obvious meaning of the words in their context denies to the religious parish priest or vicar the right of administration granted to all other parish priests or rectors of churches from canon 1182. Nebreda, who has examined this canon most carefully, suggests that the phrase can be harmonised with other general principles of administering church property by attributing to the Ordinary in this context, as in many other affairs, only the right and the duty of invigilating the administration carried out by the religious parish priest, but not of actually and immediately performing himself the office of an administrator; or, if neither of these views is acceptable, it may be held that the Ordinary, in this context, administers funds for the upkeep of the church cumulatively with the religious parish priest.[4] We think that local Ordinaries are not accustomed to retain in their own administration funds collected for the upkeep of a parish church served but not owned by religious: they delegate their office described in this canon to the religious parish priest or to his superiors.

iii. It is interesting to find that, in the proposed Code for the Eastern Churches, the equivalent of our canon 630, §4, solves the doubt on the meaning of the genitive as follows in n. 179, §4: ". . . communitatis religiosae, h.e. si communitas sibi vindicet ecclesiae proprietatem aut usum in perpetuum vel saltem ad tempus indefinitum; secus, servetur praescriptum can. 264". The

[1] Schaefer, *De Religiosis*, §§1458, 1459; *Comment. pro Religiosis*, 1943, p. 149.
[2] Beste, *Introductio*, p. 431; Coronata, *Institutiones*, I, p. 830, n. 7, appears to agree: "Non omnes ecclesiae paroeciales incorporatae alicui domui religiosae, etiam si incorporatio pleno iure facta sit, sunt ecclesiae religiosorum.
[3] Mundy, *The Union of Parishes*, p. 86; Bernier, *De Patrimonio Paroeciali*, §271.
[4] Nebreda, *De Loci Ordinariorum Iuribus* . . ., p. 34.

concluding words of this n. 179 take the place of "secus ad loci Ordinarium" in our canon 630, §4; and n. 264 to which we are referred reads: "Firmo praescripto can. 179, §4, de ecclesia paroeciali quae sit communitatis religiosae . . . administratio bonorum quae destinata sunt conservandae, reparandae decorandaeque ecclesiae divinoque in eadem cultu exercendo pertinet, nisi aliud ex speciali titulo vel legitima consuetudine constet, ad Episcopum cum consultorum eparchialium coetu, si de ecclesia cathedrali agatur; ad rectorem, si de alia ecclesia saeculari."[1] This is a clearer and a more satisfactory arrangement than the directions of our canon, and it may well be that the modifications made in the Eastern canons will eventually be introduced into our own law.[2] Many will with some reason conclude that the Eastern canons provide a strong argument for interpreting our own in the same sense, whenever there is a doubt on their meaning. Actually, however, the Eastern canons are for the East alone, and have no legal force whatever in the West.

31. DISMISSED RELIGIOUS: "CLERICUS VAGUS"

On a point of law, and with no reference to any actual case: how is canon 111, §1, *which declares that a cleric must belong either to a religious body or to a diocese, harmonised with the juridical status of a dismissed religious in priestly orders, as set out in canon* 671*? For if he is dismissed he no longer belongs to a religious body, and until incardinated as a secular cleric in a diocese (which might take six years from canon* 641, §2) *he does not belong to a diocese.*

Canon 111, §1: Quemlibet clericum oportet esse vel alicui dioecesi vel alicui religioni adscriptum, ita ut clerici vagi nullatenus admittantur.

The question is intricate, since the juridical condition of a dismissed religious varies with the cause and method of his dismissal. Assuming, however, that after dismissal his status has been regularised[3] to the extent at least of his being able to celebrate Mass with the local Ordinary's sanction, the following considerations will serve to harmonise canon 111, §1, with canons 641, §2, and 671.

i. The religious body to which he used to belong before dismissal is responsible for his support, as provided for in canon 671, nn. 5

[1] *A.A.S.*, 1952, XLIV, pp. 112, 133.
[2] Cf. *The Clergy Review*, 1950, XXXIII, p. 256.
[3] In the more serious circumstances of his position as a cleric not being recognised as in canon 670, the rule of canon 111, §1, is not implicated. His condition is the same as that of a secular cleric who is no longer permitted to function as such.

and 7. Moreover, from canon 672, §1, the religious body may be required to receive him back if the necessary conditions are fulfilled. The obvious purpose of the rule in canon 111, §1, is to prevent the scandal of unattached clerics wandering about without any means of support. Therefore, in spite of dismissal, he still "belongs" to a religious body, not indeed as a member, but as a liability, until incardinated in a diocese.

ii. The diocese in which he is saying Mass with the Ordinary's sanction is not yet his diocese of incardination. All the commentators note that canon 671, n. 2, which provides for the assignation of a diocese to the dismissed religious, does not provide for incardination therein: this may be effected in due course as in canon 641. A second purpose of the rule in canon 111, §1 is to bar the existence of clerics with no obedience to any recognised superior. Therefore, though not incardinated, he "belongs" to a diocese in the sense that the Ordinary assigned to him is his recognised superior, until he is either restored to his former religious body or has become incardinated in a diocese. Cf. Palombo, *De Dimissione Religiosorum*, §§200, 203, 207.

32. SECULAR INSTITUTES—SUPPORT OF MEMBERS

It is maintained in some quarters that one of the features which distinguish the Secular Institute from the Religious is that the former is not obliged to provide for the support of its members in sickness and old age. Since some measure of voluntary poverty is necessary in the members, whence is this support to come?

Provida Mater, 2 February, 1947, III, §3: Quoad incorporationem Sodalium Instituto proprio et quoad vinculum ex ipsa ortum. Vinculum quo Institutum saeculare et ipsius membra, proprie dicta, inter se coniungi oportet, debet esse. . . . Mutuum ac plenum, ita ut, ad normam Constitutionum, Sodalis se totum Instituto tradat, et Institutum de Sodali curam gerat atque respondeat.

Instructio *Cum SSmus*, 19 March, 1948: Ad iudicium securum et practicum ferendum . . . haec sunt accurate perpendenda . . . (*b*) an vinculum, quo membra strictiore sensu sumpta et Associatio inter se ligantur, *stabile*, *mutuum ac plenum* sit, ita ut ad normam Constitutionis, Sodalis Associationi se totum tradat et Associatio talis sit vel serio fore praevideatur, quae de Sodali curam gerere atque de ipso iure respondere velit ac possit.

i. As noted by Dr McReavy in his valuable explanation of the Secular Institute,[1] many problems will need a canonical solution

[1] *The Clergy Review*, 1947, XXVIII, p. 153.

which may cause canonists a headache, and it is even now too soon to expect everything to be straightened out: this will come only after a long period of trial and of experience in the working of these Secular Institutes. The economic structure is one of these problems, and it arises fundamentally from the nature of the "poverty" which the members must in some degree profess and practise: for, on the one hand, they are not religious and consequently not bound by the canonical regulations of canon 569 governing religious poverty; on the other hand, they are in a state of perfection which, in the traditional concept of this state, does demand amongst other things a negation of earthly goods. The notion of poverty, as described in *Provida Mater*, III, §2, (*c*), is that the members of a Secular Institute do not enjoy the free use, but only a defined and restricted use, of temporal goods according to the Constitutions of the Institute. The matter will be decided in different ways in each body, and in some instances the rules do, to some extent, relieve the Institute of the obligation of supporting its members in sickness and old age. Thus members may be bound, out of revenues accruing to them from sources other than the work of the Institute, to keep a capital sum in reserve for their future needs,[1] and reliance on public hospitals, social insurance, and other benefits of the Welfare State is not excluded.[2] For a religious of solemn vows ownership does not exist; ownership remains but its administration and use is withdrawn in the case of a religious of simple vows; members of Secular Institutes retain both ownership and administration, but within the limits permitted by the Constitutions.

ii. A study, however, of the documents, and of the commentaries thereon, does not support the view that the Secular Institute is not bound in principle to provide for its members in sickness and old age. The two important extracts from the documents given above affirm responsibility, though subject always to subsidiary arrangements sanctioned by the Constitutions. For the latter arrangements may, for one reason or another, fail to provide the necessary assistance required by a sick or aged member: the capital sum put aside by the individual for the purpose may disappear, and there is nothing absolutely inevitable and permanent in the schemes of benefits and social insurance provided by a Welfare State. In the last resort, no matter what subsidiary arrangements may be made by the Constitutions, it seems quite clear to us that the Institute will be responsible. Thus Larraona, a religious canonist who has made a profound study of these Secular Institutes, in explaining these two

[1] E. L. Heston, C.S.C., in *Secular Institutes*, a Blackfriars Symposium, p. 101.
[2] R. Lemoine, O.S.B., loc. cit., p. 80.

extracts from the documents observes: "Nota tamen, quod etiam in casu in quo unumquodque ex membris directe de propria subsistentia respondet, quoad membra *stricte dicta* quae plene ipsius manibus se tradunt, Institutum, esto *subsidiarie et mediate*, sed denique et efficaciter respondere debet."[1]

iii. A purely accidental and temporary relaxation of this principle may be found to exist in some of these Institutes, which, in their first beginnings, will be altogether lacking in material resources. Accordingly the rule of *Provida Mater* is interpreted by the Instruction quoted above to mean that the Secular Institute must offer the serious promise or prospect of being able to provide for its members. It may well be that an Institute in its infancy, suffering the mischance of having many incapacitated members, will be unable to help them—*nemo dat quod non habet*—a misfortune to which any human association is liable. This is true, indeed, even of the canonical obligation of the Ordinary of a diocese to support its incardinated clerics when, as in some French dioceses, the means are for the moment totally lacking. But the plea of being physically unable to meet one's obligations is totally different from the plea that the obligations are non-existent. We think it as certain as anything can be in the canonical structure of the Secular Institute that it accepts the obligation of providing for its sick and aged members.

[1] *De Institutis Saecularibus*, Rome, 1951, p. 96, n. 31.

IV. ASSOCIATIONS AND CONFRATERNITIES

33. MORAL REARMAMENT

What is the present position regarding the lawfulness of Catholics co-operating with Moral Rearmament?

The position is that Catholics must obey the direction of the local Ordinary of the place where they are staying, and if none is published they should consult the local parish priest and accept his decision.

The association or movement is identical with what, at various times, has been called Buchmanism, Oxford Groups, Group Movement, and even Oxford Movement. On the rights and wrongs of its assuming the title "Oxford" a correspondence in *The Times*, 3–8 June, 1939, initiated by Mr A. P. Herbert, and a parliamentary reply, 14 June, 1939, should be read.

Its present title, open in itself to no objection at all, is sufficiently wide to cause some misunderstandings, since all Catholics are obviously in favour of moral rearmament, and the phrase or something like it is met with in papal documents; indeed, when an Italian bishop once wrote something on the subject which was commended by the Holy Father, the friends of the movement took this commendation to refer to their organisation. Our correspondent mentions a report that the Holy Office has permitted priests to participate in the Swiss meetings, but we have no knowledge of this.

It would be too considerable an enterprise to discuss here the purposes of Buchmanism, its methods and practices, the possible dangers it may have for the unwary, and the conditions under which Catholics may take an active part in the movement in those places where no ecclesiastical prohibition of discouragement exists.[1]

[1] Amongst Catholic writers cf. M. J. Browne, Bishop of Galway, *The Group Movement*, C.T.S., No. 179, a reprint from *Irish Ecclesiastical Record*, December 1936, p. 635, maintaining that it is an heretical sect, a view repeated in the same journal, March, 1937, p. 305. *From Oxford Group to the Catholic Church*, C.T.S., C276, by Doris Burton. *The Oxford Groups*, by Maisie Ward (Sheed & Ward, 1937). In *The Clergy Review*, Mgr R. Knox gave his impressions, 1933, V, p. 265, and again in 1938, XIV, p. 310. *Documentation Catholique*, 9 December, 1933, cols. 1113–1144, gives a good account of its origins and purposes. *The Right View of Moral Rearmament*, by Bishop Suenens, Burns Oates, 1954, gives a thorough and up-to-date valuation.

Instead, there follow in chronological order the only verifiable episcopal directions we have been able to trace.

(1) *The Tablet*, 28 October, 1933, published a *démenti*, obtained through the vigilance of the Bellarmine Society, Heythrop, in which the Archbishop of Quebec, Cardinal Villeneuve, denied the report that he had encouraged the movement: "de hoc nunquam audivi".[1]

(2) Cardinal Hinsley, 11 February, 1938: "The Group Movement is so tainted with indifferentism, i.e. with the error that one religion is as good as another, that no Catholic may join in such a movement so as to take an active part therein or formally co-operate therewith." The statement was printed in *The (American) Ecclesiastical Review*, July 1938, p. 18, and in *The Catholic Herald*, 11 March, 1938, which had been informed by Archbishop's House that the Group Movement was using a private letter addressed by the Cardinal to a lady in Kenya; the Cardinal denied any recollection of this letter and asked the Group Movement to discontinue its circulation. The direction given above is still, we believe, operative in Westminster diocese.

(3) Mgr Charrière, Bishop of Lausanne, Geneva and Fribourg, in whose diocese, at Caux sur Montreux, Moral Rearmament reunions include Catholics, issued a long directive, 25 September, 1947, reprinted in *Documentation Catholique*, 12 September, 1948, col. 1152, which recognises the good points of the movement as well as its possible dangers, and notably the danger of indifferentism and of seeking a common ground by minimising Catholic truth: "Nous ne saurions trop insister là-dessus. C'est à cette condition seulement —c'est à dire en restant pleinement eux-mêmes—que les Catholiques apporteront au Réarmament moral un concours vraiment efficace." An English version of the bishop's statement was given in *The Catholic Herald*, 1 September, 1950.

(4) The Assembly of the Cardinals and Archbishops of France, 2–4 March, 1948, drew the attention of French bishops to the position taken up by the Swiss bishop, and suggested for French Catholics the following directions: "1° Ne pourront fréquenter les rassemblements du M. R. A. que des catholiques bien éclairés sur leur religion et qui, au préalable, auront pris l'avis d'un prêtre suffisamment informé des conditions requises pour qu'un catholique puisse y participer sans dommage.

"2° Les prêtres et religieux—*a fortiori* les séminaristes—ne fréquenteront pas le M. R. A. sans avoir reçu l'autorisation de leurs évêques ou de leurs supérieurs religieux. En tout état de cause, ils auront soin de ne pas laisser croire que leur présence aux réunions du

[1] Cf. *Documentation Catholique*, 1933, XXX, col. 1145.

M. R. A. entraîne une approbation de principe de la hiérarchie catholique à l'égard du mouvement."

The text was printed in *Documentation Catholique*, 1948, col. 1156; in *Ephemerides Theologicae Lovanienses*, 1948, p. 666; and an English version in *The Tablet*, 14 August, 1948.

(5) *The Tablet*, 17 June, 1950, reported that Cardinal Frings, Archbishop of Cologne, in a Whitsun sermon, had warned Catholics against the Moral Rearmament movement; his Eminence's words were occasioned by an important meeting of the movement at Gelsenkirchen, which had been welcomed by Dr Adenauer and some other Catholics prominent in political life.

Some of our readers may know of other episcopal directions. From the above we can learn that the leaders of the movement are anxious to claim the approval of Catholic bishops; that some of these are unequivocally against it and others (in recent times) disposed to give it a guarded approval. The varying episcopal directions on the subject are to be understood in connexion with the Instruction of the Holy Office, 20 December, 1949, reprinted in *The Clergy Review*, 1950, XXXIII, p. 270, which carefully defines the permissible activities of Catholics when taking part in the Oecumenical Movement, and which leaves effective control in the hands of local Ordinaries.

Editorial Note.—Since above was written, the Holy Office has issued the following statement, dated 8 August, 1951: "1. It is not fitting for either diocesan or religious priests, and much less for nuns, to participate in meetings of Moral Rearmament. 2. If exceptional circumstances should make such participation opportune, the permission of the Sacred Congregation of the Holy Office must be requested beforehand. This permission will be granted only to learned and experienced priests. 3. Finally it is not fitting that the faithful should accept posts of responsibility in Moral Rearmament, and especially not fitting that they join the so-called 'policy team'."[1]

34. WOMEN IN CONFRATERNITIES

Why are women excluded from full membership of confraternities according to canon 709, §2*?*

Canon 707, §2: Sodalitia vero in incrementum quoque publici cultus erecta, speciali nomine *confraternitates* appellantur.

[1] Quoted, in translation, by *The American Ecclesiastical Review*, November, 1955, p. 351, from *La Semaine Religieuse* of Quebec, 14 July, 1955.

Canon 709, §2: Mulieres confraternitatibus adscribi tantum possunt ad lucrandas indulgentias et gratias spirituales confratribus concessas.

Canon 1256: Cultus, si deferatur nomine Ecclesiae a personis legitime ad hoc deputatis et per actus ex Ecclesiae institutione Deo, Sanctis ac Beatis tantum exhibendos, dicitur *publicus*; sin minus, *privatus*.

i. The meaning of the exclusion of women in canon 709, §2, can only be explained by giving *cultus publicus* in canons 707 and 1256 an identical signification. There are, indeed, certain difficulties about the definition of public worship in canon 1256, and some commentators attempt to avoid them by giving the conjunction "et" the meaning of "vel", thus providing for the familiar "per viam non-cultus" in processes of beatification.[1] There are also difficulties in supposing, with the majority of commentators, that liturgical worship has an adequate definition in canon 1256. Without exploring either of these problems, which would take us far beyond the scope of the present question, we will suppose that chiefly liturgical worship is referred to in canons 707 and 1256. It would seem to follow that women are excluded from a body (confraternity) whose members engage in the service of the altar or choir in public churches. Hence, as in canon 712, §3, a confraternity of this kind may not be erected in the oratories of women religious. Taking the word "confraternity" in this very strict and limited sense, there must be comparatively few bodies to which it is properly applicable. The learned writer who has contributed a fine article on the subject in *Dictionnaire de Droit Canonique*[2] records that in 1936 the Holy See made an enquiry, through the Nunciatures, about the number of confraternities (in this strict sense) functioning in parish churches as provided for in such canons as 709 and 718; few were found to exist and in France scarcely any at all.

ii. One shudders at the consequences of defending the view that women cannot be full members of confraternities. For everyone knows that they are not only members of many bodies lawfully bearing this name, but are usually amongst the most active, devoted and enthusiastic adherents. It could be argued, no doubt, that the word "confraternity" means a brotherhood and women cannot therefore enjoy full membership, but this does not satisfactorily account for the terms of canon 709. The correct explanation is that many well-known bodies bearing the name of confraternity, and admitting both men and women on equal terms, were founded in days long before the Code, when the meaning now given to this

[1] Vermeersch-Creusen, *Epitome*, II, §574. [2] IV, col. 135.

word in the strict canonical sense was not recognised. These bodies are entitled to be called confraternities, since they have been authorised to carry this title, but in the Code terminology, and considering their nature and constitution, they are not confraternities but sodalities or pious unions. Moreover, this strict terminology is not rigidly and coherently sustained even in the Code.

35. BLESSED SACRAMENT GUILD

Is it not correct that any *pious association, guild, league, sodality or confraternity, having for its chief purpose the increase of devotion to the Blessed Sacrament, satisfies the law of canon* 711, §2, *and therefore enjoys aggregation to the Archconfraternity in Rome?*

Canon 707, §1: Associationes fidelium quae ad exercitium alicuius operis pietatis aut caritatis erectae sunt, nomine veniunt *piarum unionum*; quae, si ad modum organici corporis sint constitutae, *sodalitia* audiunt.

§2: Sodalitia vero in incrementum quoque publici cultus erecta, speciali nomine *confraternitates* appellantur.

Canon 711, §2: Curent locorum Ordinarii ut in qualibet paroecia instituantur confraternitates sanctissimi Sacramenti, ac doctrinae Christianae; quae, legitime erectae, ipso iure aggregatae sunt eisdem Archiconfraternitatibus in Urbe a Cardinali Urbis Vicario erectis.

Code Commission, 6 March, 1927; *A.A.S.*, XIX, 161: I. Utrum, vi canonis 711, §2, locorum Ordinarii stricte teneantur erigere in qualibet paroecia confraternitatem Ss.mi Sacramenti, an eius loco possint, secundum peculiaria adiuncta, instituere piam unionem vel sodalitatem Ss.mi Sacramenti.

II. Utrum archiconfraternitati Ss.mi Sacramenti in Urbe erectae, de qua in canone 711, §2, ipso iure aggregatae sint tantum confraternitates Ss.mi Sacramenti proprie dictae, an etiam piae uniones aliaeque sodalitates Ss.mi Sacramenti.

Resp. Ad I. Negative ad primam partem, affirmative ad secundam. Ad II. Affirmative ad primam partem, negative ad secundam.

i. The extraordinary variety of pious unions, leagues, guilds and confraternities existing and flourishing at the present time makes it sometimes extremely difficult to determine the canonical status of each. The meaning of terms in canon 707 was rather different before the publication of the Code, and the old notions have naturally continued in many places, so that the faithful of a parish often refer to any association flourishing in their midst as a confraternity, or even as "the" sodality, as though it were the only one in existence,

no matter what its internal nature may be. The designations given in canon 707 are not, it seems, exclusive of others, or, as the canonists say, the list is not defined *taxative*;[1] nor are the canons which follow always coherent, for what is called a confraternity of Christian Doctrine in canon 711, §2, is not within the definition of canon 707, §2, since its purpose is not divine worship, which perhaps accounts for the same body being called *sodalitium* in later documents.[2] The *Code Commission* in the above reply has clearly enlarged the meaning of the word *confraternitas*.

Indeed, if one regards the matter from the point of view of a devout Catholic rather than that of a canonist—though God forbid that the two should be incompatible—one might say that the Church is clearly more concerned with the increase of piety amongst the faithful than with the form of the organisation which furthers it.

ii. The notion that substance and reality is of more importance than form and appearance is certainly sustained in the first part of the above reply, which has happily allayed the scruples or misgivings both of Ordinaries and of parish priests in relation to the word "curent" in canon 711. A confraternity even in the loosest sense of the word, if it is alive and flourishing, is of the utmost value in any parish, though it may not be technically a canonical confraternity.[3] In the Middle Ages, in fact, the confraternity in its strict meaning, enjoying moral personality and its own property, chapel and chaplain, led frequently to abuses and conflicts with ecclesiastical authority.[4]

ii. When it comes to determining the possession of certain privileges, especially indulgences, the law is more exigent, and it is reflected in the second part of the *Code Commission* reply. Aggregation, which is the power of adopting other bodies and imparting privileges to them, is restricted to associations distinguished by the prefix "arch" or by the adjective "primaria", as explained in canons 720–725, though even here one must walk warily since many are decorated with the prefix "arch" merely as an honorific title and with no powers of aggregation. A parish confraternity, in the wide sense, satisfies the law of canon 711, §2, but if its promoters desire the privileges arising from aggregation to the Roman Archconfraternity, these may be obtained *ipso iure*, without any further

[1] Vermeersch-Creusen, *Epitome*, I, §855.
[2] It is so styled in the important decree, *S.C. Conc.*, 12 January, 1935, *A.A.S.*, XXVII, p. 145; Eng. tr. Bouscaren, *Digest*, I, p. 412. Cf. also *Glasgow Synod*, 1946, n. 77.
[3] Cf. the excellent articles "Confraternities and how to work them", by Rev. J. Cleary, C.SS.R., *Irish Ecclesiastical Record*, 1927, XXIX, p. 573, and XXX, pp. 173, 261.
[4] *Dict. Droit Canon.*, IV, col. 151.

formalities, by erecting a confraternity in the strict sense defined in canon 707 and with the formalities of canon 708; alternatively they may be obtained, by explicitly securing aggregation to the Archconfraternity, a favour which will be granted or not according to the faculties enjoyed by the Roman Archconfraternity. Quite frequently the Holy See issues a *sanatio* healing the various defects that may occur in the erection and aggregation of associations. In our view, saving an Ordinary's directions to the contrary, parish priests need not be unduly concerned about the canonical status of some parish confraternity in the wide sense of the word, for the specific indulgences which are perhaps forgone owing to the lack of some formality or other, are usually obtainable in numbers of other ways.

36. CHILDREN OF MARY

Why is it that in some parishes this sodality is restricted to young girls who forfeit membership on marriage, whereas in other parishes the membership is lifelong and open to both sexes?

What we had occasion to say about Blessed Sacrament Guilds[1] applies equally to Sodalities of Our Lady, which exist in more than one form, although the exact identity of each can usually be determined from the documents of erection or of aggregation to a Roman *Primaria*.[2] There are at least two associations known indifferently as the Sodality or The Children of Mary.

i. The one which is most favoured was founded in 1563 in the Roman College by the Society of Jesus. Amongst many papal commendations is the Golden Bull *Gloriosae Dominae* of Benedict XIV, 27 September, 1748, the second centenary of which was commemorated by Pius XII in a document which renewed the commendation and summarised the rules.[3] This Sodality is not merely styled *primaria* in the sense defined in canon 720, namely as having the faculty to aggregate others, but is always referred to as *Prima Primaria*; the original association, owing to its growth, was divided into *Prima, Secunda, Tertia and Quarta Primaria*, of which only the *Prima Primaria* survived.[4] Its correct title is "Primaria Congregatio seu Primarium Sodalitium sub titulo Annuntiationis B.V.M." For the purpose of gaining the indulgences and other privileges any

[1] *The Clergy Review*, 1950, XXXIII, p. 405. [2] Canons 708, 720.
[3] *Bis Saeculari*, 27 September, 1948; *The Clergy Review*, 1948, XXX, p. 416; Eng. tr. Bouscaren, *Digest*, 1948, p. 24.
[4] This is the explanation given in *N.R.T.*, January, 1949, p. 58; other sources and handbooks describe the association almost from its first beginnings as *Prima Primaria*.

Sodality of Our Lady may, if deemed suitable, become aggregated to the *Prima Primaria* by the Father General of the Society of Jesus.

ii. Very common, however, in the parish churches of this country is another sodality known as The Children of Mary, the membership of which is restricted to unmarried girls, though the Directress or Vice-Directress may be married. It was founded in 1864 by Dom A. Passeri, C.R.L., in the Roman parish church of St Agnes outside the Walls. This also has the rank of *primaria*, in the sense of canon 720, the power of aggregation being with the Abbot General of the Canons Regular of the Lateran.[1] One of its special features is the medal with a representation on one side of Our Lady Immaculate welcoming her children presented by St Agnes, and on the reverse the monogram of Mary. The correct Latin title of this sodality is "Sodalitas Filiarum Mariae sub patrocinio B.V. Immaculatae et S Agnetis, V.M."

iii. A parish priest may secure the erection of either or both sodalities in his parish, or may choose some other association of a similar kind,[2] or may even invent his own special one, provided that in every case the Ordinary's sanction is obtained. If the parish priest desires aggregation to a *primaria*, he may choose either of the two explained above (not both, canon 723.1), and it will be granted or not according to the will of Father General or Abbot General, who, no doubt, are guided by their own faculties in accepting or declining requests for aggregation.

iv. There exists a Confederation of Children of Mary, effected by Cardinal Bourne.[3] According to the handbook, aggregation when secured through the agency of the Confederation rests with the Father General of the Society of Jesus, that is to say the aggregation is to the *Prima Primaria* of the Roman College. An echo at least of the Sodality mentioned in (ii) is found in certain references to the Agnetians.

v. Though there is a wealth of devotional literature and pamphlets about these sodalities, accurate canonical information is difficult to obtain. A further letter of the Holy Father on the subject, addressed to the General of the Society of Jesus, was given on 15 April 1950,[4] which supports the view given above that any sodality of Our Lady may become affiliated to the *Prima Primaria* without necessarily belonging, so to speak, to the Society of Jesus.

[1] Beringer, *Les Indulgences*, II, §244; *The Child of Mary's Little Handbook*, compiled by Rev. V. Scully, C.R.L., 1921.
[2] *Catholic Encyclopedia*, III, p. 659, mentions two others.
[3] Secretariate: 23 Eccleston Square, London, S.W.1.
[4] *l'Osservatore Romano*, 22 April, 1950; *Documentation Catholique*, 1950, p. 578.

V. BAPTISM AND CHURCHING

37. BAPTISM BY HERETICAL MINISTER

In a maternity hospital, no one was willing or able to baptise an infant in danger of death except the non-Catholic chaplain and the mother. Which of these two is the lawful minister?

Canon 742, §2: Patri aut matri suam prolem baptizare non licet, praeterquam in mortis periculo, quando alius praesto non est, qui baptizet.

S.Off., 20 August, 1671; *Fontes*, n. 746: Non permittat (Episcopus) schismaticis administrare Sacram. Baptismatis nisi in casu necessitatis, et deficiente quacunque alia persona catholica. Cf. also n. 924.

It is certain that the non-Catholic chaplain is able to administer a valid baptism, and like anyone else is bound by the law of charity to do so in danger of death if no Catholic is present who is able and willing to baptise the infant; in this instance he rightly baptises if the mother is too ill to do so. There is, however, reason in the query, since canon 742, §3, excludes the mother, even though she is able and willing, if there is another person present who can baptise. As far as the letter of the law is concerned there is some little conflict in the directions, which must be resolved by giving precedence to the more important aspect of the law.

Before the promulgation of the Code, an added reason existed excluding the parents from administering baptism, even in danger of death, to their own children: for the diriment impediment of spiritual relationship, which was more extended than it is now, was held by some to deprive the baptising parent of the right to seek the marriage debt.[1] It was a deprival which could easily be restored and though we cannot find any writer who discussed the situation in the above question, it might be held that the possible deprival was sufficient reason for permitting an heretical minister.

This particular point, however, is now only of historical interest, and it seems to us that, if the mother is able to baptise, the positive law forbidding her to do so is of less consequence than the law forbidding *communicatio in sacris*. Moreover, the exclusion of heretics should apply, in our opinion, even to those who are not ordained

[1] Cf. *Dict. Droit Canon.*, II, col. 127.

ministers of their sect, and the word "quacunque" in the reply of the Holy Office could bear the meaning that, if any Catholic including the mother is able to baptise, a non-Catholic is not to be employed; an exception permitting a non-Catholic to baptise, on analogy with "nisi pudoris gratia" of canon 742, §2, exists in cases of baptism "in utero", whenever a Catholic though present lacks the necessary skill and knowledge.

Finally, it cannot be assumed that an heretical minister, even an ordained one, will validly administer baptism to an infant in danger of death. We have heard the view defended by these ministers that "dry" baptism is permitted, i.e. a sign of the cross and the formula without the use of water, or at least of running water.

38. BAPTISM OF ADOPTED CHILD

In this district the foster parents of an adopted child are on trial for six months, until the authorities are satisfied that the child is in suitable surroundings. If, in a given case, there is every reason for supposing that, at the conclusion of six months trial, the adoption will become permanent, should the child be baptised at once?

Canon 750, §2: Extra mortis periculum, dummodo catholicae eius educationi cautum sit, licite baptizatur: 1. Si parentes vel tutores, aut saltem unus eorum, consentiant; 2. Si parentes, id est pater, mater, avus, avia, vel tutores desint, aut ius in eum amiserint, vel illud exercere nullo pacto queant.

Canon 770: Infantes quamprimum baptizentur; et parochi ac concionatores frequenter fideles de hac gravi eorum obligatione commoneant.

i. Where there is no reason for supposing that, at the end of six months, the child will be withdrawn from its adopting parents and educated as a non-Catholic, it seems to us that it should be assumed that the adopting parents will remain permanently such; the child should then be baptised as soon as possible, exactly like any other infant. There is, perhaps, some slight risk that it may be withdrawn from their care at the end of six months and educated as a non-Catholic. But there is often some possibility of this happening even to the natural and legitimate offspring of Catholic parents, and the risk must be taken, since every infant has a right to baptism.

ii. If, on the other hand, there is some reason for supposing that the adoption will not become permanent, we think that the baptism should be deferred for six months, until the clause of canon 750, §2, "dummodo cautum sit etc.", is verified. Should it be in danger of

death, however, it ought to be baptised at once, in accordance with canon 750, §1, "Infans infidelium, etiam invitis parentibus, licite baptizatur, cum in eo versatur discrimine, ut prudenter praevideatur moriturus, antequam usum rationis attingat."

39. BAPTISM BY ASPERSION

When receiving a family, including young children, into the Church, the parents attested that the non-Catholic minister baptised one child (thought to be in danger of death) by sprinkling water from a small bottle with the type of stopper used in scent bottles. The water was sprinkled on the child's face, but the witnesses could not say whether it flowed or not. Did I act correctly in re-baptising the child conditionally?

Canon 758: Licet baptismus conferri valide possit aut per infusionem, aut per immersionem, aut per aspersionem, primus tamen vel secundus modus, aut mixtus ex utroque, qui magis sit in usu, retineatur, secundum probatos diversarum Ecclesiarum rituales libros.

The inquiry about the matter and form of a valid administration of baptism turns, firstly, on the fact of a rite having been performed, which is established in the above instance fully and satisfactorily: the proof of administration by a written certificate from the non-Catholic minister, though urged by some canonists, is not customary in this country, and the testimony of one witness "omni exceptione maior" suffices as canon 779 directs.

It turns secondly on whether the rite has been validly performed, and (restricting the inquiry to the proximate matter) the question to be decided is whether the water flowed, for there is agreement amongst all the commentators that a flow of water, even though it be merely a few drops, is essential to the sign of ablution or washing which, by divine institution, is of the substance of this sacrament. Canon 758, whilst admitting the validity of baptism by aspersion, on the understanding that the water flows, nevertheless rejects this method because, as it seems to us, there must always be uncertainty about the flowing of water which is merely sprinkled on the candidate.

If the water flowed on the face of the infant, this is certainly valid, though the more usual and recommended method is to cause water to flow on the forehead or on the crown of the head. Fortescue, in fact, directs that "the water may best be poured over the right cheek",[1] a recommendation which occasioned some comment[2] and

[1] *Ceremonies of the Roman Rite* (1920), p. 395.
[2] *Irish Ecclesiastical Record*, 1922, XIX, p. 421.

which has been modified in Fr O'Connell's edition of the book; the added rubric on page 7 of the *Ordo Administrandi* reads "Abluenda est pars capitis superior". In the common law, as Cappello states, "Nomine capitis intelligitur frons, vertex, visus."

The conclusion must clearly be that the priest receiving the family into the Church acted rightly in re-baptising this child conditionally, because he had no certainty that the rite which had taken place was validly performed.

40. BAPTISM OF A CHILD OF NON-CATHOLIC PARENTAGE

A non-Catholic mother, anxious for her child's baptism, cannot take the infant to the Protestant church owing to domestic difficulties, and the minister declines to baptise it at home. May the parish priest, when consulted, either recommend the mother to get some other non-Catholic minister or privately baptise the infant himself? If neither course is permissible, is there anything the parish priest can do to assist this mother?

Canon 759, §1: In mortis periculo baptismum privatim conferre licet; et, si conferatur a ministro qui nec sacerdos sit nec diaconus, ea tantum ponantur, quae sunt ad baptismi validitatem necessaria. . . .

§2: Extra mortis periculum baptismum privatum loci Ordinarius permittere nequit, nisi agatur de hereticis qui in adulta aetate sub conditione baptizentur.

Canon 750, §2: Extra mortis periculum, dummodo catholicae eius educationi cautum sit, licite baptizatur: 1. Si parentes vel tutores, aut saltem unus eorum consentiant.

The only person enjoying the right of administering public baptism is the Catholic parish priest of the place: the priest consulted may baptise this child, if the mother consents to its being educated a Catholic, which appears not to be the case. The baptism, however, would have to be in the church like any other, unless the child is in danger of death.

The priest consulted may not recommend the parent(s) to have the child publicly baptised by any non-Catholic minister, since this advice amounts to a recognition of the heretical sect, which the Holy See has more than once forbidden.

It seems, therefore, that the most the priest may do is to inform the mother about the law of baptism in danger of death, and he may even instruct her on the correct matter and form. If the child is in danger of death at any time, the priest may himself administer

private baptism at the mother's request, or—what is probably the best course in the circumstances—the mother may herself baptise the child.

41. MINISTER AS BAPTISMAL SPONSOR

Assuming that a priest gets permission to be a baptismal sponsor, as required from canon 766.5, *may he at the same time administer the sacrament?*

S.R.C., 14 June, 1873, n. 3305·3: Num in administratione sacramenti Confirmationis Episcopus possit . . . Ministri et Patrini partes uno eodemque tempore sustinere, dextera scilicet manu frontem confirmandi sacro Chrismate signare ut Minister, ac sinistra confirmandum ipsum tenere ut Patrinus. *Resp.* Episcopus confirmans in casu officium Patrini gerat per Procuratorem.

One's first reaction to this question was a decided negative, since it appeared almost from the nature of things that the minister could not also be the godparent. He contracts spiritual paternity by baptising the infant and it would seem that he cannot contract it again, with regard to the same person, by acting as sponsor; moreover, he would be addressing questions to himself during the rite. Relying, however, by analogy, on the reply given by *S.R.C.*, n. 3305·3, De Smet, *De Sacramentis*, n. 352, teaches that it is not forbidden: "Non prohibetur sacerdoti baptizanti, simul ac baptizat, agere patrinum; sed munus susceptoris exercere debt per procuratorem, qui nomine sacerdotis Baptismum ministrantis suscipiat et interrogationibus faciendis respondeat." He quotes for the same teaching *Revue du Clergé Français*, LV, p. 725.

De Smet's opinion may be followed, if desired, since the law nowhere expressly bars the minister from being at the same time a godparent. But we cannot easily discern any reason for a practice which, if not forbidden, is certainly extremely odd and unusual, and we imagine that the priest's Ordinary would not grant permission for him to act as sponsor if he knew that the sponsor was also to be the minister.

If the double office is, nevertheless, assumed, the priest should appoint a proxy to answer for him as sponsor, on analogy with *S.R.C.*, n. 3305·3, thereby avoiding the additional oddity or impropriety of speaking to himself when putting and answering the questions.

42. BAPTISMAL SPONSOR "PRO FORMA"

Having to refuse a non-Catholic sponsor I appointed the school-teacher, who is always present for the Catechism on Sunday afternoon. The parents objected to having a perfect stranger, and I insisted for the purpose of duly carrying out the ceremonies; but I am now doubtful whether I acted rightly. Is it better to have no sponsor at all rather than one who, though willing to assist at a ceremony, has no intention of assuming any responsibility for the child's spiritual welfare?

Canon 765: Ut quis sit patrinus, oportet: 1. Sit baptizatus rationis usum assecutus et intentionem habeat id munus gerendi.

Canon 769: Patrinorum est, ex suscepto munere, spiritualem filium perpetuo sibi commendatum habere, atque in iis quae ad christianae vitae institutionem spectant, curare diligenter ut ille talem in tota vita se praebeat qualem futurum esse sollemni caeremonia spoponderunt.

S. Off. 15 Sept. 1869; *Fontes* n. 1011: Quandoquidem nil impedit quominus ipsi (parentes) patrinorum vices gerant suos infantes materialiter tenendo et pro iis baptizanti respondendo, citra tamen veri ac proprie sumpti patrinatus praerogativam. . . . Ita fiet, ut in sollemnitate Baptismi omnes quadam ratione serventur ritus, et parentum materiali praesentia formalis patrinorum suppleatur.

S. Sacram. 29 July and 25 November, 1925; *A.A.S.*, 1926, XVIII, p. 43: . . . patrinus suum munus suscipere debet cum plena notitia et conscientia inde exorientis obligationis ad mentem can. 769. . . .

i. Parents should provide a sponsor who fulfils all the requirements of the canons, and if he is unable to be present a proxy may be appointed.[1] Failing an appointment by the parents it is for the minister, from canon 765.4, to choose a sponsor who has, at least, the minimum qualifications. It must be conceded that, quite often, whether appointed by parents or minister, the intention in taking this office does not explicitly correspond with the description in canon 769, owing to ignorance of the law. But a vague and confused knowledge suffices, and one could not question the validity of the action except, perhaps, in a case where an unwilling sponsor has been forced into the office by the priest.[2]

It is not, however, to be assumed that school-teachers, always ready to assist in an emergency, are necessarily unqualified from lack of the necessary intention. These persons may regard the charge more seriously than some friend or relation of the parents chosen merely for social reasons; they can be informed about the obligations; their identity is registered and their assistance could be claimed later on if the necessity arose.

[1] Cf. *The Clergy Review*, 1944, XXIV, p. 560.
[2] Cf. *The Clergy Review*, 1934, VII, p. 527.

ii. The question we have to answer is whether it is preferable to dispense with a sponsor altogether rather than have one who has no serious intention of assuming the obligations, but merely of assisting at a ceremony. The canons and the instructions of the Holy See all point to the conclusion that it is preferable to have no sponsor. The Church would not attach a diriment impediment to a mere ceremony; the canons are quite explicit about the sponsor's office and obligations; and the two replies referred to above support this view. The reply in 1869 was chiefly concerned with pointing out that the lack of a sponsor was no reason for administering Baptism without the ceremonies. It forbade the appointment of a proxy unless the principal had previously consented: "ratio est quia patrinus formalem habere debet voluntatem acceptandi et exercendi pro viribus onera patrinatui inhaerentia." Finally it strongly reprobated the practice of employing for the office some person who happened to be in the church and who would take no further interest in the child.

The reply in 1925 made more explicit the rules for appointing proxies, precisely because of the obligations attached to the office, and the accompanying instruction quotes papal decretals, St Thomas and the Roman Catechism in proof of the seriousness of the act of sponsorship, and insists that the abuse of regarding it as an empty ceremony must be removed.

It is certain, therefore, that the appointment of a sponsor merely to take part in the rite is unlawful; it may even be invalid in some instances, although in the *external forum* a sponsor would have difficulty in proving its invalidity, since a person's internal intention is presumed to conform with his external acts.

43. UNLAWFUL BAPTISMAL SPONSOR

May a Catholic who has contracted a mixed marriage in a register office be a lawful godparent at Baptism, if this attempted marriage is not notorious?

Canon 766: Ut autem quis licite patrinus admittatur, oportet: . . . 2. Non sit propter notorium delictum excommunicatus vel exclusus ab actibus legitimis . . . vel infamis infamia facti.

Canon 2293, §3: Infamia facti contrahitur, quando quis, ob patratum delictum vel ob pravos mores, bonam existimationem apud fideles probos et graves amisit, de quo iudicium spectat ad Ordinarium.

Canon 2375: Catholici qui matrimonium mixtum, etsi validum, sine Ecclesiae dispensatione inire ausi fuerint, ispo facto ab actibus legitimis ecclesiasticis . . . exclusi manent. . . .

i. Details of canon law and its interpretation apart, a person of this type is unsuited for the office of sponsor. Since, from canon 765.4, the choice of sponsor rests with the parents, the priest who knows about the status of the proposed sponsor should use his influence to urge the choice of a more respectable person.

ii. Difficulty, however, arises when the parents are so bent on having this undesirable sponsor that they might even decline to have the child baptised if the sponsor is rejected. It is then for the priest, applying the rule of canon 2219, §1, "In poenis benignior est interpretatio facienda", to admit the sponsor unless it is certain that he comes within the prohibitive law of canon 766, and *a fortiori* within the invalidating law of canon 765. In some dioceses the local law resolves whatever doubt there may be in interpreting the above canons by enacting that all parties to a civil marriage, mixed or not, must be excluded from baptismal sponsorship.[1]

If there is no local law, we think it could be decided that a person of this kind is not with certainty excluded by positive law from the legitimate ecclesiastical acts enumerated in canon 2256.2, amongst which is sponsorship; for, although canon 2375 does not mention notoriety, canon 766 does, unless this qualification is to be applied only to the excommunicated and not to the classes which follow.[2] *Infamia facti* cannot exist unless its basis is publicly known and established by the bishop. "Ausi fuerint" of canon 2375 requires, amongst other things, knowledge of the penalty, which will usually be lacking. Evidently quite a number of canonical reasons could be adduced if one wanted to prove that a person of this character is not necessarily excluded by the positive law.

iii. Where the civil marriage is notorious, or even merely public (canon 2197), and scandal will be caused by admission to sponsorship, the party may lawfully be rejected, in the teaching of Prümmer and others, even though his condition does not come, perhaps, within any specified positive law.[3]

44. CONTENT OF BAPTISMAL CERTIFICATE

Is it necessary to give the full particulars, including those of confirmation and marriage, when all that is required is a certificate of baptism for civil purposes?

[1] Gougnard, *Collationes Theologicae*, 1932, p. 42.
[2] Cf. *Ecclesiastical Review*, March 1941, p. 255, where the writer applies notoriety rightly to all that follows, an interpretation which should be accepted.
[3] *Theol. Moralis*, III, §146; *The Clergy Review*, 1941, XX, p. 88.

In the event of a baptism being entered which shows the child to be of illegitimate birth, but whose parents have later married and thus legitimated the offspring, what exactly should be stated on the certificated copy?

i. The *testimonium baptismi*, required by certain canons, is perfectly established by a certificated copy from the baptismal register, but this is not the only lawful method of proving baptism, as is evident from canon 779,[1] although local laws frequently insist upon it.

If, however, a certificate is issued which purports to be a copy of the baptismal register, the certificate must contain all the details entered therein, whether they are judged necessary or not. The parish priest making entries in his register, or giving certificated copies of them, acts as a notary, not as a judge of what is fitting. It would be improper for him to make any alterations, or to supply an imperfect copy of the whole entry, unless authorised by the local Ordinary. For this improper procedure might have the effect of nullifying the purpose of the law, especially that relating to marriage; an adult, for example, in possession of a baptismal certificate which omitted the details of his marriage, could use it within six months of issue as a proof of freedom to marry.

ii. In observing the above principle difficulties occasionally arise, for example, in cases where it is advisable to conceal the fact of a child's adoption.[2] It is for the Ordinary to decide, either by local regulations or by giving a direction in individual cases, what changes, if any, may be permitted.

In some dioceses the difficulty about legitimation by subsequent marriage is met by authorising the clergy to note the date and place of the marriage in the margin of the baptismal register: extracts subsequent to this added entry are to be issued containing without qualification the names of the married parents which perhaps, following the law of canon 777, §2, were not inscribed in the baptismal register, or were inscribed with the qualification "coram lege civili" before the word "coniugum".

45. ABSOLUTE BAPTISM OF ADULTS

At the absolute baptism of adults, when the form for infants is used by indult, should the questions be answered by the candidate or by the sponsors? Should the candidate join in the recitation of the "Credo" *and* "Pater"*? Should a profession of faith precede the rite of baptism?*

[1] *The Clergy Review*, 1938, XV, p. 260.
[2] Cf. *The Clergy Review*, 1942, XXII, p. 556; 1943, XXIII, p. 192.

Canon 755, §2: Loci Ordinarius potest gravi et rationabili de causa indulgere ut caeremoniae praescriptae pro baptismo infantium adhibeantur in baptismo adultorum.

Ordo Administrandi, Tit. iii, cap. iv, i *a*: Si Baptismus absolute conferatur, nulla fit a neo-converso abiuratio haeresis, nec ei datur absolutio, eo quod omnia abluat Sacramentum regenerationis; sed Professio fidei emitti debet, saltem ab adultis, quam sequitur Baptismi publica administratio sub ritu (ex privilegio) Baptismi parvulorum.

S. Off. 19 May, 1879; *Fontes*, n. 1063: . . . ultrum scilicet baptizari possint, servato ordine Baptismi parvulorum, ii pueri neophyti qui scholis catholicis admissi baptizantur ante primam Communionem? *Resp.* . . . Affirmative; responsiones autem praescriptae dentur a pueris baptizandis insimul cum eorum patrinis.

In the common law, when the rite for adults is used, the above questions are answered by the rubrics of the rite itself.

In this country the form for infants was permitted by indult before the Code, and is now lawful, even without an Apostolic indult, from the terms of canon 755, §2. The direction of the Holy Office, 19 May, 1879, is that the responses are to be made by the candidate and the sponsors together; though it was given for only one locality, it may fittingly be followed in all cases of adult baptism with the form for infants; on analogy with this rule, the candidate should also, we think, recite the *Credo* and *Pater* with the minister and sponsors.

A profession of faith, not indeed required by the common law from the adult candidate, except in the course of the rite for adults, must precede the rite for infants in this country as directed by the *Ordo Administrandi*. The teaching of Fr Dunne, *The Ritual Explained*, p. 33, that no profession of faith is required beyond that contained in the rite itself, must refer, we think, to the absolute baptism of adults with the adult rite. When the infant form is used and the candidate, correctly we think, joins in the profession of faith with the sponsors, he does so, as it were, unofficially, and not as one making the profession of faith required by the law. This explanation, though weak, is the only one occurring to us which explains the requirement of the *Ordo Administrandi* for a profession of faith from the adult candidate before the rite of baptism administered with the form for infants. A profession of faith by an adult candidate is in the nature of things, and has always been required by the Church: an instance of it is in Acts viii, 37, before Philip's baptism of the eunuch.

The formula of this profession found in the *Ordo Administrandi* is

the one given by the *Holy Office*, 20 July, 1859,[1] for the reconciliation of heretics. It could be maintained, therefore, that its use is not obligatory except for those already baptised, and that in the case we are discussing the *Credo* suffices, or the formula of Pius IV given in *Fontes*, n. 108. A study of the formula in the *Ordo Administrandi* by Fr Bévenot, S.J., may be seen in *The Clergy Review*, 1938, XV, p. 212, and 1939, XVI, p. 401; a new formula was authorised for England and Wales in 1945.

46. CONDITIONAL BAPTISM

A child of a mixed marriage was, unknown to the Catholic mother, baptised in the Protestant church. He was confirmed, has made his First Communion, and has never received any religious instruction or taken part in any religious worship except that of the Catholic religion. The defect of his baptism was not discovered until he was sixteen years of age. What is the correct procedure in rectifying his status, assuming his first baptism to be doubtful?

Canon 759, §2: Extra mortis periculum baptismum privatum loci Ordinarius permittere nequit, nisi agatur de haereticis qui in adulta aetate sub conditione baptizentur.

§3: Caeremoniae autem quae in baptismi collatione praetermissae quavis ratione fuerint, quamprimum in ecclesia suppleantur, nisi in casu de quo in §2.

Canon 760: Cum baptismus sub conditione iteratur, caeremoniae, si quidem in priore baptismo omissae fuerunt, suppleantur, salvo praescripto can. 759, §3; sin autem in priore baptismo adhibitae sunt, repeti in altero aut omitti possunt.

Canon 763, §1: Cum baptismus iteratur sub conditione idem patrinus, quatenus fieri possit, adhibeatur, qui in priore baptismo forte adfuit; extra hunc casum in baptismo conditionato patrinus non est necessarius.

§2: Iterato baptismo sub conditione, neque patrinus qui priori baptismo adfuit, neque qui posteriori, cognationem spiritualem contrahit, nisi idem patrinus in utroque baptismo adhibitus fuerit.

In *The Clergy Review*, 1942, XXII, p. 372, a chart was suggested for the purpose of solving questions of this kind. The boy in the above case comes under the description of a "Catholic 7 onwards" receiving conditional baptism.

In the common law the permission or the intervention of the Ordinary is not required since canon 744 is commonly interpreted

[1] *Fontes*, n. 953.

as referring to absolute baptism, and the boy not having been at any time a heretic is not subject to the usual procedure for receiving a convert into the Church.[1] Occasionally, however, local law requires even conditional adult baptism to be referred to the Ordinary, as in Lancaster Synod, 1945, n. 75.

The ceremonies are to be employed (which by indult are those in the "Ordo Parvulorum") since conditional baptism without the ceremonies is permitted only at the reception of converts. A sponsor is permissible, though not necessary, and if employed the impediment of spiritual relationship is not set up; the questions may be answered by the sponsor and candidate together.[2] The baptismal formula should be preceded by the words "si tu non es baptizatus."

The above solutions, which we believe to be correct, are given on the assumption that this boy, though baptised in a non-Catholic church, is not a heretic, because he has never adhered at any time to a sect since reaching the age of discretion; for this reason, the convert form is not used, there is no abjuration of heresy, and no profession of faith beyond that contained in the "Ordo Parvulorum".

47. FONT BLESSING: HOLY OILS

If the Holy Oils blessed on the previous Holy Thursday have not arrived, what is the correct practice in blessing the Font, particularly when a solemn Baptism must be administered immediately?

Canon 734: Sacra olea quae quibusdam sacramentis administrandis inserviunt, debent esse ab Episcopo benedicta feria V *in Coena Domini* proxime superiore; neque adhibeantur vetera, nisi necessitas urgeat.

S.R.C., 31 January, 1896, n. 3879: Parochus curet, ut presbyter vel clericus, si possibile sit in Sacris constitutus, nova Olea Sacra recipiat. Quod si aliquod adhuc exstet impedimentum, idem parochus vel per se vel per alium Sacerdotem benedicat Fontem sine Sacrorum Oleorum infusione, quae privatim opportuno tempore fiet: nisi aliquem baptizare debeat; tunc enim ipsa benedictione solemni vetera Olea infundat.

Some other earlier replies are not so clear because the circumstance of an impending Baptism was not taken into consideration. If no Baptism is expected before the newly consecrated oils arrive, the Holy Saturday rite should be performed without them, and later a priest vested in surplice and violet stole should add to the

[1] Cf. *The Clergy Review*, 1943, XXIII, p. 566.
[2] *The Clergy Review*, 1946, XXVI, p. 101.

blessed water the Holy Oils with the formula given in the Missal. A solemn Baptism, let us suppose, must be administered unexpectedly after the blessing of the Font without Holy Oils and before the newly consecrated ones have arrived; the Baptism will be preceded by pouring the old Oils into the Font with the appropriate formula, and the candidate throughout the rite will be anointed with the old Oils. It is evident that the priest should not burn up the old Oils before he is in possession of the new ones, since he may need them in an emergency for Extreme Unction or Confirmation, as well as for solemn Baptism.

48. CHURCHING: STOLE CEREMONY

Since this rite is not a purification but a thanksgiving, why does it include certain penitential features such as the direction that the woman shall kneel at the church door and be led to the altar holding the priest's stole? Women sometimes rather resent the implications of these rites.

Rituale Romanum, VIII, vi . . . ad fores ecclesiae accedat, ubi illam (puerperam) foris ad limina genuflectentem et candelam accensam in manu tenentem, aqua benedicta aspergat. . . . 2. Deinde porrigens ad manum mulieris extremam partem stolae, ex humero sinistro pendentem, eam introducit in ecclesiam. . . .

i. In the primitive rite of this blessing there was included the notion of "purification" which has now almost completely disappeared. This notion was due to the fact that Our Blessed Lady herself observed the Mosaic law contained in Leviticus xii, and the Christian rite began as an imitation of Our Lady's Purification; in many ancient rituals, indeed, the rite is described as a purification.[1] It must be observed, however, that the purification in question was only legalistic, and in no sense considered to be a cleansing from some kind of moral stain. Our Lady was not properly speaking bound to observe the ritualistic purification, since the circumstances of Christ's birth were not those described in Leviticus; that she nevertheless did so, in a spirit of humility and obedience, encouraged Christian mothers to imitate her example, and the Church provided a rite for the purpose in order to sanction what the Ritual still refers to as "pia et laudabilis consuetudo", although the stress is now exclusively on the notion of rendering thanks to God for a safe delivery.

We think that, historically speaking, the existing rubrics quoted above must be traces of the notion of ceremonial purifying which has

[1] *Maynooth Council*, 1927, n. 305, refers to "ritus purificationis".

now completely disappeared from the title and words of the rite, a notion which everyone is rightly anxious to suppress, lest an entirely false idea of motherhood should be encouraged.

ii. If we take the rubrics and the rite as we have it in our current ritual, together with the law on the subject, the traces of what used to be a purificatory ceremony are capable of an explanation which relates solely to the idea of thanksgiving.

Humility, both in word and gesture, is at all times appropriate to Christian worship, and most of all in an act of thanksgiving to God for benefits received. Though resembling the stole ceremony on introducing catechumens at Baptism (*Ingredere in templum Dei*), the use of a white stole at Churching indicates the difference: if the action symbolised the rehabilitation of a mother as part of a ceremonial purifying, the colour of the stole would certainly be violet. Neither our word "Churching" nor the French word "Relevailles", both of which are reminiscent of rehabilitation, is to be found in the vocabulary of the liturgy; and whatever may be the popular idea, there is no liturgical rule which requires the mother not to enter the sacred precincts until after receiving the blessing. We cannot remember any other rite, except Baptism, in which the priest's stole is used to conduct the recipient of a blessing into the church, and it is therefore difficult to attach a meaning to it which is unconnected with some kind of rehabilitation. The lighted candle and procession to the altar are strongly reminiscent of the Candlemas rite, and it could be said, perhaps, that the action of accompanying the priest, whilst holding the end of his stole, far from indicating rehabilitation, is a privilege which is not found in any other blessing.

Were this rite one of rehabilitation or purification, it would seem that it could more fittingly be used for unmarried mothers. Exactly the opposite, however, is implied in many local rituals which direct that the blessing is to be given only to mothers who have borne children in lawful wedlock; and, though the modern common law does not refuse it to the unmarried, it is agreed that they have no strict right to it.[1]

iii. Finally, we must remember that there is no common law obligation in the Latin Church for women to receive this blessing after childbirth. If the Church considered it to be a purifying or rehabilitating rite, it would no doubt be obligatory for women to receive it. Should the above reasons fail to convince, any mother who views the rite with repugnance may be told not to ask for this blessing, unless local law directs parish priests to exhort women to receive it, as in *Madras Statutes*, 1942, n. 331.

[1] *The Clergy Review*, 1940, XVIII, p. 347.

49. CHURCHING AFTER INFANT'S DEATH

Is it usual for churching to take place if the child is dead, especially when it has died without baptism?

S.R.C., 12 September, 1857, n. 3059.17: . . . pro benedictione accipienda, etiamsi proles mortua fuerit quandoque sine Baptismo. In illo tamen casu verba orationum Ritualis Romani nunc in hac dioecesi vigentis verificari non possunt, et aliunde benedictio omitti nequit sine aliqua admiratione plebis et sine aggravatione moeroris mulierum huiusmodi. Quaeritur quid agendum. . . . *Resp.* Servandum omnino Rituale Romanum.

19 May, 1896, n. 3904: Utrum vi Decreti . . . 12 Septembris, 1857, liceat benedictionem mulieris post partum, iuxta Rituale Romanum, impertiri puerperae, cuius proles mortua fuerit sine Baptismo; an vero abstinendum sit ab ea benedictione? *Resp.* Non esse negandam benedictionem.

The use of some Churches, especially in the East, supposes that the child is present with the mother at the time of receiving the blessing,[1] and this might have been so in the local rite mentioned in *S.R.C.* n. 3059. Assuming, however, that the rite in question is that contained in our present Ritual, its unsuitability for the case where an infant has previously died without baptism can only be discerned in the words of the prayer "ad aeternae beatitudinis gaudia cum prole sua pervenire mereatur". It touches upon the difficult question of the salvation of infants dying without baptism. To the questions set the reply is that the words of the Ritual are not to be modified, and that the blessing is not to be refused even when the infant has died unbaptised. Without in any way modifying the dogmatic teaching on this question, the Sacred Congregation insists on the words of the Ritual being used; they are not absolutely irreconcilable with the doctrine, since the necessity of baptism does not absolutely exclude the possibility of salvation by some miraculous divine intervention, difficult though it may be to prove.[2]

If the infant has died after baptism, there is no problem of any kind, since the formula in our current Ritual is exclusively a blessing upon the mother.

[1] O'Kane, *Rubrics of the Roman Ritual*, §542.
[2] Cf. *Dict. Théol.*, II, col. 365.

VI. CONFIRMATION

50. CONFIRMATION: GRAVE SICKNESS

The terms of the indult defining the powers of the extraordinary minister of Confirmation seem to require in the sick candidate a danger of death which is more certain and proximate than that required for Extreme Unction. What support is there for the opinion that for both sacraments the danger required is the same?

Propaganda, 4 May, 1774; *Fontes*, n. 4565: . . . agatur de eo, qui gravi morbo laboret, ex quo decessurus praevideatur. . . .

Canon 940, §1: Extrema Unctio . . . ob infirmitatem vel senium in periculo mortis versetur.

S.C.Sacram., 14 September, 1946: . . . dummodo hi fideles *ex gravi morbo in vero mortis periculo sint constituti, ex quo decessuri praevideantur.*

There is this difference between the two dangers of death, that if the person is in danger of death from old age or from some lingering sickness, he may receive Extreme Unction and the other last rites validly and lawfully; but quite probably the reception of Confirmation, though valid, might, in such circumstances, be unlawful, since in the case of a lingering sickness it might be possible to secure a bishop, as required in n. 3 of the indult.

It must be admitted that the phrasing of the indult and of its predecessor in 1774 seems to require a more proximate and certain danger of death than is required, according to the common teaching, for Extreme Unction. Nevertheless, most of the commentators are in agreement that for the valid reception of both sacraments the degree of danger of death required is identical, and whatever doubts may arise are common to both sacraments and to be solved in the same way. The word "true" is opposed to "false", and does not exclude the accepted doctrine that a person in danger of death can validly receive both sacraments whenever a truly prudent judgement is made, albeit only a probable opinion, that death may ensue. The best explanation of the peculiar terms used is the practice of the Roman Curia of adhering to precedent in the drafting of documents; the instruction of 1774 used almost identical terms, and those derive from the contemporary opinion which required imminent danger of death for Extreme Unction.

51. OBLIGATION OF RECEIVING CONFIRMATION

Is there now a grave obligation on the faithful when dying to seek the sacrament of confirmation?

Canon 787: Quamquam hoc sacramentum non est de necessitate medii ad salutem, nemini tamen licet, oblata occasione, illud negligere; imo parochi curent ut fideles ad illud opportuno tempore accedant.

Benedict XIV, *Etsi Pastoralis*, 26 May, 1742; *Fontes*, n. 328, III, §4 . . . monendi tamen sunt ab Ordinariis Locorum, eos gravis peccati reatu teneri, si cum possunt ad confirmationem accedere, illam renuunt, ac negligunt.

Propaganda, 4 May, 1774; *Fontes*, n. 4565: . . . etsi enim hoc Sacramentum non sit de necessitate medii ad salutem, tamen sine gravis peccati reatu respui non potest, ac negligi, cum illud suscipiendi opportuna datur occasio.

S.Off., 20 June, 1866; *Fontes*, n. 994, n. 40: . . . omnino periculosum esset, si ab hac vita sine Confirmatione migrare contingeret, non quia damnaretur, nisi forte propter contemptum, sed quia detrimentum perfectionis pateretur.

It cannot be proved, either from the nature of this sacrament or from any certain positive law, that its reception is a grave obligation in itself, apart from such extrinsic circumstances as the necessity of avoiding scandal, or when refusal is due to contempt. The Benedictine phrase, as is clear from the context of the whole document, is usually explained by pointing out that the Italo-Greeks, for whose instruction the Pope was writing, were in fact guilty of contempt in refusing confirmation from a bishop, the Holy See having withdrawn the faculty from their priests.[1] The phrase in *Fontes*, n. 4565, is drawn from the Benedictine constitution, cited in a footnote; it is not a law but an instruction giving the teaching of the Roman Congregation at that time. St Alphonsus relied on the Benedictine statement for his stricter view,[2] and some modern manualists, relying on both the above texts, argue that the obligation is a grave one.[3] The majority of commentators think it is not grave, and their view may safely be accepted.[4] The teaching of Propaganda in 1774 is not sustained by the Holy Office in *Fontes*, n. 994, and the earlier instruction is no longer printed in the Appendix to the Roman Ritual.[5] The mild terms of canon 787 are

[1] De Smet, *De Sacramentis*, §396.
[2] *Theol. Moralis*, VI, n. 182, ad finem.
[3] E.g. Aertnys-Damen, II, §92.
[4] E.g. Iorio, *Theol. Moralis*, III, §89.
[5] Noldin, loc. cit., edition 1935, is to be corrected on this point: he is referring, no doubt, to the edition of the Ritual previous to that of 1925.

reflected in canon 1021, §2, directing that parties about to be married should be confirmed if it can be done without grave inconvenience. Nothing appears to modify the milder view in the 1946 decree,[1] which facilitates the reception of this sacrament, and commentators remain unwilling to assert a grave obligation.[2]

52. OBLIGATION OF CONFIRMING THE DYING

Does it follow from the opinion that the dying are not gravely bound to receive Confirmation (cf. previous question), that neither is the priest gravely bound to administer it, when asked to do so?

Canon 467, §1: Debet parochus . . . administrare sacramenta fidelibus, quoties legitime petant. . . .

Canon 468, §1: Sedula cura et effusa caritate debet parochus aegrotos in sua paroecia, maxime vero morti proximos, adiuvare, eos sollicite Sacramentis reficiendo. . . .

Canon 785, §1: Episcopus obligatione tenetur sacramentum hoc subditis rite et rationabiliter petentibus conferendi, praesertim tempore visitationis dioecesis.

§2: Eadem obligatione tenetur presbyter, privilegio apostolico donatus, erga illos quorum in favorem est concessa facultas.

§3: Ordinarius, legitima causa impeditus aut potestate confirmandi carens, debet, quoad fieri potest, saltem intra quodlibet quinquennium providere ut suis subditis hoc sacramentum administretur.

i. The satisfaction felt, perhaps, in sharing the powers of the episcopate, has been clouded in some few instances by the labour involved: if there is a large maternity clinic in his district, a parish priest is liable to be summoned at all hours of the day or night, and cannot depute an assistant priest to take his place. The remedy in cases of serious hardship is to obtain an indult for the priest who habitually attends the institution.[3] A definition of the priest minister's obligation to confirm the dying is one of the most difficult points arising from the decree *Spiritus Sancti*, 14 September, 1946. The one suggested in the following notes is tentative and lacking that modest degree of assurance which one would like to have in solving a doubt. The question must be kept within due bounds by limiting it to what is of grave obligation, and by eliminating such circumstances as scandal, contempt, or special necessity in the recipient. Further,

[1] *The Clergy Review*, 1947, XXVII, p. 54.
[2] E.g. Pistoni, *De Confirmatione a Ministro Extraordinaris*, n. 40.
[3] One has now been granted.

there is complete agreement that a parish priest who habitually declines to confirm the dying commits grave sin, a conclusion deduced from canon 785 which affirms a priest's obligation to be the same as a bishop's: strict parity exists, indeed, only when a priest's indult extends to holding a general confirmation of persons not in danger of death, but it can be extended by analogy to the case of a priest who habitually refuses to use his faculty of confirming.

ii. Many commentators go further and by regarding an individual request in much the same way as a request for Extreme Unction on the part of a person who has received absolution and Viaticum, they assert a grave obligation to confirm each individual,[1] whilst admitting that grave inconvenience may release from grave obligation in an individual case, a reasonable consideration which is not, however, strictly relevant. This view, shared by the majority, is based on the law of canons 467 and 468, and not on other considerations: the faithful have a right to the sacraments and it is the parish priest's grave duty to administer them when reasonably requested, a duty not limited to those which are necessary for salvation, which confirmation is not, nor to those which the faithful are under a grave obligation to receive, which again confirmation is not. There is everything to be said for defending this safe view even though it should prove to be too strict.

iii. Nevertheless, it is not certain that the obligation to confirm each individual applicant is grave, and we agree with those writers who think it be only binding *sub levi*.[2] Our unwillingness to fasten fresh grave obligations on the parochial clergy is supported by two considerations. It is, in the first place, unreasonable to make the extraordinary minister's obligation more serious than that of the ordinary minister, and many writers including St Alphonsus teach that a bishop is under no obligation to confirm a dying person because it is not the common practice. Moreover, in the second place, seeing that the power is now enjoyed by parish priests, it appears that the thing to be examined is whether a dying person has a strict right to this sacerdotal ministry, for a decision on the parish priest's obligation turns on this point. Mgr Zerba, correctly in our opinion, teaches that dying persons have no strict right to this sacrament;[3] otherwise it will be difficult to explain how it came about that, for many centuries, this right was in practice denied them. Not being a strict right to something claimed as due, it must

[1] Zerba, *Commentarius*, p. 73; Smiddy, *Manual*, p. 59; *E.T.L.*, 1949, p. 355; *I.E.R.*, pp. 348, 537.
[2] *A.E.R.*, April 1947, p. 261; *The Jurist*, 1947, p. 231; *L'Ami du Clergé*, 1949, p. 694.
[3] Op. cit., p. 52.

be a favour, a privilege, a right in the wide sense of something fitting and expedient which the Church desires the faithful to enjoy. In those parts of the world where priests have long enjoyed the faculty under Propaganda, the accepted opinion is that the obligation to use the faculty is not grave.[1] Probably the best way is to regard the question not *vis-à-vis* the claims or desires of individuals but of the Church and of the Holy See; a refusal, even on one occasion, if causing scandal or due to contempt, may easily be grave sin.

53. CONFIRMATION: APPARENT DEATH

Called to administer the last sacraments to a person who died just before I arrived, I absolved and anointed him conditionally, as recommended by modern writers. He had not been confirmed, and I wondered afterwards whether I should have administered conditional Confirmation as well?

With all the reservations applying to the conditional administration of the last sacraments in such cases,[2] we cannot discern any reason at all why Confirmation should not be included. Up to the appearance of the new decree on the subject[3] the point was not discussed by the commentators, since it was scarcely of any practical value. Since the decree, the only reference to the point that we have seen is in *l'Ami du Clergé*, 1947, p. 617, where the writer decides that there is no reason for excepting Confirmation from the theological teaching about administering sacraments to the apparently dead. Unlike Extreme Unction the Ritual makes no provision for a short form in cases of necessity; following the existing principles, and on analogy with them, the form will be "N, si vivis, signo te", etc.

54. CONFIRMING A DYING HERETIC

The practice of administering "servatis servandis" *Penance and Extreme Unction to dying heretics has been sanctioned for some time. May we now add Confirmation in the circumstances permitted by the recent decree, 14 September, 1946?*

Canon 786: Aquis baptismi non ablutus valide confirmari nequit; praeterea, ut quis licite et fructuose confirmetur, debet esse in statu gratiae constitutus et, si usu rationis polleat, sufficienter instructus. *S. Off.*, 1 November, 1941. Iis autem, qui bona fide errant et iam sensibus sint destituti, ea sacramenta (absolutio et extrema unctio)

[1] *South African Clergy Review*, 1949, p. 79.
[2] Cf. *The Clergy Review*, 1932, III, p. 228, and 1941, XXI, p. 114.
[3] Ibid. 1947, XXVII, p. 54.

conferri possunt sub condicione, praesertim si coniicere liceat, eos implicite saltem errores reiecisse. (*Periodica*, 1948, p. 97.)

S.C. Sacram., 14 September, 1946, n. 2: Praefati ministri Confirmationem valide et licite conferre valeant per se ipsi, personaliter, fidelibus tantummodo in proprio territorio degentibus. . . .[1]

i. The practice as regards Penance and Extreme Unction, long taught by theologians as permissible, was sanctioned by a private reply of the Holy Office, 17 March, 1916, which now appears in *Denzinger*, n. 2181, a. A full explanation of the matter is in *Periodica*, 1929, p. 125 (Vermeersch), and a closer analysis of the condition on which these sacraments are administered is in the same journal, 1948, p. 97 (Umberg), which gives also a more recent private reply of the Holy Office, 1 November, 1941, quoted above. It is not our purpose to discuss this practice in general but, assuming its lawfulness in given circumstances, we have to decide whether it is now to be extended so as to include Confirmation, a point which has only arisen as a practical issue since the decree of 1946 gave the power of confirming to parish priests. Our discussion is limited to the case of an adult heretic, for in contingencies where an infant child of heretical parents is being lawfully baptised in danger of death there can be no doubt that, *servatis servandis*, this infant should also be confirmed.[2]

ii. Canon Pistoni, an excellent commentator on the decree of 1946, decides that Confirmation cannot validly be conferred on a dying heretic.[3] His reason is based on the terms in which the power of confirming is granted to extraordinary ministers in the decree, for it cannot be in dispute that, if it is a case of the ordinary minister, any baptised person may, other things being equal, be validly confirmed. Canon Pistoni's interpretation takes "fidelis" in the decree to mean a baptised person who is neither a heretic, nor a schismatic, nor an apostate, and this is, indeed, its usual meaning both in the Code and in other legal texts. It may also be that he is attaching the word "tantummodo" to the preceding word "fideles".

iii. The Code, however, occasionally uses the word "fidelis" in a wider sense, so as to include every baptised person, in such canons as 218, §2; 1124 and 1126; 1203, §1; 1276; 1384.[4] It must be admitted that the decree empowering parish priests to confirm does obviously have in mind Catholics primarily, if not exclusively, and the truth probably is that the terms of that decree were framed without any

[1] *The Clergy Review*, 1947, XXVII, p. 57.
[2] *Ecclesiastical Review*, April 1947, p. 260.
[3] *De Confirmatione a Ministro Extraordinario*, p. 95.
[4] Cf. Mörsdorf, *Die Rechtssprache des Codex*, p. 129.

reference whatever to the question of administering sacraments to dying heretics conditionally. The common law of canon 731, §2, which forbids the sacraments to heretics in good faith, is similarly expressed with no reference to the practice permitted by the Holy Office in 1916 and 1941, and it is not self-evident from the terms of the 1946 decree on Confirmation that the Holy See expressly excludes heretics from its provisions.

In missionary parts priests have long enjoyed, from the Propaganda faculties, n. 3, the power to confirm, and the conditions attached thereto, unlike most of those attached to the 1946 decree, are not held by the commentators to limit the validity of its administration. It would be helpful in the present query if these commentators discussed the validity and the lawfulness of using the Propaganda faculty in favour of dying heretics in good faith, but we cannot find any who deal with the question.

Our conclusion, given with much hesitation, is that the sacrament would be validly administered, since heretics are not expressly excluded and, on the ordinary principles of sacramental causality, this sacrament can be validly received by any baptised person who has at least an habitual implicit intention, as Canon Pistoni teaches in §22, c., of his Commentary.

iv. Assuming that the sacrament of Confirmation (relying on the 1946 decree) can be validly received *servatis servandis* by a dying heretic, the question remains as to its lawfulness. Canon Pistoni is the only author we have discovered who has given an opinion, which is to declare it to be unlawful, a necessary consequence of the opinion that its reception is invalid.

Our own view is that, even though it may be validly received, its reception is unlawful: firstly, because it is not necessary for salvation, and so the grave reasons which justify absolution and Extreme Unction are lacking; secondly, because the administration of Holy Communion is always forbidden in these circumstances, since it is a sign of external communion with the Church and there seems some parity with Confirmation in this respect. One could also cite the direction of the rubric, perhaps, which forbids its administration in the presence of heretics;[1] *a fortiori* it would seem that the rubric forbids the confirmation of heretics.

55. PRIEST MINISTER OF CONFIRMATION—ADMINISTRATOR

An administrator of a vacant parish, "vicarius oeconomus", *is amongst those empowered by* "Spiritus Sancti munera" *to confirm the dying. Does*

[1] *The Clergy Review*, 1947, XXVIII, p. 41.

this mean the one mentioned in canon 472.2, or are the powers restricted to the one defined in canon 472.1?

Canon 472: Vacante paroecia: 1. Ordinarius loci in ea quam-primum constituat idoneum vicarium oeconomum . . . qui eam tempore vacationis regat, assignata eidem parte fructuum pro congrua sustentatione;

2. Ante oeconomi constitutionem, paroeciae regimen, nisi aliter provisum fuerit, assumat interim vicarius cooperator. . . .

Spiritus Sancti munera, 14 September, 1946: . . . facultas tribuitur conferendi sacramentum Confirmationis . . . sequentibus presbyteris, iisdemque dumtaxat: . . . (*b*) vicariis de quibus in canone 471, atque vicariis oeconomis.

i. The wording of the document seems to require us to limit the power of confirming to the administrator appointed by the Ordinary, as directed by canon 472.1. If the various provisional custodians mentioned in n. 2 of the canon are also given this power, the decree would have read: "vicariis de quibus in cann. 471 and 472"; whereas it mentions only the *vicarii paroeciales* of canon 471 and *vicarii oeconomi*. The term *vicarius oeconomus* is restricted to n. 1 of canon 472, and the various priests who are to assume the custody of a parish in n. 2 are described as functioning "ante oeconomi constitutionem". The word "dumtaxat" emphasises the fact that only the priests mentioned enjoy the faculty, and everyone is agreed that the list may not be extended solely because there seems to be a good reason for so doing, or because there is a certain analogy between those expressly mentioned and some other priest whom it is desired to include. The list will, no doubt, be extended in course of time, either by indult or by an extensive interpretation officially given to those already named therein, but for the moment, in our view, the custodian of canon 472.2 is not included. This view is held by Zerba, *Commentarius*, p. 49 (h); Pistoni, *De Confimatione* §99; *The Jurist*, 1947, p. 178.

ii. Onclin, however, in *Ephemerides Theologicae Lovanienses*, 1949, p. 340, includes the custodian of canon 472.2, and his view is shared by Regatillo, *Jus Sacramentarium*, §86, because the priest in n. 2, though not styled *vicarius oeconomus*, is effectively such, the only difference between him and the one in n. 1 being that n. 1 is appointed *ab homine* and n. 2 *a iure*. This view which is, it appears, that of the minority, may be accepted if desired. For the difference of opinion on the point constitutes a *dubium iuris* which, in our opinion, is covered by canon 209. Unhappily, there is no complete agreement on the lawfulness of applying canon 209 to doubts

affecting the extraordinary minister, because it involves the debated question concerning the exact nature of this priestly power obtained by indult. That canon 209 may be used in solving doubts is taught, correctly we think, by Dr Onclin, a Belgian canonist of the first rank. Unless an instruction to the contrary has been given by local Ordinaries, priests may accept this view. It means, in practice, that on the death of the parish priest, his senior curate may administer confirmation to those dying within the parish, until an administrator is appointed by the Ordinary. This question is only one of a number of doubts arising from the decree *Spiritus Sancti munera*, which is lacking precision in certain phrases.

56. CONFIRMATION BY "SUPPLY" PRIEST

Is it certain that a priest canonically appointed to supply for an absent parish priest, or to assist one who is incapacitated, does not enjoy the faculty of confirming the dying?

Spiritus Sancti, 14 September, 1946: . . . facultas tribuitur . . . in casibus tantum et sub conditionibus infra enumeratis, iisdemque dumtaxat: (*a*) parochis . . .; (*b*) vicariis, de quibus in canone 471, atque vicariis oeconomis; (*c*) sacerdotibus, quibus exclusive et stabiliter commissa sit in certo territorio et cum determinata ecclesia plena animarum cura cum omnibus parochorum iuribus et officiis.

i. The view favoured by practically all commentators on this decree excludes the supplying and the assistant vicars of canons 474 and 475, because the list of priests delegated in this document is *taxative*—iisdemque dumtaxat"; because the Holy See would have included them under (*b*) if they were given the faculty; in a word, because their exclusion seems plainly expressed in the decree and we are required from canon 18 to interpret laws according to the proper meaning of the words in text and context. Amongst those holding this view are: Alvarez-Menendez, O.P., in *Angelicum*, 1947, p. 193; Bergh, S.J., in *Nouvelle Revue Théologique*, 1947, p. 85; Connell, C.SS.R., in *The American Ecclesiastical Review*, April, 1947, p. 258; Bastnagel in *The Jurist*, 1947, p. 176; Onclin in *Ephemerides Theologicae Lovanienses*, 1939, p. 332; Pistoni, *De Confirmatione*, p. 93; Zerba, *Commentarius in Decretum*, p. 48; Smiddy, *The Extraordinary Minister of Confirmation*, p. 35.

ii. An important exception to the practically united opinion of previous commentators is the view of Regatillo, S.J., in *Ius Sacramentarium*, p. 57, and in *Interpretatio et Iurisprudentia*, p. 242, who argues with great persuasiveness that these substitute and assistant

vicars enjoy the faculty, not indeed under (*b*) of the decree but under (*c*). Everything said on the subject by this canonist, who is in the first rank of contemporary writers, certainly proves that these vicars ought to be given the faculty. We entirely agree and most of the commentators mentioned under (i) express some surprise that they are not included. The categories of priests to whom the faculty has been granted have already been extended by local indults in America and elsewhere, and we imagine that this process will go on until eventually every priest assisting the dying will be empowered to confirm them. The question, however, is not what is desirable and fitting but to whom *de facto* the faculty has been granted by the Holy See. It seems to us that Regatillo has not proved his point. He joins with the rest of us in expressing surprise that substitute and assistant vicars are not included under (*b*), and explains that the reason for the omission is that they are included in the category (*c*). But this is by no means apparent when the wording of (*c*) is considered, for these vicars are of their nature neither stable, nor endowed with exclusive powers, nor in possession of all the rights or burdened with all the duties of parish priests. If, in exceptional cases, they are found to be within the definition of (*c*), it must follow that they enjoy the faculty, as Cappello noted at the time the decree appeared, in the commentary printed in *Periodica*, 1946, p. 386. It appears that Regatillo's opinion is to some extent due to local Spanish conditions, where substitute and assistant vicars often rule a parish for many years, during the absence or illness of the parish priest, in which case they no doubt come up to the requirements of (*c*). On the other hand, length of tenure is not strictly relevant, for the administering vicar certainly enjoys the faculty even though his appointment lasts only a few days. Regatillo's view may prove to be "probable" or at least to supply the foundation for a *dubium iuris*, when juristiction will be supplied from canon 209.

VII. THE MASS (CANON LAW)

57. DUPLICATION ON DAYS WHICH ARE NOT OF OBLIGATION

Is there any possible circumstance in which a priest would be justified in saying two Masses on an ordinary weekday? Example: a priest is giving a mission in a place in which the Blessed Sacrament is not reserved. He urges the people to attend morning Mass in large numbers. He says his Mass at 6.30. The P.P. is to follow at 7. He is too ill to celebrate. A large number of people has arrived for the 7 o'clock Mass wishing to receive Holy Communion and the Ordinary cannot be reached. Is there any probable opinion which would justify the missioner in saying a second Mass?

Canon 806, §2: Hanc tamen facultatem (plures in die celebrare Missas) impertiri nequit Ordinarius, nisi cum, prudenti ipsius iudicio, propter penuriam sacerdotum die festo de praecepto notabilis fidelium pars Missae adstare non possit. . . .

i. Our first reaction to this query was to deny the lawfulness of duplicating in these circumstances, since the canon permits the practice only on Sundays and holy days when the faithful would otherwise be unable to observe the precept. That it is lawful on such days to presume on the Ordinary's permission is taught by canonists such as Brys, whose opinion we accepted when answering a question some years ago.[1]

ii. Maturer reflexion, however, leads to an affirmative answer, provided always that the local Ordinary has not expressly forbidden priests in his jurisdiction ever to presume on his permission no matter what the necessity may be. An affirmative reply can be justified on the principle that positive laws do not bind when a superior cannot be reached for a dispensation and when their observance would cause grave harm or scandal to the faithful. It is necessary, in order to arrive at a just decision, to weigh the gravity of the law and the harm resulting from its observance: in estimating the law itself one must discover whether the Church is accustomed to dispense from its observance and, in estimating the harm, necessity of avoiding scandal has great weight since it implicates the natural law.

Now it is certain, in the first place, that the Church is accustomed

[1] *The Clergy Review*, 1940, X III, p. 541; *Collationes Brugenses*, 1929, p. 71.

in these days, for proper reasons, to permit duplication on days which are not of obligation, and the following examples may be cited: 7 February, 1938 in Valparaiso on certain days for the people's devotion;[1] 1941 in Germany "si adsit necessitas, cum multi sacerdotes ad militum nosocomia sint vocati";[2] 8 March, 1948 for Paris "occasione matrimoniorum vel funerum, ob cleri penuriam";[3] 16 November, 1948 for an American diocese "occasione matrimoniorum vel funerum vel ad renovandas Sacras Species in oratoriis monasteriorum, attenta sacerdotum penuria".[4]

It is equally certain, in our view, that the reasons for not observing the positive law as described in the above question are, if anything, rather weightier than those for which the various indults were obtained, and therefore that a superior's permission may be presumed when he cannot be reached. It is agreed, of course, that the Ordinary's faculties do not cover duplication except on days of obligation. If he can be reached and grants permission, he will do so by virtue of canon 81 and not by relying on canon 806, §2.

58. MASS WITHOUT A SERVER

I understand that Cappello has the following paragraph in "De Sacramentis", *Editio quinta* (1945), *Lib.* 4, *pars.* 2, *cap.* 4, *para.* 703: "*Si desit omnino minister, sacerdos ex qualibet justa et rationabili causa, etiam devotionis tantum, potest Missam sine ministro celebrare, potius quam eam omittere*" *Can one safely act on this in view of the provision of the Code, the unanimous and strict view of approved authors, and the fact that Cappello is the only author to teach this and that he does so only in post-war editions?*

S.C. Sacram., 1 October, 1949; *A.A.S.*, 1949, XLI, p. 507:

III, 2: Lex utendi ministro in Missa perpaucas tantummodo patitur exceptiones, quae ab AA. rei liturgicae et moralis peritis uno consilio reducuntur ad sequentes casus:

(*a*) si viaticum ministrari debeat infirmo et minister desit;

(*b*) si urgeat praeceptum audiendi Missam ut populus eidem satisfacere possit;

(*c*) tempore pestilentiae, quando haud facile invenitur qui tale ministerium expleat et secus sacerdos debeat per notabile tempus se abstinere a celebrando;

(*d*) si minister e loco abscedat tempore celebrationis, etiam citra consecrationem et offertorium: quo casu reverentia sancto Sacrificio debita prosecutionem exigit etiam illo absente.

[1] Bouscaren, *Digest*, II, p. 192.
[2] *Ephemerides Liturgicae*, 1941 (Jus et Praxis), p. 6.
[3] Op. cit., 1948, p. 381.
[4] Op. cit., 1949, p. 326.

Extra hos casus, pro quibus habetur unanimis auctorum consensus, huic legi derogatur dumtaxat per apostolicum indultum, praesertim in locis missionum. . . .

3. . . . Nuper vero Sanctitas Sua aliam clausulam indulto litandi Missam sine ministro inserendam praecepit, nempe "*dummodo aliquis fidelis Sacro assistat*", cui nullimode derogari praestat.

i. The lenient view that one may celebrate Mass without a server "devotionis causa" was held to be probable not only by Cappello[1] but also by Prümmer[2] and Wouters,[3] and it was well defended more recently in America by writers in the *Ecclesiastical Review*.[4] Conditions in America in earlier days were held to justify in these circumstances even a solitary celebration, and the authority of *Propaganda* supported this view in interpreting the faculty of celebrating without a server; this outlook or custom naturally continued long after the indult had ceased to be granted. Without wishing to criticise the practice of priests in other countries, the plea for the milder view seems to have been made too easily. When it is asked, for example, why a number of priests in retreat, all eager to say Mass for their personal sanctification, should be denied the privilege owing to the lack of servers, the obvious rejoinder is that they should serve each other.

ii. Since the 1949 instruction, it seems certain to us that the lenient view can no longer be defended. It is within the competence of the Sacred Congregation to correct abuses, which has now been done in no uncertain terms. It might be thought that n. 2 is dealing with the practice of celebrating in an empty church, since the causes (*a*) and (*d*) are those usually cited in justification of this practice. It is clear, however, from comparing n. 2 with n. 5, that except for the statement that indults will not be granted for celebrating Mass in an empty church, the whole of section III is based on the assumption that someone is present.

The terms of the instruction are not so severe as they might seem to be, for it is possible to obtain indults for causes of less gravity than those given in (*a*) to (*d*); moreover, it is not required that the server should be able to function perfectly and exactly in accordance with the rubrics, if such a one is not obtainable. It should be fairly easy to obtain at least an indifferent server, or the services of a woman to answer the responses, and the firmness of the Sacred Congregation will encourage priests to do this. In places where the

[1] *De Sacramentis*, §703.
[2] *Theol. Moralis*, III, §304.
[3] *Theol. Moralis*, II, §269.
[4] 1947, CXVI, p. 432; CXVII, p. 369.

custom of what is called *Missa Dialogata* exists, there will rarely be any difficulty to surmount.

iii. Commenting on the above instruction,[1] Cappello writes: "Instructio memorat quatuor casus in quibus ex communi doctorum consensu fas est sacrum facere sine ministro. Enumeratio dici nequit exclusiva; nam, praeter casus recensitos, alii quoque in praxi verificari possunt." He does not, indeed, mention "devotion" as one of these causes, but it appears that unless this henceforth is to be excluded the words of the instruction have scarcely any meaning, for "devotion" is undoubtedly the weakest of all the reasons alleged by writers as an excuse justifying non-observance of the law.[2] Dealing with the matter in *Mediator Dei*, the Holy Father writes:

"Although it is clear from what We have said that, even though a priest said Mass without a server, the Sacrifice would still be offered in the name of Christ and of the Church, and would not be deprived of its effects even for the benefit of the community, still it is Our desire and command—as it is indeed the command of Holy Mother Church—that out of reverence for the dignity of this august Sacrifice no priest should go to the altar without a server to assist and answer the Mass, according to the prescription of canon 813."[3]

59. SERVER AT CONVENT MASS

In convent chapels a religious usually answers at Mass. Is this permissible even on exceptional occasions when it is possible to have a male server?

Canon 813, §1: Sacerdos Missam ne celebret sine ministro qui eidem inserviat et respondeat.

§2: Minister Missae inserviens ne sit mulier, nisi, deficiente viro, iusta de causa, eaque lege ut mulier ex longinquo respondeat nec ullo pacto ad altare accedat.

De Defectibus, X, 1: . . . si non adsit clericus, vel alius deserviens in Missa, vel adsit qui deservire non debet, ut mulier.

i. Whilst sustaining the rule requiring a male server as the normal and correct procedure, the law and the commentators thereon have in recent years become progressively lenient in defining the kind

[1] *Periodica*, 1949, p. 420.

[2] In the 1953 edition of his commentary *De Sacramentis*, I, n. 703, Cappello holds to his opinion that, in the absolute lack of a server, a priest can say Mass without one, "ex qualibet iusta causa, etiam devotionis tantum", and the only concession he makes to the 1949 Instruction is to add: "saltem in casu particulari" [Editor].

[3] C.T.S., §102.

of reason, cause or necessity justifying the use of a woman to answer the responses, and this fact must be remembered when weighing more ancient texts, as that in *De Defectibus*, X, 1. The list of things in this chapter includes the necessity of reciting Matins and Lauds before Mass, which it is now commonly agreed is not a precept.

The kind of reason which justifies the use of a woman server is something less than grave necessity. A reply *S.R.C.*, 4 August, 1893, requiring the necessity to be grave was not included in *Decreta Authentica*, and was indeed effectively revoked a few months after its issue.[1] Moreover the replies, nn. 2745.8, and 4015.6, which require necessity, though referred to amongst the sources of canon 813, §1, are not incorporated in the canon itself; a just cause is something less than necessity, and the writers agree in defining this cause generously, though always on the supposition that there is no male present who is able and willing to serve.

ii. Cappello is even more lenient than the majority of writers: "In oratorio seu sacello religiosarum, i.e. piae domus mulierum, huiusmodi causa iusta semper haberi censetur. Imo congruentius est, ut ibi Missae respondeat ex longinquo mulier, quam ut vir inserviat, saltem generatim loquendo."[2] His meaning seems to be that, even though there is a male willing and able to serve, it is more fitting as a general rule that a religious should answer the responses at Mass in a convent chapel. This is certainly a common practice or outlook, and priests may rely on Cappello's teaching for its justification. In our view it is incorrect, for the canon keeps distinct the two clauses "deficiente viro" and "iusta de causa", and the just cause comes into operation only when there is no male present who is able and willing to serve. A careful search has not revealed any other commentator supporting Cappello's opinion, but it is not, we think, affected adversely by the recent Roman instruction[3] which is concerned with reprobating the custom of celebrating Mass with no server at all.

60. MASS AT SEA

Are any formalities necessary before a priest may lawfully say Mass at sea when the ship has an oratory authorised by the Ordinary of its port of origin?

Canon 822, §1: Missa celebranda est super altare consecratum et in ecclesia vel oratorio consecrato aut benedicto ad normam iuris. . . .

[1] Cappello, §702, n. 7; Many, *De Missa*, §139.

[2] Loc. cit.

[3] Discussed in the preceding question.

§2: Privilegium *altaris portatilis* vel iure vel indulto Sedis tantum Apostolicae conceditur.

§3: Hoc privilegium ita intelligendum est, ut secumferat facultatem ubique celebrandi, honesto tamen ac decenti loco et super petram sacram, non autem in mari.

Facultates Legatorum App. n. 37: Permittendi sacerdotibus navigantibus sive in mari sive in fluminibus, ut in navi Missam celebrare possint super altari portaili, dummodo locus in quo Missa celebratur nihil indecens aut indecorum prae se ferat et periculum absit calicis effusionis.

S.R.C., 4 March, 1901, n. 4069.4: Utrum sacerdotes, qui privilegio fruuntur celebrandi ubique, valeant, vi huius privilegii in navi celebrare, absque speciali Indulto Apostolico? *Resp.* Negative.

5: Utrum Cappellae navium aut Altaria in ipsis navibus erecta pro Sacro litando debeant considerari ut Oratoria privata vel publica. *Resp.* Si Cappella locum fixum habeat in navi, uti publica habenda est: secus neque publica est, neque privata, sed habetur ut Altare portatile.

i. Before the advent of large ships celebration at sea was hardly possible and the few examples of it happening were regarded as something altogether extraordinary.[1] When celebration became feasible the common law firmly insisted on an apostolic indult, denying bishops the faculty of granting it, and expressly excluding Mass at sea from indults granted for the use of a portable altar; the Code reproduces this discipline in canon 822. The faculty is obtained (*a*) *de iure* by Cardinals and Bishops from canons 239, §1, 8 and 349, §1, 1; (*b*) normally from the Apostolic Delegate of the country from which the ship sails; (*c*) exceptionally from local Ordinaries who may have this power, as granted, for example, to the bishops of South America in their decennial faculties.[2] We do not find it granted in the formula of quinquennial faculties obtained by Ordinaries in this country, but individual Ordinaries no doubt obtain the additional faculty occasionally; the bishops of the United States enjoyed it, for example, during the Holy Year.[3] Also the Generals of some religious Orders have the faculty for their subjects, e.g. the Minister General of the Franciscans.[4]

Priests desiring to celebrate at sea will apply to their diocesan Curia which will either grant the faculty or obtain it from the

[1] Many, *De Missa*, §12, n. 1.
[2] *A.A.S.*, XLI, p. 191; *The Clergy Review*, 1949, XXXII, p. 348.
[3] *S.C. Sacram.*, 13 February, 1950; *Ephemerides Liturgicae*, 1950, p. 368.
[4] Sartori, *Iurisprudentiae Ecclesiasticae Elementa*, p. 61.

Apostolic Delegate. The conditions usually attached are: "(i) locus electus decens sit; (ii) mare sit tranquillum; (iii) nullum adsit periculum effusionis; (iv) si possibile, alter sacerdos superpelliceo indutus celebranti continuo assistat."

(ii) A new development occurs when the ship has a permanent Catholic oratory, duly authorised, as may often be found on the ships of some foreign lines. This might seem to come within the terms of canon 822, §1, and Cappello holds the view[1] that Mass may be celebrated therein, as in any other authorised oratory, without the special indult required by canon 822, §3: "In isto sacello omnes sacerdotes, etiam sine peculiari indulto apostolico, possunt Missam celebrare." Cappello, who was the first to hold this opinion, is followed by certain other contemporary writers of repute,[2] who think that it may be presumed that the shipping company has obtained the necessary authorisation. This opinion is externally probable[3] and may be followed until a decision to the contrary is given by the Holy See.[4]

We hesitate to accept this view as a correct interpretation of the law, seeing that the necessity of an apostolic indult for celebrating at sea has always been so firmly maintained. Thus, in the American indult for the Holy Year mentioned above we read amongst other conditions for its lawful use: "dummodo . . . oratorium autem, si canonice erectum sit, tum etiam altare et sacra paramenta non inserviant sectis acatholicis. . . ." By permitting, in the terms of an indult for Mass at sea, the use of the ship's oratory provided it is exclusively devoted to Catholic worship, the document seems to show, by implication, that a special indult is always required even in ships which have a permanent oratory.

61. MASS IN AN AEROPLANE

Would a priest enjoying a portable altar indult, which included celebration in a ship, violate any grave law by celebrating Mass in an aeroplane?

Canon 20: Si certa de re desit expressum praescriptum legis . . . norma sumenda est . . . a legibus latis in similibus; a generalibus iuris principiis cum aequitate canonica servatis. . . .

Canon 822, §3: Hoc privilegium (altaris portatilis) ita intelligendum est, ut secumferat facultatem ubique celebrandi, honesto

[1] *De Sacramentis*, §712.
[2] Cimetier, *Consultations*, I, §84; Jombart, *Droit Canon.*, §426.
[3] Coronata, *De Sacramentis*, §257, f.n. 5. [4] *Ami du Clergé*, 1950, p. 492.

tamen ac decenti loco et super petram sacram, non autem in mari.

i. The Code law on portable altars excludes their use at sea. It follows that, in principle, celebration of Mass at sea, to be lawful, requires an apostolic indult, or the inclusion of the faculty in the portable altar privilege. Hence, *a fortiori*, unless a priest has an indult for celebrating at sea, he cannot lawfully celebrate in an aeroplane. Whether the privilege of celebrating on ships can be stretched to include aeroplanes remains to be discussed. But the commentators, perhaps illogically, teach that no indult is required for celebrating at sea on liners which have a permanent oratory in which, very often, the Blessed Sacrament is reserved. They argue that the law of canon 822, §3, does not apply to these oratories on large ships, since there is normally no danger of accident or irreverence.[1] We agree with this interpretation. Very likely the point will be covered by the conditions attached to the erection of a ship's oratory, but at the moment even giant aeroplanes have not got the proportions of a liner, and the question concerning Mass in them is limited to priests who enjoy by indult the privilege of celebrating on a ship. This is possessed *ipso iure* by Cardinals (canon 239, §1, 8) and by bishops (canon 349, §1, 1): others must obtain the faculty from the Holy See, and usually Apostolic Delegates are able to concede it.

ii. There is no express prohibition against celebrating in aeroplanes. On the contrary, it was expressly permitted by papal indult as long ago as 1936, on the voyage of the dirigible *Hindenburg* from Friedrichshafen to New York,[2] and the celebrant, Father Schulte, O.M.I., is said to have been the first priest to celebrate in the air. Indults can, therefore, be obtained expressly for use in aeroplanes, since a large modern one is at least as safe as a dirigible airship.

If the indult for celebrating at sea contains no express mention of its use in aeroplanes, Coronata implies that, provided the conditions safeguarding reverence are verified, the practice is permitted and we agree with this very reasonable interpretation. No doubt, in time, the indults will all deal with the situation. Those commentators who taught that the confessional faculty of canon 883 could be used in aeroplanes were justified,[3] and there seems no good reason why the rule of canon 20 (a legibus latis in similibus) should not be applied equally to the present topic.

[1] *Periodica*, 1945, p. 42; Coronata, *De Sacramentis*, I, §257; Cappello, *De Sacramentis*, §712.
[2] Bouscaren, *Digest*, II, p. 203.
[3] Cf. *The Clergy Review*, 1941, XX, p. 552; 1948, XXX, p. 344.

62. MASS "IN CUBICULO"

Could permission be obtained, notwithstanding the prohibition of canon 822, §4, for a priest to celebrate Mass in the bedroom of a sick parent who is near to death?

Canon 822, §4: Loci Ordinarius aut, si agatur de domo religionis exemptae, Superior maior, licentiam celebrandi extra ecclesiam et oratorium super petram sacram et decenti loco, nunquam autem in cubiculo, concedere potest iusta tantum et rationabili causa, in aliquo extraordinario casu et per modum actus.

The rule seems absolute at first sight that Mass may *never* be permitted in a bedroom, and the *Code Commission*, 16 October, 1919, declared that the canon must be interpreted restrictively. Any positive law, however, may be relaxed by the appropriate authority, and the canon merely declares that granting permission for Mass in a bedroom is excluded from the Ordinary's powers. Examples occur now and then of a priest getting permission in the circumstances described in the question,[1] though we have no information whence the faculty was obtained, whether from the Holy See or from the Ordinary possessed of an indult in addition to the faculties he usually enjoys from the Quinquennial Formula.

In fact, a survey of the many existing departures from the rule of canon 822, §4, suggests that a petition for an indult permitting a priest to say Mass in the bedroom of a dying parent would normally be granted without great difficulty. There is, firstly, the direction of *S.C. Sacram.*, 30 April, 1926,[2] deprecating indeed the celebration of Mass in a *camera ardente*, but permitting it in certain cases. Then we have the common permission for celebrating at sea, which is included in the Faculties issued by *Propaganda*, n. 51; although the Sacred Congregation had decided that the cabin of a ship was not "decenti loco", the decision was altered a few months later, 13 August, 1902, and Mass in private cabins permitted provided all danger of irreverence was removed;[3] some regulars have this faculty habitually, and it can be obtained in many countries by any priest voyager from the Apostolic Delegate. Priests belonging to the Institute of St Camillus were granted the faculty by Pius X in 1905 for use in their administrations to the sick and dying.[4] Finally, many commentators hold that a hospital ward is not included in the word "cubiculo" of this canon.[5]

[1] E.g. *Catholic Press*, 9 July, 1943.
[2] *A.A.S.*, XVIII, p. 388.
[3] *Periodica*, 1922, p. 83.
[4] *Ephemerides Liturgicae*, Ius et Praxis, 1948, p. 179.
[5] Coronata, *De Sacramentis*, I, §258.

63. "ANTIMENSION"

Could permission easily be obtained for a priest enjoying the portable altar privilege to use a linen "antimension" *in place of an altar stone? If so, is there a recognised form of blessing for this article?*

Canon 823, §2: Deficiente altari proprii ritus, sacerdoti fas est ritu proprio celebrare in altari consecrato alius ritus catholici, non autem super Graecorum antimensiis.

i. The *antimension* used in oriental rites is fully described in *Dict. Archéol.*, I, coll. 2319–2326, and on a principle of keeping rites and their appurtenances distinct its use is forbidden to priests of the Latin rite. Benedict XIV, nevertheless, permitted Latin priests in Russia to celebrate in Ruthenian churches with the use of an *antimension*, since otherwise they would not be able to say Mass, and he pointed out that priests of an Eastern rite were accustomed, in analogous circumstances, to celebrate on a Latin altar stone.[1] Accordingly, whilst maintaining the rule of canon 823, §2, in normal conditions. Cappello permits its non-observance if there is a grave reason.[2]

ii. The practice favoured in the Latin Church is the use of a small portable altar stone, and contrary to the common rule *Propaganda* permits its continued use in missionary countries even though it be fractured and lacking relics.[3] In 1929 the Ordinaries of Mexico obtained, amongst their special faculties, "in loco altaris seu arae, liceat lineo panno rite benedicendo et in profanos usus non amplius convertendo",[4] which appears to be a description of an *antimension*. Coronata states that the Holy Office, 3 May, 1941, refused to sanction its use by army chaplains in Italy,[5] but the prohibition must have been withdrawn in later stages of the war, since English army chaplains certainly enjoyed this faculty. It was inevitable that the *antimension*, which is so convenient when travelling about, and obviously more fitting than a fractured stone, should eventually have found favour with those in authority. Its use is now permitted in places subject to *Propaganda*, "iis tantum in casibus, et onerata eorum (sacerdotum) conscientia, in quibus aut nulla ecclesia vel oratorium sive publicum sive privatum exstet, et valde incommodum sit lapideum altare secum in itinere transferre".[6]

We think that, where similar necessity exists, priests with a portable altar privilege could reasonably petition their own Ordinaries for the use of an *antimension*.[1]

iii. It is described by the *Congregation of Rites* as "aliquod linteum ex lino vel cannabe confectum, et ab Episcopo benedictum, in quo reconditae sint Sanctorum reliquiae ab eodem Episcopo recognitae". The usual dimensions are those of a corporal, and the relics are enclosed in a small pocket in one of the corners; its use does not, of course, dispense with the altar cloths.

The formula of blessing, which accompanied the decree permitting its use, is as follows:

"V. Adiutorium nostrum in nomine Domini.
R. Qui fecit coelum et terram.
V. Dominus vobiscum.
R. Et cum spiritu tuo.

Oremus: Majestatem tuam, Domine, humiliter imploramus ut linteum hoc ad suscipienda populi tui munera praeparatum, per nostrae humilitatis servitium bene+dicere, sancti+ficare et conse +crare digneris: ut super eo sanctum sactificium Tibi offerre valeamus, ad honorem beatissimae Virginis Mariae, Sanctorum N.N., quorum reliquiae in eo reposuimus, et omnium Sanctorum; et praesta, ut per haec sacrosancta mysteria vincula peccatorum nostrorum absolvantur, maculae deleantur, veniae impetrentur, acquirantur, quatenus una cum Sanctis et Electis tuis vitam percipere mereamur aeternam. Per eumdem Christum Dominum nostrum. R. Amen."

This prayer is taken, with appropriate modifications, from the Roman Pontifical "De Unius Altaris vel Plurium Consecratione: Quae fit sine Ecclesiae Dedicatione", where it occurs as the penultimate prayer of the rite.

[1] *Fontes*, n. 410.
[2] *De Sacramentis* (1945), I, §720.
[3] Paventi, *Brevis Commentarius*, p. 14, ad. n. 4; cf. *The Clergy Review*, 1943, XXIII, p. 321.
[4] Ibid., p. 432.
[5] *De Sacramentis*, §256, n. 8.
[6] *S.R.C.*, 12 March, 1947, printed in *Ephem. Iuris Canonici*, 1947, p. 251.

64. THREE MASSES ON ALL SOULS' DAY

It is maintained, relying on an English version of the original Bull, that a stipend may be accepted for the second Mass, provided it is offered for all the faithful departed, and that the second and third Masses may discharge obligations arising from the Pact ("Societas pro Clero Defuncto"). *Is this correct?*

[1] Since the above was written, the Congregation of Rites has declared, 26 June, 1950 (*Monitor Ecclesiasticus*, 1952, p. 450), that it was "not expedient" to grant the faculty of using an *antimension*, which had been requested by some Ordinaries on behalf of priests who had to celebrate Mass in distant places to meet the need of the faithful, and found it difficult to transport an altar stone [Editor].

Canon 806, §1: Excepto die Nativitatis Domini et die Commemorationis omnium fidelium defunctorum, quibus facultas est ter offerendi Eucharisticum Sacrificium, non licet sacerdoti plures in die celebrare Missas, nisi ex Apostolico indulto aut potestate facta a loci Ordinario.

Canon 824, §2: Quoties autem pluries in die celebrat, si unam Missam ex titulo iustitiae applicet, sacerdos, praeterquam in die Nativitatis Domini, pro alia eleemosynam recipere nequit, excepta aliqua retributione ex titulo extrinseco.

Benedict XV, *Incruentum Altaris*, 10 August, 1915, ad 1: Liceat omnibus in Ecclesia universa Sacerdotibus, quo die agitur Sollemnis Commemoratio omnium fidelium defunctorum, ter sacrum facere; ea tamen lege, ut unam e tribus Missis cuicumque maluerint applicare et stipem percipere queant; teneantur vero, nulla stipe percepta, applicare alteram Missam in suffragium omnium fidelium defunctorum, tertiam ad mentem Summi Pontificis, quam satis superque declaravimus.

Eng. Tr. (Burns Oates, 1915): . . . subject however to this law, that they can apply one of the three Masses for whomsoever they prefer and accept an offering; but they shall be bound, having accepted an offering, to apply the second Mass by way of suffrage for all the faithful departed, the third according to the intention of the Supreme Pontiff, which we have more than sufficiently declared.

i. From the English version given above there is some foundation for the view that a stipend may be accepted for the second Mass said for all the faithful departed. The explanation may be that, in the Latin version first sent to Ordinaries, there was some phrase corresponding to "having accepted an offering". Otherwise, it is clear that the English version is an incredible mistranslation of "nulla stipe percepta", which is in the authentic version published in *A.A.S.*, 1915, VII, p. 422. It is completely certain that, without an Apostolic Indult, no stipend may be accepted for the second or third Mass.

ii. Though the exact nature of the Pact obligation may be in dispute, as noted in *The Clergy Review*, 1931, I, p. 331, it is agreed, firstly, that it is not an obligation of commutative justice, and therefore it may be discharged when duplicating. But it is agreed, secondly, that the Pact Mass must be offered for the soul of the deceased priest, and therefore it is not discharged by offering a Mass for all the faithful departed, or according to the Pope's intention. But a second and third Mass on All Souls' Day is permitted only if the Masses are applied as directed—*ea tamen lege*—by the papal Bull. It is accordingly gravely unlawful to discharge a Pact obligation at the second or third Mass on All Souls' Day.

65. ANTICIPATED MASSES FOR THE DEAD

It is alleged that one of the recent Popes teaches that it is of more profit to one's soul to have Masses said for its repose whilst still alive. Could you give the teaching which appears to have this meaning?

In an Apostolic Letter to the *Bona Mors* Confraternity, 31 May, 1921,[1] Benedict XV grants certain indulgences and uses the occasion for explaining the gift of final perseverance, and for urging the reception of Extreme Unction in good time. In the course of the letter, words occur which, taken out of their context, might mean that it is possible to have Masses said whilst alive which are not applied to the benefit of one's soul till after death. The correct meaning, however, is that the fruit of these Masses said during life is more certainly obtained than is the fruit of Masses said after death; other things being equal, they dispose the soul for a good death and thereby shorten one's purgatory.[2] They may be offered in satisfaction for the penalty due to sins committed up to the time of the celebration of the Mass, but not for the penalty due to possible future sins not yet committed. It is erroneous to suppose that the benefit of such Masses resembles that of an indulgence which one gains by fulfilling certain conditions, but which is not applicable till the moment of death.

These are the relevant passages in the papal letter: Verum ad gratiam eiusmodi assequendam cum preces eo plus valeant, quo excellentiores sunt, liquet, quas Christus ipse, Mediator ac Sacerdos, in augusto Missae sacrificio, Patri obsecrationes adhibet, eas esse prorsus perfectas et gratas, ideoque omnium efficacissimas. Fideles igitur, qui pretiosum sibi spondere decessum tutumque reddere velint, quidni Sacrum ad hanc mentem fieri iubeant, cum in altari Christus sit *semper vivens ad interpellandum pro nobis*, ibique *thronum gratiae* constituerit, ad quem *adeamus cum fiducia ut misericordiam consequamur et gratiam inveniamus in auxilio opportuno?* Praeterquam enim quod, ut Tridentini verbis utamur, *sacrificii oblatione placatus Dominus, gratiam et donum poenitentiae concedens, crimina et peccata etiam ingentia dimittit*, poenasque culpae expiandae debitas condonat, solutionis pretium ex immenso satisfactionum Christi cumulo depromens, per ipsam praeterea Sacri litationem subsidia ea omnia impetrare licet necessaria atque opportuna, quibus non modo maculas devitemus conceptasque eluamus, sed etiam in Dei gratia amicitiaque sic perstemus ut mortem iustorum obeamus. In quo considerandum

[1] *A.A.S.*, 1921, XIII, p. 342.
[2] Cf. Cappello, *De Sacramentis*, §608; Tummolo-Iorio, *Theol. Moralis*, II, §354.

praecipue est, fructus, qui ex Sacro percipiuntur, hominibus longe uberius vivis prodesse quam vita functis, cum iis, bene animatis ac dispositis, magis directo, certius atque abundantius, quam his, applicentur: unde efficitur, ut, cum perseverantiae dono, queamus nobis facultatem adhuc vivis comparare cum placandae Dei iustitiae, tum poenae, quae nos in Purgatorio igni maneret, vel tollendae omnino vel valde saltem imminuendae. Quodsi satis multi, obliviosi atque ingrati homines, id committere consueverunt, ut ad animas eorum piandas, quos habere carissimos videbantur, augustum offerri Sacrificium neglegant, sunt quidem maiore numero, qui, gravi cum spiritualium utilitatum iactura, illud ignorent, profuturum sibi multo magis Missae sacrificium quod, se vivis, ipsimet, quam quod in ipsorum levamen defunctorum heredes, propinqui vel amici perlitari iusserint.

66. EASTER MASS STIPEND

I suppose that a priest who celebrates the nocturnal Mass is not forbidden to accept a stipend for one Mass on Easter morning.

Canon 824, §2: Quoties autem pluries in die celebrat, si unam Missam ex titulo iustitiae applicet, sacerdos, praeterquam in die Nativitatis Domini, pro alia eleemosynam recipere nequit, excepta aliqua retributione ex titulo extrinseco.

In our view the priest who accepts a stipend for the midnight vigil Mass may accept another for one Mass on Easter morning (in this connexion the application of *missa pro populo* is the equivalent of a stipend). This requires the words "in die" of canon 824, §2, not to be taken in the sense of midnight to midnight in this instance, as defined in canon 32, §1, but in a sense which accords with the special rules made by the Holy See for the restored paschal vigil. These rules include permission to anticipate the paschal vigil, with the Ordinary's permission, at 8 p.m., when there is no stipend problem to solve, since the priest will be celebrating only once within the twenty-four hours of Holy Saturday: if he may take a stipend when anticipating it is reasonable that he may also do so when celebrating at midnight, which for the purposes of the stipend laws is regarded as pertaining to Saturday. The rules also permit the priest who celebrates at midnight to say three Masses on Easter Sunday, assuming that he enjoys an indult for this purpose: he may take a stipend at one of these three Masses exactly as he would on any other Sunday, on the supposition that, for the purpose of the stipend law, these three Masses are not on the same "day" as the

midnight Mass: otherwise, we should have to see in this permission to celebrate three Masses after midnight Mass the unheard of permission (in modern times) of celebrating four Masses on one "day".

67. HOLY SOULS' BOX MASSES

Within what period is one bound to discharge or get discharged these collective Mass offerings? It would seem that they are not, properly speaking, manual Masses and should not be subject to the same rules.

Canon 826, §1: Stipendia quae a fidelibus pro Missis offeruntur ex propria devotione, veluti ad manum . . . *manualia* dicuntur.

Canon 832: Sacerdoti fas est oblatam ultro maiorem stipem pro Missae applicatione accipere; et, nisi loci Ordinarius prohibuerit, etiam minorem.

Canon 834, §2: Si oblator nullum tempus pro Missarum manualium celebratione expresse praescripserit. . . . Missae sunt celebrandae intra modicum tempus pro maiore vel minore Missarum numero.

§3: Quod si oblator arbitrio sacerdotis tempus celebrationis expresse reliquerit, sacerdos poterit tempore quo sibi magis placuerit, eas celebrare, firmo praescripto can. 835.

Canon 835: Nemini licet tot Missarum onera per se celebrandarum recipere quibus intra annum satisfacere nequeat.

Canon 837: Qui Missas per alios celebrandas habet, eas quamprimum distribuat . . . sed tempus legitimum pro earundem celebratione incipit a die quo sacerdos celebraturus easdem receperit, nisi aliud constet.

Canon 841, §1: Omnes . . . ad Missarum onera implenda obligati . . . sub exitum cuiuslibet anni, Missarum onera quibus nondum fuerit satisfactum, suis Ordinariis tradant secundum modum ab his definiendum.

§2: Hoc autem tempus ita est accipiendum . . . in manualibus vero, post annum a die suscepti oneris, salva diversa offerentium voluntate.

Canon 842: Ius et officium advigilandi ut onera Missarum adimpleantur, in ecclesiis saecularium pertinent ad loci Ordinarium. . . .

i. In the common law some justification may be found for regarding these Masses as being in a rather different category from the ordinary manual Mass, and there exists for America a decision of the Congregation of the Council, 27 January, 1877, sanctioning the custom of saying one Mass in November for an indeterminate

collective offering of the faithful, provided they are informed that their offerings will be applied in this way.[1]

ii. The practice being liable to abuse is forbidden in many dioceses, and the prohibition is also attached to the offerings made in the Holy Souls' Box throughout the year. In this country a resolution of the Bishops, 20 October, 1936, decided that these offerings must be considered as obliging to a Mass for every amount equal to the usual diocesan stipend; the resolution was communicated by many of the bishops individually to their own clergy, and is now found in some collections of local or Synodal statutes.[2] There cannot be the slightest doubt that, in making this regulation, the Ordinary is acting within the terms of canon 842. An episcopal declaration of this kind resolves any doubt there might be: these Masses are in the category of manual Masses and subject to the same rules, for there is no other category to which they may be assigned.

iii. The rule concerning the time limit for the ordinary Manual Mass in canon 834, §2, reads "intra modicum tempus", whereas the pre-Code rule assigned one month for one Mass. There is everything to be said for retaining the pre-Code rule, which makes for a prompt discharge of Mass obligations, but it may be held with probability that it is not, since the Code, of strict obligation in the common law.[3] An Ordinary, however, is well within his right in imposing the pre-Code rule on the priests of his diocese,[4] as an interpretation of canon 834, §2, for manual Masses in general.

But it by no means follows, in our opinion, that each Mass represented by offerings in the Holy Souls' Box is to be regarded as equivalent to each ordinary Mass stipend offered by an individual. For, quite apart from the offering being collective, the amount may represent several Masses which, even when offered in the ordinary way by one donor, are subject to a longer time limit, and were allowed this longer time under the stricter pre-Code rules. We think accordingly, from the nature of the case, that the only certain rule about them is the year's limit contained in canons 835 and 841.

68. OBLIGATION OF CELEBRATING AT A PRIVILEGED ALTAR

Does a priest fulfil his obligation in justice when, after accepting a stipend for Mass at a privileged altar, he celebrates at an altar which is not privileged?

[1] Cf. *The Clergy Review*, 1942, XXII, p. 82.
[2] E.g. Nottingham, 1946, n. 2; Northampton, 1947, n. 66.
[3] Cf. *The Clergy Review*, 1941, XXI, p. 50.
[4] E.g. Northampton *Statutes*, 1947, p. 68.

Canon 833: Praesumitur oblatorem petiisse solam Missae applicationem; si tamen oblator expresse aliquas circumstantias in Missae celebratione servandas determinaverit, sacerdos, eleemosynam acceptans, eius voluntati stare debet.

Canon 918, §2: Pro Missis celebrandis in altari privilegiato nequit, sub obtentu privilegii, maior exigi Missae eleemosyna.

It may be assumed, in these parts at any rate, that no condition is attached to the circumstance of place when Mass stipends are offered, unless the donor expressly mentions them: and even in this case we think it would have to be certain that the donor, in requesting the Mass to be celebrated at a privileged altar, means this to be a condition *sine qua non*, and that the priest who accepts the obligation is aware of this.

Supposing, therefore, that the obligation of using a privileged altar is contracted, it is agreed that the condition is fulfilled by a priest who enjoys a personal indult, a faculty which is often obtained by those who have joined some pious association.

If a priest lacks a personal indult and fails to celebrate at a local privileged altar, it is now fairly certain, although some decrees of the Congregation of Indulgences are conflicting, that if the omission to observe the attached condition is accompanied by good faith, the obligation is fulfilled by the priest applying to the donor's intention some other plenary indulgence applicable to the souls departed. Good faith is held to cover not only forgetfulness but any other grave cause, physical or moral, which prevents the priest from celebrating at a privileged altar.[1]

If, however, the omission is in bad faith (a defect which cannot easily be conceded) the obligation in justice is not fulfilled: the priest is bound to say another Mass as agreed upon or return the stipend to the donor.[2]

69. MASS STIPENDS: INDULT FOR REDUCTION

To a priest in charge of a charitable work in "A", the faithful send Mass stipends thinking the money will assist the work. Could one petition the Holy See, with any prospect of success, for an indult permitting these Mass offerings to be discharged in "B" where the stipend is less, in order that the difference may be devoted to the charitable work?

Canon 840, §1: Qui Missarum stipes manuales ad alios transmittit, debet acceptas integre transmittere, nisi aut oblator expresse permittat aliquid retinere, aut certo constet excessum supra taxam dioecesanam datum fuisse intuitu personae.

[1] Cappello, *De Eucharistia*, §658. [2] De Angelis, *De Indulgentiis*, §430.

Canon 2324: Qui delinquerint contra praescriptum can. 840, §1, ab Ordinario pro gravitate culpae puniantur, non exclusa, si res ferat, suspensione aut beneficii vel officii ecclesiastici privatione, vel, si de laicis agatur, excommunicatione.

(i) The indivisibility of the manual Mass offering is certain in the positive law, and its violation is a grave matter, as may be discerned from the penalties attached. It may perhaps be assumed that, if the Mass offering in the above circumstance is in excess of the diocesan stipend fixed in the place where the charity is administered, it is given *intuitu personae*; or, if desired, a ruling of the local Ordinary could be obtained on the point. The commentators permit deduction of postal expenses, and there is no law prohibiting the recipient in "B" freely to return part of the offering, after he has accepted it, for the work of the charity; if, however, he is compelled, as it were, to do this, by the charity organiser in "A" making it a condition, we think the law of canon 840 is thereby violated. We have had experience of priests in the condition of diocese "B" writing to diocese "A" for Mass stipends and asserting their willingness to accept less than the stipend in "A"; this is not a violation of the law, though it comes rather near to it, and the local Ordinary may forbid the practice from his powers in canon 842. Cf. Keller, *Mass Stipends*, pp. 162–172.

(ii) If canon 840, §1, is a declaration of the natural law, it appears that indults excusing from its observance are to be ruled out. Suarez was the first to defend the view that having Masses said for less than the donor's stipend was not intrinsically unjust, though the majority of writers, having in mind the donor's intention that the offering should go to the celebrant, are loth to accept this view.

The commentators are very reticent about the possibility of obtaining an indult permitting the rule of canon 840 to be relaxed. One modern example we have come across is in *Commentarium pro Religiosis*, 1946, p. 33, where an incidental question is discussed arising from an indult of this nature. The indult permits a reduction provided, firstly, that the amount is not more than halved, and, secondly, that the amount sent to the celebrant is not less than the diocesan stipend of the place where he is living. *Dict. Droit Canon.*, III, col. 986, mentions another dated 1905.

It follows that the natural law difficulty, if it is really such, is not insuperable, and that a petition could properly be presented to the Holy See for the favour desired, particularly as it is for the benefit of a charity. With the *votum* of the Ordinary supporting it, there seems every prospect of a favourable response.

VIII. THE MASS (RUBRICS AND LITURGY)

70. CALENDAR FOR MASS AT SEA

When celebrating on board ship, should one follow one's own calendar or rather that of the universal Church?

S.R.C., 13 June, 1950, ad i; *Ephemerides Liturgicae*, 1950, p. 359: Cum iuxta decretum S. Congregationis Rituum, n. 4069, ad 5, cappella navis, fixum locum habens, uti publica censenda sit, quaeritur utrum in Missarum celebratione (1) Calendarium illius dioecesis sequi oportet, ad quam pertinet portus patrius eiusdem navis, (2) an potius Calendarium universale? *Resp.* Negative ad primam partem, affirmative ad secundam.

The reply, though not authentically published, indicates what one should do when celebrating in the public oratory of the ship; if a private cabin is being used, as would be the case on the smaller vessels, it would also seem to be more correct to follow the universal calendar, since in the open sea there is no local Ordinary to direct otherwise; but there is no rule on the point, and it may often be more convenient to follow one's own calendar.[1]

71. RESPONSES AT MASS WITHOUT SERVER

It is suggested by some that, on analogy with the rule requiring the celebrant to say "manibus meis" instead of "manibus tuis" when he himself answers the "Suscipiat", he should say "Et cum spiritu meo" for the response to "Dominus vobiscum". Is this correct?

The lawfulness of celebrating alone is discussed above, in qu. 58. Relying on the rubrics in *Rit. Celebr. Miss.*, IV, 2, and VII, 7, which direct the celebrant to say the *Kyrie* nine times and to say the *Suscipiat* when no response is given by those assisting, the rubricians formulate a rule that the celebrant says all the responses when, for grave reasons, he has to celebrate Mass without a server who can answer. *S.R.C.*, 4 September, 1875, n. 3368.1, directs the *Confiteor* to

[1] Cf. article, "Mass at Sea", by Rev. R. More O'Ferrall, in *The Clergy Review*, 1951, XXXVI, p. 33 *ff*. Concerning permission to say Mass at sea, cf. above, qu. 60.

be said in these circumstances only once, which is rightly taken to mean that it is said, with the *Misereatur* and *Indulgentiam*, in the form used when saying Office alone.[1]

We can find no ruling on this point and no commentator who deals with the above suggestion, which is certainly supported to some extent by the rubric at the *Suscipiat*. In our view, however, no modification should be made in any responses occurring in the liturgy unless they have been authorised, and we think accordingly that the celebrant should say "Et cum spiritu tuo". Two similar instances occur to us when modifications are forbidden, notwithstanding the fact that circumstances seem to demand some change in the words. The first requires nuns when reciting office in choir to say *Pater* et *Fratres*, as in the text of the Breviary, instead of changing them, as circumstances seem to demand, into *Mater* et *Sorores*.[2] The second requires the minister at Baptism himself to recite the questions and answers in Latin before putting the questions and receiving the answers from the sponsor in the vernacular,[3] which means that he must himself say *Volo* after putting the question "N, vis baptizari?" Whatever illogicality exists in this procedure disappears when one remembers that the words are being said for the completion of the rite. Rather than change *tuo* to *meo* at the "Dominus vobiscum", it would be better to omit the response altogether, for a small omission is less notable than changing a formula which has been in use from the beginning.

72. MASS "VOICE" WHEN MANY ARE CELEBRATING

Is it merely a matter of courtesy or is there some law of rubric directing celebrants to lower their voices when others are celebrating at the same time?

Rubricae Generales Missae, xvi, 2. Sacerdos autem maxime curare debet, ut ea quae clara voce dicenda sunt, distincte et apposite proferat . . . neque etiam voce nimis elata, ne perturbet alios, qui fortasse in eadem Ecclesia tunc temporis celebrant; neque tam submissa, ut a circumstantibus audiri non possit, sed mediocri et gravi: quae et devotionem moveat, et audientibus ita sit accomodata, ut quae leguntur intelligant.

There is no direction which determines absolutely the pitch or tone to be used by all priests everywhere and in all circumstances, the terms of the above rubric being relative to the church or oratory

[1] O'Connell, *Celebration of Mass*, II, p. 212.
[2] *S.R.C.*, 13 February, 1666, n. 1334, 4.
[3] 5 March, 1904; *Periodica*, III, p. 287.

where Mass is being celebrated; a pitch and tone which would be "clear and intelligible" in a cathedral, and therefore correct, would be too loud and therefore wrong in a small oratory, even though no other priests were celebrating at the same time.

When many priests are celebrating at side-altars, as for example in a college chapel, the rubric is observed if the voice of each celebrant can be heard by the server and by any of the faithful assisting at his Mass in the immediate vicinity of the altar.

If, however, whilst many private Masses are being said at side-altars, there is at the same time a public or community Mass at the high altar, at which all of the faithful in the church are assisting, it cannot be maintained that the rubric requires the celebrant at the high altar to use a voice which can be heard, indeed, by his server and those in the vicinity, but not by the body of the faithful assisting; for this practice, whilst keeping the rule of not disturbing other celebrants, would violate the rule requiring his voice to be accommodated to those hearing Mass. There is, in fact, in these circumstances, a conflict of laws which makes it impossible perfectly to observe both, and one must choose the lesser evil.

Dr Eaton, writing in the *Irish Ecclesiastical Record*, 1923, XXI, p. 314, maintains that "it is less unrubrical to adopt a tone of voice that may not be heard distinctly throughout the church, than to interfere with the attention and devotion of other priests engaged at the same time in offering the Holy Sacrifice". The majority of the clergy would probably agree with this solution, which is based on courtesy, particularly if the presence of other celebrants rarely occurred.

The opposite view is nevertheless tenable in our opinion. The celebrant at the community Mass, whilst somewhat moderating his voice out of regard for other celebrants, is entitled to use a voice which can be heard by all the community, and the celebrants at side-altars must bear with the inconvenience, as they would have to do if the community Mass were being sung. Otherwise, in college chapels, the community would scarcely ever hear a low Mass celebrated in accordance with the rubrics, nor would it ever be possible for the community to assist at a dialogued Mass which is nowadays so common a practice.

However, it will be for the rector of the church to decide, in a given instance, which of these two views should be preferred. Our own preference is for the second opinion, and we think that the first dates from days when it was the exception for the faithful to follow in a missal the words of the celebrant, and still more the exception for them to answer the responses with the server.

73. POSITION OF THE STOLE

Should the back of the stole be entirely hidden by the chasuble?

Rit. Celebr. Miss., I, 3: Deinde ambabus manibus accipiens Stolam, simili modo deosculatur, et imponit medium eius collo. . . .

Caerem. Epp., II, viii, 14: Diaconus . . . Episcopo (stolam) deosculandam offert, eamque super eius humeros applicat, ita ut, nec eius collum tegat, nec transversa sit in modum crucis, sed aequaliter ante pectus pendeat. . . .

i. The direction of the Missal (eius collo) is not in perfect accord with that of *Caerem. Epp.* (eius humeros), and modern commentators prefer the latter expression as an explanation. Thus O'Connell, *Celebration of Mass*, II, p. 49: ". . . places the stole . . . so that the back part lies, flattened down, between the shoulders at the base of the neck"; *The Ceremonies of the Roman Rite Described*, p. 39: ". . . puts it over the shoulders. . . . It is a much disputed question as to the position of the stole on the back. The best solution of the difficulty seems to be that the stole should lie between the shoulders at the base of the neck (covered by the chasuble), neither up around the neck (C.E., II, viii, 14) nor yet down low on the back (R. I, 3)". The preference for "on the shoulders", as a more correct description than "round the neck" is supported by the Ordinal: "Pontifex . . . reflectit orarium sive stolam ab humero sinistro Ordinandi . . . imponens super dexterum humerum. . . ." The Pontifical, nevertheless, on occasions when a chasuble is not worn, e.g. *De Patenae et Calicis Consecratione*, reads: "Pontifex . . . debet semper stolam circa collum habere." No doubt the two expressions can be harmonised, but the visible effect of stressing one rather than the other will cause the stole to be covered or not covered by the chasuble.

ii. The only full discussion of this point, so far as we can discover, is given by Merati commenting on Gavanti. Gavanti, *Thesaurus*, II, i, 3, n., states: ". . . imponit collo, ut torquem, ait *Gemma*, loc. cit.[1] non longe a collo, contra quosdam; longe enim a collo est proprium episcopi; premens cervicem, et utrumque humerum, ait *Conc. Bracar.* citatum: si premit cervicem, ergo prope collum". Merati, n. xxx, clears up the rather equivocal direction of Gavanti, by discussing whether the chasuble should cover the stole or not. The Jesuit fathers, he says, "Stolam collo ita aptant, ut Crux stolae a planeta non contegatur, sed exterius appareat", a custom which is supported by the ceremonial books of various religious Institutes cited. His own view is that the stole should be entirely hidden by the

[1] *Gemma Animae*, a mediaeval commentary, I, 204 (Hittorp, ed. 1610, p. 1232), does not use the word *torquem*, and is concerned chiefly with symbolism.

chasuble, a practice supported by many authorities and observed by the Pope and Roman prelates. It is also in line with the original purpose of the *planeta*, an outdoor garment designed to cover everything worn.[1]

iii. In our opinion Merati has the weight of argument in his favour, but notwithstanding the preference of modern commentators for this view, the question is still an open one, and is probably a phase of the controversy about Roman or "Gothic" chasubles. The Roman type has a high peaked back, as a rule, which will cover the stole in any case; it is stiffer than the "Gothic" kind, and the stole, being fixed out of view, is held in position by the fastening tapes attached to the chasuble. The softer ample chasuble usually has no tapes, and no high peaked back, so that the stole is eventually liable to appear, even though one has carefully concealed it when vesting. Unless some explicit direction can be produced which requires the stole to be completely hidden at the back by the chasuble, we think that at least on the principle that one may do what no certain law forbids, priests may allow the stole to be visible. They also have rather in their favour the explicit rubric of the missal directing the stole to be placed round the neck.

74. FERIAL MASS—PLAINSONG

What is the meaning and force of the rule, printed at the end of Credo IV, to the effect that, with the exception of the ferial Masses, *the settings of the Ordinary may be interchanged at will?*

Vatican Kyriale, Credo IV: Qualislibet cantus Ordinarii superius in una Missa positus adhiberi potest etiam in alia, feriis tamen exceptis; itemque pro qualitate Missae, aut gradu solemnitatis, aliquis potest assumi ex iis qui subsequuntur. (Sequuntur "Cantus ad Libitum".)

The meaning may be twofold: either that the *Kyrie*, *Sanctus*, *Benedictus* and *Agnus Dei*, whenever there is a sung ferial Mass, must always be the chant appointed for ferias (XVI and XVII); or it may mean that the two settings for ferial Masses are for these exclusively and that they may never be used for Masses which are not ferial.

Monitor Ecclesiasticus, 1952, pp. 459–82, contains what is called "Codex Iuris Musicae Sacrae" by Dr Florentius Romita, a series of seventy canons admirably codifying the existing law on sacred music in churches. It is the result of a suggestion made at the Roman

[1] *The Clergy Review*, 1946, XXVI, p. 431.

"Conventus de Musica Sacra" in 1950, and though obviously of no legal force as a text it is a most useful clarification. Canon 25 reads: "Rubricae, quae in Kyriali Vaticano sub unaquaque Missa inveniuntur, sunt directivae tantum, feriis tamen exceptis, in quibus Missa de feria canendae sunt." The source quoted is the rubric concluding Credo IV, which Dr Romita takes in the first of the two senses noted above. One may ask, however, with great respect for his authority, whether the exception contained in the rubric is itself anything more than directive. For one is not bound to have a plainsong Ordinary at any sung Mass, including ferias and Requiems, provided the music sung comes within the rules of what is permitted.

It seems equally likely that the exception in the rubric may be taken in the second sense, as rendered in the *Liber Usualis* containing English rubrics "the ferial Masses excepted"; but even so we think it nothing more than a directive. People who want to restore popular singing of plainsong recommend that the ferial Ordinary is the simplest one to begin with; and there is never any suggestion that it may not be used except on the extremely rare occasions of a sung ferial Mass.

However, our conclusion is that either of the two senses suggested may be adopted.

75. PUBLIC PRAYERS DURING MASS

Does S.R.C., 4 *August*, 1922, *refer to a children's Mass, where the priest recites Mass prayers with the children even during the Canon? I have found that the only way to have the children understand the Mass is to recite the prayers in this way, with short explanations of what the priest is doing at the different parts of the Mass. Miming the Mass in school does not give the children the requisite knowledge or devotion. I find also that converts are helped in understanding the action of the Mass by attendance at such children's Masses. Must the practice "be entirely removed"?*

S.R.C., 4 August, 1922, n. 4375: (1) An liceat coetui fidelium adstanti sacrificio Missae, simul et conjunctim respondere, loco ministri, sacerdoti celebranti?

(2) An probandus sit usus, quo fideles Sacro adstantes, elata voce legant Secreta, Canonem, atque ipsa Verba Consecrationis, quae, paucissimis in Canone verbis exceptis, juxta Rubricas *secreto* dici debent ab ipso sacerdote?

Et Sacra Rituum Congregatio, audito specialis Commissionis voto, omnibus mature perpensis, ita respondendum censuit:

Ad 1. Ad Rm̃um Ordinarium juxta mentem. Mens autem est: Quae per se licent, non semper expediunt ob inconvenientia quae facile oriuntur, sicut in casu, praesertim ob perturbationes quae sacerdotes celebrantes et fideles adstantes experiri possunt cum detrimento sacrae actionis et rubricarum. Quapropter expedit, ut servetur praxis communis, uti in simili casu pluries responsum est.

Ad 2. *Negative*; neque permitti potest fidelibus adstantibus quod a Rubricis vetitum est sacerdotibus celebrantibus, qui Canonis verba *secreto* dicunt, ut sacris Mysteriis maior reverentia concilietur, et in ipsa Mysteria fidelium veneratio, modestia et devotio augeantur; ideoque mos enuntiatus, tamquam abusus, reprobandus est, et, sicubi introductus sit, omnino amoveatur.

This reply of the Sacred Congregation, and others in a similar sense, refer to what has become known as the *Missa Dialogata*, in which the faithful answer with the server the usual responses of a Low Mass, and even recite with the celebrant the portions which, in a sung Mass, are chanted by the choir. These practices may be permitted with the Ordinary's sanction.[1]

A further development took the form of the congregation reciting with the priest those parts of the Mass which the rubrics direct the celebrant to recite *secreto*; this practice is forbidden.

The recital of any other authorised prayers, accompanied by appropriate explanations, especially during a children's Mass, is not touched by the above decree.

76. PROCESSIONAL INTROIT

In certain places abroad the choir sings the Introit during the procession to the altar, and adds antiphonally the verses of the psalm of which only one verse is given in the Missal. May this practice be introduced anywhere?

S.R.C., 29 January, 1947 (private): An in Missis cantatis . . . liceat Introitum cantare iuxta morem antiquum, plures nempe versus psalmi canendo, Antiphona quidem interiecta, ita ut cantus Introitus protrahatur ad totum tempus quoad Celebrans a Sacristia . . . ad altare accesserit? *Resp.* Affirmative, dummodo omnia secundum ordinem fiant iuxta prudens Ordinarii iudicium.

i. The practice of singing the Introit, as in the *Liber Usualis*, whilst the sacred ministers are approaching the altar is according

[1] Cf. *The Clergy Review*, 1933, VI, p. 234; 1941, XX, p. 453. The official attitude to the Dialogue Mass has grown more favourable (cf. ibid., 1954, XXXIX, p. 589), and it was expressly commended by Pius XII in his encyclical *Mediator Dei* (Editor).

to the rubrics of some monastic missals in current use and, notwithstanding a Roman reply, 14 April, 1753, is held by many to be permitted by a direction in the Vatican Gradual, *De Ritibus Servandis*, n. 1.[1]

ii. The private reply quoted above goes further than this and permits the re-introduction of an antiphonal singing of the psalm, repeating the antiphon between each verse. To be lawful the Ordinary's sanction is required, as it is for other liturgical developments such as the *Missa dialogata*. It will surely be rare for the rector of any church to want this development of the Introit chant, which will take considerable time to carry out, particularly on some days, as the Feast of Christ the King, when the Introit is already very long. But occasions may arise when, for one reason or another, there has to be a long procession from the sacristy to the altar, perhaps going round the aisles of the church: the Ordinary's permission may then properly be sought, relying on the above reply to the Master of Ceremonies of the Cathedral of Bayonne.

77. THE PEOPLE'S OFFERTORY

In "Mediator Dei" *the Holy Father speaks with approval of the faithful themselves presenting bread and wine at Mass. If a priest is allowed to introduce this custom what are the ritual details to be observed?*

Mediator Dei, 20 November, 1947; *A.A.S.*, 1947, XXXIX, p. 555; Eng. tr. n. 94: Quamobrem consentaneum est ut christianus quoque populus pie quaerat quo sensu et ipse in Eucharistici Sacrificii Canone illud offerre dicatur. . . . Et primum quidem rationes habentur magis a re remotae, quia nempe haud raro contingit ut christifideles, sacris assistentes ritibus, suas preces cum sacerdotis precibus alternis vocibus conserant; itemque, quia nonnunquam—quod antiquitus eveniebat crebrius—administris altaris panem vinumque offerunt, ut Christi corpus et sanguis fiant; ac denique quia eleemosynis id agunt, ut sacerdos divinam victimam pro iisdem offerat.

Rit. Celebr. Miss. (De Ingressu Sacerdotis ad Altare), II, 3: Si est consecraturus plures Hostias pro Communione facienda, quae ob quantitatem super Patenam manere non possint, locat eas super Corporale ante Calicem. . . .

i. Before dealing at length with the deeper reason (intima ratio) why all the faithful are said "to offer" when present at Mass, the Holy Father mentions briefly three remoter reasons: the first is in

[1] *The Clergy Review*, 1939, XVII, pp. 71, 282.

what is usually called dialogue Mass; the third is in the alms or Mass offering given to the priest; the second is in the actual offering of bread and wine made to the priest.

Later in the encyclical,[1] when speaking of the communion of the people, Benedict XIV is quoted in support of the practice of communicating the faithful from hosts consecrated in the Mass at which they are assisting. It is clear that, provided the practical difficulties can be surmounted, the clergy are encouraged by the Holy Father to distribute Holy Communion in the manner described; it is in fact the only method when the faithful desire to communicate during a Mass celebrated at an altar which has no tabernacle.

But, as regards the faithful offering bread and wine, the Holy Father does not urge the practice, but merely records that it sometimes happens. To what is the Holy Father referring? Firstly, the custom continues still in many rites other than the Roman, e.g. the Ambrosian, and is explained by the liturgical writers.[2] Secondly, vestiges of it remain in the Roman rite at the Mass of consecrating a bishop or blessing an abbot, though the bread and wine offered to the celebrant are not actually used at that Mass. Thirdly, local customs still survive in places where the Roman rite is used, e.g. the offerings at the exequial Mass, and amongst the authentic decrees *S.R.C.* one or two may be found[3] which regulate the manner of offering oblations, whilst not specifying what these oblations are, in places where the custom exists.

ii. Dealing with this point long before the publication of the encyclical,[4] our opinion was that, unless justified on the ordinary principles of customary law, the celebrant is not permitted by the existing rubrics to receive offerings of hosts from the faithful at the Offertory. It is not permitted because it is an unauthorised interruption of the Mass, and because the rubric in *Rit. Celebr. Miss.*, II, 3, clearly directs the hosts for the communion of the faithful to be on the corporal from the beginning of the Mass. We can see no reason in the words of the encyclical for receding from this view, but it is open to those priests who desire to introduce the practice to obtain an indult for what they want to do, or to agitate by every lawful method for a modification of the existing rubrics.

iii. Since in our view the practice is against the rubrics of the Roman rite, the question of the rubrical details to be observed on the occasion scarcely arises. In places where a contrary custom

[1] *A.A.S.*, p. 564; Eng. tr., n. 126.
[2] Cf. *Dict. Archéol.*, XII, col. 1946; *Periodica*, 1944, p. 61.
[3] E.g. Nn. 3535.1 and 3579.1.
[4] *The Clergy Review*, 1941, XXI, p. 113.

exists, *S.R.C.*, 30 December, 1881, n. 3535.1, directed the celebrant to receive the offerings in silence and permitted the faithful to kiss his stole or maniple.

There can be no serious objection, except one of practical ways and means, to the faithful bringing offertory hosts to the priest before Mass begins, but we imagine that this would be neither liturgically correct nor appropriate, and would serve no useful purpose.

In many places love for the liturgy has re-introduced an offertory procession of the faithful[1] at which hosts are offered to the celebrant. Whether this is done by indult or not we cannot say, but it may be admitted that those in favour of the practice have some support from the words of the Holy Father in *Mediator Dei*. The practical difficulties to be surmounted in churches with a large congregation are imposing, and such a ceremony must add considerably to the length of the rite.

78. "ORATE FRATRES"

Why does the rubric direct a completion of the circle after this salutation, but not after others occurring during the Mass?

Mediaeval writers, like Durandus, suggest a number of mystical reasons which most of us nowadays find quaint rather than convincing, and which were rejected by some of their contemporaries such as Albertus Magnus: "apud me nihil valent tales adaptationes." Gavanti mentions one or two of these, followed by the literal reason: "Ad literam dici potest, perfici circulum, ut convertat se sacerdos ad librum; ad quem semper se vertit, excepto unico casu, ante *Offertorium* quod a choro cantatur."[2] Le Brun gives the same explanation,[3] and the rubrics of some ancient missals confirm it by giving the direction "revertit ad librum" or "ad librum in sinistra parte accedens".[4] After the last blessing, similarly, the circle is completed in order to read the last gospel.

The only exception, at the *Dominus Vobiscum* before the Offertory, is certainly difficult to explain, and one writer who admirably proves the principle of turning "ad librum"[5] has to admit defeat when confronted by this exception. The reason given by Le Brun seems to us quite adequate: the celebrant nowadays, indeed, has to read the Offertory antiphon, both in solemn and low Mass, but formerly it was not so in the solemn Mass, since the Offertory was

[1] Cf. *National Liturgical Week* (U.S.A.), 1941, pp. 92 and 216.
[2] *Thesaurus*, II, vii, 7.
[3] *Explicatio*, ed. 1770, p. 181.
[4] Le Brun, loc. cit.; *Tracts on the Mass*, H.B.S., 1904, p. 100.
[5] *Questions Liturgiques et Paroissiales*, 1921, p. 244.

sung by the choir, and many of the rubrics of a solemn Mass continued naturally at low Mass. A further reason may be suggested, though we have not seen it recorded by the writers. The *Oremus* at this point is probably all that remains of the prayers, commonly called bidding prayers, which are still sung on Good Friday, and presumably they were sung, as on Good Friday, from the missal on the epistle side. Just as the *Oremus* has continued, so also the movement after the salutation, and the principle of turning "ad librum" is sustained.

If it is asked why the turn is always commenced from the priest's right, the best answer is that this is the more natural way to make the movement. Fortescue's suggestion that it is to avoid the celebrant turning his back on the deacon is perhaps correct; Jungmann thinks it unlikely.[1]

79. "SECRET" PRAYERS

The popular missal edited by Dom Cabrol states that it is at least doubtful that the "secret" prayers are so called because they are recited silently. What are the alternative explanations?

Rubricae Generales, xii . . . postea fit oblatio cum Orationibus, ut in Ordine Missae. Qua oblatione facta, dicuntur Orationes secretae . . . sed ante primam Orationem non dicitur *Dominus Vobiscum*, nec aliquid aliud, sed dicto *Suscipiat Dominus sacrificium*, absolute dicuntur: neque etiam ante secundam Orationem dicitur *Oremus*.

i. The question is one of the minor difficulties in the history of the Mass and it is not yet satisfactorily settled. All the explanations offered have to take account of the word "secreta", past participle of "secerno", and the commonest is undoubtedly to give the word, which primarily means "separate", its secondary meaning of "private". The prayers are said privately, that is to say in silence, *submissa voce*, because in a sung Mass the singing of the Offertory psalm prevents the prayers being said aloud.[2] Another explanation of the silent recital of these prayers is sometimes suggested: they were whispered in deference to the established tradition that the offering was the act of the people, made through the deacons.[3]

The weak point of this common explanation is that it gives no adequate reason for the presence of the prayers, and whatever their origin may be it seems that the custom of reciting them secretly was subsequent to their introduction in the liturgy.

[1] Fortescue, *The Mass*, p. 214; Jungmann, *Missarum Sollemnia*, II, p. 103.
[2] Thus Fortescue, *The Mass*, p. 312; Gasparri, *De Eucharistia*, §907; *Dict. Archéol.*, XI, col. 726.
[3] Dix, *The Shape of the Liturgy*, p. 118.

ii. A second solution gives the word "secreta" its primary meaning of "separated", the neuter plural becoming ultimately a feminine singular, as may be noticed in the word "oblata" which occurs so often in liturgical texts: *oratio super oblata* becomes *oratio super oblatam* (hostiam). There are two meanings given to this notion of something separated, both of which are recorded by O'Brien, in his *History of the Mass*, a remarkably informative work considering its age[1] and its popular character.

One meaning associates the word with the separation, the dismissal, of catechumens which occurred just before this point. There is little proof in support of this contention.

A second meaning is related to the separation of the bread and wine from the offerings of the people, which would normally be far in excess of what was required for consecration. Bossuet has pointed out that in some ancient sacramentaries the oratio *super oblata* is described as *oratio post secreta*, which certainly supports this meaning of "separated". Critics, however, observe that accurate references to this phrase are wanting.[2]

ii. A third solution, favoured by Dr Brinktrine,[3] stresses the meaning of "mystery" which is often given to the derivatives of "secerno". What we now call the Preface, as something distinct from the Canon, is undoubtedly an essential part of the *anaphora* or Eucharistic Prayer in its most primitive shape: the versicles *Sursum corda* etc. being found in all its forms. The description of the Eucharistic Prayer as *Mysterium* or *Secreta* is fairly common. It is suggested that our word *Secreta* must be related to the Eucharistic Prayer to which it is attached, and similar examples of a prayer preceding a *praefatio* may still be seen in the missal at the Blessing of the Font on Holy Saturday, and in the Ordinal at the ordination of deacons and priests and the consecration of bishops. Consequently the prayer which was in its origin a gate, as it were, leading to the *Praefatio*, has itself preserved the name of "Secret" or "Mystery".

The prayer has no *Oremus*, since the more lengthy *Orate fratres* takes its place, and the *Amen* which the priest is directed to say *submissa voce* is accounted for, no doubt, by the same causes that account for the plurality of *Amen* in the course of the Canon.[4]

80. INTENTION IN CONSECRATING CIBORIUM

Relying on the teaching of St Alphonsus, priests are usually recommended to formulate an intention of consecrating only that matter which is on the

[1] New York, 1884, p. 283. [2] *L'Ami du Clergé*, 1947, p. 683.
[3] *Zur Deutung des Wortes Secreta*, in *Ephemerides Liturgicae*, 1930, p. 291.
[4] Cf. *Theological Studies*, 1945, p. 380.

corporal. Others, following Vermeersch, hold that it is less precarious if an intention is made to consecrate all matter brought to the altar for that purpose, whether placed on the corporal or not. Which of these opinions is to be preferred?

De Defectibus, VII, 1: . . . quilibet sacerdos talem semper intentionem habere deberet, scilicet consecrandi eas omnes quas ante se ad consecrandam positas habet. 4. Si intentio non sit actualis in ipsa consecratione propter evagationem mentis, sed virtualis, cum accedens ad altare intendat facere quod facit Ecclesia, conficitur sacramentum, etsi curare debet sacerdos, ut etiam actualem intentionem adhibeat.

St Alphonsus, *Theol. Moralis*, VI, 217: Utrum censendum sit consecratum ciborium, ex oblivione extra corporale relictum? . . . sententia communis et probabilior negat cum Suarez, Diana, Palao, etc. cum Croix. Ratio, quia cum intentio consecrandi extra corporale fuisset peccatum grave, illam tu habuisse non praesumeris.

Vermeersch, *Theol. Moralis* (1923), III, §379: Verum huiusmodi consilium (non consecrandi quidquid sit extra corporale) aeque nocere ac prodesse potest . . . Intentio esse possit, consecrandi quidquid affertur vel allatum ad altare, in finem consecrationis.

(i) An intention is *actual* if the act performed under its influence is done with advertence; if done without advertence it is *virtual*; it is *habitual* if made once and not retracted but having no influence on the action at the time it is performed. It is agreed that, in principle, an habitual intention suffices for receiving a sacrament validly, though not for administering it; the minister should have, if possible, an actual intention, though a virtual intention suffices.

The matter under discussion is not a law but a counsel or device, for the purpose of allaying anxiety about the consecration of a ciborium in cases when the celebrant had no actual intention: for a valid consecration it is necessary to have at least a virtual intention, and it is rightly maintained that by forming some time before Mass an intention which is sufficiently wide in its object, provided always that the matter is present as the words "hic" "hoc" imply, the consecration will be valid, even though the celebrant did not advert to its presence.

We must beware, however, of supposing that any intention of this kind will always be, if one may use the term, "fool-proof" in every contingency. A parish priest, let us suppose, having prepared a ciborium in the sacristy, decides not to consecrate it that morning; the sacristan, thinking it has been forgotten, places it behind the

Missal during the *Lavabo*; or, during a solemn Mass, let us suppose, the deacon removes the ciborium just off the corporal, and the celebrant nevertheless intends to consecrate it. In the first instance the celebrant does not advert to its presence on the altar, and in the second instance to its removal from the corporal, but in neither case will the device we are discussing avail: the ciborium is not consecrated in the first case, notwithstanding a general intention to consecrate all matter placed on the altar; it is consecrated in the second instance, notwithstanding a general intention not to consecrate matter placed outside the corporal. For in a conflict of intentions the particular must prevail over the general, and it is exactly on these lines that the Church decides on the validity of marriage consent.

(ii) Of the two suggestions we prefer that of Vermeersch, since it is wider and more efficacious in solving doubts,[1] as well as being more perfectly in agreement with the phrase in the rubrics "ante se ad consecrandam positas". We have been informed by an eye-witness that the consecrating prelate at an ordination Mass distributed to the *ordinati* the Holy Eucharist from a ciborium that had been inadvertently left on the credence. Assuming that it is the celebrant's intention to consecrate whatever is placed before him for consecration, it is preferable not to limit this intention to what is placed on the altar. Following St Alphonsus, D'Annibale and other authorities, one may regard twenty paces as the limit beyond which the matter is not to be regarded as present.[2] Gasparri, amongst others, is opposed to the practice of not intending to consecrate matter not placed on the corporal.[3]

(iii) St Alphonsus is mistaken in regarding his doctrine as the common and more probable opinion, since the authors cited by him are, for the most part, cited incorrectly, as a reference to the critical edition of Gaudé proves. The presumption referred to is, at the most, an *interpretative* intention, which is really no intention at all: what we have to discover is not what a priest would have done had he known the ciborium to be unlawfully outside the corporal, but what he intended to do at the time. Thus Cappello: "Non valet, inquam, ratio allegata, quia fundatur in falso principio, quatenus supponit generalem hanc doctrinam quod non possit in sacerdote praesumi intentio consecrandi, si aliqua circumstantia, licet sacerdoti ignota,

[1] He notes, in effect, what is sometimes overlooked, that an habitual intention does not suffice: "Primo observes intentionem istam non esse, secundum principia generalia, perpetuae efficaciae, sed tamdiu valere quamdiu in actione sacerdotali, ex confusa saltem memoria, aliquid efficiat, seu sit aliquo modo virtualis."
[2] St. Alphonsus, *Theol. Moralis*, VI, §213; D'Annibale, III, §388.
[3] *De Eucharistia*, §459.

intercedat, quae, si ab eodem sacerdote nosceretur, ipsum deterreret a consecrando, ne illicite consecraret."[1]

The objection remains that a priest may not lawfully form an intention to consecrate hosts lying outside the corporal; to which a proper reply seems to be that the intention is not absolute but conditioned, the condition being that there will be a grave reason for not observing a positive law, the necessity of securing a valid consecration in certain contingencies when the consecration would otherwise be left in doubt.

81. REMOVAL OF CIBORIUM AFTER CONSECRATION

At a Christmas midnight Mass, when a large congregation desired Holy Communion, the parish priest found insufficient Hosts in the Tabernacle. He directed an assistant to say Mass immediately; the consecrated ciborium was removed after the consecration and before the completion of the priest's Mass. Was this permissible in the circumstances?

S.R.C., 11 May, 1878, n. 3448.7: Valetne sustineri usus aliquarum Ecclesiarum, in quibus, ratione concursus ingentis populi, cum non suffecerit multitudini pro S. Communione quantitas hostiarum, iam subsequente alia Missa, statim a consecratione reassumitur distributio Communionis. *Resp.* Abusum esse interdicendum.

i. There was sufficient justification for a priest in these circumstances saying Mass in violation of the "aurora" rule of canon 821, §1, or of the midnight Mass rule in §2 of the same canon. The writers, following St Alphonsus, permit anticipation of the rubrical time by two hours for any reasonable cause, and in some rare and extraordinary contingency allow anticipation by more than two hours.[2] Moreover, the faculties of some religious institutes permit the celebration of Mass one hour after midnight, with the presumed permission of a superior; it is a law which the Church is accustomed to dispense, and its non-observance was rightly recommended in the above case.

Another remedy, which the parish priest could have used if the deficiency was discovered in time, was to divide the existing Hosts: there is sufficient authority for dividing each one into four when, otherwise, the faithful will have to be denied Holy Communion.[3]

ii. The ciborium is validly consecrated at the completion of the words of divine institution, and persons immediately communicating

[1] *De Sacramentis*, I, §303.
[2] Iorio, *Theol. Moralis*, III, §246. [3] Gasparri, *De Eucharistia*, II, §1098.

therefrom would validly receive Holy Communion. But doing so involves, firstly, an interruption of the Mass by part of the oblation being consumed before its ritual completion; and, secondly, a violation of the rule requiring the laity to communicate after the priest. The justification for consuming the sacred species immediately after the consecration of the Mass is in *De Defectibus*, x, 2: "si timeatur incursus hostium, vel alluvionis, vel ruina loci ubi celebratur, ante consecrationem dimmittatur Missa; post consecrationem vero Sacerdos accelerare poterit sumptionem Sacramenti, omissis omnibus aliis".[1] The necessity of preventing irreverence to the Body of Christ is an emergency which justifies departing from all positive laws about the reception of the Holy Eucharist. There is nothing resembling this necessity in the above case. The faithful, having awaited the course of the priest's Mass up to the consecration, must be kept waiting a further few minutes, until the celebrant has himself consumed the oblation.

82. COMMUNION "CONFITEOR" DURING MASS

Is the recitation of the "Confiteor" *at the communion of the faithful an ancient custom? Should it be sung, not only at solemn Masses by the deacon, but at a* "Missa Cantata" *by a cleric or layman; and is there only one tone for all occasions? Is it correct to precede the word* "*pater*" *by* "*reverendissime*" *or* "*eminentissime*", *if a bishop or a Cardinal is present? Why is the variant* "*beatus*" *and* "*sanctus*" *therein?*

i. It is a mediaeval addition to the rites of the Mass, apparently due to the influence of the mendicant friars. Well before the twelfth century the *Confiteor*, etc., in use at the beginning of Mass, was said whenever the sick communicated in their homes, and the rite which properly belongs to the Ritual was then transferred to the Mass whenever the faithful communicated.[2] Though it is actually a duplication of the prayers said at the beginning, and a repetition of the sentiments expressed throughout in various prayers, liturgical writers, especially Callewaert,[3] are at pains to show that it is fittingly said at this place, and there are indications of its recital in some rites by the celebrant even when no communicants were present. The absolution formula following its recital is a sacramental with

[1] Cf. Fr Davis in *The Clergy Review*, 1939, XVII, p. 456, where this direction is applied to air-raids.
[2] Crogaert, *Rites et Prières du Saint Sacrifice de la Messe*, III, p. 332; Jungmann, *Missarum Solemnia*, II, p. 449.
[3] *Collationes Brugenses*, 1932, p. 116.

the effect of remitting venial sins or of securing the grace of contrition for grave sins.[1]

ii. We know of only one tone in use when it is chanted, as printed in the *Liber Usualis* from *Caeremoniale Episcoporum*, II, xxxix, for the episcopal indulgence; and other indications in this book lead most most writers to direct that at a Pontifical Mass it must always be sung.[2] This we think correct; the reply, *S.R.C.*, 28 November, 1902, n. 4104.2, permits it to be recited as an alternative *alta voce*, if that is the custom, in all non-pontifical solemn Masses. We can find no express ruling about the sung Mass celebrated without sacred ministers, but seeing that its chanting is a diaconal function wherever it is mentioned, we think it is incorrect for anyone else to sing it; the *Confiteor* should be recited at these Masses exactly as at Low Mass.

iii. Throughout *Caeremoniale Episcoporum* "pater" without any prefix is the rule whenever the *Confiteor* is said; equally the Missal rubrics[3] direct the *Confiteor* to be recited as in *Caeremoniale Episcoporum*, even when it is being said with the supreme pontiff. It is wrong, apart from customs or indults, to add any prefix to "pater".

iv. The distinction between "beatus" and "sanctus" for denoting the difference between a beatified and a canonised person is not found in the ancient liturgical prayers of the Mass, in which either word is used indifferently for a canonised saint. The distinction used in the *Confiteor* is also found in the prayer *Suscipe sancta Trinitas*. Some think that the epithet "sanctus" is used of the Apostles because it is so found in *Ephes.*, iii, 5, "sicuti nunc revelatum est sanctis apostolis",[4] but we have found no certain explanation of the distinction, which might possibly be due simply to euphony; "beatus" is moreover frequently found applied to the apostles, as in the preface and the *A Cunctis*.

83. THE PEOPLE'S SACRIFICE

Is there not a rule that the Hosts already consecrated must be consumed before those newly consecrated? How is this harmonised with the wish of the Holy Father that the faithful should receive Hosts consecrated at the Mass at which they are assisting?

Canon 1272: Hostiae consecratae, sive propter fidelium communionem, sive propter expositionem sanctissimi Sacramenti, et

[1] Cf. *The Clergy Review*, 1944, XXIV, p. 31.
[2] O'Connell, *The Celebration of Mass*, III, p. 135.
[3] *Rit. Celebr. Miss.*, III, 2 and 3.
[4] *L'Ami du Clergé*, 1947, p. 622.

recentes sint et frequenter renoventur, veteribus rite consumptis, ita ut nullum sit periculum corruptionis. . . .

Rituale Romanum, V, i, 7: Sanctissimae Eucharistiae particulas frequenter renovabit. Hostiae vero seu particulae consecrandae sint recentes; et ubi eas consecraverit, veteres primo distribuat vel sumat.

Mediator Dei, 20 November, 1947; *A.A.S.*, 1947, XXXIX, p. 565; Eng. tr., n. 128: . . . atque, ut supra scripsimus, ii dilaudandi sunt, qui, Sacro adstantes hostias in eodem sacrificio consecratas accipiant, ita quidem ut reapse contingat "ut quotquot ex hac altaris participatione sacrosanctum Filii tui corpus et sanguinem sumpserimus, omni benedictione caelesti et gratia repleamur".

i. When Mass is being said at an altar on which the Blessed Sacrament is reserved, and the faithful receive Holy Communion from a ciborium consecrated at that Mass, there does appear to be some little conflict between the existing rubrics and the desire of the Holy Father expressed in the encyclical. Assuming for the moment that there is a conflict, the right solution, following the accepted rule for all such cases, is for the more important thing to take precedence. The papal direction is the more important, firstly, because it deals with the faithful's share in the Sacrifice of the Mass, whereas the rubric is concerned with precautions against the danger of corruption of the Sacred Species; secondly, because it is more recent and it must be presumed that the Holy Father is aware of the existing rubric. The previous paragraph, to which the words "ut supra scripsimus" refer, contains a quotation from Benedict XIV, which affirms that priests are to be blamed who deny this sharing of the sacrifice to the faithful at Mass. In other parts of the encyclical it is taught that the faithful communicating from a pre-consecrated ciborium also share in the sacrifice, and there is usually some reasonable cause for this method of distributing Holy Communion, but the preference for the faithful communicating from hosts consecrated in the Mass at which they assist is firmly maintained.

ii. It could be argued, however, that there is actually no conflict, because the rubrics cited and the papal direction are dealing with distinct and separate things, the purpose of each being expressed in the clause "ita ut" at the conclusion of the above extracts from canon and encyclical. Canon 1272 comes within Tit. xv, "De custodia et cultu sanctissimae Eucharistiae" which is explanatory of everything connected with reservation of the Holy Eucharist and the worship due; similarly the rubric of the Ritual is within Tit. iv, "De Sanctissimo Eucharistiae Sacramento". The papal direction, on the other hand, though within the portion of the document

explaining Holy Communion, is directly concerned not with reservation of the Holy Eucharist but with the share of the faithful in the sacrifice of the Mass. The rule of the canon and of the rubric must always be observed, whenever Holy Communion is distributed from ciboria reserved in the tabernacle; the direction of the encyclical should be observed, if it is possible conveniently to do so, whenever the faithful communicate in the Mass at which they are assisting. The canon and the rubric are laws relating to the reservation of the Holy Eucharist, laws which all priests are bound to observe; the papal direction is not a law but a counsel which it is praiseworthy to observe.

84. PURIFYING COMMUNION PLATE

The direction is that any particles on the plate are to be placed in the chalice, when Communion is given during Mass. Does this apply when a second Mass is following immediately at the same altar celebrated by the same priest?

S.C. Sacram., 26 March, 1929, n. 7: Fragmenta autem quae in patina post sacram fidelium communionem exstabunt, quoties haec intra Missam fuerit diribita, in calicem sedulissime, digiti ope, iniiciantur; in pyxidem vero, si extra Missam sacra Synaxis a fidelibus recipiatur.

S.R.C., 11 March, 1858, in Appendix to *Rituale Romanum*: ". . . completo ultimo Evangelio, rursus stet in medio Altaris, et detecto calice, inspiciat, an aliquid divini Sanguinis necne ad imum se receperit. . . . Si itaque divini Sanguinis gutta quaedam supersit adhuc, ea rursus ac diligenter sorbeatur . . . Quando vero Sacerdos eadem die duas Missas in eadem Ecclesia offerre debet, se gerat uti supra dictum est, sed absoluta Missa quin Calicem purificet . . . eum eodem modo supra Altare relinquet."

We can find no explicit discussion of this point by the commentators, but it seems to us that, in the above circumstances, the plate should be purified into the Ciborium, as the Instruction n. 7 directs whenever Communion is distributed outside Mass. Since the rubric requires the priest, even when duplicating at the same altar,[1] to consume at the end of Mass whatever drops of the Sacred Species may be discernible in the chalice, it is clearly unreasonable to place in this chalice any further particles from the plate; moreover, it would scarcely be possible to consume them except with the aid of a finger.

[1] Cf. *The Clergy Review*, 1940, XVIII, p. 71.

If the altar at which both Masses are being said has no Tabernacle, a ciborium with an exact number of particles for the communicants being consecrated at the first Mass, the solution given above will not apply. We think the best practice is then to leave the ciborium unpurified with the chalice, until the conclusion of the second Mass. If there is to be an interval between the Masses, the difficulty does not arise; the chalice can be purified, under the new discipline, at least with water.

85. PRAYER FOR THE QUEEN AFTER MASS

What is now the correct form of this prayer? Should it be in English or in Latin? Is it correct to insert "cum principe consorte" before "et prole regia"?

In the *Preces* of the breviary, the prayer for the civil ruler is always "Domine salvum fac regem", whether the ruler be a king, queen or president, because the invocation has no "N" and the word "rex" has the generic meaning of "ruler". The prayer after Mass, on the contrary, is the *Oratio Diversa* n. 6 of the Missal, which has "N" and therefore requires the sovereign to be mentioned by name. For the rest, the ruling of the local Ordinary must be observed, or, failing any such ruling, the directions of the rector of the church.

i. Before Cardinal Wiseman's time certain indefensible practices were current, such as mentioning the sovereign's name in the Canon of the Mass, or adding the prayer, n. 6, to those assigned for the day. With the sanction of the Holy See the Cardinal introduced the prayer to which we are accustomed, as printed in the *Ritus Servandus*, and it is held to have become obligatory from that time.[1] No formal decree for the whole country can be discovered and the matter is not mentioned in the IV Westminster Councils. We think it is certainly of obligation at the present time, at least on a principle of custom, unless the local Ordinary allows it to be omitted. In addition, local diocesan law in many places asserts its obligation[2] and frequently the direction is that the prayer may be said in Latin or in English. In some dioceses the prayer is: "O God by whom kings reign" as given in the *Manual of Prayers*.

ii. Assuming that the prayer based on n. 6 of the Missal is being said in Latin, we think that "Elizabeth" is more correctly undeclined; that the conclusion may always be "Per Christum Dominum nostrum", as given in the *Ritus Servandus*, not withstanding some arguments which can be produced for "Per eumdem Christum Dominum nostrum";[1] and that "cum principe consorte" may be inserted before "et prole regia", since the Duke of Edinburgh is a prince, and the appellation was popularly used of Queen Victoria's consort before it was officially sanctioned. Subject, as we have said, to an authoritative ruling, we think a correct form of the prayer is:

V. Domine, salvam fac reginam nostram Elizabeth.
R. Et exaudi nos in die qua invocaverimus te.
Oremus. Quaesumus, omnipotens Deus, ut famula tua Elizabeth, regina nostra, quae tua miseratione suscepit regni gubernacula, virtutum etiam omnium percipiat incrementum: quibus decenter ornata, et vitiorum monstra devitare (*tempore belli* hostes superare) et ad te qui via, veritas et vita es, cum principe consorte et prole regia, gratiosa valeat pervenire. Per Christum Dominum nostrum. Amen.

[1] Ward, *The Sequel to Catholic Emancipation*, I, p. 201.
[2] Cf. *The Clergy Review*, 1936, XI, p. 249; *Westminster Synod*, XXXII, 1893; Liverpool, Synod XXIII, 1945, n. 198.

86. ANGELUS AFTER MASS

It is my custom to recite the Angelus at the conclusion of the last Mass on Sundays, usually about 12 midday, whether this Mass is sung or recited. Is there any substance in the criticism made by some colleagues that one is not permitted to say any prayers in Mass vestments after Mass except on the authority of the local Ordinary?

S.R.C., 31 August, 1867, n. 3157.7. An possint praecipi, aut saltem permitti, aliquae preces recitandae ad Altare post Missam, non depositis sacris vestibus? *Resp.* Affirmative; dummodo preces dicantur assentiente Ordinario.

We think that the Angelus should not be recited after a sung Mass by the celebrant at the altar, except with the Ordinary's sanction, since no vernacular prayers, not even those ordered by Leo XIII, are then recited. After low Mass, the Leonine prayers, and in certain localities others as well, are prescribed, and usually the problem presented is whether a priest is entitled, for this reason or that, to omit them. If he desires to add to those ordered, the above reply leaves it with the local Ordinary to determine its legality, and the writers concede a certain latitude on the supposition that the Ordinary's permission may sometimes be presumed; in fact, the replies of the Sacred Congregation of Rites in nn. 3537, 1, and 3805, can be harmonised with n. 3157 quoted above only by supposing that a presumed permission suffices. It may be presumed when

[1] *The Clergy Review*, 1934, VIII, p. 331.

there exists some good reason for adding prayers: it seems to us that the end of Mass coinciding with the ringing of the Angelus bell is a just reason; but the more obvious course is to get the Ordinary's permission if the practice is habitual.

87. "DIVINE PRAISES" AFTER LOW MASS

In the promulgation of the additional invocation of our Lady's Assumption does not the official text suppose that there is an obligation ("recitandis") *of reciting the Divine Praises together with the Leonine Prayers after Mass?*

S.R.C., 23 December, 1952; *The Clergy Review*, 1953, XXXVIII, p. 367: "S.D.N. . . . statuere benigne dignatis est ut invocationibus in fine Missae et in Benedictione S̃mo Sacramenti recitandis . . . addatur: *Benedetta la sua gloriosa Assunzione.*

The obligation of reciting the Leonine Prayers, notwithstanding many attempts under succeeding pontiffs to evade it, is firmly established at the moment: Pius XI, in a consistorial allocution, 30 June, 1930, ordered them to be continued for Russia.[1] The triple invocation of the Sacred Heart is also said because Pius X exhorted priests to do so without imposing an obligation, which nevertheless now exists, in our view, owing to the legal force of custom.[2]

We do not know of any obligation in the common law to recite after Mass the Divine Praises as well as the above prayers. The force of "recitandis" can only mean that in those localities where their recitation is obligatory, whether by custom or by direction of the local Ordinary, the additional invocation is to be added.

Commenting on this decree, 23 December, 1952, in the Roman journal *Monitor Ecclesiasticus*, 1953, p. 211, Dr Silverius Mattei who is described as "S. Rituum Congr. a Studiis" summarises for his part what are the views of many priests and lay people about these prayers after Mass. Owing to his position and authority his words may be of interest to many of our readers. "Praefatis dispositionibus Precum recitationem imperantibus non obstantibus, Ritus servandus in celebratione Missae (XII, 5, 6) habet et nunc: 'Finito Evangelio Sancti Joannis, sacerdos, descendens ab altari, pro gratiarum actione dicit Antiphonam *Trium Puerorum* cum reliquis, ut habetur in principio Missalis, mentionem minime faciens ipsarum precum, quod clare indicat easdem proprias non esse liturgiae eucharisticae. Incongruum enim est alias preces recitare quando fidelibus dictum est: *Ite Missa est!* Curandum est igitur ut fideles activam partem habeant

[1] *A.A.S.*, 1930, XXII, p. 296.
[2] *The Clergy Review*, 1944, XXIV, p. 428.

Sacrorum Mysteriorum celebrationi, et ubi maior huiusmodi participatio, ibi minor necessitas alias collectivas preces addendi." It should be remembered that in the rite of the Paschal Vigil, in which the faithful have an active part, even the last Gospel is omitted at the conclusion of the Mass.

88. VOTIVE MASS OF CHRIST ETERNAL HIGH PRIEST

What special devotions for the sanctification of priests justify the special celebration of the Mass as a solemn votive Mass on the first Thursday of each month?

S.R.C., 11 March, 1936; *A.A.S.*, XXVIII, p. 240: . . . Sanctitas porro Sua . . . benigne indulgere dignatus est ut primis feriis V cuiusque mensis in ecclesiis vel oratoriis, ubi de consensu respectivi Ordinarii peculiaria exercitia pietatis pro Cleri sanctificatione mane peraguntur, una Missa votiva de Iesu Christo Summo et Aeterno Sacerdote litari possit, dummodo non occurrat festum duplex. . . .

The occasion of this concession, explained in the decree, was a pious practice, already flourishing in Germany and elsewhere, of devoting a day each month to celebrating Mass, receiving Holy Communion, and offering various prayers and good works for the sanctification of the clergy. The practice is encouraged by permitting a special votive Mass on those days, the development being very similar to the special votive Mass permitted on the first Friday of each month in churches where there are devotions to the Sacred Heart. In both cases the exact nature of the devotions is not specified in the decrees, but inasmuch as the Ordinary's sanction is required, this will not normally be given, we suppose, unless the devotions are specified when his permission is being sought.[1]

The commentators on the decree are not very helpful in making suggestions. One writer has the following: "Requiruntur specialia pietatis opera, quorum scopus sit orare pro sanctificatione sacerdotum et adspirantium ad sacerdotium in universo orbe; quae autem et quanta esse debeant, non determinatur. Sufficiunt expositio cum pyxide SS̃mi Sacramenti, Litaniae Cordis Iesu, Laur-etanae, et ita porro. Ea mane peragantur oportet, sive ante sive post Missam; non tamen opus est ut physicam cum eadem coniunctionem habeant et unum actum constituant, sed sufficit coniunctio moralis".[2] To these suggestions may be added the indulgenced prayers for the sanctification of the clergy contained in

[1] Cf. *The Clergy Review*, 1943, XXIII, p. 282.
[2] *Ephemerides Liturgicae*, 1937, p. 82.

Enchiridion Indulgentiarum, nn. 656–660. The indulgences attached to "Dies Cleri Sanctificationi Sacer", in n. 657, require certain pious practices, such as receiving Holy Communion, and they are more clearly defined than those required for the votive Mass. The two things are really distinct,[1] but they could very suitably be united as a popular devotion, and the pious practices which are conditions for the indulgences amply satisfy the conditions for the votive Mass.

For the liturgical rules applicable to this special votive Mass, the days on which it is not permitted, and other details, cf. O'Connell, *The Celebration of Mass*, I, p. 105.

89. SOLEMN VOTIVE MASS: "CONCURSUS POPULI"

What is the exact meaning of "concursus populi", which is one of the conditions required for a solemn votive Mass?

Since the votive Mass is a departure from the rule requiring the Mass to be in conformity with the office of the day, it is only permitted on certain conditions: a grave cause of a public nature; the mandate or permission of the Ordinary; and that the Mass shall be a sung Mass in the presence of a concourse of people. In *Addit. et Variat.*, IV, 2, we read "cum magno populi concursu, cuius rei judex est Ordinarius". The Ordinary will not presumably give his permission unless this condition is likely to be fulfilled, and the question is equivalent to asking when one may reasonably seek permission with some prospect of success.

The best account of this votive sung Mass that we have seen is in *Ephemerides Liturgicae* (Jus et Praxis), 1942, p. 56. It explains all the liturgical rules which apply to it, but we have not found either in this article or in the other authorities consulted a definition of "concursus populi". Since all the conditions required must exist together, one could imagine a grave public cause being verified but a large congregation unlikely owing to the hour chosen being unsuitable; for example, if war is impending a sung Mass *pro Pace* would not be lawful if celebrated at a late hour on a weekday in a working-class parish where few, if any, would be free to attend. It is for this reason, no doubt, that it is becoming customary to select a Sunday for these and similar votive Masses.

An examination of the official decisions as to what constitutes a grave and public cause[2] has likewise revealed no definition of "concursus populi". We think therefore that, if the day chosen is

[1] *Periodica*, 1937, p. 201.
[2] Cf. Crogaert, *Rubricae Missalis*, p. 131; O'Connell, *Celebration of Mass*, I, p. 72.

Sunday or a holy day of obligation, this condition will always be verified. On other days, the likelihood of a good attendance should be mentioned when applying to the Ordinary for the faculty: the expectation of an attendance equal to that on a Sunday or holy day would be too conservative an estimate in our opinion; it suffices if the number anticipated is far in excess of the usual congregation of devout people.

90. FIRST FRIDAY VOTIVE MASS

May this Mass of the Sacred Heart be said by all priests who choose to do so, including the celebrant not only of the principal Mass but of any private Mass?

The rules for this votive Mass, like many of the innovations of Leo XIII, are *sui generis*, and may be studied in O'Connell, *The Celebration of Mass* I, p. 101, or in *The Clergy Review*, 1943, XXIII, p. 281. The principle underlying the use of this privilege is that the Mass is part of the Sacred Heart devotions on the First Friday, and though the exact nature of the devotions is not specified, they need to be sanctioned by the local Ordinary. Only one votive Mass is permitted in principle, but some think that it may be repeated when, with the Ordinary's consent, the devotions are themselves repeated for a different congregation.

Variations of the above rule may happen when, in addition to the privilege of the common law, all priests are permitted to say this votive Mass by indult: this may be granted through the local Ordinary, and recourse to him is recommended for the solution of any other doubts arising, since his permission for the devotions has always been a *sine qua non* for the use of the privilege in the common law. Other variations are apparent rather than real, as when the First Friday happens to fall on a day when all votive Masses are permitted, including, if desired, the votive Mass of the Sacred Heart, which then conforms to the common law on votive Masses, and not to the special Leonine provisions.

91. OMISSION OF "PAX" DURING "TRIDUUM"

Why is the "Pax" omitted in the restored rite of the Paschal Vigil, an occasion when, it would appear, the ceremony of exchanging the kiss of peace is eminently suitable?

i. It is omitted in the recently restored rite because, apart from the additional features contained therein, the Mass remains substantially that of the Roman Missal. The above question could be

seeking the reason for its omission in the Roman Missal, or it could contain the suggestion that, amongst the rites restored, it would be fitting to depart from the directions of the Roman Missal and restore the *Pax* during the Masses on Holy Thursday and Easter Eve, as it is given throughout the year during all solemn Masses except Requiems. The latter suggestion has found much favour amongst liturgical writers commenting on the restored rite.[1]

ii. The reason for its omission in the Roman Missal for centuries was explained on mystical grounds by mediaeval writers, and this is still repeated by many modern scholars. "Cur vero non datur pax in Feria Quinta Coena Domini audiendum est ab Alcuino in libro qui *De Coena Domini* inscribitur: 'A pacis osculo sive salutatione (hac die) abstinetur, non quod malum sit, ubi ex caritate profertur, sed ad evitandam salutationem pestiferam, qualem Judas proditor exercuit. . . .' In Sabbato Sancto autem non danda est pax quia adhuc perseverat memoria osculi Judae proditoris, sive quia Christus Dominus nondum pacem dederat Discipulis suis."[2]

iii. Mystical reasons, though always to be encouraged as assisting devotion, are not always the most convincing explanation of ancient ecclesiastical practices in the rites of the Mass. The true historical reason appears to be that during this rite the *Pax* had already been given in the early Roman Church: to reconciled penitents on Holy Thursday and to neophytes on Easter Eve; there was no reason to repeat it and every reason to omit it during the Mass.[3]

iv. Some think that if the *Pax* is restored on these two days it would be more in accordance with the practice of the primitive Church in Rome to place it somewhere before the Canon rather than at the end. The letter of Innocent I (401–417) to Decentius, an important liturgical document, appears to be the first definite mention of its position at the end, a practice which is at variance with most other ancient rites.[4]

92. ORDINATION ANNIVERSARY—MASS FORMULA

What is the most suitable votive Mass formula to use, if permitted by the rubrics, at the Mass celebrated by a priest on the anniversary of ordination? Are there any special concessions for the silver and golden jubilee?

Addit. et Variat., VI, 3. In anniversario propriae ordinationis sacerdotalis, a die fixa mensis computando, si Vigilia Nativitatis

[1] *Ephemerides Liturgicae*, 1952, p. 136.
[2] Op. cit., 1925, p. 84; Crogaert, *Les Rites . . . de la Messe*, III, p. 299.
[3] Hebert, *Le Missel Romain*, p. 281.
[4] Cf. *Theological Studies*, 1948, p. 4, for a nice edition of this document, with a translation and commentary.

vel Pentecostes, Dominica Palmarum aut Duplex I classis non occurrerit, secus autem in proximiori sequenti die, quae a Duplici item I classis sit libera, cuivis Sacerdoti licet, extra Missas defunctorum, et post Orationes a Rubricis praescriptas, addere Orationem pro seipso Sacerdote, ut inter Orationes diversas.

This is the only modification now permitted on the anniversary of a priest's ordination, and nothing further is conceded even for a diamond jubilee. In some ancient sacramentaries a formula is found containing a proper preface, *Hanc igitur* and prayers.[1] These all disappeared with the reform of the Missal by St Pius V. Permission to use the formula of a votive Mass of the Blessed Trinity or of the Holy Eucharist was seriously considered before the 1920 edition of the Missal rubrics, which incorporated the reforms of *Divino Afflatu*, but the concessions actually made in *Addit. & Variat.*, II, 5 & 6, are for bishops only. On the anniversary of a priest's ordination (not that of his first Mass) n. 20 in *Orationes Diversae* may be added in accordance with the rubric above. There is no permission for a votive Mass unless the day happens to be one on which votive Masses are permitted, as in the general rubrics of the Missal, IV, 3. The votive Mass then chosen may very suitably be that of the Eternal Priesthood of our Lord, but there is no rule about the choice to be made, nor is there an obligation but merely a permission to add the prayer n. 20. If used its place will be after the special and common commemorations but before an *oratio imperata*.[2]

93. SUNG NUPTIAL MASS

Is there any reason against having the nuptial Mass sung, whether in the form of a solemn Mass, or of a "Missa Cantata" *without sacred ministers?*

Apart from the discouraging reasons which apply to any sung Mass, such as lack of servers or of an adequate choir, there is nothing against having a nuptial Mass sung, and there may be reasons in some cases, as when the choir master is getting married, which would make a sung Mass eminently suitable. Owing to the fact that we are accustomed to low Mass and the comparative rarity of a sung Mass, and also to the fact that even a low Mass is by no means common at weddings, the impression may be abroad that there is something anomalous about a sung nuptial Mass.

[1] *The Clergy Review*, 1950, XXXIV, p. 38.
[2] *Ephemerides Liturgicae*, 1938, p. 162.—It is subject to the new rule of *Cum Nostra*, tit. III, n. 3, and therefore may not be added if the prayers which must precede it already number three (cf. O'Connell ,*Simplifying the Rubrics*, p. 41)—[Editor].

Liturgically speaking the reverse is the truth, since the sung Mass is still the ideal form of celebrating the Sacred Mysteries.

The writers, therefore, do not fail to observe that the nuptial Mass may be sung if desired.[1] If any confirmation of their teaching is wanted, it may be seen indirectly in *S.R.C.*, 18 August, 1913,[2] which agrees that the Leonine prayers may be omitted at this Mass and at others attended by some solemnity on the principle "haberi possit ut solemnis". It is confirmed also by the inclusion of the chant for a nuptial Mass in the Vatican Gradual, and in the *Liber Usualis*.

The above is consistent with an episcopal prohibition of a sung nuptial Mass in a given case, either as a penalty in the case of a marriage already invalidly attempted,[3] or when there are some special reasons against a sung Mass of any kind or on any occasion.

94. NUPTIAL MASS AND BLESSING

It is the custom in most of our churches for the bride and bridegroom to be inside the sanctuary all through the nuptial Mass. Is it lawful and how did it come about?

Some writers on the subject, in order to preserve as far as possible their preference for excluding the couple from the sanctuary, direct them to come within the sanctuary only for the blessing.[4] Our own view is that they may remain within the sanctuary throughout the Mass. This is, as our correspondent states, customary in most churches, a custom which in this country is traced back to at least four centuries. A ritual printed at Douay in 1610 reads: "Finitis orationibus quae dicebantur super eos prostratos ad gradum altaris, et introductis illis in presbyterium (scilicet inter chorum et altare) ex parte Ecclesiae australi, et statuta muliere a dextris viri (videlicet inter ipsum et altare) incipiatur Missa."[5] It is a reasonable custom, assuming the nuptial blessing to be an exception to the rule excluding laity from the sanctuary, since otherwise the parties will have to make some rather embarrassing journeys from their places in the nave to the foot of the altar. Those commentators who prefer the couple to be outside the sanctuary even for the nuptial blessing allow an exception if a bishop is the celebrant. The best modern writer on the Pontifical is Nabuco, who, correctly in our view, recommends the parties to be on the sanctuary throughout the Mass:

[1] *Ephemerides Liturgicae*, 1941, p. 137; O'Connell, *The Celebration of Mass*, I, p. 91.
[2] *Decreta Authentica*, n. 4305.
[3] *The Clergy Review*, 1947, XXVII, p. 119.
[4] Cf. Dunne, *The Ritual Explained*, p. 133.
[5] *The Clergy Review*, 1939, XVI, p. 129.

"Sedes pro sponsis locentur quatuor vel quinque passus ab altari ne impediant episcopum et ministros. . . . Stricto iure sponsi (et non sponsa sola) ad altare accedunt pro matrimonio et pro duabus benedictionibus intra missam, reliquo tempore ad loca sua recedunt extra presbyterium. Usus tamen receptus est prout exposuimus, nam si genuflexoria locentur extra chorum, sponsi tenentur ter ad altare accedere, praeterea extra presbyterium nequeunt Eucharistiam convenienter recipere."[1]

Our view is supported by an interesting private reply, *S.R.C.*, 20 November, 1940,[2] which denies that parents and relatives may also be within the sanctuary for the nuptial Mass, and therefore by implication seems to assert that the parties may be there. The reply is not dealing exclusively with a pontifical Mass.

Granted the variety of views on the whole subject, it is for the parish priest, unless there is a local diocesan ruling, to make what rules he thinks proper about the position of the bridal couple for the blessing and Mass.

95. NUPTIAL BLESSING AND HOLY COMMUNION

Tanquerey, "De Matrimonio", §926, *teaches that it is the mind of the rubric that persons receiving the nuptial blessing should receive at the Communion two hosts consecrated at that Mass, thereby communicating "per modum sacrificii". Is this a common practice? If so what is the meaning of "per modum sacrificii"?*

Missale Romanum, "Missa votiva pro Sponso et Sponsa": Tunc sacerdos . . . postquam sumpserit sanguinem, communicet Sponsos.

S.R.C., 21 March, 1874, n. 3329: . . . curent tamen parochi et animarum rectores adhortari fideles nupturos, ut in Missa, in qua benedictiones nuptiales impertiuntur, communicent.

Pius XII, *Mediator Dei*, *C.T.S.*, n. 126: Pope Benedict XIV, in order that it might be more evident that by receiving Holy Communion the faithful take part in the sacrifice, praised the devotion that prompts the desire of some, not only to communicate when present at Mass, but preferably to receive particles consecrated at the same Mass—although, as he himself explains, the sacrifice is shared by the faithful even when they communicate with hosts previously consecrated.

Tanquerey, *De Matrimonio*, §926: Juxta rubricas Missalis, sacerdos "postquam sumpserit Sanguinem communicet sponsos"; proinde

[1] *Pontificalis Romani Expositio*, III, pp. 345 & 360, n. 188.
[2] Bouscaren, *Digest Supplement*, 1948, p. 167.

haec communio fieri decet infra Missam, et juxta mentem rubricae, per modum sacrificii, quatenus videlicer duae parvae hostiae in hac Missa pro sponso et sponsa consecrari debent. Quod quidem omnino decet, sed non stricte obligat. . . .

i. The nuptial blessing is one of the few remaining examples of the *Benedictiones Episcopales* which used to be given after the *Pater Noster* of the Mass.[1] It is quite clear that in days when it was customary at all Masses for the faithful to bring offerings of bread and wine, part of the offering was consecrated at the Mass, and the faithful communicated from the same. On special occasions the offerers were mentioned at the *Hanc Igitur*, the formula at Easter and Pentecost being the sole remaining examples in our Missal. Thus the "Velatio Nuptialis" of the *Leonine Sacramentary*, regarding the offering as specifically the bride's, reads: "Hanc igitur oblationem famulae tuae illius quam tibi offerimus pro famula tua illa quaesumus Domine placatus aspicias pro qua maiestatem tuam supplices exoramus ut sicut eam ad aetatem nuptiis congruentem pervenire tribuisti sic consortio maritali tuo munere copulatam desiderata subole gaudere perficias atque ad optatam seriem cum suo coniuge provehas benignus annorum."[2]

ii. An examination of all the available writers on the subject has not revealed any text resembling that of Tanquerey. It may be a local custom which is rightly preserved, as canon 1100 directs, and there are many rites both on the continent and in this country subject to the same rule. In some places, for example, the Host is always divided and shared by the newly married; in other places the two parties kiss the altar before the prayer of the blessing.[3] It is on this principle of customary law, if not also indeed the letter of the rubric, that the newly married enter the sanctuary and kneel on the altar steps for the blessing,[4] and stand when exchanging their marriage consent.[5] They have done both these things for centuries in this country, and should continue to do so until the appropriate authority directs the custom to be changed. Similarly the custom of consecrating hosts specially for the newly wed should continue.

Even if there is no custom, it is certain from the words of the Holy Father, quoting Benedict XIV in the encyclical *Mediator Dei*, that the newly wed who expressly request to be communicated from Hosts consecrated at the nuptial Mass are well within their right. The quotation goes on to say that a refusal is blameworthy.

[1] *Dict. Archéol.*, II, 716; *Dict. Droit. Canon.*, II, 379; *Collat. Brugen.*, 1914, p. 402.
[2] Feltoe, p. 141.
[3] De Smet, *De Matrimonio*, §198.
[4] *The Clergy Review*, 1945, XXV, p. 176.
[5] Op. cit., 1942, XXII, p. 464.

But we cannot agree with the implication in Tanquerey's statement that the newly wed who receive Holy Communion from a ciborium consecrated in a previous Mass are, as it were, not fully and properly sharing in the sacrifice. This view is expressly rejected in the Encyclical, and it applies to all Masses. The request to communicate from Hosts consecrated in the Mass at which the faithful are assisting is a pious and just request: it is an external observance which portrays more vividly their share in the sacrifice which is being offered, and there are occasions, such as the nuptial Mass, when the practice will cause no inconvenience.

96. "ALLELUIA" IN VOTIVE MASSES

Certain Masses outside Paschal time have "Alleluia" *concluding Introit, Offertory and Communion, presumably because of the prominence of the feast, as on Corpus Christi. Should these* "Alleluias" *be omitted when the Mass is Votive outside Paschal time?* S.R.C., *n.* 3764, *X, seems to direct their retention.*

The reply given by *S.R.C.* in n. 3764, X, deciding this point for the Mass *Miserebitur* (now changed) of the Sacred Heart, was corrected when the Index came to be printed: *affirmative* must be read for *negative*. The Alleluia at the Introit, Offertory and Communion should be omitted at Votive Masses outside Paschal time. More recent Missals indicate this ruling. Thus the Votive Mass of the Blessed Sacrament permitted on Feria V indicates that *Alleluia* is said at these places only during Paschal time. The Mass *Cogitationes* of the Sacred Heart gives for use during Paschal time a special text in these places, omitting *Alleluia*. Moreover the general principle is reaffirmed for all Votive Masses in a reply given to the Friars Minor, 9 May, 1941: "Utrum norma a S. Rituum Congregationi in Decreto n. 3764 Linciensi sub die 6 Februarii . . . ad omnes Missas votivas, de respectivis Missis festivis desumptas, applicanda sit, ita ut *Alleluia* ratione festivitatis in istis Missis ad Introitum vel Offertorium vel Communionem additum, in Missis votivis extra tempus Paschale omitti debet. Resp. . . . *affirmative*."[1] The rule is limited to the three texts mentioned, and does not apply to the Gradual *Alleluia* outside Paschal time.

97. GENUFLEXION AT "ADIUVA NOS DEUS"

When celebrating Low Mass on certain days of Lent, should the celebrant remain in genuflexion whilst reciting the whole versicle "Adiuva nos Deus'. *etc.?*

[1] *Ephemerides Liturgicae*, 1941 (Ius et Praxis), p. 16.

Rubricae Generales, XVII, 1: In Missa privata Sacerdos genuflectit quando . . . in Quadragesima dicit in Tractu V. *Adiuva nos Deus*, etc. 3: In Missa sollemni . . . Ad versum vero *Adiuva nos Deus*, etc. . . . genuflectit usque ad finem.

Feria IV Cinerum: . . . quia pauperes facti sumus nimis. (Hic genuflectitur) V. Adiuva nos Deus. . . .

The correct practice, according to the obvious meaning of the rubrics, is to remain in genuflexion whilst the whole versicle is recited, and in a solemn Mass this is done whilst the versicle is being chanted. In Low Mass the observance of this rule would mean that the celebrant must know by heart these few words; if he has not memorised them, he must rise before the text is finished in order to read the words from the Missal, as De Herdt recommends: ". . . in missa privata ad verba . . . *Adiuva nos* . . . genuflectere tantum in initio, et statim surgere, ut lectionem commode prosequi possit."[1] De Herdt is the only commentator we have found who adverts to the difficulty. Some assume that the genuflexion will continue during the recital of the text,[2] whilst making no suggestion as to the procedure if the text is not known by heart. Rubricians generally, however, after describing the simple genuflexion in terms of touching the floor and rising immediately, include the *Adiuva nos* amongst the occasions on which this genuflexion should be made.[3] This common teaching, which is also the usual practice, should be followed, even though it is, perhaps, not according to the strict letter of the rubric.

98. METHOD OF SINGING THE PASSION

Is it in order for laymen or the congregation to sing the portions assigned to "Synagoga"?

S.R.C., 7 July, 1899, n. 4044.2: An permitti possit ut in cantu Passionis Diaconus, qui repraesentat Synagogam, eas tantum sententias cantet quae ab uno proferuntur ut a Petro, Caipha, Pilato, etc.; sententiae vero turbae cantentur a schola, ordinarie ex laicis conflata? *Resp.* Permitti posse.

It is with some surprise that we learn that a method of singing the Passion which is extremely common is actually a practice which is merely permitted. A reply dated 1677, n. 1589, described this assumption by lay persons of an office proper to deacons as a scandalous abuse, and one must suppose that the custom of a choir "turba" began with a choir of deacons or at least of clerics, for the music of these responses written by Vitoria and other polyphonic composers existed at least two centuries before the permission given in n. 4044.

The method of its singing has naturally developed into its present form after many modifications. Originally, like the *Exultet*, it was sung by one deacon, but three had become customary by the fifteenth century, and the signs "✝", "C" and "S" were used, though not universally, to denote the portions of each.[1] *Caeremoniale Episcoporum*, II, xxi, 15, still supposes that the three deacons are using one book and gives directions for the assistance of acolytes in passing the book from one to the other. At Rouen in the eighteenth century the ancient custom continued of one deacon singing the passion in the tone of a gospel. "S" which we are accustomed to take as "Synagoga", was, perhaps, originally an abbreviation for "Sursum". Certainly by 1706 the custom of the choir in collegiate churches singing the plural passages of "S" was accepted, for a reply, 17 June of that year, n. 2169, very sternly forbids a choir of nuns to do the same.[2]

If a congregation could be taught how to sing the portions representing "turba", this could be brought within the direction of n. 4044, and indeed would be an excellent way of encouraging their active participation in the liturgical office.

[1] *Sacrae Liturgiae Praxis*, I, §116.
[2] *Collationes Brugenses*, 1939, p. 51; *l'Ami du Clergé*, 1922, p. 384.
[3] Crogaert, *Caeremoniale*, II, p. 5; O'Connell, *The Celebration of Mass*, II, p. 25.

99. THE LITURGICAL ACTION OF GOOD FRIDAY

Seeing that the Mass is a memorial of Christ's death, why is Good Friday the only day when it is not celebrated?

Canon 820: Missae sacrificium omnibus diebus celebrari potest, exceptis iis qui proprio sacerdotis ritu excluduntur.

Summa Theol., III, 82, 2, ad 2: Ad secundum dicendum quod, veniente veritate, cessat figura. Hoc autem sacramentum est figura quaedam et exemplum passionis Dominicae, sicut dictum est. Et ideo in die quo ipsa passio Domini recolitur prout realiter gesta est, non celebratur consecratio huius sacramenti. Ne tamen Ecclesia eo etiam die sit sine fructu passionis per hoc sacramentum nobis exhibito, corpus Christi consecratum in die praecedenti reservatur sumendum in illa die.

Innocentius I (401–417), *ad Decentium*; *P.L.*, XX, 551, ad 7: Nam utique constat Apostolos biduo isto et in moerore fuisse, et propter

[1] *The Clergy Review*, 1947, XXVII, p. 353.
[2] *Q.L.P.*, 1923, pp. 1–15, gives a good historical account of the subject.

metum Judaeorum se occuluisse. Quod utique non dubium est, in tantum eos jejunasse biduo memorato, ut traditio Ecclesiae habeat, isto biduo sacramenta penitus non celebrari.

i. As in many other rites the symbolic reason is subsequent to the historical one. It is clear that in early centuries the celebration of Mass, being a joyful occasion, was considered to be incompatible with the penitential practice of the ecclesiastical fast, so that even in St Thomas's day Mass on fast days was "hora nona",[1] that is to say at 3 p.m., after which the chief meal could be taken. In more primitive times, when the chief meal was not permitted before the evening, Mass was not celebrated till the evening.[2] Long before the Lenten fast of forty days became established it was the rule, dating probably from Apostolic times, to fast rigidly, that is to say to take no nourishment whatever, on the Friday and Saturday of Holy Week, the *biduum* to which Pope Innocent I refers.[3] The Pope is arguing for the fittingness of every Friday and Saturday being days of fasting (in the mitigated sense of one meal) since every week is, so to speak, a little Holy Week. The primitive practice of rigidly fasting on Friday and Saturday of Holy Week accounts for the liturgical rule of not celebrating on those days, a rule which continued to be observed even though the fast became mitigated.

ii. What was called the "Mass" of the Presanctified is, in its ultimate analysis, no more than a very solemn reception of Holy Communion. In the East these "Masses" were the rule on practically all fasting days, whereas in the West that of Good Friday is the only known example even in primitive times.[4] The custom was borrowed from the East and became practically universal in the West. There is abundant proof that all the faithful communicated at this "Mass" in Rome up to the end of the eighth century, and in parts of France, as at Rouen, up to the end of the seventeenth century.[5] The Missal of Pius V, in the rubric of Holy Thursday, permitted Holy Communion on Good Friday only to the sick, and notwithstanding the opinion of many older writers who permitted all the faithful to communicate, this rule became firmly established.

iii. In popular explanations it is possible to give the symbolic reasons, including St Thomas's explanation which is universally accepted, whilst preserving the historical ones. The Mass is not exclusively a memorial of Christ's death: "memores . . . necnon et

[1] III, 82, 2, ad 3. [2] Cf. *The Clergy Review*, 1947, XXVII, p. 409.
[3] This letter *ad Decentium*, of importance for several liturgical points, is conveniently reprinted with a translation and commentary by Fr Ellard, S.J., in *Theological Studies*, 1948, pp. 1–19.
[4] *Dict. Archéol.*, XI, 770, and a much fuller account in *Dict. Théol.*, XIII, 78–110.
[5] *L'Ami du Clergé*, 1914–19, p. 310.

ab inferis resurrectionis, sed et in coelos gloriosae ascensionis." It is essentially a joyful rite and therefore omitted on the day when the Church, by fasting and other penitential signs, is mourning Christ's death; this omission, like the veiling of images during Passiontide, serves to bring into greater prominence the joy of Easter. It is also arguable that Mass could not validly be celebrated during the period when the body of Christ was in the tomb.

100. HOLY SATURDAY—BLESSING OF FIRE

The symbolism of these rites is sufficiently evident from the prayers accompanying them. But where may one find a full treatment of the origins of this ceremony?

The fullest modern discussion of which we are aware is by Schuster in his *Liber Sacramentorum*, Book IV, ch. i, "Eucharistia Lucernaris"; also Book III, c. ii, "The Paschal Triduum". Fr Thurston's *Lent and Holy Week* (1904), the substance of which may be read in various articles of *The Catholic Encyclopedia*, is full of interesting facts.

The *Lucernarium* was an evening ceremony which accompanied the lighting of lamps, taken over by the early Church from the Mosaic law, the *sacrificium vespertinum* mentioned in the psalms. It disappeared from Roman liturgical use in the third century but returned four centuries later when Gallican customs of eastern origin, particularly the Paschal candle, became gradually incorporated in the Roman liturgy. As with all these early rites and observances, the history of their rise and development is somewhat complicated. In Schuster's view, the ceremony which we now have on Holy Saturday of blessing the fire, incense and candle, is ultimately traceable to this ancient *Lucernarium*, which took on a special solemnity at the Paschal vigil. Hence its assignation to the deacon, whose duty it was to perform the rites of the *Lucernarium*.

IX. HOLY COMMUNION

101. COMMUNION BEFORE CONVENTUAL MASS

If the conventual Mass is a low Mass, may the celebrant distribute Holy Communion immediately beforehand, as he is permitted to do at any low Mass?

Canon 846, §1: Quilibet sacerdos intra Missam et, si privatim celebret, etiam proxime ante et statim post, sacram communionem ministrare potest. . . .

S.R.C., 19 January, 1906, n. 4177.3: An sacerdos sacris vestibus Sacrificii indutus, possit administrare Sacram Communionem, data rationabili causa, ante vel post Missam solemnem aut cantatam aut etiam conventualem, sicut permittitur ante vel post Missam privatam? *Resp.* Negative.

The word "private" in the canon, though capable of many meanings, is taken by the Sacred Congregation to mean a Mass which is neither sung nor conventual, and the latter can only mean a conventual low Mass in the context of the reply. The reason for applying the rule to the conventual Mass may be the fact that it is immediately preceded and followed by the recitation of divine office, which it is unseemly to interrupt by a distinct rite of distributing Holy Communion; or the reason may be that the conventual Mass is, from canon 413, §2, normally a sung Mass and retains the rules proper thereto even when it is not sung.

102. VIATICUM TO THE UNCONSCIOUS

Is it lawful, and if so is it obligatory on the priest, to administer the Holy Eucharist to a dying person who is unconscious?

Canon 854, §2: In periculo mortis, ut sanctissima Eucharistia pueris ministrari possit ac debeat, satis est ut sciant Corpus Christi a communi cibo discernere illudque reverenter adorare.

Rituale Romanum, V, i, 10. Amentibus praeterea, seu phreneticis communicare non licet; licebit tamen, si quando habeant lucida intervalla, et devotionem ostendant, dum in eo statu manent, si nullum indignitatis periculum adsit.

The unconscious, other things being equal, may receive Holy Communion validly, and our question is limited to whether they

may do so lawfully, namely having regard to the positive law of the Church at the present time. Unfortunately the law does not anywhere expressly decide the point, but the commentators try to reach a decision on analogy with the law of the Code about infants, and also by applying to the unconscious the rubric of the Ritual about persons who have lost the use of reason. We assume, therefore, that before becoming unconscious the person could lawfully receive Viaticum, and it is understood that, though unconscious, the Sacred Species can be consumed without danger of irreverence.

i. The view which has most support from analogous laws is that Viaticum may not lawfully be given to a person who is completely unconscious, and this view is accepted in practice by most priests, we believe, in this country; though their outlook is very likely based on the fear of irreverence, a circumstance which is not strictly relevant, since the danger of vomiting, for example, would forbid Holy Communion to both conscious and unconscious persons. The rubric of the Ritual, without distinguishing between Holy Communion and Viaticum, requires a lucid interval, and canon 854 the ability to distinguish between the Holy Eucharist and ordinary food; in a person completely unconscious both qualifications are clearly lacking.

ii. It is maintained, however, by many that the rubric of the Ritual does not necessarily apply to Holy Communion as Viaticum, and that the criterion in canon 854 should be restricted to infants who have not made their First Communion; for the case of an adult, who before losing consciousness could have expressly desired Holy Communion, is not the same as that of a child who has never formed this desire at all. The condition of the adult is identical with that discussed by St Thomas,[1] ". . . tunc, si prius, quando erant compotes suae mentis, apparuit in eis devotio huius sacramenti, debet eis in articulo mortis hoc sacramentum exhiberi: nisi forte timeatur periculum vomitus." Relying chiefly on this Thomistic text, the practice of giving Viaticum to the unconscious can be justified, notwithstanding the words of the rubric.[2]

iii. If it is lawful to administer Viaticum to the unconscious, it would seem to follow that the priest is bound to do so, at least on a principle of charity, lest the dying should be deprived of the grace of this sacrament, and some of the writers, such as Iorio, expressly teach that there is an obligation. The situation is similar to the case of administering certain sacraments to those who are apparently

[1] *Summa Theol.*, III, 80, 9.
[2] Gury-Ferreres, *Casus*, II, §319; Cappello, *De Sacramentis*, I, §402; Iorio, *Theol. Moralis*, III, §149.4; *Ecclesiastical Review*, July 1948, p. 24.

dead, about which the rubrics equally have nothing to say,[1] and we incline to the view that in both situations the administration of the appropriate sacraments is obligatory.

Since, however, the law on the whole subject is so uncertain, priests may decide that there is no obligation, and probably the summing up of Gasparri is the best solution to adopt: "Praxis cappellanorum in hospitalibus eadem ubique non est: nonnulli auctorum sententiam sequuntur et in illis circumstantiis viaticum ministrant; plerique verbis *Ritualis* stricte adhaerent et nunquam viaticum praebent; tacente auctoriate ecclesiastica, nos nec illos nec istos damnare audemus."[2]

103. RECEPTION OF VIATICUM BY THE INSANE

Is a completely insane person to be given Viaticum, and if there is no strict obligation on the priest in such cases may he nevertheless give Viaticum, always supposing that there is no reason to fear irreverence?

Canon 864, §1: In periculo mortis, quavis ex causa procedat, fideles sacrae communionis recipiendae praecepto tenentur.

Canon 865: Sanctum Viaticum infirmis ne nimium differatur; et qui animarum curam gerunt, sedulo advigilent ut eo infirmi sui compotes reficiantur.

Rit. Rom., V, i, 10: Amentibus praeterea seu phreneticis communicare non licet; licebit tamen, si quando habeant lucida intervalla, et devotionem ostendant, dum in eo statu manent, si nullum indignitatis periculum adsit.

Summa Theol., III, 80, 9: . . . aliqui dicuntur non habere usum rationis dupliciter. Uno modo quia habent debilem usum rationis: sicut dicitur non videns quia male videt. Et quia tales possunt aliquam devotionem concipere huius sacramenti, non est eis hoc sacramentum negandum. Alio modo dicuntur aliqui non habere totaliter usum rationis. Aut igitur nunquam habuerunt usum rationis, sed sic a nativitate permanserunt: et sic talibus non est hoc sacramentum exhibendum, quia in eis nullo modo praecessit huius sacramenti devotio. Aut non semper caruerunt usu rationis. Et tunc, si prius, quando erant suae mentis compotes, apparuit in eis huius sacramenti devotio, debet eis in articulo mortis hoc sacramentum exhiberi, nisi forte timeatur periculum vomitus vel exspuitionis.

[1] *The Clergy Review*, 1932, III, p. 228; 1941, XXI, p. 114.
[2] *De Eucharistia*, II, §1124.

Catechismus Romanus, De Euch., n. 57: . . . si antequam in insaniam inciderint, piam et religiosam animi voluntatem prae se tulerunt, licebit eis in fine vitae ex Concilii Cathaginensis (IV, 76) decreto Eucharistiam administrare; modo . . . periculum nullum timendum sit.

i. We eliminate, firstly, some points about which there is no particular problem. If danger of irreverence is feared Viaticum must be refused, and the decision is with the priest after consultation with the sick person's attendants. Some disallow, in the case of an insane person, an experiment with an unconsecrated host,[1] since the recipient will presumably not know that it is an experiment and there is danger of idolatry; but the common teaching, following St Alphonsus, rightly disregards this danger, and recommends the experiment.[2] If the sacred Host is rejected, readers are referred to the discussion in Question 116 concerning the best way of disposal. When the person is not wholly insane but is capable of reverently communicating, his position is that of children referred to in canon 854, §2: "satis est ut sciant Corpus Christi a communi cibo discernere illudque reverenter adorare". The issue, moreover, to be clarified is not whether an insane person can receive Viaticum validly and fruitfully, assuming baptism and the absence of any obex: for it was a primitive custom to communicate baptised infants before they enjoyed the use of reason, and the insane from birth are in the same category. It is the positive law of the Church, as in the Ritual, which now forbids them Holy Communion.

ii. The only problem, therefore, relates to a dying person who at some previous time was capable of a rudimentary desire, even an implied desire, for the Holy Eucharist, but who is at the moment completely insane. Two questions emerge: is it lawful to communicate such and, if lawful, is it obligatory? That it is lawful to administer Viaticum (not Holy Communion outside danger of death) is the teaching of St Thomas and of the Roman Catechism, followed by the majority of modern writers. Our opinion also is that if a sacrament may be lawfully received by the dying, a priest is bound to administer it at least on a principle of charity, though for reasons to be next explained it is not a grave obligation, and we would not agree with Wouters that the practice of not giving Viaticum in such cases is a real abuse.[3]

iii. That it is unlawful to administer it in the circumstances

[1] *American Ecclesiastical Review*, July 1948, p. 24.
[2] E.g. Iorio, *Theol. Moralis*, III, §149.
[3] *Theol. Moralis*, II, §174.

outlined in (ii) rests chiefly on the rubric of the Ritual which draws no distinction between Viaticum and Holy Communion at other times, and prohibits it indiscriminately, a prohibition which was not, it appears, the law in St Thomas's day. Notwithstanding the opinion of most theologians Gasparri,[1] relying on the Ritual and the practice of many priests, and observing that the law is silent on the point, declines to blame those who refuse Viaticum. For the needs of a person dying insane are met by Extreme Unction, if by conditional absolution, except in cases where no priest is obtainable, when probability may be conceded to the view that Holy Communion will remit mortal sin in one who has merely attrition. If, however, a priest is unobtainable the question about his obligations cannot arise. Gasparri may be followed by those who prefer not to administer Viaticum to the insane, and as he himself notes, the hypothesis that the sacrament is going to be administered without danger of irreverence can rarely be verified.

104. VIATICUM "SUB SPECIE VINI"

Since there is a grave obligation to receive Viaticum, may a sick person unable to swallow anything except liquid receive Holy Communion "sub specie vini"?

Canon 852: Sanctissima Eucharistia sub sola specie panis praebeatur.

The law in the Western Church is of great antiquity and is due partly to heretical doctrines on the subject, partly to the difficulty of communicating the laity from the chalice, especially when it must be carried to the sick. In earlier times this was permissible, and a conciliar decree of Toledo in 675 is quoted directing the sick to receive Viaticum from the chalice if unable otherwise to communicate owing to the nature of the sickness. Cappello permits it only when the Holy Eucharist *sub specie panis* is unobtainable, which seems to be hardly a practical contingency,[2] but he does not discuss its permission in the circumstances of the above question, and we cannot find any author who allows it. Until better informed we think it is unlawful, firstly because Viaticum is not a sacrament necessary for salvation, and secondly because the sick person in this condition can surely receive a very small portion of a Host administered with water, as all the writers permit.

[1] *De Eucharistia*, §1, 124.

[2] *De Extrema Unctione*, §83.

105. DECISION ON FIRST COMMUNION

In a Catholic Institution is it the religious superior, the confessor or the chaplain who has to make a final decision on the fitness of children to make their First Communion?

Quam Singulari, 8 August, 1910; Denz. 2140: Obligatio praecepti confessionis et communionis, quae puerum gravat, in eos praecipue recidit, qui ipsius curam habere debent, hoc est in parentes, in confessarium, in institutores et in parochum. Ad patrem vero, aut ad illos qui vices eius gerunt, et ad confessarium, secundum Catechismum Romanum, pertinet admittere puerum ad primam communionem.

Canon 854, §4: De sufficienti puerorum dispositione ad primam communionem iudicium esto sacerdoti a confessionibus eorumque parentibus aut iis qui loco parentum sunt.

§5: Parocho autem est officium advigilandi, etiam per examen, si opportunum prudenter iudicaverit, ne pueri ad sacram Synaxim accedant ante adeptum usum rationis vel sine sufficienti dispositione; itemque curandi ut usum rationis assecuti et sufficienter dispositi quamprimum hoc divino cibo reficiantur.

Canon 860: Obligatio praecepti communionis sumendae, quae impuberes gravat, in eos quoque ac praecipue recidit, qui ipsorum curam habere debent, idest in parentes, tutores, confessarium, institutores et parochum.

i. There is usually no problem since parent, confessor, teacher and parish priest will be in agreement on the point, and only occasionally there may be a little disagreement. We may eliminate the parent from the question only on the assumption that the religious superior is the parent's delegate or in *loco parentis* in the circumstances of the question. Canon 854, §4, reverses the order of parent and confessor as set out in *Quam Singulari*, but we believe this to be of no special significance; in canon 860 the order is the same. We assume also that the chaplain is the parish priest's delegate, and that if there is more than one confessor the superior may rely on the judgement of any one of them at choice. The problem is then a particular application of the general principle that the sacraments are to be given to those who seek them reasonably, and in so far as the rights or obligations of persons other than the children are concerned, it is merely another aspect of the question discussed in *The Clergy Review*, 1943, XXIII, p. 224, relating to the attendance of children at Sunday Mass.

ii. The decision that a child is ready for first Communion rests primarily with the religious superior who, for the time being, is

taking the place of the parent. The parental right must, however, be maintained intact, in cases where the parent is in disagreement with the superior, subject always to the duty of the parish priest or of his delegate to correct parental abuses or neglect. Administering first Communion is not, however, amongst the reserved parochial rights enumerated in canon 462.[1]

iii. The confessor in this context means a priest with faculties for hearing confessions, in our opinion, and not exclusively the confessor who actually hears a child's confession. In the latter case, he will tell the penitent that he should make his first Communion and let him so inform the superior; the law obviously cannot contemplate a situation in which, after hearing a child's confession, the confessor discusses the findings with some third party.

According to some, parents are within their rights in deciding on a child's fitness, even without obtaining a confessor's judgement, but they will be acting imprudently, since a confessor is the best person to assist them in deciding on the age of discretion being reached and on the other necessary qualifications. The confessor functions in the internal forum only, and it is not for him to forbid the superior to present a child for Holy Communion; the most he may say is that, in his judgement, the law of the Church prohibits it,[2] and he may refer the matter to the parish priest.

iv. Finally, the chaplain as the parish priest's delegate functions in the external forum, for the souls committed to his care, by seeing that the law is observed, in rather the same way as the bishop functions for the whole diocese from canon 336, §2, and there is always the remedy of recourse to the parish priest or to the bishop on the part of superiors or others who are dissatisfied with his intervention. His duty is clearly set out in canon 854, §5, its exercise being qualified by the important words "opportunum" and "prudenter". Unless it is absolutely manifest that a child kneeling at the altar rails is lacking the right to Holy Communion, the chaplain, the parish priest or any priest is not only imprudent but gravely wrong in refusing this sacrament. Short of denying Holy Communion at the altar to a child presented by superiors he acts as described in canon 854, §5, and he must always do so when he has a well-founded suspicion that the superior or the confessor is not observing the law. He is within his right in holding a routine instruction or examination of all first communicants in his jurisdiction, and local law, as *Malines*, IV, n. 188, frequently strengthens his position by requiring parents, superiors and others, to inform him when children under their care are about to make their first Communion.

[1] *The Clergy Review*, 1932, III, p. 324. [2] *Collationes Brugenses*, 1946, p. 469.

106. ADMISSION TO COMMUNION OF RE-MARRIED DIVORCEE

"A" after a civil divorce from "B" contracts a civil union and cohabits with "C". If "A" repents and seriously promises to live in continence under the same roof with "C", may a confessor absolve him and allow him publicly to receive Holy Communion?

Canon 855, §1: Arcendi sunt ab Eucharistia publice indigni, quales sunt excommunicati, interdicti manifestoque infames, nisi de eorum poenitentia et emendatione constet et publico scandalo prius satisfecerint.

§2: Occultos vero peccatores, si occulte petant et eos non emendatos agnoverit, minister repellat; non autem si publice petant et sine scandalo ipsos praeterire nequeat.

Canon 2356: Bigami, idest qui, obstante coniugali vinculo, aliud matrimonium etsi tantum civile, ut aiunt, attentaverint, sunt ipso facto infames; et si, spreta Ordinarii monitione, in illicito contubernio persistant, pro diversa reatus gravitate excommunicentur vel personali interdicto plectantur.

i. The ordinary application of the law to "A" requires for his rehabilitation that he should return to "B", the partner of his valid marriage, unless there exists a canonical cause justifying separation; if this reconciliation can be effected, "A" could get the Ordinary's permission to obtain a civil divorce from "C". Usually reconciliation is impossible, and the ordinary application of the law then requires *per se* that, on repentance, "A" should cease living under the same roof with "C" before being allowed to receive the sacraments. But even this will often be morally impossible, owing to the necessity of rearing children, for example, or owing to the civil penalties consequent on desertion. Though the moral and the canon law cannot condone such serious delinquencies, a confessor is rightly anxious to make the path of repentance as smooth as possible, and a correct solution will turn on whether the situation is publicly known or not.

ii. It is public, according to canon 2197.1, "si iam divulgatum est aut talibus contigit seu versatur in adiunctis ut prudenter iudicari possit et debeat facile divulgatum iri". Dealing in *The Clergy Review*, 1941, XX, p. 181, with the condition of a divorced person, similarly repentant though not again "married", our opinion was that the Ordinary's intervention is required, and the same must be said *a fortiori* in the present case. His intervention will determine measures for removing the scandal which must inevitably occur if "A" receives the sacraments publicly whilst living with

"C". The measures suggested by the authors are, for example, a statement to be made by "A" outside the tribunal of penance before the parish priest or witnesses, to the effect that cohabitation will cease when morally possible; this undertaking could be published in the measure necessary for avoiding scandal.[1] A penitent who seriously promises to have this recourse to the parish priest or Ordinary could, in our opinion, immediately be absolved by a confessor, with safeguards against the occasion of sin, but he may not receive Holy Communion except secretly or, what amounts to the same thing, in a place where his condition is unknown.[2]

iii. The case is occult when it is publicly thought that "A" is married to "C", which could quite easily happen if his earlier matrimonial history took place in another part of the world. Natural justice then excuses him from publicly giving undertakings which will seriously defame his own character, and it suffices for the promise of ceasing cohabitation (when morally possible) to be made before the confessor, who will then deal with the penitent according to the rules formulated by the moral theologians for absolving a person living in a necessary proximate occasion of sin.[3]

iv. The penalty of *infamia iuris* which is incurred by bigamists, in virtue of canon 2356, and which largely consists in the list of deprivations set out in canon 2294, may have to continue notwithstanding repentance and admission to the sacraments. This is clear enough in regard to the "irregularity" which accompanies *infamia iuris*; but it applies equally to the lesser privations, such as the exclusion from sponsorship at baptisms. Thus Sole, *De Delictis et Poenis*, n. 279: "Infamia iuris . . . in genere est poena perpetua, quae imponitur absque temporis limitatione; proindeque adnexa delicto non cessat poenitentia aut emendatione."

If the case is *occult*, the penalty may be suspended by any confessor, as provided in canon 2290, §1. If it is *public*, the penalty cannot be suspended or remitted except by the Holy See, and the clause of canon 2232, §1, "quoties eam servare sine infamia nequit" obviously does not apply. The publicity of a bigamous marriage is notorious, in our opinion, and therefore the person cannot even claim the relief mentioned at the end of canon 2232, §1. If he desires to exercise rights, of which the punishment of *infamia iuris* deprives him,

[1] Cf. *Collationes Brugenses*, 1946, p. 486.
[2] These principles are applied occasionally by the Sacred Penitentiary, though with more stringent safeguards against scandal, to the circumstances of civil marriage contracted by a priest. *Lex Sacri Coelibatus*, 18 April, 1936. Cf. *The Clergy Review*, 1936, XII, p. 158, and 1937, XIII, p. 271.
[3] Cf. Ter Haar, *Casus Conscientiae*, I, §161.

he must petition the Holy See for a dispensation; but he may be admitted to the sacraments, even publicly, with the safeguards mentioned above.

107. MOTIVES OF THE EUCHARISTIC FAST

In explaining the new rules to the faithful the question has arisen about the reasons or motives of this law. Is the stress to be placed on the reverence due to the Body of Christ, or rather on the necessity of self-denial and mortification?

The teaching of St Thomas in *Summa Theologica*, III, 80, 8, is still the best traditional explanation of the motives of this law: "Primo quidem, sicut Augustinus dicit, in honorem huius sacramenti: ut scilicet in os hominis intret nondum aliquo cibo vel potu infectum. Secundo, propter significationem: ut scilicet detur intelligi quod Christus, qui est res huius sacramenti, et caritas eius, debet primo fundari in cordibus nostris; secundum illud Matth. vi: Primo quaerite regnum Dei. Tertio propter periculum vomitus et ebrietatis, quae quandoque contingunt ex hoc quod homines inordinate cibis utuntur: sicut et Apostolus dicit, 1 Cor. xi." To these reasons is often added a symbolic one, the hunger we should have for the Body of Christ.

The penitential motive, though not excluded from the above considerations, necessarily becomes less prominent if 12 midnight is the reckoning of the *terminus a quo* of the fast, and the first two reasons given by St Thomas have a meaning only if the matter is regarded from the point of view of a new day beginning, as noted in the answer to the fifth objection: the beginning of a new day can be reckoned, indeed, in various ways, but the Roman reckoning is from 12 midnight. With the introduction, first by indults and now by a general relaxation, of a *terminus a quo* reckoned not from midnight but from the time of receiving Holy Communion, the reverential motive still remains, except for invalids, in the prohibition of food and drink for a certain previous period of time. But the notion of priority in the day's nourishment has begun to disappear for the large number of people who benefit by the new rules, and the penitential motive is proportionately to be stressed, as we read in the words of the Holy Father towards the end of the Constitution *Christus Dominus*[1] which underline the penitential value of the Eucharistic fast and urge us all to compensate for the relaxations by other good works and penitential practices, being mindful that the Holy Eucharist is a memorial of our Lord's passion.

[1] Dr Bride in *L'Ami du Clergé*, 1953, p. 211, rightly notes: "c'est un aspect déjà un peu nouveau".

108. "QUOAD POTUM"

The occurrence of this phrase in the recent legislation about the Eucharistic fast seems to call for some definition of what constitutes liquid. Is there any official definition?

S.C. Sacram., 24 March 1952 (private); *The Jurist*, 1952, XII, p. 474: Nomine potus veniunt potiones ex cafaeo, thea, lacte, iure ceterisque substantiis etiam vim nutritivam habentibus, dummodo liquidi formam praeseferant.

The notion in this context of liquid is quite distinct from that which determines its nature in the ecclesiastical fast, on Ash Wednesday for example: in the latter case the adage "potus non frangit ieiunium" assumes that the liquid contains, practically speaking, no nourishing substance such as eggs, whereas in the former case the nourishing character of the liquid is irrelevant provided only that it is liquid and not solid food. The meaning of the phrase, as explained by the canonists, may best be studied in their commentary on canon 858, §2, where the common law permits liquid nourishment to invalids, a concession which is now amply covered and extended by the new law. Unlike the culinary distinction between solids, slops, and liquid, the canon law in this context recognises only two kinds of nourishment, and whatever doubts arise on the margins will be in determining whether "slops" are solid or liquid.[1] This is to be decided on the common estimation: it is liquid if one can pour it from the containing vessel, and if it is in the state of liquidity before being introduced into the mouth. Thus solids such as soup cubes may be reduced to liquid in preparing a drink, and there is no limit to the process of strengthening a liquid with various additions provided it can still be called liquid in its final stage. To milk may be added beaten eggs, Bovril, Ovaltine, and all the various preparations designed for invalids. The result may be an unattractive brew but it remains a liquid in the common estimation. What one must resist, however, is the temptation to enliven this mixture with even a little drop of brandy.

109. EUCHARISTIC FAST: OLD AGE AN INFIRMITY

The writers all seem to accept old age as the equivalent of bodily infirmity for the concession of a drink before communicating. Is there any agreement on the number of years which merit the description of old age in this context?

Some suggest with probability that, on analogy with the fasting law of canon 1254, §2, old age begins when one's sixtieth year is

[1] *Questions and Answers*, I, qu. 147.

reached, that is to say after one's fifty-ninth birthday.[1] Others suggest seventy on analogy with the Jubilee concession in 1950 which permitted persons of this age, on the ground of infirmity, to gain the indulgence without making a Roman pilgrimage.[2]

Pending an official clarification sixty may be taken as probably the age which is equivalent, presumptively at least, to infirmity, and confessors may grant the necessary permission to persons of this age who, though not suffering any other infirmity, assert that they find the fast difficult to observe.

110. EASTER OR ANNUAL COMMUNION

Inasmuch as the law of annual reception is graver, it seems, than that of making one's Communion at paschal tide; and inasmuch as a priest may extend the paschal time, could this time be anticipated? For example, there is a mission during January, when all the people receive Holy Communion. May the parish priest, fearing that many will not go again during the paschal time, declare that the January Communion fulfils the Easter precept?

Canon 859, §1: Omnis utriusque sexus fidelis, postquam ad annos discretionis, idest ad rationis usum, pervenerit, debet semel in anno, saltem in Paschate, Eucharistiae sacramentum recipere, nisi forte de consilio proprii sacerdotis, ob aliquam rationabilem causam, ad tempus ab eius perceptione duxerit abstinendum.

i. It is true that the law of annual Communion is graver than that of communicating at paschal tide, for the latter is a purely ecclesiastical law, whereas the obligation of an annual Communion is an ecclesiastical declaration of what is actually a divine law from John vi, 54 seq. The computation of paschal tide is clear in the common law of canon 859, §2, and local indults often anticipate or extend the time beyond the extensions permitted in the canon. But the computation of the year is not certain, various estimates about its beginning and ending being possible: we prefer the view which fixes the beginning of the year for this purpose from the day on which the obligation of the Easter precept begins,[3] and if this view is accepted, the answer we suggest to the above question is also more easily formulated. The solution of all questions arising from this canon requires us to bear in mind that there is a double precept contained in it, and though the one may be graver than the other, they both certainly bind *sub gravi*.

[1] Ford, *The New Eucharistic Legislation*, p. 75.
[2] Reed, S.J., in *Theological Studies*, 1953, p. 220.
[3] *The Clergy Review*, 1940, XIX, p. 74; Coronata, *De Sacramentis*, I, §322.

ii. "Proprius sacerdos" in this context means not only the parish priest but probably the confessor as well,[1] and the parish priest as such enjoys no special faculties in the matter. It is certain that the priest may sanction an extension of the time for Easter Communion for any reasonable cause, that is to say the law does not require a *grave* cause. The writers suggest as adequate reasons: the case of a sick person when it is not convenient to receive Communion at home; the circumstances of a person travelling abroad who, being unable to speak a foreign language, prefers to wait until returning to his own country; or when persons are not yet fully instructed, as might often happen with the first Communion of children. In all these and similar instances the canon does not speak of the priest dispensing from the observance of law, but of his counselling a recipient to postpone Easter Communion.[2]

There is no warrant, either in the canon or in the opinion of commentators, for counselling the anticipation of paschal time. What might easily happen is that some persons attending the January mission have not observed the grave law of Easter Communion for the previous year, and have not yet kept the still graver law of annual Communion for the current year; by communicating at the mission they fulfil the annual obligation, but they must communicate again when the paschal time commences in order to fulfil the paschal tide obligation.

iii. It is recognised, however, that it might often be for the good of souls to permit the precept of annual Communion to cover that of Easter as well, no matter at what time of the year Holy Communion is received, and indults may be obtained for this purpose from the Congregation of the Council. Thus the French Capucins, with the consent of the local Ordinary, may declare that the reception of Holy Communion during a mission given by these fathers fulfils the Easter precept for that year: "(Conceditur ut) Christifideles qui sacris missionibus atque exercitiis spiritualibus interfuerunt, quae a concionatoribus praefatae Provinciae (Savoy) in variis Galliae paroeciis constituuntur, per sacramenta Poenitentiae et Eucharistiae durante cursu missionis aut exercitiorum suscepta, quocunque anni tempore praecepto annuae confessionis et Communionis paschalis satisfacere valeant."[3] A similar faculty is enjoyed, we believe, by the Society of Jesus, and no doubt by other religious Institutes engaged in giving missions and retreats, its lawful use being always conditioned by the local Ordinary's consent.

[1] *The Clergy Review*, 1939, XVI, p. 547.
[2] *Collationes Brugenses*, 1937, pp. 164 and 492.
[3] *Ephemerides Theologicae Lovanienses*, 1940, p. 128, quoting *Il Monitore*.

III. FREQUENT COMMUNION—CONFESSOR

Is it the law that for daily Communion a confessor's counsel is necessary?

Canon 863: Excitentur fideles ut frequenter, etiam quotidie, pane Eucharistico reficiantur ad normas in decretis Apostolicae Sedis traditas. . . .

S.C. Sacram., 8 December, 1938, II: "Itaque ad abusum omnem, quatenus fieri potest, praecavendum, huic Sacrae Congregationi visum est necessarium investigare opportuna remedia. . . . Concionatores atque spiritus moderatores, hortantes publice vel privatim fideles, adolescentulos praesertim, ad frequentem et quotidianam Communionem . . . aperte doceant . . . eandem fieri non posse nisi necessariis concurrentibus conditionibus. . . . Ideo requiritur praeprimis status gratiae . . . Requiritur quoque recta seu pia intentio . . . Praeterea *ut frequens et quotidiana Communio maiore prudentia fiat uberioreque merito augeatur, oportet ut confessarii consilium intercedat.*"

The concluding italicised words of the above extract repeat the admonition of *Sacra Tridentina Synodus*, 20 December, 1905, n. 5. The document, dated 8 December, 1938, was entitled *Instructio Reservata* and was not printed in the *A.A.S.* A summary was given in *The Clergy Review*, 1939, XVII, p. 111, and extracts in 1940, XVIII, p. 166.

The Instruction, repeating the original conditions laid down by Pius X, quite clearly requires a confessor's counsel. In practically every case the confessor will counsel frequent Communion, and in Pius X's decree he is warned against dissuading from frequent Communion anyone who is in a state of grace and has a right intention. It might happen occasionally, particularly in school communities where all are more or less expected to communicate frequently, that there may be some doubt about the right intention. The confessor will then explore the matter for the penitent's benefit and counsel him accordingly.

The rule has this further advantage, which is, in fact, the chief purpose of the 1938 Instruction: the decision on more frequent or less frequent Communion is for the individual conscience, and the obvious person to advise on a matter of conscience is the confessor: the requirement that a confessor's counsel should intervene makes it evident that it is not for the superiors or the teachers to decide which children under their care should communicate frequently or not. As the Instruction states, "Frequens et quotidiana Communio valde quidem commendatur, sed nulla lege praecipitur. Relinquitur ideo uniuscuiusque devotioni ac pietati."

112. RELIGIOUS HOUSES—FREQUENT COMMUNION

Is there still an obligation for religious superiors to have read annually in their houses the decree "Sacra Tridentina Synodus" *on the subject of frequent Communion?*

Sacra Tridentina Synodus, 20 December, 1905; *Fontes*, n. 4326.8. Ut autem omnes utriusque sexus Religiosi huius decreti dispositiones rite cognoscere queant, singularum domorum moderatores curabunt, ut illud quotannis vernacula lingua in communi legatur intra Octavam festivitatis Corporis Christi.

i. This rule, faithfully observed everywhere for some years after its promulgation, has in recent years fallen into disuse, and one of the most reliable commentators on religious discipline states: "nunc post Codicis promulgationem haec praescriptio non iam valet",[1] whilst observing nevertheless that some others are not of his opinion. The practical solution for each individual religious house is for the local superior to observe the rule if required to do so by his immediate superior: otherwise he may please himself about observing it or not, relying on the opinion of Schaefer.

ii. The same applies, it seems to us, with regard to a number of similar regulations made during the time of Pius X for Cathedral and parish churches. It cannot be the wish of the Church that these should all bind till the end of time, and on the other hand they have not been expressly withdrawn. It is for the rectors of churches to obey the directives of the local Ordinary, to be found either in diocesan synods[2] or in the diocesan Ordo, on such matters as the annual explanation of *Quam Singulari* about First Communion, or the sermon on the Sunday within the octave of Corpus Christi on Frequent Communion. If directives are lacking, rectors of churches are not, in our view, strictly bound to observe the terms of the Pian documents. Both superiors and rectors should, however, bear in mind the Instruction of the Congregation of the Sacraments, 8 December, 1938[3] concerning the safeguards to be observed in the practice of frequent Communion, an important and more recent document which, owing to the reserved method of its promulgation, is not sufficiently known.

iii. What might appear to be contempt of the law in gradually ceasing practices which have been lawfully imposed is met by the rules on custom, especially canon 25: the consent of ecclesiastical authority required for the justification of a custom contrary to the

[1] Schaefer, *De Religiosis*, §1144.
[2] Cf. Liverpool, 1945, XXIII, n. 125; Northampton, 1947, XII, nn. 74, 77.
[3] *The Clergy Review*, 1939, XVII, p. 111; 1940, XVIII, p. 167.

law may be tacit—"qui tacet consentire videtur". Remarking a custom of disregarding some law the superior authority may enforce its observance, or he may think it more prudent to tolerate the custom.[1]

113. SEMINARIANS AND FREQUENT COMMUNION

There seems to be some little conflict in the text of Roman instructions relating to frequent Communion in seminaries. Are the superiors entitled to consider the frequency of a candidate's reception of Holy Communion in forming an opinion about his fitness for sacred orders?

Canon 1367: Curent episcopi ut alumni Seminarii . . . 2. Semel saltem in hebdomada ad sacramentum poenitentiae accedant et frequenter, qua par est pietate, Eucharistico pane se reficiant; cf. also canons 973, §3, and 974, §1.2.

S.C. Sacram. Instr. *Quam Ingens*, 27 December, 1930; *A.A.S.*, 1931, XXIII, p. 120; English tr., Bouscaren, *Digest*, I, p. 463; §2, 5: Seminarii moderator diligentissime notitiam de promovendis exquirere curabit . . . ab iis qui in Seminario doctorum gerunt munus, ipsosque non solum seorsum audiet, sed etiam insimul convocatos, de singularibus nempe vocationis signis . . . ad quod inservire poterunt interrogatoria, congrua congruis referendo, quae in Appendice habentur, iuxta Mod. II and III.

Mod., II, 2. Num ad sacram Confessionem et ad sacram Synaxim crebro ac devote accedat.

S.C. Sacram., Instr. *Postquam Pius*, 8 December, 1938; *Periodica*, 1939, p. 317; English tr., Bouscaren, *Digest*, II, p. 208; II, 3, a.: In Seminariis vero aliisque id genus institutis, ubi statis temporibus iudicium profertur a Superioribus de unoquoque alumno, quod ad pietatem, studium et disciplinam attinet, iidem Superiores, in promenda sententia de iuvenis in pietate profectu, de maiore vel minore assiduitate ipsius in Ss. Eucharistia sumenda rationem ne habeant.

i. *Quam Ingens* is a document promulgated like any other in the official acts of the Holy See, whereas *Postquam Pius* was sent, in the first place, to individual Ordinaries; it was entitled "Instructio Reservata" and has never appeared in the *Acta Apostolicae Sedis*. Some ecclesiastical journals, however, published it like any other Roman document, and it appeared in *Apollinaris*, 1940, p. 14, without the qualification "Reservata" and with a commentary by Mgr Zerba, an official of the Sacred Congregation. Permission was

[1] Op. cit., 1943, XXIII, p. 83.

obtained for the summary which was printed in *The Clergy Review*, 1939, XVII, p. 111. It may well be that no great significance attaches to its alleged "reserved" character, and according to one commentator, Mgr Bracci: "il Santo Padre Pio XI d'immortale memoria ha solo voluto che della medesima fosse fatto dai Vescovi e Superiori un uso prudente, riservato e discreto"[1]; but, in our view, the solution of the proposed difficulty ultimately rests on the respective authority of the two documents.

ii. The manualists writing on the subject of frequent Communion or of holy orders appear not to have adverted to this conflict between the two Roman instructions, and the only writer known to us who gives it serious consideration is Fr U. Lopez, S.J., in *Periodica*, 1940, p. 302. He reflects on the different character and purpose of the two documents and concludes: "Non datur oppositio, per se, inter has duas Instructiones, sed bene inter se concordari possunt, ita ut utriusque, secundum proprium spiritum, observantia impleri possit." The spirit of each would be preserved, it is thought, by restricting *Quam Ingens* to candidates on the eve of receiving orders, that is to say to those in the first year of theology; by refraining, even with regard to these candidates, from interrogating or reproving individuals who are remiss in receiving daily Communion; by requiring always the testimony of parish priests during vacations, as expressly indicated in *Quam Ingens*, Mod., II, 2, bearing in mind that the warnings in *Postquam Pius* refer specifically to persons living in community, since it is these who are more likely to approach the sacred table with inadequate intentions. We think, however, with great respect, that Fr Lopez does not fully succeed in harmonising the two documents.

iii. They set up, in our view, a *dubium iuris*, which it is for the Ordinary to resolve as seems to him best, instructing the superiors of the seminary on the right way of implementing both documents. It is not for this writer to anticipate the Ordinary's ruling or to tell seminary superiors what they should do. We would only make a purely academic observation which might apply just as well to any two documents which give contradictory directions: the preference is to be given to *Quam Ingens* since this alone has been properly promulgated. Cardinal Iorio, prefect of the Congregation which issued it, explains Mod., II, 2, as meaning "An assiduus sit . . . ad frequentem aut etiam quotidianam communionem".[2] Pius XI, in the encyclical on the priesthood, 20 December, 1935, expressly mentions and urges in general the observance of the precautions set out in *Quam Ingens*. It is to be read annually to candidates in

[1] Quoted in *Periodica*, 1940, p. 304.

[2] *Periodica*, loc. cit., p. 302.

seminaries. The other document has not, it seems to us, quite the same weight because it lacks the publicity of official promulgation, and it is even possible that some seminary superiors may not know of its existence. The directions of *Quam Ingens* should be faithfully observed in all seminaries until they have been officially withdrawn by the Holy See.

114. FREQUENT COMMUNION: M.D. CHILDREN

Is there any ruling as to how often Holy Communion should be received by feeble-minded children in our Catholic institutions?

S.C. Conc., 16 December, 1905; Denz. 1985: Communio frequens et quotidiana . . . omnibus Christifidelibus cuiusvis ordinis aut conditionis pateat, ita ut nemo, qui in statu gratiae sit et cum recta piaque mente ad s. mensam accedat, impediri ab ea possit.

i. We cannot find any theologian who deals fully with this point. The manualists are usually content with repeating what St Alphonsus has to say "de semi-fatuis" in Book VI, §303, of his Moral Theology: he cites a number of writers to the effect that the reception of Holy Communion by such should be limited to fulfilling the Easter precept and receiving Viaticum, but Leander is mentioned for the view that its reception is permitted "toties quoties". Aertnys-Damen adds to St Alphonsus "aliquoties per annum, pro maiori vel minori gradu discretionis quo utuntur".[1] We must remember that writers previous to the reform of Pius X on frequent Communion must be read with caution, and it seems to us that the modern commentators have not sufficiently revised the view of St Alphonsus. If we assume that the feeble-minded in question, no matter what their actual age, have at least attained the discretion required in a child of seven, no reason can be discerned why Holy Communion should be permitted only a certain number of times. If they are in a state of grace and have a right intention, they may communicate daily like anyone else: a state of grace is, for various reasons, more easily to be taken for granted in the feeble-minded, and the right intention must be measured exactly as it is for the faithful in general. There was something to be said, perhaps, for the view that they may communicate only at Easter and when receiving Viaticum; but we cannot see in what principle they may communicate only a certain number of times, which one writer interprets to mean once a month.[2] Dr M. McGowan, in a C.T.S. pamphlet

[1] *Theol. Moralis*, II, §137.

[2] *Irish Ecclesiastical Record*, 1921, XVIII, p. 191.

on Mental Deficiency, mentions incidentally that at Besford Court many of the boys communicate daily. Why not?

ii. The restriction, if any, on the number of times they may communicate is to be determined exactly as it is for any children living in an institution, and the Congregation of the Sacraments, 8 December, 1938, found it necessary to suggest rules for safeguarding the right intention of these communicants.[1] It may well be, in the case of certain categories of the feeble-minded, that greater caution is necessary for preventing abuse. The judgement of the superiors, who are trained in dealing with these cases, must be accepted, provided it is not based on the principle that the feeble-minded are *ipso facto*, and by reason of their condition, permitted Holy Communion less frequently than those normally constituted; but the persons themselves, in so far as it is possible, must take the decision on the usual principles which apply to all frequent communicants.

115. REMOVING THE PYX DURING ANOTHER'S MASS

The priest at Mass prepares the pyx, leaves it in the tabernacle, and later, whilst another Mass is in progress at the same altar, approaches unvested in cassock and cotta to take the pyx in order to communicate a sick person. Is this custom lawful?

i. O'Kane-Fallon is the chief authority who sanctions opening the tabernacle improperly vested, in order to remove the prepared pyx for communicating the sick,[2] but he appears to assume that this is being done at an altar in a private oratory situated in the priest's house.

We think that cassock, cotta and white stole should always be worn, as directed by the Roman Ritual, V, iv, 12, whether the pyx is already prepared or not; and that we have no lawful custom in this country justifying a non-observance of the law, at least when the action is being performed in a church or public oratory.[3]

ii. Likewise, in principle, it is not permitted to impose one rite upon another, as would happen when a priest administers Holy Communion at an altar where another priest is already engaged in celebrating Mass. The practice described above is not, indeed, actually that of administering Holy Communion, but it is a rite distinct from the Mass, with its own set of rubrics.

iii. Both (i) and (ii) are positive laws which, on the usual principles, need not be observed for a proportionately grave reason.

[1] *The Clergy Review*, 1939, XVII, p. 111.
[2] *Rubrics of the Roman Ritual*, 1938, §773.
[3] Cf. *The Clergy Review*, 1943, XXIII, p. 469.

There is sufficient authority amongst the writers to justify administering Holy Communion at an altar where a priest is already celebrating, provided it does not interfere with the progress of the Mass: a moment would have to be chosen when the celebrating priest is not standing in front of the tabernacle.[1] A sufficient reason for tolerating the practice would exist, for example, on a day when many of the faithful who wish to communicate are unable to remain for Mass, and when the church contains no other tabernacle; similarly a grave reason, such as administering viaticum, certainly suffices as a justification for removing the pyx. Whether any less obvious reason suffices, in the ordinary administration of Holy Communion to the sick, the priest's conscience must decide. One cannot easily imagine what this reason could be, neither is it apparent why the priest taking Communion to the sick cannot wait till the Mass is finished. It is still more difficult to discern any justifying reason at all for opening the tabernacle improperly vested, unless perhaps for the purpose of administering viaticum.

116. DISPOSAL OF UNCONSUMED HOST

In practice what is the correct thing to do with a Host which has been removed from a sick person's tongue owing to his inability to swallow?

De Defectibus, X, 14: Si Sacerdos evomat Eucharistiam, si species integrae appareant, reverenter sumantur, nisi nausea fiat: tunc enim species consecratae caute separentur, et in aliquo loco reponantur, donec corrumpantur, et postea in sacrarium projiciantur. Quod si species non apparent, comburatur vomitus, et cineres in sacrarium mittantur.

Rituale Romanum, Tit. iv, cap. iv, n. 4: Potest quidem Viaticum brevi morituris dari non ieiunis; id tamen diligenter curandum est, ne iis tribuatur, a quibus ob phrenesim, sive ob assiduam tussim, aliumve similem morbum, aliqua indecentia cum iniuria tanti Sacramenti timeri potest.

Summa Theol., III, 83, 6, ad 7: . . . hoc tamen observandum est, quod ubicunque species integrae inveniuntur, sunt reverenter conservandae, vel etiam sumendae; quia manentibus speciebus, manet ibi corpus Christi, ut supra dictum est; ea vero in quibus inveniuntur, si commode fieri potest, sunt comburenda, cinere in sacrario recondito . . .

Though the rubrics on Communion *more laicorum* make no express

[1] Cf. *The Clergy Review*, 1938, XIV, p. 446.

reference to this contingency, all the commentators apply the directions contained in *De Defectibus*, from which it is clear that disposal by burning refers only to a rejected substance in which the Sacred Species cannot be discerned. Deliberately to burn what one discerns to be the Sacred Species is obviously sacrilegious; if it cannot be consumed, one must allow it to corrupt by natural processes. The situation described in the above question is equivalent to that in *De Defectibus* where the Sacred Species can be discerned.

The simplest and most expeditious method, if it can be done without nausea, is for the priest, after removing it from the tongue with his finger, to consume it himself: prevention of irreverence is one of the reasons which justify non-fasting Communion.

If this is not possible, the Sacred Species, after being removed with the finger, should be transferred to a piece of linen, e.g. the purificator, the lavabo cloth, or a clean handkerchief; failing a piece of linen, cotton wool or a piece of clean paper may be used.

The Sacred Species in its wrapping is taken back to the sacristy, and after separation from the wrapping, which is either purified or burned and placed in the sacrarium, it must be preserved till corrupt before being placed therein. The commentators are not very helpful in describing this stage of the process, for it is well established that a dry host will remain uncorrupted for years in suitable conditions. Many recommend placing the sacred species in a small glass vessel containing a little water, on analogy with the purifying vase usually put near the tabernacle, the vessel being kept in a locked cupboard. Those, however, who had experimented with an unconsecrated host find that, even when placed in water, a softening of the substance occurs but not corruption. We should be extremely glad to hear from any priest who, on following the directions of the rubrics, has found the host corrupted after a reasonable time. One way out of the difficulty is suggested from a private reply of the Congregation of Rites, 19 February, 1909,[1] which directs that the particles collected from a ciborium used in communicating lepers need not be consumed by the celebrant in the ordinary way; they may be placed in a vessel containing water and cotton wool and burned immediately. By this procedure the particles, though present and uncorrupted, are no longer discernible, and it occurs to us that a rejected Host might be separated into small particles, and dealt with in the same way.

As noted in *The Clergy Review*, 1940, XVIII, p. 344, the *piscina* or *sacrarium* provided in most sacristies, though suitable for the disposal of liquid, is not sufficiently large for receiving other sacred remains.[2]

[1] *Sylloge*, n. 14.

[2] Cf. Roulin, *Nos Églises*, pp. 639–43.

If the Sacred Species, after corruption has set in, cannot be placed in the sacristy *sacrarium* or in that of the baptistery, the only alternative, we suppose, must be to use a spot in the garden reserved for the purpose.

Distressing incidents of this kind may often be avoided by first giving the sick person, whose ability to swallow is in doubt, an unconsecrated particle before Holy Communion.[1]

[The author summarised subsequent correspondence on the subject as follows:]

The rubric, *De Defectibus*, X, 14, directs that the unconsumed host should be kept safely until corrupted, and then consigned to the sacrarium. Since experience shows that corruption does not take place, even after some years, the following suggestions have been made with a view to expediting corruption: (*a*) the use of chemicals; (*b*) the addition of a little water in the containing vessel; (*c*) the addition of a little wine (in either case the vessel being exposed to the air); (*d*) separation of the host into small portions, with the aid of cotton wool moistened, so that the particles become indiscernible.

I can find no authorisation for the use of chemicals, and there would seem to be no difference between this method and burning, which is not permitted if the host is discernible. A disinfectant may, however, be added, when its immediate object is not the unconsumed host but the sputum of a tubercular patient. The addition of wine is said to reduce the host to a greenish slime, provided only a small quantity is used and it is left exposed to the air; this is permissible.

Having placed one unconsecrated host in a small vessel of water, and another in a small vessel of wine, I found at the end of two months that the one placed in wine had become brown but remained firm and incorrupt. The one placed in water, on the other hand, was so soft at the end of a month that with a little disturbance it became completely dissolved in the water, which had the appearance of a thin milky fluid.

I regret not having arrived at a completely satisfactory conclusion, but it seems to me that, of the various methods suggested, dissolving in water is the most expeditious as well as being in accordance with the teaching of many of the authors. The disturbance necessary to make it dissolve is equivalent to (*d*).

[1] O'Kane-Fallon, *The Rubrics of the Roman Ritual*, n. 75[1].

X. PENANCE

117. CONFESSIONS OF RELIGIOUS ON A PARISH PILGRIMAGE

A religious house "iuris pontificii" *is withdrawn from the pastoral care of the local parish priest. May the parish priest, nevertheless, validly and lawfully absolve the religious when they accompany him on a parish pilgrimage outside the diocese?*

Canon 464, §1: Parochus ex officio tenetur curam animarum exercere in omnes suos paroecianos, qui non sint legitime exempti.

§2: Potest episcopus iusta et gravi de causa religiosas familias et pias domos, quae in paroeciae territorio sint et a iure non exemptae, a parochi cura subducere.

Canon 519: Firmis constitutionibus quae confessionem statis temporibus praecipiunt vel suadent apud determinatos confessarios peragendam, si religiosus, etiam exemptus, ad suae conscientiae quietem, confessarium adeat ab Ordinario loci approbatum . . . confessio . . . valida et licita est. . . . Cf. also canon 522.

Canon 873, §1: Ordinaria iurisdictione ad confessiones excipiendas . . . pro suo quisque territorio Ordinarius loci, et parochus aliique qui loco parochi sunt.

Canon 881, §2: Qui ordinariam habent absolvendi potestatem, possunt subditos absolvere ubique terrarum.

i. Since the exemption of persons within his territory limits the parish priest's rights and duties, it will be necessary to establish beyond all dispute that the local Ordinary has withdrawn them from parochial jurisdiction. In many instances in this country, where a religious house has its own chaplain, it is assumed as a matter of practical convenience that the chaplain will function therein instead of the parish priest; but this practical arrangement does not imply exemption with all its consequences, unless the Ordinary has expressly so decreed. Elsewhere the practice of expressly exempting religious houses from parochial jurisdiction is fairly common.[1] If the house is certainly exempt the parish priest enjoys no jurisdiction therein, except what is conceded by the common law in given instances: he may, for example, hear the confession of any religious

[1] Cf. *Collationes Brugenses*, 1948, p. 23.

within the terms of canon 519; or he may administer confirmation to the dying.[1]

ii. If the house is not exempt, the religious, being subject in principle to the jurisdiction of the parish priest, are on much the same footing as other parishioners in regard to canon 519. When outside the diocese they may use the faculty of this canon and go to confession, not only to any priest approved by the local Ordinary, but also to their own parish priest who enjoys ordinary jurisdiction over them from canon 881, §2.

In the case, however, of religious exempted by the Ordinary from parochial jurisdiction, and *a fortiori* of those who may be exempted by a papal privilege, the matter is not so clear. They may certainly be lawfully and validly absolved by the parish priest within the parish in which the religious house is situated, since he comes within the clause "ab Ordinario loci approbatum" of canon 519; with equal certainty they may be absolved outside the parish, but within the diocese, if the parish priest enjoys the usual delegated faculties throughout the diocese. Outside the diocese it might appear that the parish priest has no jurisdiction over them, unless delegated by the local Ordinary, since they have been withdrawn from his jurisdiction. Schaefer solves the point as follows: ". . . etsi non esset delegatus, non videtur improbabilis sententia, quae etiam hoc in casu tenet praelaudatos Religiosos absolvi posse, cum in favorabilibus radicalis potestas parochi non sit destructa, practice autem sententia fiat certa vi can. 209".[2] The reasons for this view which we think may be accepted are not explained, but we imagine them to rest on the wish of the Church in modern times to facilitate the confessions of religious; a liberal interpretation of this wish preserves the radical ordinary jurisdiction of the parish priest in absolving religious, even though in other respects they have been withdrawn from his care.

118. FACULTIES ON A SEA VOYAGE

In the diocesan "pagella" *of confessional faculties powers are enjoyed over certain censures reserved to the Ordinary and to the Holy See* "simpliciter", *and these diocesan faculties are the basis of faculties enjoyed at sea from canon* 883. *Are these reserved cases excluded at sea?*

Canon 883, §1: Sacerdotes omnes maritimum iter arripientes, dummodo vel a proprio Ordinario, vel ab Ordinario portus in quo

[1] *Spiritus Sancti*, 14 September, 1946; *The Clergy Review*, 1947, XXVII, p. 57.
[2] *De Religiosis*, §417.

navim conscendunt, vel etiam ab Ordinario cuiusvis portus interiecti per quem in itinere transeunt, facultatem rite acceperint confessiones audiendi, possunt, toto itinere, quorumlibet fidelium secum navigantium confessiones in navi excipere, quamvis in itinere transeat vel etiam aliquandiu consistat variis in locis diversorum Ordinariorum iurisdictioni subiectis.

§2: Quoties vero navis in itinere consistat, possunt confessiones excipere tum fidelium qui quavis de causa ad navim accedant, tum eorum qui ipsis ad terram obiter appellentibus confiteri petant eosque valide ac licite absolvere etiam a casibus Ordinario loci reservatis.

Unlike the ordinary jurisdiction which is enjoyed by a parish priest over his parishioners, from canons 873, §1, and 881, §2, wherever they may be,[1] the faculties of canon 883 are delegated *a iure* to all approved priests on sea voyages, and the Holy See decided, 16 December, 1947,[2] that for the purposes of this canon 883 a voyage by aeroplane is subject to the same provisions.

i. The delegated faculty covers cases reserved to the local Ordinary whenever the ship is stationary in a port, though there is some dispute as to the meaning of "cases" in this context.[3] If she is outside territorial waters, and therefore outside the territory of any local Ordinary, there can obviously be no cases reserved to the Ordinary, and consequently no restriction in this respect on the use of the faculty granted by the canon. If she is within territorial waters we agree with the solution given by Fr Vermeersch: "Dubium tantum superest, de facultate absolvendi a casibus quos sibi reservarit Ordinarius loci quando navis quidem non consistit in itinere, sed in mari territoriali navigat. Putamus tamen canone 883 expeditam iurisdictionem tribui, quae non impediatur scrupulosa observatione partis maris in qua navis navigat. . . ."[4] The conclusion must be, as regards reservations to the Ordinary, that they cease throughout the voyage.[5]

ii. Since, however, the canon makes no reference whatever to papal reservations, it is certain that these are not included; we think, also, that since faculties over papal reservations delegated by a local Ordinary are not valid beyond the territory of that Ordinary, they are not included in the powers granted by the canon. If they occur, the voyaging priest may absolve them only with the procedure of canon 2254.

[1] Cf. *The Clergy Review*, 1947, XXVIII, p. 125.
[2] Op cit., 1948, XXX, p. 344. [3] Op. cit., 1941, XXI, p. 170.
[4] *Periodica*, 1930, p. 119.
[5] Cf. *Code Commission*, 20 May, 1923, limiting their use beyond three days in ports.

119. CONFESSIONS DURING A TRAIN JOURNEY

The law now extends the faculty of canon 883 to a journey by air, an extension which was permitted by some canonists even before the law expressly did so. Are there any canonists who now extend the faculty to a long journey by train, an extension which is not yet expressly sanctioned by the law? If so, may this opinion be followed?

Pius XII, *Motu Proprio*, 16 December, 1947: Nos . . . motu proprio, certa scientia et matura deliberatione, de Apostolicae potestatis plenitudine, statuimus ac decernimus ut quae can. 883 C.I.C. de facultate excipiendi confessiones sanciuntur pro sacerdotibus maritimum iter habentibus, valeant atque extendantur, consentaneis quidem clausulis, ad sacerdotes iter aërium facientes.

Canon 20: Si certa de re desit expressum praescriptum legis sive generalis sive particularis, norma sumenda est, nisi agatur de poenis applicandis, a legibus latis in similibus; a generalibus iuris principiis cum aequitate canonica servatis; a stylo et praxi Curiae Romanae; a communi sententia doctorum.

i. Long before the 1947 *Motu Proprio*, certain commentators sufficient in number and authority to establish a probable opinion, relying on the principle of canon 20, held that the faculty of canon 883 also applied to a journey by air; there were also some who took the gloomy view that a journey by air was always accompanied by danger of death, and that confessional faculties were therefore enjoyed from canon 882 in any case.[1]

ii. The *Motu Proprio* was issued in response to the petitions of many Ordinaries, and it is not unlikely that, at some future time, the Holy See will extend the faculty to a journey by train. Examples exist of this favour being granted by indult, for example during pilgrimages, and the reasons which make it desirable to facilitate confession on a voyage by sea or air apply equally to a long train journey. Cappello, writing before the *Motu Proprio*, thought it probable that canon 883 was applicable both to travelling by air and to long journeys, for example across Siberia, by train.[2] Since the *Motu Proprio* appeared the view favouring the extension of the faculty to a train journey has been defended[3] by applying canon 20 to the case.

iii. Whilst admitting the right of any confessor to form his own judgement on the matter, it is our opinion that the faculty may not be extended beyond the limits of canon 883 and of the *Motu Proprio*. The difficulty of obtaining faculties from the local Ordinary, one

[1] *The Clergy Review*, 1941, XX, p. 552; *Periodica*, 1945, p. 32.
[2] *De Poenitentia*, §300. [3] *Periodica*, 1949, p. 30.

of the reasons for the extended faculty, applies equally indeed to a journey by train. There is, however, a point which is verified when journeying by sea or air, but not verified when travelling by train: in a ship or in an aeroplane it is rarely known which diocese, if any, is being traversed, whereas in a train the boundaries of dioceses are capable of being ascertained, and it appears that this local or territorial aspect is a most important element to consider in the law of canon 883, since the rights of local Ordinaries are not patently infringed; the law permitting confessions to be heard at ports of call, when faculties are obtained from canon 883, is merely accessory to the chief benefit of the canon, which is to facilitate confessions during a voyage. The desirability of providing for confessions during a long train journey must have been apparent to the Holy See when the *Motu Proprio* was issued, and nevertheless no provision was made for the situation.[1]

The most reliable commentators, accordingly, so far decline to extend the faculty beyond the terms of canon 883 and the *Motu Proprio*.[2] They also express the wish, which all priests will share, that the Holy See may make some provision for a journey by train. The difficulty is in defining the limits of such journeys. The fringes of the existing law have produced a number of casuistical questions in defining the nature of a voyage by sea[3] and these will be increased if the faculty is extended to land journeys. If trains are included it will be difficult to exclude motor-cars, cycles, or even a journey on foot. A train journey across Siberia, as Cappello intimates, seems to call for some concession, but what of a train journey from Charing Cross to Waterloo?

120. PILGRIMAGE CONFESSIONAL FACULTIES

May a priest pilgrim to Lourdes, provided he already possesses faculties, hear the confessions of his fellow pilgrims on the journey and during his stay in Lourdes?

i. He possesses in the common law a limited confessional jurisdiction from canon 883, enabling him to absolve fellow voyagers on that part of the journey which is by sea, and also to absolve all comers at the port of arrival for three days. For details of interpretation in using the common law faculty cf. *The Clergy Review*, 1940, XIX, p. 69, and 1941, XX, p. 86.

The *motu proprio* of Pius XII, 16 December, 1947, reprinted in that

[1] *Periodica*, loc. cit. [2] *E.T.L.*, 1948, p. 463; 1949, p. 250.
[3] Cf. *The Clergy Review*, 1941, XX, p. 86.

journal, 1948, XXX, p. 344, extended the terms of canon 883 to those travelling by air, which means that the three days rule about the sea port applies equally to the air port. If, however, the air port is in a place which is distant from Lourdes, the faculty in the common law does not, in our view, extend to Lourdes.

A few commentators apply the terms of the above to a journey by train, and some priests accept this view. In our opinion, as explained in qu. 119, it is not permissible to extend the terms of canon 883 and of the *motu proprio* to journeys by train.

ii. In many countries all doubts concerning the margins of the common law are set at rest by indults granted to priest pilgrims. The indult, if it exists, will be communicated to all priests who are members of group pilgrimages arranged under the authority of the bishops. An example of such, which no doubt is the pattern of those conceded elsewhere, is printed in *Collationes Brugenses*, 1948, p. 320, and in *Ephemerides Theologicae Lovanienses*, 1948, p. 467. The text is as follows:

Emus Archiepiscopus Mechlinien., ad pedes S.V. provolutus, nomine omnium Belgii Episcoporum, humiliter postulat pro sacerdotibus tum saecularibus tum religiosis, in aliqua Belgii dioecesi commorantibus ibique iurisdictione ad confessiones audiendas gaudentibus, qui peregrinationem ad pia loca extra Belgium comitantur, durante itinere, eamdem iurisdictionem quam in Belgio obtinent, dummodo praedicta peregrinatio ab uno pluribusve Belgii Episcopis sit adprobata.

Ex audientia SSmi diei 12 Aprilis, 1948.

Sanctissimus Dominus Noster Pius Papa XII, audita relatione infrascripti Card. Pro-Praefecti Sacrae Congregationis de Sacramentis, attentis expositis ab Emo. Archiepiscopo Mechlinien., gratiam benigne indulgere dignatus est iuxta preces; dummodo revera enunciati sacerdotes ad confessiones audiendas in Belgio ab Ordinariis sint adprobati; ceteris servatis de iure servandis; contrariis quibuslibet minime obstantibus. Praesentibus valituris ad biennium. B. Card. Aloisi Masella.

Assuming that a priest in England has a similar indult communicated to him, one or two points are worth attention:

i. The proviso in the reply, *dummodo revera* etc., makes it clear that the Belgian priest using this indult must already be in possession of faculties granted by a Belgian Ordinary, faculties which might be obtained either *de iure*, e.g. from being appointed a parish priest, or *ab homine* by delegation. In our view "Ordinary" in this context means a local Ordinary not a major religious superior, an interpretation which seems necessary on analogy with the Code Commission reply, 30 July, 1934, about the meaning of the word in canon 883.[1]

[1] *The Clergy Review*, 1934, VIII, p. 492.

ii. The only commentary we have seen on this document, that of Dr Onclin in *E.T.L.* cited above, restricts the faculty to the journey alone, and will not permit its use at the place of pilgrimage. But local faculties, for use within the domain, are commonly granted to confessors on approved pilgrimages.

121. CONFESSION: GRAVE PENANCE

The view is held by some confessors that, for example, "Pater Ave & Gloria" *five times is in itself a grave penance and therefore suffices for grave sins. If this is so, could you explain on what principles this penance is to be considered grave?*

Conc. Trid (Sess. 14. c. 8.) Debent ergo sacerdotes Domini quantum spiritus et prudentia suggesserit, pro qualitate criminum et paenitentium facultate, salutares et convenientes satisfactiones iniungere, ne, si forte peccatis conniveant et indulgentius cum paenitentibus agant, levissima quaedam opera pro gravissimis delictis iniungendo, alienorum peccatorum participes efficiantur. Habeant autem prae oculis ut satisfactio, quam imponunt, non sit tantum ad novae vitae custodiam et infirmitatis medicamentum, sed etiam ad praeteritorum peccatorum vindictam et castigationem.

Canon 887: Pro qualitate et numero peccatorum et conditione poenitentis salutares et convenientes satisfactiones confessarius iniungat; quas poenitens volenti animo excipere atque ipse per se debet implere.

i. The penance is to be proportioned to the conditions of the penitent. Therefore, on various grounds, whether of weakness bodily or spiritual, or for the encouragement of a penitent, the confessor is permitted to impose a light penance for grave sins if he judges this to be a right course. It might appear that in these days confessors as a class do always and habitually give light penances, especially in the case of penitents who frequently confess. From the nature of the case it is, perhaps, difficult to come to any certain conclusions as to whether this is or is not the common practice. Certainly, those of us who are more advanced in years recollect that much larger penances, often lasting for several days, were given by the generality of confessors, and not always by any means for what theologians would class as grave sins. The reason for this change in discipline is that, since the Pian reforms on Frequent Communion, confessions also are more frequent than they used to be, and the practice of giving penances consisting of prayers to be said for several days is rightly to be discouraged, at least for those penitents who confess

frequently, lest they become worried or harassed about penances overlapping.

ii. Assuming, however, that there is no particular reason for giving a light penance for grave sins in a given instance, and assuming that the confessor wishes to give the minimum grave penance, which is to be in the usual form of reciting prayers rather than in the form of actions such as almsgiving, we have to determine on what principle the gravity of a penance is determined. The principle usually accepted is that a grave penance is that which, on some other count, can be a grave obligation: the rosary, for example, is occasionally substituted by indult for a portion at least of the divine office, in which case the recital of five mysteries is a grave obligation.[1] In our view this is the simplest unit of measurement in deciding what constitutes the minimum grave penance: it is familiar to all and it may be varied by imposing prayers of approximately the same length.

iii. A search through the writers on this subject has not produced one who is of the opinion that *Pater Ave & Gloria* five times is a grave penance. On the contrary, it is sometimes cited by theologians who are habitually benign and amiable as not being a grave penance[2] and we agree that it is not. If this is imposed it will be on the principle discussed above under (i), and not because it is of its nature grave.

122. PENANCE AFTER ABSOLUTION

Seeing that the acts of the penitent, which include satisfaction, are the matter of the sacrament, what is the position if the penitent declines the penance after having received absolution?

Canon 887: Pro qualitate et numero peccatorum et conditione poenitentis salutares et convenientes satisfactiones confessarius iniungat; quas poenitens volenti animo excipere atque per se debet implere.

The position is that the absolution is valid if, at the time it was given, the penitent has the will to accept a sacramental penance as satisfaction. His unwillingness to accept what is imposed must be held to refer to what he considers the unreasonable nature of the penance, and not to the necessity of accepting a penance in principle. Unless the confessor elects to commute it, the penitent's remedy is to get it commuted by another confessor, which will not normally

[1] *The Clergy Review*, 1935, X, p. 303.
[2] Génicot, *Theol. Moralis*, II, §279.

be done unless it is manifestly unreasonable. One is breaking no law in imposing penances after absolution, but the manualists usually recommend that the penance should be indicated before absolution.

123. RESERVED CASES

How is the theory or principle about episcopal reservations applied to the following instances? (a) *A case is reserved* "ratione peccati" *both in diocese A and B. May a penitent domiciled in diocese A be absolved by a simple confessor in diocese B?* (b) *A case is reserved* "ratione censurae" *both in diocese A and B. May a penitent who has incurred the censure in diocese A be absolved by a simple confessor in diocese B?*

Canon 900.3: Quaevis reservatio omni vi caret: . . . Extra territorium reservantis, etiamsi dumtaxat ad absolutionem obtinendam poenitens ex eo discesserit.

Canon 2247, §2: Reservatio censurae in particulari territorio vim suam extra illius territorii fines non exerit, etiamsi censuratus ad absolutionem obtinendam e territorio egrediatur; censura vero ab homine est ubique locorum reservata ita ut censuratus nullibi absolvi sine debitis facultatibus possit.

Code Commission, 24 November, 1920: Utrum ad normam canonis 893, §1 et 2, peregrinus teneatur reservationibus loci in quo degit. *Resp.* affirmative.

Ibid. 10 November, 1925, VII. Utrum *quaevis reservatio*, de qua in can. 900, sit tantum ratione peccati an etiam ratione censurae. *Resp.* Affirmative ad primam partem, negative ad secundam.

The reservations are the comparatively rare cases reserved by the local Ordinary to himself, whether *ratione peccati* or *ratione censurae*, in addition to the cases *ratione censurae* which are reserved by the common law of the Code to the local Ordinary: about these Code reservations there is no problem to discuss. The situation is that the penitent is a traveller outside his own diocese, and he desires to be absolved from a case which is reserved in his own diocese and also in the diocese in which he is travelling. We assume that the censure here discussed is not *ab homine*.

i. Many of the older problems concerning confessional jurisdiction over a penitent travelling outside his own diocese have been solved by the Code: from canons such as 874, §1, and 881, it is certain that he is absolved from sin by virtue of jurisdiction obtained from the Ordinary of the place where he makes his confession. Reservation of a case *ratione peccati* made by this Ordinary affects directly the confessor's powers and only indirectly the penitent's condition. Hence a simple confessor in diocese B cannot absolve from his sin, apart from the circumstances provided for in the Code; it is completely irrelevant whether the penitent is domiciled in B or is merely travelling therein, and it is equally irrelevant whether the sin was committed in diocese B or elsewhere.

ii It might seem that the same solution should apply where the reservation is *ratione censurae*. Actually it does not, because the reservation of a censure directly affects the penitent who has incurred it and only indirectly the confessor. The Ordinary of diocese A by attaching a censure l.s. to a given act, and reserving its absolution to his own tribunal, has made a local law, which from the general principle of canon 14 does not bind outside his own diocesan territory. The penitent travelling in diocese B is outside the territory of diocese A in which the censure is reserved and can therefore be absolved by a simple confessor in B. It is purely accidental that in B a similar reserved censure exists for crimes there committed by those persons who are subjects of B. Assuming, as we must, that the reserved censure is incurred by a penitent outside B's jurisdiction and by virtue of a local law in A, the Ordinary of B cannot reserve it to himself.

A superficial reading of the two replies of the Code Commission might suggest that we are adopting a wrong solution. When they are more carefully examined, however, it is clear that the law about reservation of sins must be kept quite distinct from the law on the reservation of censures. The 1920 reply therefore must be limited to a reservation *ratione peccati*, the reason being, as pointed out in (*a*) *supra*, that reservation of a sin means a direct restriction of the confessor's powers. The reply of 1925 is chiefly concerned with establishing the distinction between reserved censures and reserved sins: the very wide and sweeping law of canon 900, which practically makes the episcopal reservations of sins a dead letter, must not be applied to reserved censures, though there is a certain resemblance between the two, as in the wording of canon 900.3 and 2247, §2.

Whatever difficulty exists in the application of the law to the above case arises because the two dioceses happen to have a local censure l.s. attached by the local Ordinary to crimes committed by subjects in their jurisdiction. The solution we have given is supported by Ferreres, *Theologia Moralis*, II, §634. Cf. also *The Clergy Review*, 1947, XXVII, p. 194.

124. REFUSAL OF ABSOLUTION

Must the penitent who has been denied absolution by one priest mention this fact when confessing to another priest?

Canon 901: Qui post baptismum mortalia perpetravit, quae nondum per claves Ecclesiae directe remissa sunt, debet omnia quorum post diligentem sui discussionem conscientiam habeat, confiteri et circumstantias in confessione explicare, quae speciem peccati mutent.

An obligation to mention the previous refusal could arise, firstly, if the penitent was conscious of having made a bad confession e.g. by lying to the first confessor; it could arise, secondly, if a question on the point was expressly put by the second confessor.

Otherwise there is no obligation, since refusal of absolution is not a sin on the penitent's part, and it might happen that the refusal was wholly unjustified owing to the confessor not fully understanding the state of the penitent's conscience. Apart from this case, the penitent is counselled to mention the first refusal, since the inadequate dispositions which occasioned it might still persist. But there is no obligation to do so, since we know of no law requiring it, provided the directions of canon 901 are observed. Thus, a penitent who is refused absolution because he declines to promise restitution, which was clearly obligatory and which he was able to make, having come to a proper state of mind may confess the same sin to another confessor and promise restitution, without being obliged to mention the previous confession when absolution was refused.

125. CONFESSION OF PRE-BAPTISMAL SINS

Though not necessary *matter, may one hold that pre-baptismal sins are* free *matter for absolution in the sacrament of Penance? Could an adult convert, baptised absolutely, receive a valid absolution by confessing solely pre-baptismal sin already remitted by Baptism? The faithful are accustomed to submit as* free *matter post-baptismal sins already remitted by absolution, and there seems no good reason why pre-baptismal sins should not also be submitted, as Prümmer appears to teach. Some colleagues, however, with whom I have discussed the point, maintain that pre-baptismal sin is not even* free *valid matter for absolution.*

Canon 870: In poenitentiae sacramento, per iudicialem absolutionem a legitimo ministro impertitam, fideli rite disposito remittuntur peccata post baptismum commissa.

Canon 902: Peccata post baptismum commissa, sive mortalia directe potestate clavium iam remissa, sive venialia, sunt materia sufficiens, sed non necessaria, sacramenti poenitentiae.

Conc. Trid., Denz. 807: Etenim pro iis, qui post baptismum in

peccata labuntur, Christus Jesus sacramentum instituit poenitentiae. . . .

894: . . . sacramentum videlicet poenitentiae, quo lapsis post baptismum beneficium mortis Christi applicatur.

911: . . . sacramentum pro fidelibus, quoties post baptismum in peccata labuntur.

Prümmer, *Theol. Moralis*, III, §321, a: Peccata quae *ante* baptismum commissa sunt . . . nunquam sunt materia necessaria sacramenti poenitentiae, etiamsi baptismus est sacrilege susceptus, ac proinde nunquam adest stricta obligatio ea confitendi.

The case of an adult convert conditionally baptised on being reconciled to the Church is excluded from this discussion; neither do we touch upon the teaching of many authors who recommend a voluntary confession of pre-baptismal sin as an exercise in humility; nor do we deal with the various explanations justifying the practice of submitting again for absolution sins in general already absolved. But assuming, as we must do, that post-baptismal sin already remitted is valid though not necessary matter for a fresh absolution, we have to examine whether the same may be said of pre-baptismal sin.

i. The manuals do not, except by implication, deal with this point, but a complete and satisfactory account may be seen in *Collationes Brugenses*, 1927, p. 115, in which Canon V. Coucke shows that, though not *de fide*, it is quite certain that pre-baptismal sin is neither necessary nor free valid matter for absolution in the sacrament of Penance. It cannot be denied, indeed, that God could have given to the priesthood, had He so wished, power to remit sins committed by the unbaptised, but actually He has ordained membership of the Church as a necessary means for salvation, from which it follows that the power of remitting sin can be exercised only upon those who are subjects of the Church by Baptism, which is the gate opening upon all the other sacraments. A penitent, though at the moment a member of the Church, who desires freely to submit to the power of the keys sins committed before membership, is presenting matter for judgement to a tribunal which is not competent to deal with it. "Why should I claim jurisdiction over those who are without? No, it is for you to pass judgement within your own number, leaving God to judge those who are without."[1]

ii. Prümmer in no way departs from this teaching, for in the context he is dealing with *necessary* matter, and is explaining the mode by which pre-baptismal sins are eventually remitted when baptism has been unfruitfully received owing to a conscious *obex*: the sin of sacrilegiously receiving baptism must be confessed and

[1] I Cor. v, 12, 13 (Knox).

absolved, whereupon the reviviscence of baptismal grace causes the remission of pre-baptismal sin. By stating that there is no strict obligation to confess the latter, an unwary reader might conclude that their confession is free. The following sentence, however, makes it clear that these sins are not even free valid matter: "Ratio est quia ista peccata commissa sunt eo tempore quo Ecclesia nondum habuit in hunc peccatorem iurisdictionem atque potestatem absolvendi." In the following §322 the usual teaching is given about *free* matter, namely that it is restricted to post-baptismal sin whether mortal or venial.

126. CONFESSION AT THE RECEPTION OF CONVERTS

The prospect of having to make a full confession of the mortal sins of his past life is so disturbing for the average convert that the reception ceremony is a time of fear and anxiety rather than of joy and gratitude. For this reason many priests, I understand, allow the convert to make his confession up to twenty-four hours before his reception and then defer the giving of penance and absolution until after the absolution from censure during the ceremony. I shall be glad to know whether this practice is lawful in the view of canonists.

Ordo Administrandi, III, iv, 3: Post receptionem in sinum Ecclesiae, si neo-conversus vel non fuit baptizatus, vel rebaptizatus fuit sub conditione, tenetur peragere confessionem integram peccatorum praeteritae vitae, et danda illi est absolutio modo sive absoluto sive conditionali, prout Baptismus vel non fuit iteratus vel iteratus fuit sub conditione, uti constat ex Declaratione S.C. Inquis., 17 Dec., 1868 (*Cf. Conc. I. Westmon., Decr. xvi, n.* 8, *et Conc. IV, Append.* 18.)

Potest etiam confiteri ante Baptismum sub conditione iterandum, et deinde post Baptismum, repetita summaria confessione, sub conditione absolvi, ut declaravit S.C. Inquis., mense Nov. 1875.

i. In some parts of the Church, but not in this country, no confession at all is required from a convert who is baptised conditionally at his reception, for if the convert's first baptism is doubtful it must follow that the obligation to confess is also doubtful, which means in practice on probabilistic principles that there is no obligation.[1] In this country the obligation to confess is certain from the direction of the *Ordo Administrandi* and from the documents there referred to. But, unfortunately perhaps in a liturgical rite, an alternative procedure is permissible: the confession may either precede or follow the conditional baptism. We believe the more

[1] *The Clergy Review*, 1944, XXIV, p. 82.

usual practice is for it to precede, since the oral confession will assure the requisite attrition for a fruitful baptism.

ii. Assuming it precedes conditional baptism the rubric of the *Ordo Administrandi* itself sanctions an interval between confession and sacramental absolution, and the commentator on whom we all rely in these matters observes: "The evening before, or at any other convenient time, the convert makes his Confession to the priest, and is by him urged to make an act of contrition, in preparation for the Sacraments of Baptism and Penance which he is going to receive."[1] Therefore the suggestion of our correspondent is quite permissible, if the convert finds it easier that way, provided of course that the priest who heard the confession the day before also gives sacramental absolution on the following day. He remembers the sins confessed, the penitent accuses himself again in a general way, and having at least attrition receives absolution. There is, in fact, nothing about this procedure which applies uniquely to the confession of a convert at the time of his reception into the Church: it could be used in any confession, except that there is usually no reason why absolution should be deferred.

127. CONFESSION IN A FOREIGN LANGUAGE

What are the obligations of a penitent subsequent to a confession made to a priest who, being ignorant of the language used, could form no judgement about the sins confessed?

We will assume that the penitent has at least attrition, and also that he is in good faith, by which is meant in this connexion that the penitent cannot speak the confessor's language, and that he has not expressly chosen a foreigner when a priest speaking his own tongue could easily be approached.

The situation is then almost exactly similar to that of a penitent who has received a general absolution: the principle that all post-baptismal mortal sins must be submitted in their number and species for direct absolution requires him, when he can conveniently do so, to confess again to a priest who understands what he is saying; or in the event of the confessor understanding one sin only among the many confessed, he must confess again the sins which have not been understood. The question is discussed by the authors s.v. *integritas materialis*, e.g. Noldin, *De Sacramentis*, §284, and a good summary of the point is in *Collationes Brugenses*, 1939, p. 165: "Certe confessarius nihil distincte intellexit, sed tamen cognovit poenitentem se accusare

[1] Dunne, *The Ritual Explained*, p. 36.

de peccatis commissis eumque de illis dolere ac absolutionem petere. Igitur confessio, coram tali confessario instituta, aequivalebat confessioni omnino genericae, quae in quibusdam adiunctis, nempe si alia sit moraliter impossibilis, sufficit ut confessarius valide et licite absolvat. Peccata sic accusata non directe sed indirecte remissa sunt, i.e. . . . absolutione data poenitenti bene disposito huius animae infunditur gratia sanctificans, quacum necessario connectitur remissio cuiusvis peccati mortalis. Peccata mortalia sic accusata, utpote indirecte tantum remissa, iure divino manent in confessione distincte accusanda, et quidem ut patet, sacerdoti linguam poenitentis intelligenti."

If the situation can be foreseen, the confessor must, for his part, do what is possible to understand the confession: a simple method is to have one of the small manuals prepared for this purpose with lists of sins in parallel columns, printed in different languages, to which the penitent may point. Pustet publishes one by Fr M. Krebs; there is another prepared by Fr M. D'Herbigny in sixteen languages.

128. PERFECT CONTRITION

The opinion is now widely held that contrition motived by a love of God based on gratitude for the divine benefits is "perfect". The opinion has very much in its favour, but in given circumstances an act of perfect contrition is necessary for salvation and it is the common teaching that we may not follow probable opinions in matters of this kind. May we, therefore, teach the faithful, without reservations, that this motive suffices for perfect contrition?

It is not possible, in the space at our disposal, to enter upon the controversies about the nature of perfect contrition. Some writers are more exacting than others in defining its motive, but there is a respectable number of authorities for the view that a love of God based on gratitude suffices. We cannot, however, find anyone who relates this view to the accepted teaching, denying the use of probable opinions in matters which are necessary for salvation.

i. Those in favour of the sufficiency of a love of God based on gratitude could rightly maintain that this teaching is not always and necessarily related to an act necessary *necessitate medii* for salvation: it could be followed, for example, before celebrating Mass on occasions when a priest who believes himself to be in a state of mortal sin cannot get to confession and is yet bound to celebrate. Moreover, the defenders of this view may think, with some reason, that it is more probable than the stricter view, in which case the common teaching about excluding probable opinions in matters pertaining to eternal salvation scarcely applies: degrees of probability, based on evidence intrinsic or extrinsic to the matter under discussion, obviously do not tally with the degrees of safety: thus it is more safe to elect to walk ten miles to fulfil the Sunday obligation, but the view that one is bound to do so is not more probable. It should also be remembered that the motive of gratitude can with little difficulty be elevated to a motive based on the love of God for His own sake. Why has God conferred these benefits on me? Clearly not because of my own merits and perfections; and therefore He has done it because He is good in Himself.

ii. If we assume, however, for the sake of the argument, that the sufficiency of a motive based on gratitude is merely probable, it must follow, we think, that the faithful should be instructed that, in danger of death, an act of contrition should be based on the highest possible motives, and that they should not then rely on the sufficiency of an act based on the motive of gratitude merely. This teaching, it might happen, will not be put into practice by individuals who are unable to rise to anything beyond a motive of gratitude; in their case, it would seem, their act of contrition will suffice for justification on the principle *facienti quod in se est Deus non denegat gratiam.*

We have not thought it necessary to give references to writers on the subject, whose number is legion, but our readers are referred to two long replies in the *Irish Ecclesiastical Record*, 1943, LXII, p. 265, and 1944, LXIII, p. 337, in which the sufficiency of a motive based on gratitude is ably defended by Dr McCarthy.

129. CONFESSIONAL FOR MEN

The church having only one confessional box, it is proposed to accommodate one of the fathers during a mission in a secluded corner of the building, for the purpose of receiving men's confessions. Is this in order?

Canon 908: Sacramentalis confessionis proprius locus est ecclesia vel oratorium publicum aut semi-publicum.

Canon 910, §1: Feminarum confessiones extra sedem confessionalem ne audiantur, nisi ex causa infirmitatis. . . .

§2: Confessiones virorum etiam in aedibus privatis excipere licet.

Code Commission, 24 November, 1920: Utrum canon 909, §2: *sedes confessionalis crate fixa ac tenuiter perforata inter poenitentem et confessarium sit instructa*, pro mulieribus tantum, an generaliter pro poenitentibus uti forma propria audiendi confessiones in ecclesiis et publicis

oratoriis sit servanda. *Resp.* Negative ad primam partem, affirmative ad secundam, firmo tamen praescripto canonis 910, §2.

The *Code Commission's* reply caused some surprise, since in Rome it is not customary to insist on the use of a confessional for receiving the confessions of men,[1] and even Maroto has some difficulty in harmonising it with canon 910, which by implication seems to assert that it is not necessary for male penitents to use the confessional box.[2] In this country the reply is in perfect accordance with our customs.

The reply is not at variance with the canons, since the proper place for all confessions, from canon 908, is a church or oratory; but from canon 910, §2, men's confessions may lawfully be heard in private houses or rooms, which is the common practice with us in colleges and seminaries: this must be regarded as an exception to the rule of canon 908, and it is assumed that there is always a reason, not necessarily a grave one, for not using the church or oratory. What the *Code Commission* asserts is that when confessions are heard in a church or oratory, men as well as women should use the confessional box as a general rule—*generaliter*. This obviously permits exceptions, for just reasons and saving local law to the contrary, as in the circumstances mentioned in the above question; in any case the official reply is universally held not to bind *sub gravi*.[3]

[1] *Periodica*, 1921, p. 256, V. [2] *Apollinaris*, 1928, p. 407.
[3] *Dict. Droit Canon.*, IV, col. 65.

XI. INDULGENCES

130. "EN EGO": RECEIVING HOLY COMMUNION

Applying the general principles of canons 931 *and* 933, *does it not follow that a plenary indulgence may be gained daily by reciting* "En Ego" *each day for a week provided Holy Communion is received once during the week?*

Canon 931, §1: Ad quaslibet indulgentias lucrandas confessio forte requisita peragi potest intra octo dies qui immediate praecedunt diem cui indulgentia fuit affixa; communio autem in pervigilio eiusdem diei; utraque vero etiam intra subsequentem totam octavam.

Canon 933: Uni eidemque rei vel loco plures ex variis titulis adnecti possunt indulgentiae; sed uno eodemque opere, cui ex variis titulis indulgentiae adnexae sint, non possunt plures acquiri indulgentiae, nisi opus requisitum sit confessio vel communio, aut nisi aliud expresse cautum fuerit.

Enchiridion Indulgentiarum, n. 201: Fidelibus, supra relatam orationem coram Iesu Christi Crucifixi imagine pie recitantibus, conceditur. . . . *Indulgentia plenaria*, si praeterea sacramentalem confessionem instituerint, caelestem Panem sumpserint et ad mentem Summi Pontificis oraverint.

S. Poenit., 13 March, 1928 (private); *Periodica*, 1928, p. 74: . . . orator petit an sufficiat, ad lucrandam dictam indulgentiam plenariam, Communio facta in pervigilio vel intra subsequentem totam octavam, ad normam Can. 931 C.I.C. *Resp.* . . . Non spectare, et rem proponendam esse ad Commissionem pro authentica interpretatione canonum C.I.C.

i. The *En Ego* prayer, to which a plenary indulgence was attached in 1858, was at one time the only pious exercise of its kind so enriched with a daily plenary indulgence. We have, now, a prayer to Christ the King (n. 272), and the recitation of a third part of the Rosary (n. 395 (c)) before the Blessed Sacrament, by which a plenary indulgence may be gained daily. The reply of the Sacred Penitentiary, 13 March, 1928, related to this recitation of the Rosary, the question put being on the meaning of the words "iuxta morem", omitted in n. 395, which qualified reception of Holy Communion in the original rescript dated 4 September, 1927. Rather surprisingly the Sacred Penitentiary declined to elucidate

their meaning, and referred the questioner to the *Code Commission* since, apparently, the doubt was concerned with the two canons 931 and 933. We have never seen the Commission's answer, and perhaps the question was not put. But it is clear that the solution will apply equally to the recitation of *En Ego*.

ii. An affirmative answer was given by Vermeersch in *Periodica*, 1928, p. 75: "Et cum c. 933 confessionem et s. communionem excipiat ab operibus quibus, nisi repetantur, plures indulgentiae acquiri, variis titulis, nequeant, inde diximus cotidie memoratam indulgentiam prostare ei qui singulis hebdomadis ad s. synaxim accedat, quotiescumque tertiam partem Rosarii coram Sanctissimo recitaverit." This solution may be accepted, if desired, and applied to the prayer *En Ego*. Owing to this prayer being printed, for nearly a century, amongst devotions after Holy Communion, we have grown accustomed to the notion that, to gain the indulgence, it must be recited immediately after receiving this sacrament, and many think it must be said before they leave the church. Actually, as is evident, the condition of receiving the sacraments is practically identical with the condition attached to many other indulgenced devotions.

The solution favoured by Vermeersch was also given, independently, by a writer in *The Ecclesiastical Review*, August, 1941, p. 138. The usual commentators on the Code and the writers on indulgences consulted do not advert to the point, with one important exception.

iii. A negative answer is favoured by De Angelis, an official of the Sacred Penitentiary, in *De Indulgentiis*, §81, and though the writer is careful to explain in the preface that his office adds nothing to the authority of his treatise (agitur enim de libera dissertatione quam omnes fas est participare), one cannot help thinking that his opinion will eventually prove to be correct: "Putamus igitur quod Communio utique fieri potest in pervigilio diei cui indulgentia fuit affixa et per totam subsequentem octavam, sed tot requiruntur Communiones quot sunt dies quibus una vel plures indulgentiae acquiri possunt."

The reason for this opinion is, of course, that the opposite view appears to contradict the well-known rule of canon 931, §3, declaring a daily (or almost daily) Communion to suffice for obtaining all indulgences requiring the reception of the sacraments as a condition.[1] It would appear that the opinion given in (ii) substitutes weekly Communion for the (almost) daily Communion required in canon 931, §3.

[1] Cf. *The Clergy Review*, 1939, XVII, p. 69.

De Angelis interprets canon 933 to mean that many indulgences *obtainable on the same day* may be gained by receiving Holy Communion once, whenever its reception is a condition. But this meaning, though likely, is not certain, and we must await a decision of the Code Commission on the point.

131. INDULGENCES ATTACHED TO BREVIARY RECITATION

Can a priest gain indulgences simply by reciting his office? If so how does this harmonise with the rule which, in principle, denies indulgences to works already of obligation?

Canon 932: Opere, cui praestando quis lege aut precepto obligatur, nequit indulgentia lucrifieri, nisi in eiusdem concessione aliud expresse dicatur. . . .

i. The indulgences granted at various times during the last few years are contained in nn. 731 and 736 of the 1950 *Enchiridion Indulgentiarum*; this book, we understand, has already been supplanted by another, in which possibly some modifications of these indulgences are contained.[1]

There is a plenary indulgence on the usual conditions (confession, Communion and prayer for the Pope's intentions) for reciting devoutly the day's divine office before the Blessed Sacrament, whether exposed or not; and five hundred days for reciting each canonical hour. The indulgence may also be gained by those in major orders whose obligation has been commuted into the recitation of some prayers other than the breviary office.

Granted originally in 1932 to those in major orders the indulgences were extended in 1937 to tonsured clerics, novices and students of religious institutes, whether they were bound or not, on some title or other, to the recitation of the divine office.

ii. The rule of canon 932 is not affected by the above concessions, though there are some other recent indulgences which do seem to be in conflict with it. For the indulgence is granted precisely in relation to the circumstance of place—before the Blessed Sacrament—which is not of obligation.

Similarly the indulgences granted for the prayer *Aperi, Domine* and *Sacrosanctae*,[2] before and after the office is recited, do not conflict with the rule, since they are not part of the office and one is not bound to recite them.

[1] The 1952 edition makes no change (Editor).

[2] "The indult and indulgences granted for the saying of the prayer *Sacrosanctae* are (now) attached to the final antiphon" (S. Rit. Congr., *Cum nostra*, IV, 4).

132. INDULGENCE AT CONSECRATION OF ALTAR

Is the indulgence provided for in canon 1166, §3, *granted in the case of an altar being consecrated by a specially delegated priest? What formula is to be used?*

Canon 1166, §3: Cum consecratur ecclesia vel altare, Episcopus consecrator, licet iurisdictione in territorio careat, indulgentiam concedit unius anni ecclesiam vel altare visitantibus in ipsa consecrationis die. . . .

Quinquennial Faculties, formula III, ex *S.R.C.* Deputandi Vicarium Generalem vel alium sacerdotem, in aliqua ecclesiastica dignitate constitutum, ad altaria fixa et portatilia consecranda, servato ritu et forma Pontificalis Romani.

S.R.C., 26 October, 1931 (private); *Apollinaris*, 1936, p. 186. An delegatio sacerdotis ad altare fixum consecrandum secundum Ritum Pontificalis Romani, data ex facultate quinquenniali, etiam contineat delegationem validam ad Indulgentiam concedendam . . . et quatenus negative, an ipse Episcopus Ordinarius loci, qui sacerdotem delegat . . . intelligi possit tamquam Episcopus consecrator . . . *Resp.* Indulgentiae in consecratione altaris conceduntur ab Episcopo qui altare consecrat, vel consecrare deberet, et tantum promulgantur ab ipso delegato.

Inasmuch as a bishop consecrator even though not the Ordinary of the place where the altar is being consecrated, grants the indulgence, there was some reason for supposing that a priest lawfully delegated to consecrate was also lawfully delegated to grant the indulgence. The Sacred Congregation, however, makes it quite clear that the priest consecrator merely announces that the indulgence is granted by the local Ordinary.

The formula is that used at a Pontifical Mass as read by the assistant priest, but modified as follows: "N.N. . . . dat et concedit omnibus Christi fidelibus altare hoc visitantibus hodie unum annum et in die anniversario consecrationis huiusmodi centum dies de vera indulgentia in forma Ecclesiae consueta. Rogate Deum. . . ."[1] The formula may be read in the vernacular.

133. RE-ERECTION OF STATIONS

In a certain church the Stations of the Cross consist of large marble or stone carvings with the cross fixed in the centre of each. In recent years the position of most of these Stations has been altered more than once: does this invalidate their canonical erection and consequently the obtaining of indulgences attached?

[1] Nabuco, *Pontificalis Romani Expositio*, II, p. 147.

S.C.Indulg., 22 August, 1842; *Fontes*, n. 5028.4. An mutatio crucium de loco in locum in eadem ecclesia secum importet annihilationem indulgentiarum Viae Crucis adnexarum? *Resp.* Negative.

The rules about erecting the Stations, which used to be rather intricate, were simplified 12 March, 1938,[1] but all the other decisions of the Holy See about various details remain unchanged. Amongst them is the ruling that the crosses must be made of wood,[2] the erection being otherwise invalid; pictures or carvings, though usual, are unnecessary and may be of any material provided the crosses are of wood. Everything, therefore, which is settled about the Stations refers always to these wooden crosses.

If the greater part of the wooden crosses has been removed for the purpose of renovation or for any other reason, the indulgences cannot be gained during their absence, but no renewal ceremony of erection is necessary on their replacement.[3] Moreover, within the building in which they have been once validly erected, the crosses may be re-arranged in position as often as desired. Hence the principle is that the indulgence is attached to the wooden crosses, and it continues provided the greater number of the crosses remains somewhere within the church in which they were first erected.

134. STATIONS' CRUCIFIX—COLLECTION FOR THE HOLY PLACES

A question has arisen about the Collection for the Holy Places. In addition to certain indulgences, the parish priest who arranged this collection in his church was granted the faculty of blessing crucifixes for the Stations' indulgence obtainable by persons prevented from making the Stations in the usual way. Could it be held that, notwithstanding the general withdrawal of such faculties in 1933, *this particular one remains? If not, how does one apply for it?*

i. The faculty as described was granted by the Holy See, 26 June, 1894, confirming the previous grant of 8 June, 1887. The text is not in the usual collections but is described by Beringer, *Les Indulgences* (1925), I, §801, with a reference to *Analect. Ord. Min.*, XIII, 131.

[1] *The Clergy Review*, 1938, XIV, p. 550.
[2] Op. cit., 1936, XII, p. 409.
[3] 30 January, 1839; *Fontes* n. 5011.5.

The important decree[1] which withdrew such faculties from 1 April, 1933, was not retrospective. Priests already in possession of this and other faculties, which used to be obtained easily by joining some pious association, retain them; on the other hand, priests joining such associations after 1 April, 1933, obtain only very reduced faculties, excluding amongst others the faculty of blessing a Stations' Crucifix.

ii. For the view that the faculty is still obtained by arranging the Holy Places Collection, it could be argued that it was not granted to those joining a pious association but to parish priests performing a specified pious work, and that it was given moreover in perpetuity. For the opposite view, it may be claimed that the intention underlying the decree of withdrawal in 1933 covers this faculty also, and it could also be held that it was actually attached to a pious association, namely, the Franciscan "Pium Opus a Terra Sancta"; and that, accordingly, the faculty ceases at least in regard to parish priests not attached to this pious work before 1 April, 1933.

A private reply of the Sacred Penitentiary, 9 April, 1940,[2] is as follows: "Iuxta hodiernam praxim parochi, de quibus in precibus, ad hoc S. Tribunal recurrere debent ut facultate, de qua supra, uti possint." The decision neither states that the faculty has ceased, nor that it is still existing, but that recourse should be had to the Sacred Penitentiary before the faculty can be used. The question discussed in the previous paragraph seems therefore to be still alive, since it is not clear whether "possint" means for the valid or the merely lawful use of the faculty. However, for all practical purposes, one must have recourse to the Holy See.

iii. The formula of application given by the most recent writer on indulgences is as follows:[3] "Beatissime Pater, N.N. sacerdos dioecesis . . . (*vel* Ordinis *seu* Congretationis . . .) ad pedes Sanctitatis Tuae provolutus, humillime petit facultatem benedicendi crucifixos ad lucrandas sacrae Viae Crucis Indulgentias pro legitime impeditis a visitandis eiusdem Viae Crucis stationibus ad normam Sanctae Sedis ad rem concessionum. Et Deus, etc." The petition must be sent to Rome through one's own Ordinary together with his own recommendation.

135. STATIONS OF THE CROSS: ROSARY

May the indulgences attached to the Stations be gained by using a rosary of fourteen medals, each containing a representation of the Station?

[1] S. Penitentiary, 20 March, 1933.
[2] *Ephemerides Liturgicae*, 1940, p. 92.
[3] De Angelis, *De Indulgentiis* (1946), p. 318.

S. Off., 24 July, 1912; *A.A.S.*, IV, p. 529: Cum igitur per huiusmodi concessionem (i.e. crucifixum ad hoc benedictum) omnium fidelium utilitati satis consultum fuerit . . . consulendum Sanctissimo decreverunt, ut quascunque alias, praeter mox memoratam, hac super re concessiones, nominatim vero quae *Coronas*, quas vocant, *Viae Crucis* respiciunt, revocare, abrogare ac penitus abolere dignaretur: insimul declarando, facultates omnes Coronas supradictas hunc in effectum benedicendi, sacerdotibus quibuslibet, tam saecularibus, quam regularibus, in praestantioribus etiam dignitatibus constitutis, hucusque quomodocumque impertitas, statim ab huius decreti promulgatione, nullius amplius esse roboris. Et sequenti feria V. . . .

S. Poenit., 14 December, 1917, ad. 2; *A.A.S.*, X, p. 30: Utrum abrogatio coronarum, quas vocant Viae Crucis, et cuiusvis concessionis, quae eas respiciat, se extendat etiam ad illas Viae Crucis coronas, quae ante abrogationis Decretum fuerant legitime benedictae, indulgentiis ditatae et fidelibus iam distributae? *Resp.* Affirmative.

i. The normal method of gaining the indulgences attached to the Stations of the Cross is by performing the devotion before the wooden crosses, properly erected by one who has the faculty, as determined by the Sacred Penitentiary, 12 March, 1938, a decree which simplified the previously existing rules.[1]

ii. For those lawfully impeded from performing the devotion in the normal way, the indulgences are obtainable by the use of a crucifix, blessed for the purpose by one who has the faculty, as summarised in *Enchiridion Indulgentiarum*, n. 194, a. This method requires the recitation twenty times of *Pater Ave* and *Gloria*, once for each station, five times in honour of the Sacred Wounds, and once for the Pope's intention.

iii. The sick who are impeded from performing the devotion, even in the form given under (ii), may gain the indulgences by kissing, or merely gazing upon, a crucifix blessed for the purpose, as explained in *Enchiridion Indulgentiarum*, n. 194, b.[2]

iv. All other methods, though authorised at some former time, are now abrogated and the abrogation is retrospective, a ruling which applies specifically to the Stations rosary. There is nothing objectionable about the article—quite the contrary—and the beads could assist a person in saying the requisite prayers as in (ii), provided a specially blessed crucifix was also used, if it is desired to gain the indulgences. The article is not clearly condemned by

[1] *The Clergy Review*, 1939, XVII, p. 544, and 1942, XXII, p. 128.
[2] *The Clergy Review*, 1931, II, p. 84, and 1943, XXIII, p. 567.

the above decrees, but it would seem better not to encourage its manufacture lest persons should wrongly imagine that the indulgences may be gained by using it.

136. CROZIER INDULGENCES

What precisely is the Crozier indulgence, and how is the faculty for granting it obtained?

S.C. Indulg., 15 March, 1884 (Supplment to Ferraris, *Bibliotheca*, IX, p. 262):

i. Utrum Indulgentia quingentorum dierum quoties in Rosariis per Crucigeros benedictis oratio dominica, vel salutatio angelica devote dicatur revocanda sit:

(*a*) vel ut apocrypha, seu ratione dubiae authenticitatis;

(*b*) vel uti indiscreta, seu ratione indiscretae concessionis;

(*c*) vel ob alias extrinsecas rationes?

Et quatenus negative ad omnes primi dubii partes:

ii. Utrum eadem Indulgentia rata habenda sit et confirmanda, vel potius dicenda sit ratihabitione et confirmatione non indigere?

iii. Utrum pro acquirenda eadem Indulgentia necesse sit integrum Rosarium devote recitare?

iv. Utrum expediat aliis etiam Sacerdotibus concedi privilegium benedicendi Rosaria cum applicatione Indulgentiae quo gaudent Sodales Crucigeri?

Resp. Ad i. Negative in omnibus. Ad ii. Non indigere. Ad iii and iv. Negative.

The indulgence was first granted by Leo X, 20 August, 1516, to the Master-General of the Canons Regular of St Augustine of the Order of the Cross, and the decree given above, which is the principal document now quoted by the authors, restricted it to the fathers of that Order. The rule, however, has since become relaxed and the faculty may be obtained, like any other, from the Sacred Penitentiary. It used to be obtainable by joining some pious association, but the decree *Consilium suum persequens*, 20 March, 1933, abolished this very attractive and simple way of obtaining faculties, as from 1 April, 1933, the date of its promulgation; priests joining pious associations after that date must apply to the Holy See, through their own Ordinaries, for whatever special faculties they may desire; priests enjoying such faculties before that date retain them.[1]

The special character of this indulgence, which may be attached

[1] Cf. *The Clergy Review*, 1933, VI, pp. 73 and 165; 1934, VII, pp. 70 and 434; 1937, XIII, p. 192; 1940, XIX, p. 374.

to the ordinary rosary, consists in the grant of 500 days indulgence for the separate recitation of a *Pater* or *Ave*, without reciting the whole rosary or even a decade, and without meditating on the mysteries. Moreover, from *S.C. Indulg.*, 12 June, 1907,[1] the Crozier indulgence may be gained cumulatively with the Dominican whilst reciting the rosary on beads blessed for both purposes, a special favour which is an exception to the general rule of canon 933.

The faculty for blessing beads with this indulgence usually permits the blessing *unico signo crucis*, without a specified formula and without the use of holy water.

137. BRIGITTINE INDULGENCE

What precisely is this indulgence and how is the faculty for imparting it obtained? Why is it not mentioned in "Enchiridion Indulgentiarum"*?*

Only those indulgenced prayers are listed in *Enchiridion Indulgentiarum* for which there is not required either the blessing of some pious object by a priest enjoying the faculty, or a visit to some special pious locality, or inscription in some pious association. Books entitled *Raccolta*, circulating before the first edition in 1929 of the official *Preces et Pia Opera*,[2] used to give a more or less complete list of all indulgences. At the present time, for current and authentic indulgences other than those in *Enchiridion Indulgentiarum*, one must consult special pamphlets or leaflets, or else refer to the larger commentaries on indulgences in general, such as those by Beringer or Gougnard.[3]

The Brigittine rosary, traced to St Brigit of Sweden as its originator, consists of six decades with three additional beads; as noted in *The Clergy Review*, 1946, XXVI, p. 44, this is very likely the explanation of the three additional beads found on all rosaries at the present time. The devotion consists of reciting for each decade a *Pater*, an *Ave* ten times and a *Credo*, with an additional *Pater* at the end commemorating the seven dolours, and an additional triple *Ave* commemorating the traditional sixty-three years of Our Lady's life. Meditation on certain mysteries is not required.

From Leo X, 10 July, 1515, to Leo XIII, 8 December, 1897, many papal rescripts have enriched this devotion with ample indulgences, including a plenary indulgence obtainable on certain days by fulfilling the usual conditions, and 100 days for each *Pater*,

[1] *Periodica*, III, p. 350. [2] Now called *Enchiridion Indulgentiarum*.
[3] For the Brigittine indulgence cf. Beringer, *Les Indulgences* (1925), I, p. 457; Gougnard, *De Indulgentiis* (1933), p. 226; Schrevel-Legrand, *Florilegium* (1933), p. 226; *Collationes Brugenses*, 1928, p. 216.

Ave and *Credo*. Unlike the Crozier indulgence,[1] the one for each bead cannot be obtained, in principle, except by having the intention at least of reciting the whole rosary.

The faculty of blessing these rosaries, originally granted to an Order founded by St Brigit which is now extinct, is proper to the Canons Regular of the Lateran. It may no longer be obtained by joining some pious association, but must be requested by secular priests through their Ordinary from the Sacred Penitentiary.[2] Though a proper form of blessing exists in the current Roman Ritual, n. 39, among the blessings proper to religious Institutes, it may be given by those who obtain the faculty by making a simple sign of the Cross.

138. ROSARY RINGS

Was there a faculty given during the war permitting a rosary ring to be indulgenced like any ordinary set of beads? May the Apostolic Indulgences be attached to this pious article?

S.Poenit., 22 May, 1940; *Ephemerides Liturgicae*, Ius et Praxis, 1940, p. 93: Utrum liceat christifidelibus, in recitatione SSmi Rosarii B.V.M., uti peculiari parva coronula ad modum anuli confecta, quin Indulgentias, memoratae recitationi adnexas, amittant. *Resp.* Negative.

21 June, 1918; De Angelis, *De Indulgentiis*, §225, e: Possuntne applicari indulgentiae SS. Rosarii armillis metallicis (*vulgo* braccialetti), quibus coronula quinque decadum cum crucifixo, item metallica, ita solide applicatur, ut immobilis permaneat, apta nihilominus sit usui cui destinatur? *Resp.* Permitti benedictionem signi supra descripti, cum applicatione indulgentiarum Apostolicarum per sacerdotes ad id facultate praeditos, exclusis tamen iis, quae pro recitatione Rosarii concessae fuerunt.

The details about indulgences, especially when attached to pious objects, are at present somewhat congested, and doubts of all kinds are constantly arising. Subject to some more authoritative information being obtained, we suggest the following solution:

i. The indulgences obtainable by reciting the rosary, as given in *Enchiridion Indulgentiarum*, n. 395, do not require any beads at all, and there is no reason why the faithful should not use the rosary ring or any other contrivance as an aid to counting. In addition to these indulgences, further ones are granted if a properly blessed set

[1] Cf. *The Clergy Review*, 1946, XXVI, p. 214.
[2] *S. Poenit.*, 20 March, 1933; *The Clergy Review*, 1946, XXVI, p. 316.

of beads is used for this devotion, as note 2 of n. 395 reminds us. All variations and changes in the form of these rosaries, for example the use of medals instead of beads, have been consistently rejected by the Holy See.[1] It is certain that the ring or the bracelet, though an effective help in counting, is not permitted as a substitute for the accustomed type of rosary to which indulgences may be attached additional to those granted in n. 395. If we are to say more than this and maintain that the article itself is prohibited even as an aid to counting, it could only be because it is a devotional novelty coming within the prohibition of the Holy Office, 26 May, 1937.[2] This is, in our view, a harsh and unwarranted conclusion.

ii. What are known as *Apostolic Indulgences*[3] are those obtainable by possessing a pious object blessed by the Pope or his delegate. The rosary bracelet comes within this definition and it would seem that the rosary ring is not excluded, since it could contain a small medal and thus come within the Holy See's description of "res apta" for the Apostolic Indulgences, namely "tantummodo coronae, rosaria, cruces, crucifixi, parvae statuae, numismata, dummodo non sint ex stanno, plumbo, vitro conflato ac vacuo aliave simili materia, quae facile confringi vel consumi potest". Since, however, the special additional rosary indulgences are not obtainable by the possession of the bracelet, *a fortiori* the same must be said of the ring.

iii. It is possible that some special concession was granted for certain categories of the faithful during the war, permitting the rosary ring to be blessed with the additional indulgences which normally are excluded. We can find no reference to the subject in the faculties enjoyed by army chaplains and others, and the concession in any case would very likely be restricted to those on active service during the war.

139. PAPAL BLESSING OF SACRED ARTICLES

At papal audiences the Holy Father is accustomed to bless crucifixes, rosaries and any other pious objects presented by the faithful present. The popular view is that the article is then indulgenced to the fullest possible extent: thus a crucifix would have attached to it a plenary indulgence at the hour of death and the persons using it would, in appropriate circumstances, gain the indulgences attached to a "Stations" crucifix; a rosary would have all and every kind of indulgence which it is possible to attach to rosaries by ecclesiastics having the faculty. Is this correct?

[1] *The Clergy Review*, 1941, XXI, p. 361.
[2] Op. cit., 1937, XIII, p. 315.
[3] Op. cit., 1944, XXIV, p. 471.

Canon 912: . . . Romanum Pontificem, cui totius spiritualis Ecclesiae thesauri a Christo Domino commissa est dispensatio. . . .

Canon 239, §1.5: . . . Cardinales . . . facultate gaudent . . . Benedicendi ubique, solo crucis signo, cum omnibus indulgentiis a Sancta Sede concedi solitis, rosaria, aliasque coronas precatorias, cruces, numismata, statuas, scapularia a Sede Apostolica probata. . . .

S. Off., 12 June, 1913; *A.A.S.*, V, p. 305. S.D.N. Pius div. prov. Pp. X, in audientia R.P.D. Assessori supremae Congregationis sancti Officii impertita, benigne declarare dignatus est, Indulgentias, quas Ipse solet annectere crucibus, crucifixis, rosariis, coronis, ss. numismatibus et parvis statuis, Sibi a fidelibus porrectis, illas tantummodo esse intellegendas, quae in elencho, a sacra Congregatione Indulgentiarum die 28 Augusti 1903 edito, recensentur, quae *apostolicae* nuncupantur; nisi expressis verbis significet, alias insuper velle annectere.v.gr. S. Birgittae, vel Crucifigerorum, specifice ac nominatim eas designando . . . M. Card. Rampolla.

The above explanation given by the Holy Office in 1913 precedes the Code, and since we find therein that Cardinals possess *de iure* the faculty of applying every kind of indulgence to pious articles, which they are presumed to intend whenever they bless these things, it might seem reasonable to suppose that the Holy Father has a similar intention. We think, nevertheless, that the rule formulated by Pius X in 1913 is still operative, since it is reprinted by Mgr De Angelis, an official of the Sacred Penitentiary, in his treatise on Indulgences issued as a second edition in 1950. Clearly the question is not what the Holy Father can do, for in the matter of granting indulgences his power is unlimited, but what he intends to do; similarly Cardinals enjoy the faculty and can use it, but on each occasion of its use the question is what they intend to do. The "Apostolic" indulgences referred to in the document are those which it is customary for the Holy Father to announce shortly after his election.[1]

140. MISSIONARY UNION FACULTY—APOSTOLIC INDULGENCES

What is to be understood by the faculty, enjoyed by certain members of the "Pia Unio Cleri pro Missionibus", of blessing with a sign of the cross certain pious objects and of applying to them the Apostolic Indulgences?

Facultas (dummodo adscriptus ad sacramentales confessiones audiendas sit approbatus) benedicendi, extra Urbem, unico Crucis

[1] For the current list of Pope Pius XII, cf. *A.A.S.*, 1939, XXXI, p. 132.

signo, coronas, rosaria, cruces, crucifixos, numismata et parvas statuas cum applicatione Indulgentiarum Apostolicarum.[1]

Nearly the whole legislation about indulgences is contained in this question and we must be content with indicating the salient points.

i. The "Pia Unio Cleri pro Missionibus" exists for the purpose of encouraging a zealous interest amongst the clergy in foreign missions. Cf. an article on the subject in *The Clergy Review*, 1939, XVII, p. 226; also p. 264.

ii. In order to encourage recruiting of new members various spiritual favours are granted, following a well-established practice in these associations, and amongst these favours used to be included for all members a faculty to bless certain objects and attach indulgences to them, e.g. a Stations' Crucifix. This faculty was, unhappily, withdrawn by the Holy See from all Pious Associations, with effect from 1 April, 1933; cf. *The Clergy Review*, 1946, XXVI, p. 316. But the decree was not retrospective, and accordingly all members who had joined before 1 April, 1933, retained these faculties, including the one we are discussing. All other priests who desire faculties of this kind must apply for them specifically through their own Ordinaries, according to the decree which came into effect on 1 April, 1933. The Missionary Union, however, makes this application on behalf of its members and obtains for them certain faculties, including the one in question.

iii. The faculty of giving a blessing "unico signo crucis" means that the priest possessing it need not employ the usual formula of the Ritual in blessing some object, but may use instead a simple sign of the cross; this is a useful privilege, since the faithful often produce objects to be blessed when the priest has not got the formula. In our view, following the best authorities, this blessing should be given with the words *In nomine Patris*, etc. Cf. *The Clergy Review*, 1944, XXIV, p. 469.

iv. The Apostolic indulgences are not, of course, all the papal indulgences; they are the indulgences, plenary or partial, which the Holy Father is accustomed to publish soon after his election, and which are attached to the pious objects mentioned in the above faculty; e.g. the indulgences for reciting the rosary are obtainable by having in one's possession a pious object, such as a medal, blessed with the above faculty. The list of these indulgences granted by the present Holy Father is in *A.A.S.*, XXXI, 1939, p., 132, and *The Clergy Review*, 1944, XXIV, p. 471.

[1] *A.A.S.*, XI, 1919, p. 20; *The Clergy Review*, 1943, XXIII, p. 43.

141. MISSIONARY UNION FACULTIES—CONFESSIONAL JURISDICTION

Certain powers enjoyed by priest members are granted to priests approved for hearing confessions. Does this mean that they may not validly be used in places where the priest does not hold faculties for confession? Is it sufficient to be approved for hearing the confessions of men only?

Missionary Union Faculties, ad III. The Clergy Review, 1943, XXIII, p. 42: Facultas (dummodo adscriptus ad sacramentales confessiones audiendas sit approbatus) benedicendi ac imponendi. . . .

Propaganda, 28 March, 1927; *Periodica*, 1928, p. 140: An sacerdos adscriptus, extra etiam locum in quo ad sacramentales confessiones audiendas approbatus est facultate cuius usui praerequiritur iurisdictio uti possit? *Resp.* Nulla iurisdictio praerequiritur; solummodo pro benedictionibus requiritur ut sacerdos approbatus sit ad sacramentales confessiones audiendas; seu sit confessarius. Cum vero nulla fiat distinctio circa diversa loca in quibus sacerdos sodalis Piae Unionis adesse possit, haec circumstantia de diversitate locorum non est attendenda. . . .

S. Paenit., 2 March, 1942; *Ephemerides Liturgicae*, 1942, p. 32: Utrum clausula "dummodo sit adprobatus ad recipiendas sacramentales confessiones" quae invenitur in aliquibus facultatibus applicandi indulgentias obiectis religiosis, intelligenda sit de sacerdotibus tantum, qui ad recipiendas fidelium utriusque sexus confessiones adprobati sint, an etiam de illis qui ad christifidelium unius sexus confessiones recipiendas adprobati sint? *Resp.* Negative ad primam partem; affirmative ad secundam.

i. Occasionally the use of some delegated power is certainly limited to places where the priest enjoys confessional faculties: examples of this may be seen in certain portions of the 1950 Jubilee documents, e.g. "Dispensare possint, in foro conscientiae et sacramentali tantum circa visitationes quatuor Basilicarum . . ."[1]; or a rescript might contain a clause "audita prius sacramentali confessione"; cf. also canons 1044, 1045 and 2254.

ii. There was some reason for supposing, from the words of the formula, that confessional jurisdiction was required on the part of priest members of the Missionary Union. The Propaganda reply makes it clear that these words mean that the priest must be qualified by enjoying confessional faculties somewhere; their possession assures a certain degree of knowledge and fitness, exactly as the common law requires a doctorate or a licentiate for certain offices. In this country priests are usually approved for both sexes; the reply of the Sacred Penitentiary declares, however, that a limited approbation suffices.

[1] *A.A.S.*, 1949, XLI, p. 344.

142. APOSTOLIC INDULGENCES DURING VACANCY OF HOLY SEE

Those who have been members of the Missionary Union since before 1 April, 1933, have the faculty of applying to religious objects the Apostolic indulgences, which it is customary for the Holy Father soon after his election to promulgate. Does this faculty continue during the vacancy of the Holy See?

Canon 61: Per Apostolicae Sedis aut dioecesis vacationem nullum eiusdem Sedis Apostolicae aut Ordinarii rescriptum perimitur, nisi aliud ex additis clausulis appareat. . . .

The difference between members before and after 1 April, 1933, is that ampler faculties are enjoyed by the earlier members simply by adscription to the Missionary Union,[1] whereas after that date the faculty must be communicated to them expressly.[2] There is reason behind the above query since what are known as "Apostolic" indulgences are published afresh by each Pope; this does not mean that articles blessed with the faculty granted by a deceased Pope lose the indulgence at his death, but there is some reason for doubting whether the faculty of imparting them ceases until a new list is promulgated by his successor, since these concessions have a special personal relation to the Holy Father.

That the faculty does not cease during the vacancy of the Holy See is the common opinion based on the terms of canons 61, 66, §1, 70 and 207, §1, and it is supported by Mgr de Angelis, an official of the Sacred Penitentiary,[3] and by the interpretation officially given by Propaganda respecting the faculties, including that of attaching the Apostolic indulgences, granted to places within the jurisdiction of that Congregation.

143. RESCRIPTS CONCERNING INDULGENCES

I am informed that a tax is payable to the Sacred Penitentiary when certain rescripts for obtaining indulgences are granted. If this is correct, does it not conflict with the generally accepted principle that money payments never enter into the matter of indulgences?

i. If instead of the word "obtaining" we read "granting" our correspondent's information is substantially correct. One must

[1] *The Clergy Review*, 1946, XXVI, p. 316.
[2] Qu. 140.
[3] *De Indulgentiis*, §238.

remember, at the outset, that there is no principle forbidding parting with money even when the indulgence, and not merely a rescript for its granting, is desired. The abuses connected with the matter in the past, especially on the eve of the Reformation in Germany, have rightly caused a reaction against a practice which was a fertile source of scandal. But examples could be cited in modern times of almsgiving being included amongst the conditions for obtaining certain indulgences, as for example an "extraordinary" Jubilee. The condition may be commuted in the case of people who cannot afford anything, but the authors continue to discuss various casuistical questions arising from it.[1]

ii. Like other sections of the Roman Curia the Sacred Penitentiary needs income in order to function. The tradition, however, is in principle to issue rescripts for the internal forum gratis, for example the commutation of private vows reserved to the Holy See in canon 1309, and it is likewise the tradition, which the experience of many confessors substantiates, to reply to all petitions with the utmost despatch: in normal times a week will usually suffice.

iii. Some writers explaining the practice of the Roman Curia state that a rescript granting faculties, for example, to bless and indulgence rosaries, is always gratis[2] and it may be that this is the rule at the present time. On the other hand the Constitution of Pius XI *Quae Divinitus*, 25 March, 1935[3] promulgating a new set of rules for the Sacred Penitentiary, definitely provided for taxation in para. 10. Canestri, in his well-informed commentary, states: "In sectione vero indulgentiarum sunt taxae pro rescriptis . . . Itaque pro altari privilegiato, pro facultate benedicendi res sacras adnectendo eis indulgentias, et similia, quaedam taxae hodie impositae sunt ad subveniendum Sanctae Sedis necessitatibus pro dicasteriorum expensis."[4]

144. INDULGENCES NOT OBTAINABLE TILL DEATH

In a discussion on the formula of Apostolic Blessing, which usually accompanies the last sacraments, some maintained that this was the only kind of indulgence which had its effect not on the completion of the conditions but at the hour of death. Are there, in fact, others of this kind?

i. There are a number of ways in which a plenary indulgence may be gained at the hour of death: the concession appears amongst many other favours granted to members of various confraternities

[1] De Angelis, *De Indulgentiis*, §191.
[2] Sartori, *Jurisprudentiae Ecclesiasticae Elementa*, 1949, pp. 71–5.
[3] *A.A.S.*, XXVII, p. 97.
[4] *Apollinaris*, 1935, p. 588.

and pious unions; or it may be imparted by a priest who has obtained the faculty from the Holy See; or it may be attached to a crucifix or other object blessed by the Holy Father or his delegate. All these indulgences require in some measure the intervention of a priest, as is the case with the Apostolic Blessing which usually accompanies the last sacraments, or when the indulgence is obtainable by inscription in a confraternity, or by kissing a crucifix or other blessed object.

ii. *Enchiridion Indulgentiarum*, the official collection of indulgenced prayers and practices, of which the last edition appeared in 1952, contains some plenary indulgences of this deferred kind which do not require the intervention of a priest except in observing the accustomed condition of receiving the sacraments: n. 638, willing acceptance of death at the hand of God; n. 452, the invocation *Angele Dei*, etc., frequently recited during life; n. 332, the *Salve Regina* often recited; many others could be indicated.

iii. If it is asked what purpose is served by multiplying a concession which, in any case, can only be gained once, the reply usually given is that one thereby has greater assurance of obtaining a plenary indulgence at the hour of death, since the conditions have to be verified in each instance, and if they are perhaps inadvertently not observed in one type of indulgence they will very likely be observed properly in one of the other types.[1] Moreover it is not to be assumed that the faithful will all set about obtaining this title to a plenary indulgence by observing all the conditions attached to every prayer or pious practice to which the concession has been attached. The idea of multiplying the various channels seems to be to offer the faithful a choice; each will select according to his devotional taste and circumstances one or other of those offered.

145. INDULGENCED PRAYERS: TEXTUAL VARIATIONS

Does the rule of canon 934, §2, apply to the addition of the word "our" in the English version of the prayer "Fidelium Deus": "by our pious supplications" instead of "by pious supplications"?

Canon 934, §2: Si peculiaris oratio assignata fuerit, indulgentiae acquiri possunt quocunque idiomate oratio recitetur, dummodo de fidelitate versionis constet ex declaratione vel Sacrae Poenitentiariae vel unius ex Ordinariis loci ubi vulgaris est lingua in quam vertitur oratio; sed indulgentiae penitus cessant ob quamlibet additionem, detractionem, vel interpolationem.

S. Poenit., 26 November, 1934; *A.A.S.*, 1934, XXVI, p. 643:

[1] Heylen, *De Indulgentiis*, p. 276.

Pluries a Sacra Poenitentiaria quaesitum est: Utrum verba can. 934, §2, C.I.C. *indulgentiae penitus cessant ob quamlibet additionem, detractionem vel interpolationem* rigorose intelligi debeant de quibusvis additionibus, detractionibus vel interpolationibus an potius de iis tantum quae earumdem substantiam alterent . . . *Resp.* Negative ad primam partem; affirmative ad secundam, facto verbo cum Ssmo.

i. The rule of canon 934 is reasonable enough: if the faithful want to gain an indulgence attached to a prayer, they must recite the prayer and not some other prayer resembling it. The reply of 26 November, 1934, is equally reasonable, especially when it is a question of a translation, and is meant to allay scrupulosity. Commenting on this reply in *The Clergy Review*, 1935, IX, p. 65, the writer correctly applied it to the hymn verse *Maria Mater Gratiae*, deciding that the substance of the prayer remained the same whether one used the Breviary form "Dulcis parens clementiae" or "Mater Misericordiae" as in the authorised text to which an indulgence was attached. On the other hand, apart from indult, additions to the *Hail Mary* when reciting the Rosary must be regarded as substantial changes[1]; similarly, the recitation of the Litany of Loreto with three invocations to one *Ora pro nobis* does not suffice for gaining the indulgences.[2] In these instances an official declaration has resolved the doubt; in other instances one has to decide whether a change is substantial or not.

ii. There can be no dispute that the word "our" is an addition in the translation which is not found in the original. It is so printed in the *Ordo Administrandi*, p. 311, and in many prayer books. The word was omitted in the 1886 edition of the *Manual of Prayers*, p. 161, and is omitted in the English version of *Preces et Pia Opera*, n. 549. It might be argued that the change is substantial, inasmuch as the original does not exclude the prayers of the Holy Souls for themselves, whereas the addition in the translation limits the sense to our prayers on their behalf.

We think, however, that the change is not substantial, for there is no reason why the holy souls should not be included in the word "our", relying on the doctrine of the communion of saints. With still greater reason one may regard "that pardon" instead of "the pardon" as a negligible modification, if any, of the concluding words of the prayer. The *Ordo Administrandi* has the reading "that".

The best form, nevertheless, is the one given in many missals and prayer books: "that through pious supplications they may obtain the pardon they have always desired".

[1] Cf. *The Clergy Review*, 1935, X, p. 306.
[2] Cf. *The Clergy Review*, 1946, XXVI, p. 609.

XII. EXTREME UNCTION AND LAST BLESSING

146. APPARENT DEATH—ANOINTING

Relying on the commonly accepted teaching about apparent death, is there an obligation to anoint conditionally the sick person who expires just before the priest arrives? If so, is this obligation taught in any instruction from the Holy See?

i. Passing over medical discussion about the possibility of life not being extinct after death has apparently taken place, and consequently passing over also an examination of the various views about the length of time for which life may continue, we assume that according to the accepted teaching life is not certainly extinct,[1] as will be the case when the priest arrives just after expiry if the common teaching is correct. A direction to anoint such persons conditionally appears in some local rituals as in Cambrai (1927): "Hic animadvertere oportet mortem veram cum specie mortis non necessario congruere, ac proinde extremam unctionem quibusdam esse ministrandam qui spiritum iam emisisse videntur." It was expected that a new edition of the Roman Ritual might contain some rubric to this effect, but the book which has recently appeared, authorised by a decree *S.R.C.*, 25 January, 1952,[2] contains no positive direction. What it does do, however, is to omit from the introductory rubrics n. 13 of the previous rituals: "Si vero dum iniungitur infirmus decedat, Presbyter ultra non procedat, et praedictas Orationes omittat." This rubric, dating from a time when the "apparent death" theory was not yet thought of, is in evident conflict with it; for if the priest should cease the rite when the person expires during the anointing, obviously he should not begin it if the person has expired before he arrives. This conflict is now removed, and n. 13 is now the former n. 14 directing conditional anointing if death is uncertain: it cannot be doubted that the modern doctrine is responsible for this deletion, and to this extent the current Ritual sanctions the teaching of the authors.

[1] On these points cf. *l'Ami du Clergé*, 1951, p. 17; M. d'Halluin, *La Morte cette inconnue*, Beauchesne (1952), prefaced by the Archbishop of Cambrai; *Cahiers Laënnec*, 1946, n. 4, p. 50.
[2] Reviewed in *The Clergy Review*, 1952, XXXVII, p. 633.

ii. Relying, amongst other reasons, on this rubric now deleted, the distinguished Roman canonist Maroto held in 1928 that an obligation to anoint even conditionally could not be established.[1] Bearing in mind, however, the practically unanimous modern teaching on the subject, the deletion of the former rubric n. 13, and the principle obliging a priest to do what is possible for a person *in extremis*, when anointing might in given circumstances be the only means of salvation available, we think that there is an obligation; but owing to the degree of uncertainty surrounding this question the obligation does not bind *sub gravi* unless local law orders anointing in these cases.

iii. Supposing the obligation is established, it is properly observed, in our view, by a conditional anointing on the forehead only, as the Ritual directs in cases of necessity, without any other rites or prayers. This procedure seems the best interpretation of the current rubrics, and also by its brevity safeguards the necessity of avoiding scandal, a point on which all the writers insist. The scandal is that, if people know that a priest will anoint a dying person after expiry, they may delay summoning him whilst the person is conscious: the unwillingness of relatives and attendants to allow a sick person to suspect that he is dying, from mistaken motives of kindness, is a grave abuse which the Holy See has reproved.[2] Arriving after death has apparently taken place, the priest will recite some prayers during which it should be easy for him, without unnecessarily attracting attention, to give conditional absolution and the one anointing requisite.

147. ANOINTING UNCONSCIOUS AFTER A REFUSAL

May one follow the opinion of Génicot, Theol. Moralis, *II,* §423, *who teaches, against the common opinion and the rule of canon* 942, *that an unconscious person may be anointed conditionally even though he refused the sacraments up to the time of losing consciousness?*

Canon 942 and *Rituale Romanum,* VI, i, 10: Hoc sacramentum non est conferendum illis qui impoenitentes in manifesto peccato mortali contumaciter perseverant; quod si hoc dubium fuerit, conferatur sub conditione.

Génicot, loc, cit.: Probabiliter tamen conferri potest iis qui in actu peccati, ex. gr. ex vulnere in duello accepto, sensibus destituuntur; immo iis qui usque ad sensuum destitutionem sacramenta

[1] *Apollinaris,* 1928, p. 180.
[2] 12 November, 1944; *Documentation Catholique,* 1947, p. 960.

respuerunt . . . nam cum aliqua veri similitudine sperari potest eos internum contritionis actum elicuisse.

i. The terms of the canon and Ritual, the rubric of which was sterner in the pre-Code edition, V, i, 8, cause some little difficulty, since the text appears to direct the use of a condition turning upon the good dispositions of the recipient which are required for the fruitful reception of this sacrament; whereas it is the universally accepted principle that a condition should turn only upon what is required for valid reception, in order that the possibility of reviviscence should not be excluded. The best way of harmonising this conflict, though it is not accepted by everyone, is to interpret the canon as referring to the lack of a minimum intention manifested externally in contumacious impenitence.[1] If the condition, even merely mental, is made to turn solely on the recipient's intention, the sacrament will be received validly but unfruitfully, until it becomes fruitful by removal of the *obex.*

ii. The canon most certainly, in the more obvious meaning of its terms, supports the common opinion[2] that, in the case of a person who up to the moment of losing consciousness has refused to be anointed, there is no probable ground for supposing the existence of a minimum intention; in any case, the law directs refusal as a penal measure.

iii. The milder view favoured by Génicot is shared by Vermeersch[3] and by Fr Davis.[4] It means giving the most generous interpretation to the word "dubium", especially bearing in mind, as Fr Davis notes, cataleptic states in which the person is unable to speak or move and yet may be aware of everything going on around him, as the theologian Diana narrates of his own experience. In the case of a lapsed Catholic we may indulgently allow for the possibility of an adequate intention, owing to the resurgence of convictions formerly held, even though priestly ministration was refused whilst he was able to speak; each case must be dealt with on its own merits and the danger of scandal effectively removed. To this extent we agree with the writers mentioned who all, it appears, have in mind a lapsed Catholic. "Benignior vero sententia appellat clementiam Ecclesiae, quae hodie tantopere in indulgentiam propendet. In hanc benignitatem ipsi nos inclinamus donec S. Sedes, si id opportunum declaraverit, sua declaratione dubium istud evacuaverit."[5]

[1] Cf. *Irish Ecclesiastical Record,* June 1945, p. 406, and November 1945, p. 369; *American Ecclesiastical Review,* May 1939, p. 458.
[2] E.g. Noldin, *Theol. Moralis,* III, §443.
[3] *Periodica,* 1925, p. 10.
[4] *Moral and Pastoral Theology,* IV, p. 9.
[5] Vermeersch, loc. cit.

iv. In the case, however, of a dying non-Catholic, who up to the moment of losing consciousness has refused the priest's ministration, there seems no basis whatever for supposing an adequate minimum intention[1]; positive refusal destroys the general intention he may have of doing whatever God requires, and there is no reason for supposing that this refusal is later modified.[2]

148. EXTREME UNCTION BEFORE OPERATIONS

Some of my colleagues maintain that Extreme Unction is always permissible before a serious operation, and that this is now the accepted practice. Is this correct?

Canon 940, §1: Extrema Unctio praeberi non potest nisi fideli, qui post adeptum usum rationis ob infirmitatem vel senium in periculo mortis versetur.

Canon 941: Quando dubitatur num infirmus usum rationis attigerit, num in periculo mortis reipsa versetur vel num mortuus sit, hoc sacramentum ministretur sub conditione.

If the practice exists, as stated in the question, and Extreme Unction is always given as a matter of course before serious operations, it is probably due to not keeping the conditions for Extreme Unction quite distinct from those justifying Viaticum or the Last Blessing. More often than not the conditions for all three coincide, and a habit of mind is formed of not distinguishing between them. The difference is that Viaticum and the Last Blessing may and should be given whenever a person is in danger of death from whatever cause, whether it be intrinsic, such as sickness, or extrinsic, such as the imminence of a serious operation, or going into battle, or suffering the death penalty.

Extreme Unction, however, cannot validly be received except by those who are in danger of death from sickness. No doubt, it usually happens that a person about to undergo a serious operation is already in danger of death from sickness, but this is not always and necessarily the case: it may be that the serious operation is for removing some disability or deformity which in no way threatens the person's life at the moment, and it is then quite certain that Extreme Unction cannot validly be received. Cappello, in stating this common doctrine, adds: "paucis recentioribus immerito contradicentibus".[3] He gives no references and we do not remember

[1] Cappello, §262.
[2] Cf. *S.Off.*, 17 May, 1916; Denz. 2181 a., 15 November, 1941; Bouscaren, *Digest* (1948), p. 103.
[3] *De Extrema Unctione*, §212.

ever seeing the opposite view in print; a probable danger suffices, and in doubt Extreme Unction should be administered, at least conditionally.

149. EXTREME UNCTION: MONTHLY REPETITION

In the case of a person dying of consumption whose condition is growing slowly but steadily worse, with no amelioration whatever, is it permissible or even obligatory to repeat this sacrament at intervals of a month?

Rituale Romanum, ed. 1913, V, i, 14: In eadem infirmitate hoc sacramentum iterari non debet, nisi diuturna sit; ut si, cum infirmus convaluerit, iterum in periculum mortis incidat.

Ed. 1952, VI, i, 8, and canon 940, §2: In eadem infirmitate hoc sacramentum iterari non potest, nisi infirmus post susceptam unctionem convaluerit et in aliud vitae discrimen inciderit.

St Thomas, *Supplementum*, 33, 2: Quaedam vero sunt aegritudines diuturnae, ut hectica, hydropsis et huiusmodi: et in talibus non debet fieri unctio, nisi quando videntur perducere ad periculum mortis: et si homo illum articulum evadat, eadem infirmitate durante, et iterum ad similem statum per illam aegritudinem reducatur, iterum potest iniungi, quia iam quasi est alius infirmitatis status, quamvis non sit alia infirmitas simpliciter.

The repetition of this sacrament in the same danger of death is unlawful, and in the view of some invalid, an opinion which is supported, perhaps, by the "non potest" of the Code and of the typical current edition of the Roman Ritual; in the 1913 edition the rubric read "non debet". Also "nisi diuturna sit" is no longer in the rubric, for the mere fact of an illness, with the same danger of death, lasting a long time, does not justify repetition. Recovery from danger of death followed by a relapse into danger, even from the same disease, justifies repetition, and it is agreed that if a sick person can validly and lawfully have this sacrament repeated, the priest has an obligation to repeat it.

It is thought by some, with plausibility, that the rule of monthly repetition has arisen from the teaching of St Alphonsus and others, who required a month's partial convalescence as an indication that the sick person had emerged from the original danger of death.[1] Whatever its origin it is a useful calculation for applying to cases where the new danger of death is doubtful, but it may not be applied indiscriminately to all protracted illness. If it is certain that a person in danger of death is steadily worsening, without any amelioration,

[1] Cf. Dr Barry in *The Clergy Review*, 1933, V, p. 201.

the sacrament should not be repeated, even though the first anointing took place more than a month ago. If it is certain that a new danger of death has threatened, following a period of amelioration, the sacrament should be repeated even though this period is less than a month. If it is doubtful, one must seek a method for resolving the doubt, and the writers are generally agreed that if a person lives for a month subsequent to the first anointing, the presumption in all cases of doubt is that there is a new danger of death. But to apply this monthly rule to all cases, instead of restricting to those which are doubtful, is wrong. Cf. Cappello, *De Extrema Unctione*, §259; Noldin, III, §448, 3; Iorio, III, §771.

150. THE POSITION OF EXTREME UNCTION

Why is it, when all the last sacraments are administered at one time, that Extreme Unction follows on Viaticum? It would seem more correct for it to follow immediately after Penance of which it is the complement. May one change the order of the Ritual?

i. The most authoritative discussion of this point is by Benedict XIV[1] who quotes other Rituals and the authority of Cardinal de Rohan for permitting the anointing before Viaticum whenever the sick person so desired, for anointing which has the effect of removing the remnants of sin would appear to be more correctly given before Viaticum. Ancient rituals prescribed this order, and it so remains to this day in the Dominican use. It is fairly certain that the order in the Roman Ritual, which is that of the Roman Catechism, is due to mediaeval influences: anointing was considered as the *sacramentum exeuntium*, the "last" rite the Church has to offer, and therefore should follow all the others. The custom of delaying anointing until death is imminent now being discouraged by canon 944: "omni studio et diligentia curandum ut infirmi, dum sui plene compotes sunt, illud recipiant", the tendency amongst modern writers is to eliminate from the minds of the faithful the idea that Extreme Unction is administered only when there is absolutely no hope, humanly speaking, of the sick person's recovery. Suarez, however, writing in the full mediaeval tradition, justifies anointing after Viaticum: ". . . cibus ad confortandum in via praebetur, et ideo, ut detur, non est expectandum ultimum vitae periculum: hoc vero sacramentum exeuntium est, quasi in ultimum subsidium institutum".[2]

ii. Cappello teaches[3] that any slight or reasonable cause justifies

[1] *De Synodo*, VIII, viii, 1; Ed. 1844, Vol. XI, p. 260.
[2] Quoted by Benedict XIV, loc. cit.
[3] *De Extrema Unctione*, §88.

inverting the order of the Ritual, and Benedict XIV is himself unwilling to affix any blame if this is done. The Pope, nevertheless, recommends parish priests always to follow the order of the Ritual, since this is the custom of the Roman Church and is followed practically everywhere. Our own view, based on preserving the stability and uniformity of liturgical rites, is that the order of the Ritual should always be followed whenever the last sacraments are administered together. But priests are permitted, with Dom Botte,[1] to agitate for a change in the order now existing, for it does appear that the older tradition regards Viaticum, and not Extreme Unction, as the last or closing sanctifying rite offered by the Church to the dying. "Last" anointing should then have the meaning of the last of many anointings received from the Church in the course of one's life.

151. "OLEUM INFIRMORUM": PRIESTLY BLESSING

May it be held that in cases of extreme necessity, when episcopally consecrated holy oil cannot be obtained, a priest may bless it himself?

Canon 945: Oleum infirmorum, in sacramento extremae unctionis adhibendum, debet esse ad hoc benedictum ab Episcopo, vel a presbytero qui facultatem benedicendi a Sede Apostolica obtinuerit.

S. Off., 15 May, 1878; *Fontes*, n. 1055: Proposito casu cuiusdam sacerdotis qui vocatus ad assistendum infirmum destitutum sensibus, deficiente oleo sancto, commune oleum benedixit ut inungeret infirmum eique conferret illud tantum sacramentum cuius capax erat, et quaesito: 1. An talis praxis probanda sit; 2. Vel saltem tolerari possit; Emi PP. responderunt: Ad utrumque, Negative.

i. An earlier reply, 14 September, 1842,[2] declared this priestly blessing of oil to be invalid, and quoted a decree of 13 January, 1611,[3] to the effect that it was temerarious and proximate to error to hold that Extreme Unction could validly be administered with holy oil not episcopally blessed. The teaching of the mediaeval scholastics who denied that a priest could validly bless this holy oil is erroneous, for it is certain that he can do so with an apostolic commission express or implied, and perhaps even with an episcopal commission. The well-known problem about the exact nature of a priest's commission to confirm has an echo in the discussions about a priest's commissioned faculty to bless oil of the sick, and, as in administering confirmation, so also in blessing this oil, the practice

[1] *La Maison Dieu*, n. 15, p. 105.
[2] *Fontes*, n. 891.
[3] *Fontes*, n. 717.

of the Eastern Church is at variance with that of the West, where the tradition requiring episcopal blessing has been firmly maintained for centuries.[1] Various explanations are offered by Cappello[2] and other writers, and a definitive pronouncement of the Holy See on the lines of that given for Holy Orders, 30 November, 1947,[3] would be welcome.

ii. In the meanwhile the only writer known to us who answers the above question affirmatively is Cappello,[4] provided the extreme necessity is of a general character in a region where priests cannot communicate with their bishops; his affirmative is given with less assurance[5] in the case of one individual who is unable to confess and is dying unconscious. The difficulty is, of course, the decision of the Holy Office on the subject, which is met by holding that in cases of extreme necessity, especially if they are of a general character and applicable to a whole district, the Holy See is presumed to give the necessary commission to priests. Faculties expressly conceded will, no doubt, direct what form is to be used in consecrating the oil, presumably the exorcism and prayer of blessing contained in the Pontifical for the episcopal ceremony on Holy Thursday.[6] This opinion may be safely accepted in cases at least of general necessity, and the sacrament administered conditionally; we may hope, perhaps, that in course of time a faculty to consecrate the oil of the sick in cases of necessity will be given *de iure* to parish priests, since this sacrament is occasionally a necessary means of salvation, whereas confirmation never is.

152. HANDLING THE HOLY OILS

Is a lay person permitted to handle the holy oils, for example the person acting as sacristan, at least if there is a grave reason? This might happen when the priest called to a sick person is unwilling to leave him, and sends a lay person back to the church for the holy oils.

Rituale Romanum, II, i, n. 54: Parochus, quantum fieri potest, curet, ne per laicos, sed per se, vel alium sacerdotem, vel saltem per alium Ecclesiae ministrum haec Olea deferantur. . . .

The holy oils, solemnly blessed by the bishop on Holy Thursday, have always been held in great veneration, and various rules exist

[1] *Collat. Brugen.*, 1949, p. 200; *Dict. Théol.*, V, 1989.
[2] *De Confirmatione*, §44 seq.
[3] *The Clergy Review*, 1948, XXX, p. 62.
[4] Op. cit. §54.
[5] Op. cit. §280.
[6] The form in the Roman Ritual, Tit. IX, cap. vii, 8, is a sacramental instituted by the Church in imitation of the sacrament of Extreme Unction.

for their safe custody. Since they are solely for the use of the sacred ministers in administering the sacraments, these ministers alone have the custody and the right of handling them, unless some necessity intervenes.

i. If it is a question merely of carrying the vessels or stocks containing the holy oils, Gardellini in the notes given in Volume V of *Decreta Authentica* states: ". . . notandum est quod non absolute praefata Rubrica excludit laicos ab eorundem delatione. . . . Quum igitur parochus per se nequeat, aliumque non habeat, nisi laicum ministrum Clerici vices fungentem, huic committere cogitur ut hoc praestet officium. Id tamen, quantum fieri potest, vitandum est".[1] He is dealing with practically the same circumstances as occur in the above question, and other instances are clearly included when some proportionate necessity justifies the handling of the holy oil stocks by a lay person who is acting as the priest's minister or sacristan. The modern commentators agree with this interpretation in principle,[2] but it is always to be supposed that there is some necessity. Hence, in most dioceses where there are sufficient priests, the diocesan regulations usually insist on a priest coming to the Cathedral on Holy Thursday for the Holy Oils, and their curator is forbidden to entrust them to laymen.

ii. If, however, the question is of a layman touching the Holy Oils, and not merely handling their stocks, we can find no similar toleration, and all the rubrics which require careful wiping with cotton wool whenever a person is anointed simply take for granted that this touching is irreverent. Touching would be well nigh unavoidable, for example, when replenishing small stocks with holy oil from a larger container. This office must be performed by a priest or at least by a deacon who, as the extraordinary minister of solemn baptism, has to touch the holy oils, and therefore may lawfully do so on other occasions. Extreme necessity may require a layman to touch them, as he may touch even the Holy Eucharist, for example to prevent irreverence. But, unlike the situation described above in (i), the necessity is not likely to arise very often. In cathedrals and in large churches, where a large supply of holy oils is kept for surrounding districts, the office of distributing it must be restricted, we think, to deacons and priests. No doubt some commentators will be found who extend the permission to all tonsured clerics, but we have not succeeded in tracing this teaching in any of the books on the subject.

[1] *D.A.*, V, p. 285, adnotatio in n. 2650, V. 2.
[2] O'Kane-Fallon, *Rubrics of the Roman Ritual*, §856; Collins, *The Church Edifice and its Appointments*, p. 184.

153. ADMINISTERING EXTREME UNCTION—DANGER OF INFECTION

What should be the priest's practice in administering Extreme Unction, if infection is feared through touching the recipient?

Canon 947, §4: Extra casum gravis necessitatis, unctiones ipsa ministri manu nulloque adhibito instrumento fiant.

Except where the imposition of hands is essential to the validity of the sacrament, as in the anointing at Confirmation, it is permitted to use some instrument such as cotton wool when there is danger of infection.[1] This meets the difficulty for the anointings at Baptism and Extreme Unction; administering the salt at Baptism is possible without touching the child; the saliva rite may be omitted for reasonable cause such as danger of infection, as *S.R.C.* 14 January, 1944, explicitly directs[2]; the touch necessary for valid sponsorship suffices if made over the vestments.[3]

There remain the touches prescribed by certain rubrics in the rite of Baptism at the imposition of hands, about which we can find no explicit reference in the manuals. On analogy with the decisions already reached about the anointings and other sacramentals and exorcisms, as described above, it suffices in our opinion to recite the formula with extended hands if there is grave danger of infection.

154. VALIDITY OF BLESSING "IN ARTICULO MORTIS"

What is the minimum required for the valid imparting of this blessing with its plenary indulgence? I have in mind the requirements in the form used and the dispositions of the recipient.

Canon 468, §2: Parocho aliive sacerdoti qui infirmis assistat, facultas est eis concedendi benedictionem apostolicam cum indulgentia plenaria in articulo mortis, secundum formam a probatis liturgicis libris traditam. . . .

S.C. Indulg., 5 February, 1841; *Fontes*, n. 5017: 5. Utrum sufficiat recitatio Confessionis, idest *Confiteor*, etc., in Sacramento Poenitentiae habita, pro recitatione illius praescripta, quando impertienda sit benedictio cum indulgentia in mortis articulo? *Resp.* Negative iuxta praxim et rubricas, nisi necessitas urgeat.

6. Utrum necesse sit tribus vicibus recitare *Confiteor*, etc., quando administratur sacrum Viaticum, extrema Unctio, ac indulgentia in

[1] Cf. Dunne, *The Ritual Explained*, p. 73.
[2] *The Clergy Review*, 1944, XXIV, p. 521.
[3] Op. cit., 1935, X, p. 482.

mortis articulo impertitur? *Resp.* Affirmative iuxta praxim et rubricas.

8. Utrum sacerdos valide conferat indulgentiam plenariam in mortis articulo omissa formula a Summo Pontifice praescripta, ob libri deficientiam? *Resp.* Negative, quia formula non est tantum directiva, sed praeceptiva.

S. Off., 1 September, 1851; *A.S.S.*, XXVIII, p. 67; De Angelis, *De Indulgentiis*, p. 105: Si on peut se tenir au *Confiteor* recité une fois dans l'administration du SS Viatique et de l'Extrême Onction données de suite à un malade, et aussi dans l'application de l'indulgence *in articulo mortis*, quand celle-ci a lieu en même temps que l'administration de l'un et de l'autre de ces deux sacraments. *Resp.* Si immineat necessitas conferendi unum post aliud immediate, licere semel in casu, secus repetatur.

S.R.C., 8 March, 1879, n. 3483: . . . num liceat in impertienda absolutione generali papali, ad contagium evitandum, uti brevissima formula. . . . *Resp.* Affirmative in casu.

S.C. Indulg., 22 September, 1892; *Fontes*, n. 5115: . . . invocatio, saltem mentalis, SSmi Nominis Jesu est *conditio sine qua non* pro universis Christifidelibus, qui in mortis articulo constituti, plenariam indulgentiam assequi volunt, vi huius Benedictionis. . . .

In these days a plenary indulgence, with or without the papal blessing, may be gained at the hour of death on any number of titles, such as adscription to some pious association or the possession of an indulgenced crucifix; this multiplication is not entirely futile since certain conditions *ad validitatem* are attached to them all, and if one title is inoperative the indulgence may be gained on another.[1] The following notes are limited to the blessing referred to in canon 468, §2, which concedes to all what used to be the privilege of those enjoying the faculty stabilised and explained by Benedict XIV in *Pia Mater*, 5 April, 1747.[2] This papal constitution imposed a formula, substantially that of our present ritual, the composition of Cardinal Camillus Cybo-Malaspina in 1726.[3]

i. It is clear from the above citations that, in principle, the formula of the Ritual, Tit. VI, cap. vi, must be used for the valid imparting of the blessing and indulgence. *S.R.C.*, 3 June, 1904, requires the formula to be in Latin "quia haec benedictio est precatio stricto sensu liturgica",[4] but its force is somewhat weakened owing to the omission of this decision from the *Decreta Authentica* of the Congregation. We think that the vernacular form is valid.

[1] Thus Gougnard, *De Indulgentiis*, p. 137.
[2] *Fontes*, n. 380.
[3] *Ephemerides Liturgicae*, Ius et Praxis, 1937, p. 25.
[4] Beringer, *Les Indulgences*, I, p. 596; *Q.L.P.*, 1920, p. 308.

ii. The strict interpretation of *Fontes*, n. 5017, 6, repeated in all the manuals, was considerably relaxed by the Holy Office, 1 September, 1851, in the sense that when it is necessary to confer all the last sacraments at one time a single recitation of the *Confiteor* suffices. Nearly all the writers rely on *Fontes*, n. 5017, and ignore the reply of the Holy Office in 1851. We think there is sufficient authority for a single recitation in the circumstances;[1] the necessity need not be grave, and still less the kind of urgency that would justify the short form.[2]

iii. For reasons which are not quite clear the ritual gives under n. 7 a duplicate short form for use in cases of necessity: the second (the shorter of the two) may always be used when the complete form has to be omitted, and most priests know it by heart. The necessity which most of the official texts have in view is that of the recipient, especially the proximity of death, but *S.R.C.*, n. 3483, extends the notion of necessity to cover that of the priest in cases of contagious disease. Some writers extend it to the case where the priest lacks a ritual but knows the short formula by heart, and it is doubtful whether the sick person will live long enough for a ritual to be obtained.[3] The short form could be used also, in our opinion, when a priest is attending a number of dying people and speed is necessary in order to be sure of reaching them all.

If we suppose that, without any real necessity, the short form is wrongly used, the efficacy of the blessing is doubtful: this is inferred from the insistence of all the official directions on the use of the authorised form, but we can find no commentator who expressly draws any conclusion either for or against its validity. We suggest that, in these circumstances, the blessing should be repeated *ad cautelam*; otherwise, no repetition is necessary if, in a case of real necessity, the sick person continues alive after receiving the blessing with the short form.[4]

iv. On the recipient's part the conditions required for validity, in addition to those necessary for all indulgences, are the invocation of the name of Jesus and the resigned acceptance of death.[5] Sacramental confession is not required, nor even an act of contrition, except when either may be necessary for getting into a state of

[1] Dunne, *The Ritual Explained*, p. 87; *American Ecclesiastical Review*, 1919, LXI, p. 590.

[2] It is now certain from a reply of S.R.C., 30 October 1953, that, in the case of continuous administration, the opening prayers of each rite and the *Confiteor* need be recited once only. Cf. *The Clergy Review*, October 1954, p. 627. [Editor.]

[3] Dunne, *The Ritual Explained*, p. 82.

[4] Cf. *Ephemerides Liturgicae*, 1926, p. 231.

[5] *The Clergy Review*, 1950, XXXIII, p. 54.

grace. Though the earlier texts seem to limit the blessing to sick people, it is now certain that it may be given to those in danger of death from other causes.

155. LAST BLESSING: RESIGNATION TO DEATH

One of the conditions for gaining this indulgence is the resigned acceptance of death. Does it suffice if one secures this disposition not at the time the blessing is given but later on?

Benedict XIV, *Pia Mater*, 5 April, 1747; *Fontes*, n. 380, p. 117: . . . ideo quo certius praedicti omnes Indulgentiae fructum consequi valeant, praefatis sacerdotibus mandamus, ut omni ratione studeant moribundos fideles excitare ad novos de admissis peccatis doloris actus eliciendos, concipiendosque ferventissimae in Deum charitatis affectus; praesertim vero ad ipsam mortem aequo ac libenti animo de manu Domini suscipiendam. Hoc enim praecipue opus in huiusmodi articulo constitutis imponimus et iniungimus. . . .

Rituale Romanum, VI, vi, 3: . . . hortetur . . . ut morbi incommoda ac dolores in anteactae vitae expiationem libenter perferat. Deoque sese paratum offerat ad . . . mortem ipsam patienter obeundam. . . . 5. Postea dicat: V. *Adiutorium*, etc.

i. As in other indulgences, there are several different methods of gaining a plenary indulgence in the hour of death, and the multiplication is not altogether useless since the actual gaining of the indulgence is thereby made more secure; in this reply we are concerned only with the indulgence mentioned in canon 468, the formula of which is in the *Rituale Romanum*, VI, vi, and the *locus classicus* for everything pertaining to it is the *Pia Mater* of Benedict XIV, as interpreted by many later decrees.

ii. For the blessing to be lawfully given the act of resignation must be made, or at least prompted by the priest, before the formula is spoken, as the rubric of the ritual clearly directs. The only obvious exception to this rule is when the recipient is unconscious at the time.

iii. We cannot find any commentator who deals with the question whether a departure from the procedure described in (ii) exposes the blessing, and consequently the indulgence, to invalidity. In our view, applying general principles of interpretation, the act though unlawful is valid. The conditions for a valid grant are the use of the formula on the part of the priest and the dispositions, including resignation, in the recipient; the indulgence, or in this case the title

to it *in articulo mortis*, is received when the last prescribed condition is fulfilled. Canon 925, §2, states that the works enjoined for an indulgence must be fulfilled "statuto tempore ac debito modo", which might perhaps support the view that the indulgence is invalid unless the act of resignation precedes the formula, as the ritual directs. We think, however, owing to the special nature of this indulgence, which is not actually obtained till the moment of death, that it suffices to have fulfilled the conditions before this moment arrives. This is supported by one commentator who writes: "It is necessary that at the moment of death the dying person have the dispositions of sorrow for sin, fervent love of God and resignation to His Will. . . ."[1] It is supported also by the phrase in *Pia Mater* quoted above. Bearing in mind that the formula may not be given more than once in the same danger of death, there is every reason to hold that it is valid even though the order of the conditions is not observed.

156. LAST BLESSING IN CASES OF APPARENT DEATH

Is one permitted to impart this blessing conditionally in cases of apparent death when the priest decides, following the common teaching, to absolve and anoint conditionally?

Canon 468, §2: Parocho aliive sacerdoti qui infirmis assistat, facultas est eis concedendi benedictionem apostolicam cum indulgentia plenaria in articulo mortis, secundum formam a probatis liturgicis libris traditam, quam benedictionem impertiri ne omittat.

i. The common teaching on this subject, now accepted in some local rituals and approved implicitly, it would appear, in the 1952 edition of *Rituale Romanum*,[2] offers no special difficulty as regards conditional absolution and anointing. It is true that most Catholics obtain a plenary indulgence at the moment of death, a concession obtained by the due performance of some pious works during life, and the writers often describe this as "indulgentia lata"; the above question refers to what may be styled conveniently "indulgentia ferenda"[3] which to be valid must be granted by a priest with the formula of the ritual to a person who has complied with the conditions.[4]

[1] *Irish Ecclesiastical Record*, 1945, LXV, p. 199.
[2] *The Clergy Review*, 1953, XXXVIII, p. 290.
[3] De Angelis, *De Indulgentiis*, §§160, 167.
[4] For a discussion of the *minimum*, both in formula and conditions cf. Question 154.

ii. There is some reason for doubting whether in cases of apparent death this indulgence should be given, since the teaching about conditional absolution and anointing in these circumstances is based on the supposition that these sacraments may be necessary for salvation, which an indulgence is not, and it is desirable for a variety of reasons, particularly the avoidance of scandal, to limit the priest's ministrations.

We think, nevertheless, that this blessing may and should be given conditionally with the short form of the ritual: the conditions in the recipient may be assumed as they are for the reception of sacraments; the indulgence is a complement of the sacrament of Penance; the concluding words of the canon stress the obligation in general; and in principle a priest should always do what in him lies to bring every benefit the Church has to offer *in articulo mortis*.

157. REPETITION OF THE LAST BLESSING

Since it is certain that the plenary indulgence is obtained not at the time of receiving the blessing but at the moment of death, it would appear that its reception once in a lifetime should suffice. Why, then, do we repeat the blessing when the recipient has recovered and is again placed in danger of death?

S.C. Indulg., 23 April, 1675, ad 2; *Fontes*, n. 4947: Utrum indulgentia plenaria in articulo mortis, quae sine alia declaratione adiecta concedi solet, in vero mortis articulo accipienda sit, an in praesumpto, an demum in utroque? *Resp.* In vero tantum articulo accipi.

23 September, 1775, ad 6; *Fontes*, n. 4996: Benedictio supradicta potestne bis aut amplius in eodem morbo, qui insperate protrahitur, impertiri, etiamsi non convaluerit aegrotus? Si possit iterari haec benedictio, quodnam requiritur intervallum inter eius largitiones? *Resp.* Semel in eodem statu morbi.

20 June, 1836, ad 7; *Fontes*, n. 5005: Licetne aut saltem conveniteine iterum applicare indulgentiam in articulo mortis . . . quando post applicationem (aegrotus) diuturna laborat aegritudine, uno verbo, quando Rituale permittit, aut praecipit iterationem Extremae Unctionis, aut confessarius iudicat iterandam esse absolutionem? *Resp.* Prout iacet, negative in omnibus.

24 September, 1838, ad 2; *Fontes*, n. 5008: Utrum Benedictio Apostolica pluries impertiri possit infirmis, novo mortis periculo redeunte? *Resp.* Negative, eadem permanente infirmitate etsi diuturna; affirmative, si infirmus convaluerit, ac deinde quacunque de causa in novum mortis periculo redeat.

Extreme Unction may be repeated when a fresh danger of death intervenes, even though the person has not ceased to be in danger, but the last blessing may be repeated only when the person has recovered and is again in danger. The reason for this distinction is seen in the fact that the sacrament has its effect when administered, but the plenary indulgence is obtained, not when the blessing is given, but at the moment of death. Accordingly it is useless to repeat it, and those manualists who teach that the blessing may be given as often as Extreme Unction is given are not quite accurate.

Undoubtedly, the logical conclusion is that the last blessing need never be repeated, even when the person has fully recovered, and no matter what length of time separates its first reception from a subsequent danger of death. This conclusion is drawn by Béringer, *Les Indulgences*, p. 680 and p. 682; by the writer of an article in *Dictionnaire de Théologie*, I, col. 259; and by Fr McKenna writing in *The Clergy Review*, 1931, II, p. 326.

Nevertheless, the above decrees, whilst not ordering its repetition, do permit it whenever the person has recovered and is again in danger. The writers mentioned observe that the Church permits repetition, in such cases, for the purpose of removing all doubt and for the consolation of the recipient; and, indeed, if there is some doubt whether the blessing has been received, this observation is just. But *de jure* the above decrees do not limit repetition to cases of doubt, and *de facto* priests repeat the blessing, in circumstances which permit it, even when they are absolutely certain that it has been received on some former occasion. They rightly do so, it seems to us, since, on a principle of charity, nothing should be omitted which, even though not ordered, is likely to be of some spiritual benefit to persons in danger of death. The decrees clearly say that, in given circumstances, the blessing may be repeated.

If, however, one asks the reason why the Church permits repetition in cases where there is no doubt of its former reception, we must confess that we have been unable to discover a completely satisfactory answer. It is not an adequate reason to suggest that it is for the consolation of the recipient, for properly instructed he would understand that he is receiving nothing that he does not already possess. One possible reason may be based on the common presumption that there is always some doubt in such cases. Or it may be discerned, perhaps, in the papal blessing as something distinct from the plenary indulgence, a blessing which the Church permits to be repeated, not whenever Extreme Unction is repeated, but in the contingencies determined by the positive law in the above decrees.

158. "COMMENDATIO ANIMAE"

Are the prayers of the Ritual entitled "Ordo Commendationis Animae" of obligation on the part of a priest with care of souls, or may other vernacular prayers be used instead?

Rituale Romanum, Tit. VI, cap. ii, n. 15: . . . statim ipsum Parochum accersant, ut morientem adiuvet, eiusque animam Deo commendat. . . .

Cap. v, n. 1: . . . si periculum immineat, statim commendationis animae officium praestabit, de quo infra.

Canon 468, §1: Sedula cura . . . maxime vero morti proximos adiuvare, eos sollicite Sacramentis reficiendo, eorumque animas Deo commendando.

The rite of Extreme Unction (Cap. ii) in the Roman Ritual is followed by the Penitential Psalms and Litanies for recital by the faithful assisting (Cap. iii), Prayers when visiting the Sick (Cap. iv), the Manner of Assisting the Dying (Cap. v), the Apostolic Blessing (Cap. vi), the Order of Commending a Soul (Cap. vii), and the Expiry (Cap. viii).

No priest ever voluntarily omits Caps. ii and vi. A careful reading of the rubrics of the other chapters, apart from Cap. vii, does not indicate any sort of obligation, but rather the contrary: Cap. iv, n. 18, "pro arbitrio sacerdotis dici vel omitti possunt"; Cap. v, n. 1, "sequentia pietatis officia praestare poterit, si ita expedire iudicaverit"; Cap. viii, n. 1, "assistens sive sacerdos pro eo clara voce pronuntiet". Throughout the rubrics of these rites, which occupy many pages of the Ritual, it is clear that their use is not obligatory, or that the prayers may be said by anyone assisting the dying person.

The query is consequently restricted to Cap. vii, itself of considerable length. From n. 5 onwards, including the Passion according to St John, the rubrics read "poterit legi super aegrotum" or "dici praeterea possunt". But nn. 1–5 are not so expressed, and taking this in conjunction with canon 468 and the two rubrics quoted above, one cannot avoid the conclusion that there is an obligation on the priest with care of souls to commend the dying to God and to do so with the prayers in Cap. vii, nn. 1–5.[1] Inasmuch as these prayers should not follow Extreme Unction immediately unless the person is actually dying, it will often happen that the priest cannot conveniently be present; the obligation is in any case not grave and a proportionate reason will excuse his attendance. But without

[1] Fanfani, *De Iure Parochorum*, n. 342.

wishing to multiply priestly obligations, we think that this one should not lightly be forgone. Many of the faithful know these liturgical texts from their inclusion in *The Dream of Gerontius* and are sometimes surprised when they are not recited over a dying person by the priest. Other prayers may be used as well, but these have a special value as a suffrage from their liturgical character, even though the dying person does not understand them; since they are found in English in the *Ordo Administrandi*, the priest may recite them in English.[1]

[1] Dunne, *The Ritual Explained*, p. 94.

XIII. HOLY ORDERS

159. PROPER BISHOP FOR TONSURE

A student in the Seminary of diocese X, who has no domicile anywhere, desires to be tonsured for the service of diocese Y. Who is the proper bishop for conferring the tonsure?

Canon 92, §1: Domicilium acquiritur commoratione in aliqua paroecia aut quasi-paroecia, aut saltem in dioecesi, vicariatu apostolico, praefectura apostolica; quae commoratio vel coniuncta sit cum animo ibi perpetuo manendi, si nihil inde avocet, vel sit protracta ad decennium completum.

Canon 955, §1: Unusquisque a proprio Episcopo ordinetur aut cum legitimis eiusdem litteris dimissoriis.

Canon 956: Episcopus proprius, quod attinet ad ordinationem saecularium, est tantum Episcopus dioecesis in qua promovendus habeat domicilium una cum origine aut simplex domicilium sine origine; sed in hoc altero casu promovendus debet animum in dioecesi perpetuo manendi iureiurando firmare, nisi agatur de promovendo . . . qui servitio alius dioecesis destinatur ad normam can. 969, §2. . . .

Code Commission, 17 August, 1919: Quisnam sit episcopus proprius pro ordinatione illorum qui nullum domicilium habent? *Resp.* Prout dubium exponitur, est episcopus loci in quo fit ordinatio, modo tamen ordinandus praevie acquirat domicilium cum iuramento ad normam can. 956. (Private Reply. Cf. *Periodica*, 1923, XII, p. 73.)

The various problems which arise in determining the proper bishop for ordination have been, for the most part, solved by official and public Roman decisions, and the present difficulty seems to be the only serious one remaining. A qualified domicile is, under the law of the Code, essential for establishing the proper bishop for ordination: if the candidate has no domicile he has no proper bishop for this purpose. One solution of the difficulty outlined above is for the student to visit his future diocese Y, to acquire a domicile therein by staying one night, and to take an oath to remain; the bishop of Y will then be the proper bishop. This is a cumbersome method, especially if the two dioceses are far apart, though it has frequently been adopted as being the only certain and safe

procedure; bearing in mind the severe penalties of canon 2373.1, Ordinaries are naturally averse to running any risk. There is always, of course, the remedy of seeking an indult, but this is also an unattractive procedure. Bouscaren, writing in *Periodica*, 1940, p. 144, favours an indult as the only correct solution: "... si certo constet ordinandum nullum habere domicilium, et illud in loco ordinationis—loquimur de prima tonsura—acquirere nequeat, putamus adhuc verum manere quod citati auctores de illo casu docent, sc. restat ut per indultum apostolicum provideatur".

Bouscaren, it will be noted, agrees that an indult must be obtained if the candidate is unable to acquire a domicile in the diocese where he is dwelling, namely the diocese in which the Seminary is situated. The apparent obstacle to his so doing, assuming he has reached his majority, is that he cannot have the intention of remaining there permanently since it is his intention to be tonsured for the service of another diocese. If this obstacle can be surmounted, one will have a solution of the difficulty which avoids the other cumbersome procedures suggested.

The generality of canonists consulted take it for granted that the obstacle, in the present state of the law, cannot be surmounted, and we know of only one writer who appears to teach the contrary. De Heneghan, writing in *The Jurist*, 1943, p. 329, states that the candidate, when he reaches his majority, may acquire a domicile in the diocese in which the seminary is located; the bishop of that diocese is then the proper bishop for conferring the tonsure, which he does under an agreement with the bishop of the diocese for the service of which the candidate is destined, by which, on receiving the tonsure, the candidate is incardinated in the distant diocese, whose bishop is henceforth the only proper bishop for promoting him to orders.

This is a reasonable solution, provided the intention of remaining permanently can be harmonised with the intention of becoming incardinated elsewhere, and we are offered no solution of this difficulty. It is scarcely covered by the clause in canon 92, §1, "si nihil inde avocet", according to the best canonists. Thus Michiels, *De Personis*, p. 106: "... requiritur vero ut *hic et nunc*, vi voluntatis praesentis, intendatur commoratio in determinato loco *in indefinitum* protrahenda, ita ut discessus futurus nondum sit determinatus et volitus. ..." Accordingly, until this very attractive solution of the problem is more firmly established, it is our opinion that the candidate must either acquire a domicile in his future diocese or seek an indult dispensing from the law of canon 955, §1.

160. PRIVATE STUDY FOR THE PRIESTHOOD

Could permission properly be asked from one's own Ordinary to study for the secular priesthood elsewhere than in a seminary?

Canon 972, §1: Curandum ut ad sacros ordines adspirantes inde a teneris annis in Seminario recipiantur; sed omnes ibidem commorari tenentur saltem per integrum sacrae theologiae curriculum, nisi Ordinarius in casibus peculiaribus, gravi de causa, onerata eius conscientia, dispensaverit. §2. Qui ad ordines adspirant et extra Seminarium legitime morantur, commendentur pio et idoneo sacerdoti, qui eis invigilet eosque ad pietatem informet.

Canon 976, §3: Cursus theologicus peractus esse debet non privatim, sed in scholis ad id institutis secundum studiorum rationem can. 1365 determinatam.

The law refers to those of an age to take the theological course: the word *curandum* in relation to the training of boys in seminaries from their earliest years implies a strong recommendation rather than a law, though local legislation may make this recommendation of the common law an obligation. Moreover the question of living in a seminary is quite distinct from the law of canon 976, §3, which disallows private study as the equivalent of a course of lectures in a qualified institution. It is for the Ordinary to dispense from the law of residence in a seminary, and a request for this favour could properly be made; but a papal indult would be required for private study,[1] since the law gives no power to an Ordinary to dispense and canon 81 is scarcely applicable. Evidently canon 976, §3, is of far greater moment than canon 972, §1.

The commonest reason for desiring a clerical education outside a seminary is the opportunity of obtaining theological degrees at a Catholic University, and most of them have institutions under episcopal surveillance where the students live an ordered life under a rule which is practically that of a seminary, except that they go out for lectures; the ecclesiastic in charge of this house is the "pius et idoneus sacerdos" of canon 972, §2. But it is rightly noted by the commentators that the law does not actually require the candidate for holy orders to live under the same roof with the priest to whose care he is commended, if dispensed from living in a seminary by his Ordinary; Catholic Universities, however, as a rule do not accept candidates for theological degrees who are not priests unless they live in an approved house ruled by a priest. Other reasons which

[1] *L'Ami du Clergé*, 1950, p. 317.

might persuade an Ordinary to use his right under canon 972, §1, are ill-health or advanced age.

The Ordinary to be approached for this permission is the proper Ordinary, by incardination, of the cleric; or, if the candidate is not tonsured, the Ordinary who has the right to ordain him or to give dimissorials.

161. INTERSTICES—EXERCISE OF ORDER

Is there a law requiring the exercise of the powers received in one order before receiving a higher order, or is this no more than a praiseworthy custom?

Canon 978, §1: In ordinationibus serventur temporum interstitia quibus promoti in receptis ordinibus, secundum Episcopi praescriptum, sese exerceant.

Since the whole point of interstices consists in a period of trial in a lower order before being promoted to a higher, it would seem that, unless a dispensation is obtained, a deacon, for example, must exercise his diaconal office before being promoted to the priesthood. The common law, however, in canon 978, §2, permits a bishop to dispense from the interstices, within the terms of the canon, so that in a case of necessity a deacon ordained, say, on Ember Saturday could be promoted to the priesthood on the following Sunday, in which case there would be no opportunity of exercising the diaconal function. Accordingly, most modern commentators, whilst stressing the law of interstices, teach that there is actually no common law obligation to exercise during this period the order received, though there is often a local episcopal law on the point; the wording of canon 978, §1, "secundum Episcopi praescriptum", supports this interpretation.[1]

A minority, including Gasparri,[2] hold that there is an obligation of the common law *sub levi*, to exercise during interstices the order received before receiving a higher one, unless of course it is dispensed; a dispensation is implied, it seems, whenever a bishop so dispenses[3] interstices as to leave no time free for exercising an order, and examples exist of papal dispensations explicitly granted to certain Roman colleges. We prefer this view, owing to the very clear directions of the Pontifical in the opening rubric *De Ordinibus Conferendis*, and because otherwise the law of interstices becomes almost meaningless. If this view is correct, it follows that every

[1] Cappello, *De Ordine*, §421; Coronata, §78.
[2] *De Sacra Ordinatione*, §512.
[3] Cf. *The Clergy Review*, 1946, XXVI, p. 263.

effort should be made to provide ordinands in seminaries with an opportunity of exercising the orders received before proceeding higher, and we believe this to be the established custom in this country.

162. "TITULUS PATRIMONII"

What is the minimum annual income required for ordination on this title? May the income from Mass offerings be reckoned as part of the patrimony? Is a priest ordained on this title less subject to his own Ordinary than one ordained "titulo servitii dioecesis"*?*

Canon 979, §1: Pro clericis saecularibus titulus canonicus est titulus beneficii, eoque deficiente, patrimonii aut pensionis.

§2: Hic titulus debet esse et vere securus pro tota ordinati vita et vere sufficiens ad congruam eiusdem sustentationem, secundum normas ab Ordinariis pro diversis locorum et temporum necessitatibus et adiunctis dandas.

Canon 980, §2: Qui, citra apostolicum indultum, suum subditum in sacris sine titulo canonico scienter ordinaverint aut ordinari permiserint, debent ipsi eorumque successores eidem egenti alimenta necessaria praebere, donec congruae eiusdem sustentationi aliter provisum fuerit.

i. It is for the Ordinary in whose diocese the priest will be incardinated to decide what is the minimum, since what is a fitting sustenance for a priest will vary according to localities; and it is for the same Ordinary to get assured that the candidate for ordination possesses this minimum income, because otherwise he may become responsible for the priest's support. In places where this ordination title is fairly common, the minimum is determined by local law; to the best of our knowledge, no local regulations of the kind exist in this country, and it is accordingly to be left to the Ordinary's decision. A cleric wishing to be ordained on the title of his own patrimony must prove to his Ordinary's satisfaction that he possesses, in his own right, an adequate income.

ii. Whether the income from Mass offerings may rightly be estimated as part of the patrimony is in dispute; some canonists definitely reject the notion,[1] whilst others admit it provided the Mass offerings are not entirely fortuitous but certain, in the sense that the priest, whether by inheritance or some other title, has an assured income from this source, as might happen if he enjoyed an office which was not a benefice.[2] We think that a cleric could rightly

[1] Many, *De Sacra Ordinatione*, §138.
[2] Cf. *Apollinaris*, 1928, 1 p. 182.

represent this source of income as part of his patrimony, leaving it to the Ordinary to accept or reject it. Moreover, it is stated that the Holy See sanctioned *titulus Missarum*, 4 April, 1946, as an adequate title for German students banished from their country,[1] though this is probably an indult, provided for in canon 980, §2, rather than a decision bringing Mass offerings within the notion of patrimony.

iii. A priest ordained on the title of his patrimony is bound, like clerics ordained on any other title, to obey his own Ordinary, and the canons make no distinction in his favour.[2] The only difference is that one ordained *titulo servitii dioecesis* is bound not only by his ordination promise and the law of canons 127 and 128, which apply to all secular clerics indiscriminately, but in addition by his ordination title, which is in effect a contract between him and the diocese; by disobedience he is guilty of a breach of this contract. It may happen, in practice, that an Ordinary is less exigent in the demands he may lawfully make on those ordained on their own patrimony, but in principle he is within his right in exacting canonical obedience from all his clerics, and coercing them by ecclesiastical penalties if necessary. The title of patrimony, from canon 979, §1, is considered as something abnormal and may be used only when the normal title is lacking.

163. IRREGULARITY—"OCULUS CANONIS"

Does a candidate for the priesthood lacking his left eye require a dispensation, at least ad cautelam, *from irregularity?*

Canon 984: Sunt irregulares ex defectu: . . . 2. Corpore vitiati qui secure propter debilitatem, vel decenter propter deformitatem, altaris ministerio defungi non valeant. . . .

S.C. Relig., 28 November, 1924: *Periodica*, 1925, p. 78. Haec S. Congregatio, mature perpenso exposito dubio utrum, sub iure Codicis, quis, ceteris omnibus dotibus praedictus atque optimi ingenii, dicendus sit irregularis ad recipiendos Sacros Ordines ob solum defectum oculi sinistri, nulla existente deformitate vel exercitii difficultate; attentis omnibus ad rem facientibus, rescribendum censuit prout rescribit: "Prout exponitur in casu non constare de irregularitate".

Some of the older pre-Code canonists held that the lack of the left eye must be considered, apart from any other consequent disabilities, to constitute irregularity, since it made reading the

[1] *Bulletin des Facultés Catholiques de Lyon*, July 1950, p. 63.
[2] *The Clergy Review*, 1939, XVII, p. 67.

Canon of the Mass difficult. The reply of the Holy See in 1924 related to a Capuchin refused ordination by a bishop because of this defect, and it confirmed what had long been the common opinion. It is quite possible to read the Canon with the right eye and for the afflicted person to have a glass left eye, thus complying with the requirements "secure" and "decenter" of canon 984. The lack of both eyes is obviously an irregularity, though examples exist in modern times of dispensations being granted.[1] The criterion as to whether irregularity exists or not, assuming there is no revolting deformity in the person's facial appearance, is whether it is possible for him to read the Missal at Mass. Total blindness subsequent to ordination is met by indult permitting the habitual use of a memorised votive Mass of Our Lady and of the Requiem Mass.

164. RELIGIOUS SUPERIOR FOR DIMISSORIALS

A religious belonging to an English province is living, for purposes of study, in a French province. Which provincial is competent to issue dimissorials for ordination?

Canon 995, §1: Etiam Superior religiosus suis litteris dimissoriis non solum testari debet promovendum professionem religiosam emisisse et esse de familia domus religiosae sibi subditae, sed etiam de studiis peractis, deque aliis iure requisitis. §2: Episcopus, acceptis iis litteris dimissoriis, aliis testimonialibus litteris non indiget.

The difficulty is that the French provincial can testify about studies but not about other matters required by the law, and the English provincial who can testify about everything concerning the *ordinandus* cannot say that he is dwelling in a religious house subject to him. The law takes it for granted, on the other hand, that dimissorials will be issued from one religious superior. The solution which is usually given and which we think correct is that the dimissorials should be given by the English provincial who will state that the *ordinandus* is his subject though dwelling for the time being in the diocese of the ordaining bishop. Thus Regatillo: "Cum ordinandus degit in domo alienae provinciae, eius Provincialis proprius nequit vere testari illum esse de familia domus sibi subditae; sed esse *subditum suum*; nam canon respicit id quod communiter contingit: ut quisque religiosus in sua provincia studeat (can. 587, §3). Imo, in quovis casu mens c. 995 est ut superior maior in dimissoriis testetur candidatum esse subditum suum. Quae redactio proprior esset et casus omnes complectens. Vel forsan melius, testetur esse

[1] Cappello, *De Ordine*, §472.

subditum suum et de familia domus religiosae in dioecesi ordinantis sitae."[1]

165. PARENTAL BLESSING OF NEWLY-ORDAINED PRIEST

Is there any ruling on the custom of a newly-ordained priest receiving the blessing of his own parents after his first Mass?

S.R.C., 30 July, 1910, n. 4257.2. Absoluta sua prima Missa, Neo-Sacerdos, retenta vel interdum deposita casula et sumpto pluviali, a matre sua in Presbyterium ingressa et stante, genuflexus benedictionem sic paratus recipit; mox surgens, matri genuflexae et ipse benedicit. Eodem modo fit quoad patrem Neo-Sacerdotis. Quaeritur: An haec consuetudo, quae vetustissima videtur, retineri queat? *Resp.* Prout exponitur, negative, et ad mentem. Mens est: consuetudinem in casu continuari posse, non tamen in Presbyterio, sed in sacristia vel alibi; et postquam Neo-Sacerdos deposuerit sacra paramenta.

The formula used by the priest is *Benedictio Dei omnipotentis, etc.* The parents may use any suitable words or none at all.

[1] *Jus Sacramentarium* (1949), §898.

XIV. MARRIAGE—THE DIFFERENT KINDS

166. SACRAMENTAL MARRIAGE—MUST BOTH BE BAPTISED?

Is it more probable, as Tanquerey says, that a marriage between a baptised and an unbaptised person is a sacrament for the baptised party?

Tanquerey-Cimetier, *Theol. Moralis* (1945), I, §832: Posterior (quaestio) est num matrimonium fidelis cum infideli sit sacramentum, quando tale matrimonium fuit ab Ecclesia permissum. (1) Multi negant. . . . (2) alii autem et quidem nostro iudicio *probabilius*, affirmant matrimonium huiusmodi esse sacramentum in parte fideli. . . .

At one time this disputed question had almost equal arguments and authorities on both sides. When, however, 5 November, 1924, the Holy See dissolved a marriage of this kind, and especially when it became known that it was by no means a solitary instance, the Thomist opinion which denies a sacramental character to such marriages began to prevail over the opposite view, and at the present time the opinion is not only more probable than its opposite but is almost universally held. It must be observed that Tanquerey's text refers expressly to a marriage contracted with the sanction of the Church, either given as a dispensation from the impediment of difference of worship, or contracted under the common law since the Code (canon 1070, §1) by a baptised non-Catholic. The point is that the non-sacramental character of these marriages is in general held to be proved from the fact that the Holy See can dissolve them even after consummation, whereas if the marriage is a sacrament, or as it is commonly described "ratum et consummatum", it is indissoluble except by death. Examples exist of papal dissolution of marriages contracted with a dispensation from difference of worship.[1] Perhaps the text in Tanquerey, originally written before 1924, was passed inadvertently by the modern editor, who is certainly aware of the practice of the Holy See.[2]

[1] Bouscaren, *Digest*, III, p. 485.
[2] Cimetier, *Pour Etudier le Code*, 1927, p. 171.

167. SACRAMENTAL MARRIAGE BY SUBSEQUENT BAPTISM

Does a legitimate marriage become sacramental when both parties receive baptism, even if a civil divorce has meanwhile intervened?

Canon 1012, §2: Quare inter baptizatos nequit matrimonialis contractus validus consistere, quin sit eo ipso sacramentum.

Prümmer, *Theol. Moralis*, III, §650: Sin autem consensus in infidelitate datus *expresse revocatus est*, e. gr. per divortium civile, difficulter intelligitur, quomodo tunc tale matrimonium per baptismum amborum coniugum evadat sacramentum. Reciperent enim tunc isti coniuges sacramentum contra ipsorum voluntatem et intentionem. Quod quidem videtur non esse possibile. Praeterea causa efficiens sacramenti matrimonii est consensus contrahentium. Iam vero in casu revocationis talis causa efficiens deest. Ergo et desit sacramentum oportet.

It is assumed, in discussing this question, that there was a valid marriage contracted in infidelity, and that the Pauline Privilege is not being used. It seems to us that Prümmer's teaching is scarcely probable, and we have not found another modern author who puts the proposition as Prümmer does. In the past, when the identity of the contract with the sacrament was not clearly perceived, some used to require renewal of marriage consent at or after Baptism,[1] and many still refer to the marriage consent continuing virtually as the explanation of the process whereby a legitimate marriage becomes *ratum* by receiving baptism.

The correct doctrine, however, regards it as irrelevant whether the parties validly married in infidelity have revoked the marriage consent by divorce before baptism. For it is evident, on reflection, that if they are validly married they cannot revoke, since the contract is intrinsically indissoluble; nor can even the natural bond of valid marriage be dissolved extrinsically by the State.[2] The marriage bond, therefore, continues no matter how much the parties desire it to cease, and the most one can say about the civil divorce is that it is the canonical equivalent of separation. The valid marriage of all baptised Christians is a sacrament, and it does not matter whether the contract precedes or follows baptism; the teaching of St Paul on marriage clearly applies to all the Christians he was addressing, without exception, and many of them must have been married before their conversion.

Accordingly, a writer such as Payen, who is experienced in all

[1] Cf. Joyce, *Christian Marriage*, p. 210.
[2] For the distinction between intrinsic and extrinsic indissolubility, cf. *The Clergy Review*, 1942, XXII, p. 176.

marriage questions affecting the unbaptised, writes very differently: "Denique nihil refert consensum validum fuisse, ab una vel ab utraque parte, illicite et invalide seu inefficaciter, revocatum: baptizato utroque coniuge infideli, eorum matrimonium, *velint nolint*, crescit in sacramentum."[1] Similarly Cappello: "Dicendum materiam et formam consistere equidem in consensu; porro consensus matrimonialis valide praestitus, adhuc perseverat, nec profecto potuit aut potest valide revocari, ob coniugii indissolubilitatem. Quare materia et forma, in ipso consensu coniugali existentes, revera adsunt quando coniuges baptizantur, ideoque per ipsum baptismum matrimonium efficitur sacramentum, quatenus consensus matrimonialis valide praestitus et adhuc perseverans, posita conditione baptismi a Christo D. requisita, fit statim signum efficax gratiae seu sacramentum."[2]

Our practice fits well with the theory, since married converts are never required to renew consent at the time of baptism; if they are validly married, the renewal of consent, even virtually or implicitly, does not in any way affect their status as married Christians, and therefore as having the sacrament of marriage from the moment of baptism. Payen gives some useful practical advice for the case of persons civilly divorced seeking baptism, and the difficulties existing in such instances are an added reason why the law requires all adult baptisms to be referred to the Ordinary.

168. INDISSOLUBILITY OF SACRAMENTAL MARRIAGE

How explain canon 1013, §2, *which states that Christian marriage has a special firmness "because of the sacrament", seeing that the contract-sacrament may be dissolved by the Pope if it has not been consummated?*

Canon 1013, §2: Essentiales matrimonii proprietates sunt unitas ac indissolubilitas, quae in matrimonio Christiano peculiarem obtinent firmitatem ratione sacramenti.

Canon 1119: Matrimonium non consummatum inter baptizatos vel inter partem baptizatam et partem non baptizatam, dissolvitur tum ipso iure per sollemnem professionem religiosam, tum per dispensationem a Sede Apostolica ex iusta causa concessam, utraque parte rogante vel alterutra, etsi altera sit invita.

i. The difficulty arises from the equivocal use of the word "sacrament". In the sense commonly understood by Catholics it means one of the seven external signs instituted by Christ as efficacious signs of grace; in a wider and less well-defined sense it means

[1] *De Matrimonio*, I, §§36 and 41. [2] *De Matrimonio*, §35.

"mystery", as in Ephesians v, 32, and frequently in liturgical texts, especially those of Leonine origin, as "sacramentum nativitatis Christi" (1 January, lectio iv). The Vulgate version of Ephesians v, 32, renders the Greek "mysterion" as "sacramentum", and the Protestant reformers who denied that marriage was one of the seven sacraments thought that the Catholic doctrine affirming it to be one could be traced to the Vulgate "sacramentum hoc magnum est". Hence Article XXV of the Church of England teaches that matrimony has not the nature of a sacrament with Baptism and the Lord's Supper, for it lacks any visible sign or ceremony ordained by God. The Pauline text is indeed used by theologians as an indirect proof that marriage is one of the seven sacraments, but the words themselves do not directly establish the doctrine, and the Tridentine teaching is content with the statement: "Quod Paulus Apostolus *innuit* dicens . . . sacramentum hoc magnum est."[1]

ii. There is a correct sense in which the reception of the sacrament by two Christians gives their union a firmness lacking in the legitimate marriages of the unbaptised: it cannot, for example, be dissolved by the Pauline privilege; but the best solution of the difficulty in the wording of canon 1013, §2, is to give the word "sacramenti" therein its second and less usual meaning of "mystery". "Matrimonium Christianum non est absolute indissolubile ob sacramentum ut signum efficax gratiae, sed in quantum est signum perfectae coniunctionis Christi et Ecclesiae. Verba can. 1013, §2, hoc modo intelligenda sunt."[2] The ultimate and intrinsic reason for the absolute indissolubility of the marriage of two Christians validly contracted and consummated lies in its mysterious symbolism of the Incarnation as taught by St Paul. Its indissolubility is certain from the teaching of Christ in the Gospels, but to quote the words of Pius XI: "If we seek with reverence to discover the intrinsic reason of this divine ordinance, we shall easily find it in the mystical signification of Christian wedlock, seen in its full perfection in consummated marriage between Christians. The Apostle . . . tells us that Christian wedlock signifies that most perfect union which subsists between Christ and the Church . . . a union which certainly, as long as Christ lives and the Church lives by Him, can never cease or be dissolved."[3] "It is incorrect to say," writes Fr Joyce, S.J., in a book which cannot be too highly praised, "that it is the sacrament of Matrimony which confers on Christian marriage its peculiar indissolubility. The reason why the bond of wedlock between Christians can under no conceivable circumstances be

[1] Denz., 969.
[2] *Jus Pontificium*, 1936, XVI, p. 324.
[3] *Casti Connubii*, C.T.S. Do 113 (Tr. Canon Smith), §35.

broken lies not in the sacrament as such, but in the sacramental symbolism, which in this case is not quite the same thing. It is because Christian marriage represents the indissoluble union of the Son of God with human nature that all severance is impossible. But that symbolism is found fully only in the consummated union."[1] The doctrine is reflected in the canonical practice of centuries, which is still in full use, of referring to a condition or an intention of contracting a dissoluble marriage as a condition or intention "contra bonum sacramenti". On the other hand, the word is used in its more usual sense referring to one of the seven sacraments in canon 1084: "Simplex error circa matrimonii unitatem vel indissolubilitatem aut sacramentalem dignitatem, etsi det causam contractui, non vitiat consensum matrimonialem."

169. MEANING OF "MATRIMONIUM RATUM"

Is there any doubt that this term means a valid marriage contracted by two baptised persons? Heylen uses it to mean also a marriage between a baptised and an unbaptised person.

Canon 1015, §1: Matrimonium baptizatorum validum dicitur *ratum*, si nondum consummatione completum est. . . .

§3: Matrimonium inter non baptizatos valide celebratum, dicitur *legitimum*.

Canon 1118: Matrimonium validum ratum et consummatum nulla humana potestate nullaque causa, praeterquam morte, dissolvi potest.

Heylen, *De Matrimonio* (1945), p. 324. Duplex datur in Ecclesia casus dissolutionis seu divortii matrimonii valide contracti: primus respicit matrimonium valide contractum inter fideles aut inter fidelem et infidelem (quod dicitur ratum); alter respicit matrimonium infidelium (quod dicitur legitimum).

The word "ratum" qualifying a marriage has had at various times different meanings, and mediaeval canonists used it in a sense which is exactly opposite to the modern use: it was taught by Gratian, for example, that consent constituted merely *matrimonium initiatum*, and that consummation was required to make it *matrimonium ratum*.[2] In the context in which it occurs in Heylen's excellent treatise the author appears to be stressing the non-consummation element in marriages so described, and Payen notes that the description "ratum" is sometimes applied to an unconsummated *matrimonium legitimum*.[3] One should not, we suppose, attach too much

[1] *Christian Marriage*, ed. 1948, p. 446.
[2] Joyce, *Christian Marriage*, p. 58.
[3] *De Matrimonio*, I, §129.3.

importance to a term, provided that the doctrine is preserved intact, and the Code itself gives to *matrimonium legitimum* in canon 331, §1 n. 1 a meaning different from that which is clearly defined in canon 1015, §3; otherwise we should have to hold that one of the qualifications for the episcopate is to be born of unbaptised parents!

We think, however, that under the Code discipline the word "ratum" when used as a qualification of a valid marriage should be used restrictively for a marriage between two baptised persons, namely a marriage which is a sacrament. Otherwise confusion is likely to arise, especially having regard to the clear statement in canon 1118, for it is not now in dispute that a marriage between a baptised and an unbaptised person can be dissolved even though it is consummated, since it is not a sacrament. We find that this is the meaning attached to the word "ratum" by nearly all the post-Code writers: Vermeersch Creusen, *Epitome*, II, §227; Gasparri, *De Matrimonio*, I, §41; Aertnys-Damen, *Theologia Moralis*, II, §634. This meaning should be retained notwithstanding the historical justification for using the term in a slightly different sense.

170. CONSUMMATION AND CONTRACEPTION

It appears from all the manuals that intercourse with contraceptives is not consummation of marriage. Does not this interpretation put, as it were, a premium on sinful behaviour, since the parties may seek a papal dissolution of marriage which is not consummated?

S.C. Sacram., 7 May, 1923, n. 11 (*A.A.S.*, XV, p. 389): §1: Si ex supplici libello oratoris, vel ex causae instructione iam inchoata, vel ex aliis investigationibus iuxta n. 9, constiterit, matrimonii consummationem coniuges omnimode devitasse ex detestabili onanismi vitio, tunc orator vel uterque coniux, si hi concorditer dispensationem petant, sunt monendi, causam non posse institui vel ad ulteriora produci.

§2: Quod si orator significet se criminis nullimodo fuisse participem, sed depravatos alterius coniugis mores passum esse, aut, etiamsi fateatur se non esse innoxium, ostendat tamen hodie res eo devenisse ut coniugalis consortii instauratio non sit possibilis, ac sincere sit facti poenitens, et serio promittat se in altero coniugio forte inituro huiusmodi nefando facinori nullimodo operam esse daturum, tunc iudex rem deferat ad H. S. C.

Canon 1015, §1: . . . *consummatum*, si inter coniuges locum habuerit coniugalis actus, ad quem natura sua ordinatur contractus matrimonialis et quo coniuges fiunt una caro.

The description of consummation of marriage in canon 1015, §1, and 1081, §2, "actus per se aptos ad prolis generationem", is given more explicitly by the canonists as "actio qua vir verum semen modo naturali effundit in vaginam mulieris."[1] Contraceptive intercourse, whether with the aid of instruments or not, clearly falls short of this definition and is not consummation of marriage.

It must be observed that, unlike those who seek to get a marriage declared null by an ecclesiastical court, parties who have not consummated their marriage have no right to a papal dissolution, even though their proof of non-consummation is certain, and no immoral actions have taken place. It is a favour which the Holy See may grant for grave reasons, and more often than not it is a method employed in cases of alleged impotence which cannot be settled as such. The granting of this favour to parties whose non-consummation of marriage is admittedly due to contraceptive practices is extremely rare. It is not possible when contraceptive devices are employed after natural intercourse, since the marriage is then consummated. Though possible in other cases, it is not usual even in the circumstances of n. 11, §2 of the 1923 decree,[2] but we have no information as to the number of these exceptional cases which succeed in securing a papal dissolution.

There remains the objection that, no matter how rare the successful cases may be, the possibility of obtaining a papal dissolution is, in these circumstances, a premium on sinful behaviour. The reply must be that the same may be said of all nullity causes due to the fault of the petitioners,[3] and there may exist, nevertheless, the gravest reasons for conceding to them, after repentance, the legal remedy.

171. CIVIL MARRIAGE

Seeing that the State has omitted from civil marriage the words "till death do us part", and considering that it does not treat the civil marriage as a permanent contract, how can the Church recognize such marriages as valid? The essential quality of indissolubility is lacking.

Canon 1013, §2: Essentiales matrimonii proprietates sunt unitas ac indissolubilitas. . . .

Canon 1084: Simplex error circa matrimonii unitatem vel indissolubilitatem aut sacramentalem dignitatem, etsi det causam contractui, non vitiat consensum matrimonialem.

[1] Wernz-Vidal, V, §218.
[2] Cf. *The Jurist*, 1941, I, p. 216.
[3] Cf. *The Clergy Review*, 1946, XXVI, p. 660.

Canon 1086, §2: At si alterutra vel utraque pars positivo voluntatis actu excludat matrimonium ipsum, aut omne ius ad coniugalem actum, vel essentialem aliquam matrimonii proprietatem, invalide contrahit.

The formula spoken by the contracting parties, in the presence of the registrar and two witnesses, is the same as that which follows a Catholic marriage: "I do solemnly declare that I know not of any lawful impediment why I, A.B., may not be joined in matrimony to C.D." and "I call upon these persons here present to witness that I, A.B., do take thee, C.D., to be my lawful wedded wife (or husband)."

In the Roman Ritual the form is even simpler: "N. Vis accipere N, hic praesentem in tuam (tuum) legitimam (legitimum) uxorem (maritum) juxta ritum sanctae matris Ecclesiae? Resp. Volo."

The words "till death do us part" are used by us in England, as well as by Anglicans, because they are part of the ancient Sarum pre-Reformation rite, which the Church desires to retain, as well as other local rites and customs connected with the exchange of consent.

The question of a valid marriage consent before a civil registrar arises only for those persons who are not bound to observe the canonical form. If the two parties are baptised and free to marry, their marriage consent before a registrar is "ratum", that is to say it is in all respects equal to the marriage of two Catholics before a priest except that it lacks the priestly blessing.

The use of the words "matrimony", "wedded wife", "wedded husband" in the civil formula, like the words "uxorem", "maritum" in the Roman Ritual include the notion of "indissolubility", since marriage is of its nature indissoluble. The parties before the registrar may hold the erroneous belief that the marriage they are contracting may be dissolved *quoad vinculum* by the State, but this error does not suffice, as canon 1084 clearly states, to make the consent invalid, unless by a positive act of the will, the quality of indissolubility is excluded by one of the contracting parties; even so, an ecclesiastical declaration of nullity cannot be obtained unless this internal defective consent can be proved by some external evidence.[1]

Since the intention of marriage predominates, notwithstanding erroneous views on the subject, it follows that marriage in a register office by persons not bound to the canonical form is *prima facie* valid in the eyes of the Church, not precisely because it is civilly

[1] Cf. *The Clergy Review*, 1931, I, p. 27, where these ideas are elaborated in the light of canonical jurisprudence.

contracted before a civil official, which the Church in principle deprecates, but because it is a proof of marriage consent externally expressed.[1]

172. CIVIL MARRIAGE SOLELY FOR CIVIL EFFECTS

A, divorced from B, who is still alive, lives in concubinage with C, and children have issued from this illicit union. A and C repent and with all due precautions for avoiding scandal are, with the Ordinary's sanction, admitted to the sacraments, whilst continuing to live under the same roof in chastity. They now desire to contract a civil marriage solely for the civil effects. Could the parish priest properly, and with any prospect of success, seek permission from the Ordinary for this action? All the parties are Catholics.

Canon 1016: Baptizatorum matrimonium regitur iure non solum divino, sed etiam canonico, salva competentia civilis potestatis circa mere civiles eiusdem matrimonii effectus.

Canon 2356: Bigami, idest qui, obstante coniugali vinculo, aliud matrimonium etsi tantum civile, ut aiunt, attentaverint, sunt ipso facto infames; et si, spreta Ordinarii monitione, in illicito contubernio persistant, pro diversa gravitate excommunicentur vel personali interdicto plectantur.

i. The term "civil marriage" has two senses, one of which is consistent with Catholic doctrine and practice and the other not. For parties who cannot contract marriage except with the canonical form, the Church tolerates the civil contract, in order to secure the civil effects attached to and issuing from a valid marriage, as in canon 1016. The correct relationship, however, between Church and State, which is secured even nowadays in some places, is for the State to recognise and enforce the civil effects of all marriages contracted with the canonical form, and without requiring any further civil ceremony beyond a simple registration. The second sense of the term "civil marriage" is not limited to civil effects but is understood by the legislator to mean the marriage bond itself, the substance of the contract, whether entered upon by the unbaptised or by the baptised, and whether the latter are bound or not bound to observe the canonical form. It is by implication a claim on the part of the State to control one of the sacraments, over

[1] Since the above was written, the following appeared in the press of 11 November, 1947:
Register office couples will in future be told:
"It is my duty to remind you of the solemn and binding character of the vows you are about to make. Marriage, according to the law of this country, is the union of one man with one woman, voluntarily entered into for life, to the exclusion of all others."

which the Church alone has power, a claim which the Church has always resisted and denounced as intrinsically wrong.

ii. It must inevitably follow, in our opinion, that the priest cannot with any prospect of success request permission from the Ordinary for the civil marriage of A and C. For, quite apart from scandal and the impediment of *ligamen*, it is a request which totally disregards the just rights of the Church over the marriages of Christians. One may not discuss the civil effects of marriage, and the various problems arising therefrom, except on the assumption that these effects arise from a valid marriage. If the parties themselves contract on their own initiative a civil marriage, a subsequent rectification of their status is possible, though difficult, as suggested in *The Clergy Review*, 1949, XXXI, p. 184. But a merciful rectification of people's follies is a very different thing from sanctioning their perpetration.

XV. MARRIAGE PRELIMINARIES

173. RELIGIOUS RITE OF CANONICAL ENGAGEMENT

In the rare event of parties wishing to become engaged with the canonical form, they expect some religious ceremony to accompany the signatures. Is there any formula for this in existence?

Canon 1017, §1: Matrimonii promissio sive unilateralis, sive bilateralis seu sponsalitia, irrita est pro utroque foro, nisi facta fuerit per scripturam subsignatam a partibus et vel a parocho aut loci Ordinario, vel a duobus saltem testibus.

i. A suggested formula for the essential act of signing was given in *The Clergy Review*, 1939, XVI, p. 157, and the question of a religious ceremony will scarcely arise unless the parties elect to have the parish priest or Ordinary as the official witness. There are good reasons for doubting whether the parish priest may validly delegate another priest to act in his name;[1] therefore, in the event of an assistant priest being approached, it is advisable for him to secure a second witness to sign the document, but he may always accompany the act by some religious rite, subject to the ruling of the parish priest on the matter.

ii. The most recent *Rituale Romanum* of 1952 contains no formula for use on these occasions. The American translation of the Ritual gives one in the Appendix consisting of Ps. 126, an allocution, an exchange of promises, a blessing of the engagement ring which is placed on the index finger of the woman's left hand by the man, and a concluding Mass. Failing an authorised formula there is hardly any limit to what a priest may do to solemnise these occasions. The minimum is a blessing of the ring with the formula "Benedictio ad omnia" of the Ritual, a blessing of the parties with the usual formula "Benedictio Dei Omnipotentis, etc.", and they may hear Mass and receive Holy Communion exactly as they would on any other day. What should be absolutely avoided is any resemblance to the rite of marriage with a nuptial blessing, and we think the American suggestion rather offends in this respect, especially if it is publicly carried out at the altar rail. Nevertheless, it is permitted apparently in America, and failing any ruling by the local Ordinary, it is hard to see on what principle it can be forbidden elsewhere.

[1] *The Clergy Review*, 1949, XXXII, p. 132.

174. INVALID ENGAGEMENT

A young man of twenty desired me to witness his engagement. The lady, aged thirty-five, was not a Catholic, and the man's parents had refused their consent on the grounds that her age, religion, family and reputation made the match undesirable. Did I act lawfully in refusing my signature?

Canon 1017, §1: Matrimonii promissio sive unilateralis, sive bilateralis seu sponsalitia, irrita est pro utroque foro, nisi facta fuerit per scripturam subsignatam a partibus et vel a parocho aut loci Ordinario, vel a duobus saltem testibus.

Canon 1034: Parochus graviter filiosfamilias minores hortetur ne nuptias ineant, insciis aut rationabiliter invitis parentibus; quod si abnuerint, eorum matrimonio ne assistat, nisi consulto prius loci Ordinario.

There is reason in the query because the marriage may be valid and lawful, and the faithful have a right to the priest's assistance in making a formal engagement.

i. On the grounds of the man's minority some maintain that a promise of marriage is invalid, unless the parental consent is obtained.[1] This is, however, by no means certain, since the refusal may be unjust, and marriage may be contracted, with the procedure of canon 1034, if there are sufficient reasons to justify it. The law nowhere states that persons under twenty-one are barred from entering upon a valid engagement to marry except with parental consent. On a principle of giving due honour to parents even those over twenty-one should consult them before marriage, but the Church has firmly maintained, even in the remote past when parents arranged the marriages of their children without consulting their wishes, that the election of a state of life is ultimately for the persons concerned, not for their parents, to determine.

The engagement of a minor without parental consent is not for that reason alone invalid. It is unlawful, however, in our opinion, because canon 1034 though referring explicitly only to marriage, seems to include by implication the promise of marriage also. Therefore, on the ground of minority alone the priest rightly refuses his signature, at least until he has consulted the Ordinary.

ii. The impediment of mixed religion, though not diriment of marriage, renders the Catholic party incapable of marrying lawfully unless a dispensation is obtained. It is held by some modern commentators that persons may make a valid and lawful engagement, notwithstanding impediments whether prohibiting or diriment, provided the promise of marriage is conditioned upon obtaining a dispensation, and the impediment is one from which the Church is accustomed to dispense.[1] Others maintain that an engagement of this kind is invalid, so that when the condition is verified it is necessary for the contract to be renewed. Accordingly, relying on this latter opinion, which is fully supported by some Roman decisions, the parish priest is entitled to refuse his signature until a dispensation has been obtained.

iii. Supposing the difficulties mentioned have been surmounted and the priest is not disposed to refuse his signature precisely for the reasons outlined in (i) and (ii), there remains the general undesirability of the marriage on which the parental refusal is based. The point to notice here is that it is wrong because imprudent for persons to contract a marriage which has every likelihood of being unhappy, and it remains wrong even though the parents consent and there are no canonical impediments. One could argue, in fact, that an engagement to contract a marriage of this kind is not only unlawful but invalid, since a contract of promising to do something wrong is invalid from the natural law. Other reasons, of course, may be present which, in all the circumstances, argue that a given marriage though wrong and undesirable is the lesser of two evils. The priest is within his right in using his own judgement about the matter and deciding that, on the whole, the proposed marriage is a folly or a scandal. He then justly refuses his signature, and he can do it the more easily because, if the parties are aggrieved, their remedy is to make their engagement, in so far as it is possible to do so validly, before two lay witnesses.

[1] Sipos, *Enchiridion*, p. 504.

175. FORM OF ENGAGEMENT TO MARRY

May an assistant priest, delegated by the Ordinary for all marriages in the parish to which he is attached, witness a formal engagement to marry; if not, may the parish priest delegate him for this office?

Canon 1017, §1: Matrimonii promissio sive unilateralis, sive bilateralis seu sponsalitia, irrita est pro utroque foro, nisi facta fuerit per scripturam subsignatam a partibus et vel a parocho aut loci Ordinario, vel a duobus saltem testibus.

Canon 199, §1: Qui iurisdictionis potestatem habeat ordinariam, potest eam alteri ex toto vel ex parte delegare, nisi aliud expresse caveatur.

S.C. Concil., 28 March, 1908; *Fontes*, n. 4349, ad VI: Utrum

[1] Cf. Cappello, *De Matrimonio*, §85; Heylen, *De Matrimonio*, p. 25.

sponsalia, praeterquam coram Ordinario aut parocho, celebrari valeant etiam coram alterutro delegato? *Resp.* Negative.

Motu Proprio . . . pro Ecclesia Orientali, canon 6, §1; *A.A.S.*, 1949, XLI, p. 91: Matrimonii promissio, etsi bilateralis seu sponsalitia, irrita est in utroque foro, nisi facta fuerit coram parocho aut loci Hierarcha aut sacerdote cui ab alterutro facta sit facultas assistendi.

The law of *Ne Temere* on the subject of engagement is codified in canon 1017, which makes no mention of delegation. It is not, indeed, self-evident why the parish priest who can delegate his powers for the marriage cannot also delegate for the engagement, and anterior to *S.C. Concil.*, 28 March, 1908, many thought that he could.[1] The reasons alleged for denying the parish priest a delegating power are not, as a matter of fact, very convincing,[2] but the positive law is clear enough for the period, at least, between *Ne Temere* and the Code.

A very good reason for doubting whether the reply of *S.C. Concil.*, 28 March, 1908, is still the law is seen in the Instruction *S.C. Sacram.*, 1 July, 1929, issued for the Italian clergy after the Lateran Treaty. It contains a formula for use at engagements[3] which expressly leaves a space for the signature of the parish priest or his delegate. A writer in *Periodica*, 1928, p. 183, explains that the inclusion of a delegate in this formula is simply a mistake, and he points out that the witnessing may not be delegated because the parish priest, from his position, is able to give advice about the suitability of the engagement; there seems little force in this reason, seeing that the parties can make a valid engagement, if they wish, without consulting the parish priest at all. A further interesting point, though of no immediate value as an authentic interpretation of Western law, is the wording of canon 6 of the Eastern Church Marriage Code, which sets out to secure, as far as possible, uniformity of practice in East and West.

However, there is no point in pressing the argument. There are solid reasons for doubting the validity of delegation, and any priest who is not a parish priest should always find it easy enough to secure the validity of his own signature by bringing another witness to sign with him.

176. OBEYING THE INSTRUCTION "SACROSANCTUM"

Are the clergy under an obligation to observe all the provisions of this Instruction, even when their own Ordinaries have not ordered this to be done?

[1] Choupin, *Les Fiançailles . . . Ne Temere*, p. 27.
[2] *L'Ami du Clergé*, 1923, p. 236.
[3] Mod. V in the document reprinted in Gasparri, *De Matrimonio*, p. 591.

Canon 1020, §3: Ordinarii loci est peculiares normas pro huiusmodi parochi investigatione dare.

Sacrosanctum, 29 June, 1941, n. 3; *A.A.S.*, 1941, XXXIII, p. 297: . . . Sacra Congregatio . . . opportunum censuit alteram conficere Instructionem, qua adiutricem praebendo manum Revmis Ordinariis, quibus hoc onus ex §3 relati can. 1020 incumbit, eis suppeditaret idoneas normas ad nupturientium examen rite diligenterque explendum. . . .

An affirmative reply to the above question would be the safest line to take, since all the provisions of this Instruction are worthy of adoption, and reverence for the Holy See prompts acceptance without peering too closely into their preceptive force. We think, nevertheless, that those parts of the Instruction which are neither the common law, nor unequivocally preceptive from the wording of the document, are not of strict obligation unless the local Ordinary has so determined.

The function of a Sacred Roman Congregation is primarily and essentially administrative and executive,[1] and the two leading commentators on the Code *Prolegomena* write as follows about their Instructions: "non exhibentur per modum legis neque vim legis obtinent, sed de se indicant normas simpliciter declarativas, quarum directio servanda est potius quam urgenda est litteralis observatio."[2] This does not exclude a preceptive force in those parts of an Instruction which are clearly so expressed. One has to discover from the document what the Sacred Congregation, in its administrative and executive capacity, expressly imposes, and in the *nihil obstat* of *Sacrosanctum*, n. 4, a, we have a clear example of a precept being imposed. The rest of the document is meant, as stated in the extract quoted above, to be a directive for Ordinaries in carrying out the obligations of canon 1020, §3. If it is to be argued that practically the whole of the document is preceptive, the clergy at least may rightly regard it as not their immediate concern, but as a matter between the Sacred Congregation and Ordinaries; it is for the clergy to accept and obey the regulations made by their own Ordinaries in the measure determined either from the document or from indult.

Though many of the commentators seem to assume that every single point in the document is of obligation on all priests investigating marriages, those who have examined this point more carefully support our contention. This is particularly true of the quasi-official interpretation given for the Bruges diocese, which is noted for the

[1] Cf. *The Clergy Review*, 1941, XXI, p. 357.
[2] Michiels, *Normae Generales*, p. 502; Van Hove, *Prolegomena*, §72.

competence of its clergy and for their loyal attachment to the Holy See.[1] Our view is also confirmed by the practice of Ordinaries everywhere who, whilst enforcing the *nihil obstat* which is of precept, have not required their clergy to accept every suggestion or recommendation in the Instruction; for example, the document plainly directs that the exchange of documents shall be done through the diocesan curia, but many Ordinaries are content with the exchange being effected directly between the parish priests concerned; a previous oath is required by the Instruction as part of the routine examination of all parties, but most Ordinaries are content with the common law, as for example in canon 1031, §1, 1, which requires an oath only in cases of doubt. Our view is supported equally by the practice of good parish priests who, confronted with new laws and formalities in every direction, remember the axiom *onera sunt restringenda* and quite reasonably are loth to recognise new obligations in the Instruction, unless these are certainly imposed by their immediate superiors.

177. DIOCESAN "NIHIL OBSTAT"

The bride belongs to diocese "A", the bridegroom to diocese "B", but the marriage is to be celebrated, with permission from the bride's parish priest, in my church in diocese "C". From which Ordinary should a "nihil obstat" be obtained?

S.C. Sacram., 29 June, 1941; *A.A.S.*, XXXIII, p. 299: Ast, cum parochi sunt diversae dioecesis, documentorum istorum paroecialium transmissio fiat semper per tramitem cancellariae Curiae Episcopalis dioecesis sponsi—cuius insuper erit litteras testimoniales dare de libertate status sponsi—ad sponsae parochum, quoties hic, prout de more, matrimonio assistit: versa vice per cancellariam Curiae Episcopalis dioecesis sponsae id fiat, si quandoque accidat ut matrimonio assistat parochus sponsi.

Haec S. Congregatio autem valde exoptat ut, antequam parochus ad matrimonii assistentiam procedat, licentiam suae Curiae, quam *nihil obstat* nuncupant, consequatur: id vero praecipit cum nupturientium parochi sunt diversae dioececis.

The document does not expressly consider a case as put above, but the solution is found in the second paragraph, which directs that a parish priest shall not assist at the marriage of a person belonging to another diocese except after obtaining a *nihil obstat* from his own Curia. To be in order the previous investigations made

[1] *Collationes Brugenses*, 1946, pp. 61–72.

by the parish priests of the two parties must have the visa of the Curia of "A" and "B" respectively, which is described in the text as "litterae testimoniales". But it is not for the Curia of either "A" or "B", in our opinion, to give a *nihil obstat*, unless the marriage is to be contracted in either of these dioceses. The *nihil obstat* is the final stage in the rather ample collection of documents now required by the common law, and it is to be issued by the Curia of the diocese "C" in which the marriage is celebrated, after an inspection by the same of all the documents from "A" and "B".

178. USE OF INDULT DISPENSING FROM "NIHIL OBSTAT"

John, living in Edinburgh, is marrying Mary, living in Birmingham, and previous to the marriage he has a month's residence in Birmingham. May the indult dispensing from Curial intervention be used for the marriage, which is to be celebrated in Birmingham?

Canon 94, §1: Sive per domicilium sive per quasi-domicilium suum quisque parochum et Ordinarium sortitur.

Canon 1097, §1: Parochus autem vel loci Ordinarius matrimonio licite assistunt: 1. Constito sibi legitime de libero statu contrahentium ad normam iuris; 2. Constito insuper de domicilio vel quasi-domicilio vel menstrua commoratione alterutrius contrahentis in loco matrimonii; 3. Habita, si conditiones deficiant de quibus in n. 2, licentia parochi vel Ordinarii domicilii vel quasi-domicilii aut menstruae commorationis, nisi . . . gravis necessitas intercedat quae a licentia petenda excuset.

S.C. Sacram., 29 June, 1941, 4, a: Quod ad parochum attinet: qui habet ius et onus inquirendi, is est cui competit assistentia matrimonio. . . . Haec S. Congregatio autem valde exoptat ut, antequam parochus ad matrimonii assistentiam procedat, licentiam suae Curiae, quam *nihil obstat* nuncupant, consequatur: id vero praecipit cum nupturientium parochi sunt diversae dioecesis.

Indult, 6 November, 1947; *The Clergy Review*, 1948, XXIX, p. 195: . . . petitas dispensationes pro universis dioecesibus Angliae et Cambriae ad *sexennium* concessit, dummodo: (1) Nupturientes ambo pertineant Angliae et Cambriae. . . .

i. In the common law of the Code and of the Instruction *Sacrosanctum*, a month's previous continuous residence constitutes the parish priest of that residence competent to assist at the marriage. Discussions as to the meaning and method of computing the month are not relevant to our question, but it should be observed that a

parish priest does not enjoy the right and duty of investigating a marriage unless he has the right to assist at it, which does not occur until the month is completed, so that in practice a residence of at least seven weeks before the wedding will be required. We think it is certain that for all questions relating to the parish priest's rights and duties the month's residence is on an equal footing in the common law with domicile and quasi-domicile. It must follow inevitably, in our opinion, that in the common law no reference to any diocesan curia is necessary in the above case: not for a *nihil obstat* or testimonial letters, since the parish priest is competent exactly as though the parties had a domicile in his parish; nor for observing the law of canon 1032, since the parties are not persons of no fixed abode, the *vagi* of canon 91. It might be objected that the law of the Instruction is ineffective if people can evade it so easily. That is true, perhaps, and it applies to the fringes of many positive laws. But evasion is not easy, and it is unlikely that anyone would take such trouble solely to avoid a simple procedure. Laws are made for the generality of cases. The solution, which we think is correct, is accepted, at least by implication, in some of the commentaries on the Instruction: Heylen, *De Matrimonio*, p. 80; Moing, *L'Enquête Religieuse*, p. 29, n. 1.

ii. But the text of the Indult, which derogates from the common law requiring a *nihil obstat*, creates a little difficulty, since it departs from the terminology of the Instruction: instead of reading "dummodo ambo nupturientium parochi pertineant Angliae et Cambriae", it reads "dummodo nupturientes ambo . . ." The difficulty is that the wording of the Indult seems to require that the parties who benefit by it must have a domicile or quasidomicile in England or Wales (canon 94), and that those who have merely a month's residence are excluded; canon 67 states: "Privilegium ex ipsius tenore aestimandum est, nec licet illud extendere aut restringere". If this is the correct interpretation of the Indult's terms, it means that the price we have to pay, so to speak, for the Indult, is that the qualification of a month's previous residence, as explained above, is inapplicable. This raises many other points, including the rule of canon 69 about not being bound to use an Indult, which we will not discuss.

Seeing that canons 50 and 68 justify a wide and more friendly interpretation of an Indult such as the one we possess, it may be doubted whether the different terminology employed has really such great significance. It could be held that "pertaining to England and Wales" means "belonging to an English or Welsh parish or parish priest", i.e. for marriage investigation purposes, which is the

equivalent of the common law interpretation explained in (i). However, it is for the local Ordinaries to decide which interpretation is to be chosen, and failing any decision we think that the wording of the Indult may be interpreted in the same way as the wording of the Code and of the Instruction itself.

It is evident from the relatively small amount of space given in the Instruction to defining the investigating priest that the Sacred Congregation is less concerned with this legalistic question than with securing a thorough investigation, no matter by whom it is done. It might happen quite easily that the parties could acquire a quasi-domicile by staying one night with the intention of remaining for six months and a day, in which case they would "belong" to the country in the fullest sense of the word; yet they would be even less well known to the parish priest of the quasi-domicile than the parties who have actually dwelt continuously in the parish for seven weeks or so.

179. "NIHIL OBSTAT": TRANSMISSION OF DOCUMENTS

The 1941 *Instruction directs that, when the parish priests of the parties belong to different dioceses, the documents shall be transmitted by the respective curial officials. In some dioceses, however, the transmission is done directly between the two parish priests concerned. Does this mean that an indult has been obtained?*

Indults may have been obtained in addition to the one discussed in the previous question, but there seems no need for an indult permitting the transmission of documents to be done directly between the parish priests, instead of through curial officials, since the *praecipit* of the Sacred Congregation applies to the curial *nihil obstat* not to the method of transmitting it. In principle, *Sacrosanctum* is meant to strengthen the authority of the bishops (n. 3) by suggesting rules for their acceptance, except only where it is clear, as in the granting of a *nihil obstat*, that some new direction is not only recommended but imposed by the Sacred Congregation.

Many of the commentaries we have examined, some issued with express episcopal approval, take for granted that the recommendation of *Sacrosanctum* on the transmission of documents is to be observed: e.g. *Guide Pratique* for the diocese of Evreux, p. 35. Also some Ordinaries have directed this method to be followed by parish priests within their jurisdiction: e.g. *Irish Ecclesiastical Record*, 1947, p. 256.

One of the best commentaries is that in *Collationes Brugenses*, 1946,

pp. 61–72. The writer notes that in Bruges the local law promulgated 24 June, 1942, requires transmission through the Bruges curia, but he also observes correctly: "Transmissio documentorum ad parochum alius dioecesis per tramitem Curiae episcopalis valde urgetur in laudata Instructione ('fiat semper per tramitem') quin explicite dicatur id a S. Congregatione praecipi."

Accordingly, the clergy have only to follow the instructions of their own Ordinaries, and any difficulties arising through the practice of the two dioceses concerned being different must be settled by the respective curial officials. Transmission through the diocesan curia is simpler and has the advantage of reducing postal expenses, but until the Sacred Congregation declares otherwise, it cannot be said, we think, that this method is of strict obligation; therefore, no indult is strictly required to justify a different method.

180. "NIHIL OBSTAT": WHICH DIOCESE?

John and Mary, both domiciled in Glasgow, propose to be married in Brighton, where they have no residence. Which diocese issues the "nihil obstat"*?*

The Instruction does not expressly decide what is to be done in the circumstances of the above question. For, on the one hand, no *nihil obstat* at all is required when the parish priests of the parties belong to the same diocese, in this case the diocese of Glasgow; on the other hand, the parish priest assisting at the wedding requires the *nihil obstat* "of his own Curia", in this case the Southwark Curia, whenever the parish priest of one of the parties belongs to a diocese other than Southwark and *a fortiori*, it would seem, when the parish priest(s) of both parties belong elsewhere. (The Indult is not relevant to the question.)

i. A correct solution, saving the right of the Ordinary of the place of the wedding to decide differently, is that no reference to any Curia is necessary in the above circumstances. The Glasgow parish priest(s) will conduct the investigation, the parish priest of the bride will send his certificate of freedom together with the licence required by canon 1097, §1, 3, to the Brighton parish priest, and everything will be in order.

ii. Local law, however, relying on canon 1020, §3, may require such marriages contracted within the diocese to have the *nihil obstat* of the local Curia, or the words of the Instruction "licentiam suae Curiae" may be interpreted locally in this strict sense. The only commentary we have seen on this particular point,[1] written by the

[1] *Guide Pratique pour l'application de l'Instruction "Sacrosanctum"*, p. 36.

Vicar-General of Evreux chiefly for that diocese, adopts this solution, and requires the local *nihil obstat* even for cases where neither of the parties belongs to Evreux.

181. MIXED MARRIAGE "NIHIL OBSTAT"

Granted that the competent priest in a mixed marriage is the parish priest of the place where the Catholic party is domiciled, does it follow that no "nihil obstat" *is required from the diocesan curia even when the non-Catholic belongs to a different diocese?*

The two ecclesiastical territories are either dioceses of the same country, as determined by the common law of the instruction *Sacrosanctum*, or dioceses in different countries as permitted by indult.[1]

The suggested conclusion does not follow, because the parish priest either of the Catholic or of the non-Catholic party may have a diocesan curia which does not accept the solution offered, and prefers the opposite one given in the reply (i). The point about the reply related to the respective rights and obligations of the two parish priests, and if they both belong to the same diocese the curia is not called upon except for the issue of a dispensation. But the point now raised affects the rights and obligations of the curia irrespective of granting a dispensation: a *nihil obstat* is required as a check or visa certifying that the documents are in order and the marriage may proceed. Receiving the *dossier* from the parish priest of the Catholic party, the curia will not issue a *nihil obstat*, even if the view given in our former reply (ii) is accepted, until it has been assured that the curia of the diocese in which the non-Catholic lives also takes this view. If it does not, the diocesan curia of the non-Catholic party is entitled to be consulted and to issue its testimonial on the freedom of the non-Catholic, which may be done either by accepting the examination carried out by the parish priest of the Catholic—the simplest procedure to adopt—or by requiring the parish priest of the non-Catholic to function as he would do in the case of a Catholic parishioner.

182. PRENUPTIAL INQUIRY: WHOSE DUTY?

The two parties, domiciled in the neighbouring parish St Mary's, have always frequented the church of my parish St Joseph's; also my parish is included in the registrar's district to which the residence of the parties belongs,

[1] See question 178.

whereas St Mary's parish is not. The parish priest of St Mary's has no objection to the wedding being at St Joseph's, but he maintains that it is his duty to make the prenuptial investigation and give a certificate of freedom, though he would gladly be relieved of the task. Is it permissible for me to make the prenuptial investigation?

Sacrosanctum, 29 June, 1941, 4, a: Munus vero inquirendi parocho *sub gravi* incumbere patet ex gravitate rei; neque a tali onere ipse eximitur, licet moraliter certus sit nihil obstare validae et licitae matrimonii celebrationi. Examen peragatur personaliter a parocho nisi iusta causa excusetur.

Banns must be published in St Mary's parish, and its parish priest is within his right, if he wishes to use it, in conducting the prenuptial investigation personally. When it is satisfactorily completed he sends his certificate of freedom and the licence required by canon 1097, §1, 3, to the parish priest of St Joseph's. The best method, however, is for him to delegate the parish priest of St Joseph's to make all the prenuptial investigations, which is permitted for a just reason (a grave one is not required), as is clearly verified in the above case.

There is no problem if both parish priests are agreeable to give and accept delegation for the inquiry, as they happily are in this instance. If the parish priest of St Mary's will neither give delegation nor make the inquiry personally, recourse to the Ordinary will be necessary, who may either compel him to do his duty, or appoint the parish priest of St Mary's to examine the parties as the Ordinary's delegate. If the parish priest of St Joseph's will not accept delegation, either the investigation must be done by the parish priest of St Mary's or he can request the Ordinary to appoint the parish priest of St Joseph's.

What is quite certain is that the parish priest of St Joseph's is bound *sub gravi* not to assist at the wedding until the prenuptial inquiry has been completed.

183. BANNS: MARRIAGE OF CATECHUMEN

If the non-Catholic is under instruction with a view to being received into the Church, is it not more correct to publish the banns?

Canon 1026: Publicationes ne fiant pro matrimoniis quae contrahuntur cum dispensatione ab impedimento disparitatis cultus aut mixtae religionis, nisi loci Ordinarius pro sua prudentia, remoto scandalo, eas permittere opportunum duxerit, dummodo apostolica

dispensatio praecesserit et mentio omittatur religionis partis non catholicae.

Some Ordinaries interpret this law in the sense that they require the banns of all mixed marriages to be published, provided the impediment has been dispensed; publication may be omitted with episcopal permission. Thus *Middlesbrough Decrees*, 1933, n. 170. Others direct that banns in these cases are not to be published, and this is, we believe, the more common rule in England. It is, therefore, for the Ordinary to interpret or to relax this ruling in cases where the non-Catholic is to be received into the Church subsequent to marriage. If the reception is to take place before marriage is contracted, it seems to us that the banns should be published, unless the Ordinary has ruled differently, for the marriage is not being contracted with a dispensation from the impediment of mixed religion, and is in all respects equivalent to the marriage of two Catholics.

184. WITNESSES AS PROOF OF FREEDOM TO MARRY

When making prenuptial investigations, is it necessary in all cases to question witnesses as in Appendix II of Sacrosanctum?

Canon 1031, §1, 1: Exorto dubio de existentia alicuius impedimenti: Parochus rem accuratius investiget, interrogando sub iuramento duos saltem testes fide dignos . . . et, si necesse fuerit, ipsas quoque partes.

Sacrosanctum, 29 June, 1941, 6: . . . neque ab iisdem (proclamationibus) dispensetur nisi legitima causa comprobata (can. 1028), neque facile, ceteris neglectis probationis argumentis (Alleg. II and III), procedatur ad iusiurandum suppletorium (Alleg. IV). . . .

Allegatum II. EXAMEN TESTIUM AD COMPROBANDAM LIBERTATEM STATUS NUPTURIENTIUM (Interrogandi sunt duo testes, a parocho cogniti, pro unoquoque nupturiente; iidem vero testes pro utroque inservire possunt, dummodo seorsum de unoquoque testificentur). Ten questions follow.

i. In the common law the obligation to question witnesses arises only when there is a doubt on the freedom of the parties. The Instruction does not, indeed, expressly state that *Allegatum II* is for use in doubtful cases, though this is stated for *Allegatum III*, which is a similar kind of *questionnaire* addressed to the parents or guardians of minors. But the context of n. 6, dealing with persons who have lived in other places for six months after the age of puberty, seems to assume that *Allegatum II* is for use only when doubt exists.

ii. The local law is ruled by canon 1020, §3, which directs that Ordinaries should make laws for their dioceses about the method of making prenuptial investigations. Also, the Instruction itself is chiefly meant as a series of suggestions for Ordinaries in their prudence to adopt, as stated in n. 3. Unless some new measure contained in this Instruction is clearly preceptive, as n. 4, a, on the *nihil obstat*, which applies everywhere, parish priests are not bound to observe it except in the measure directed by their own Ordinaries. In many dioceses, long before the Instruction appeared, the local law required the testimony of some other person as a routine part of the prenuptial examination in all mixed marriages and the forms for dispensation may contain a reference to it. The reason is the will of the local Ordinary, for which no other justification is required beyond the rule of canon 1020, §3; it is evident, however, that in mixed marriages, particularly as the law of canon 1026 requires banns not to be published, there is nearly always some doubt, which the testimony of other person(s) assists in removing.

185. FREEDOM TO MARRY AFTER CIVIL MARRIAGE AND DIVORCE

A Catholic invalidly attempts marriage in a register office, subsequently obtains a civil divorce, and now wishes to marry a third party. If he produces legal evidence of divorce is he free to marry? Or must the investigating priest submit the case to the Ordinary?

Canon 1031, §1, 3: Exorto dubio de existentia alicuius impedimenti. . . . Matrimonio ne assistat, inconsulto Ordinario, si dubium adhuc superesse prudenter iudicaverit.

Canon 1069, §2: Quamvis prius matrimonium sit irritum aut solutum qualibet ex causa, non ideo licet aliud contrahere, antequam de prioris nullitate aut solutione legitime et certo constiterit.

S.C. Sacram., 15 August, 1936, Art. 231, §1: Si quis certo tenebatur ad canonicam formam celebrationis matrimonii, et tantum civile matrimonium contraxit, vel coram ministro acatholico matrimonium inivit, aut si apostatae a fide catholica in apostasia civiliter vel ritu alieno se iunxerunt, ad hoc ut constet de horum statu libero, neque iudiciales sollemnitates requiruntur, neque interventus defensoris vinculi: sed hi casus solvendi sunt ab Ordinario ipso, vel a parocho, consulto Ordinario, in praevia investigatione ad matrimonii celebrationem, de qua in can. 1019 seq.

Idem., 29 June, 1941, n. 6, a: Praescriptum can. 1069, §2, optime norint, matrimonii nempe nullitatem *canonica probatione esse evin-*

cendam . . . expletis regulis traditis in supra memorata Instructione huius S.C. diei 15 augusti 1936, art. 226 seq.

Allegatum I, f.n. 6: Si civile quod vocant matrimonium cum alia persona etiam alteruter tantum attentaverit et resolutum definitive fuerit, resolutionis definitivae huiusmodi requiratur documentum authenticum; si adhuc vero vigeat, consulatur Ordinarius.

i. In the common law, the phrase found in a footnote to *Allegatum* I, n. 6, of the instruction *Sacrosanctum* definitely implies that recourse to the Ordinary is not necessary in principle after a civil marriage has been dissolved by a civil divorce. It suffices for the investigating priest to obtain proof of the civil dissolution. From canon 1031, §§1, 3, however, recourse is necessary, even in the common law, if it is doubtful whether the party who has obtained a civil divorce is free to marry *coram ecclesia*. It might appear, at first sight, that he is obviously free and that there can be no reasonable doubt on this issue. But when it is remembered that in many countries the bishops enjoy the faculty of rectifying by *sanatio* mixed marriages invalidly attempted before a civil official,[1] and that this faculty is widely used whenever the circumstances justify it, and that a *sanatio* may be granted even though the non-Catholic party is unaware of it, there will quite often be a well founded and reasonable doubt whether the civil marriage subsequently civilly divorced was not, as a matter of fact, revalidated by *sanatio*, in which case the civil divorce is irrelevant, and the party desiring to contract marriage with a third party is prevented by *ligamen*, the bond of a previous marriage. Recourse to the Ordinary is necessary for resolving this doubt, since curial archives will contain a notice of any *sanatio* that has been granted. In addition, there may sometimes be a reasonable doubt, in marriages contracted before 1 January, 1949,[2] whether a Catholic who is only nominally such was bound to observe the canonical form, since he might have been exempted by the closing phrase, now abrogated, in canon 1099, in which case his civil marriage is valid *coram ecclesia*. Moreover, in these years of war and rumours of war, it is distinctly possible for the civil marriage of a member of the forces to be valid *in periculo mortis* from canon 1098.1. Taking all these possibilities into account, it is hard to avoid the conclusion that the phrase, included as an afterthought in a footnote to *Allegatum* I, is not really very helpful, and that the common law is clearer without it.

ii. Local law nearly everywhere expressly requires recourse to the Ordinary after an attempted civil marriage, whether it has been

[1] Text in *Irish Ecclesiastical Record*, April 1948, p. 375.
[2] *The Clergy Review*, 1948, XXX, p. 341.

civilly divorced or not. The bishops in 1908, when the promulgation of *Ne Temere* raised the whole question of the canonical form in this country, agreed "that the case of the remarriage of persons who have gone through the form of marriage in a registry or non-Catholic place of worship be always referred to the Bishop before re-marriage",[1] an agreement which each bishop presumably communicated to his clergy. In many American dioceses, recourse is necessary since the act of contracting a civil marriage is either a sin reserved to the Ordinary, or is punished by a local l.s. censure.

iii. The following simple rule for the investigation of marriages may be acceptable to the generality of the clergy: whenever it is discovered that either of the parties has at any time possessed married status, even only civilly and even when it has been subsequently dissolved, the case must be referred to the Ordinary unless an authentic death certificate is produced.

186. INVESTIGATION OF IMPEDIMENT OF CRIME

The instruction Sacrosanctum *and occasionally the local Ordinary's list of questions direct the investigating priest to inquire about the impediment of crime, an unattractive task since questioning implies the suspicion of grave immorality and seems to require the revelation, outside the confessional, of grave sin. What is the minimum required under this heading from the investigating priest?*

Sacrosanctum, 29 June, 1941, n. 5: Parochus a sponsis percontetur num aliquo impedimento . . . sive publico . . . sive occulto, immo hoc potissimum, quod rarius innotescere solet (voti, criminis etc.).

Allegatum I, n. 9: Diligenter inquiratur utrum sponsi detineantur aliquo alio impedimento . . . criminis. . . . FOOTNOTE ADDED: De existentia impedimenti criminis accuratius, licet prudenter, inquiratur quando constet prolem adulterinam nupturientes suscepisse; aut eosdem detineri impedimento affinitatis; aut alia suspicandi ratio intersit.

Canon 1075: Valide contrahere nequeunt matrimonium: 1. Qui, perdurante eodem legitimo matrimonio, adulterium inter se consummarunt et fidem sibi mutuo dederunt de matrimonio ineundo vel ipsum matrimonium, etiam per civilem actum tantum, attentarunt. . . .

Since the root of this problem lies in the ignorance of the faithful, otherwise well instructed, about marriage impediments, an important section of the document insists on the duty of the parish

[1] *Leeds Synods*, 1911, p. 102.

priest, during his pastoral instructions, to enlighten them. It must be remembered, also, that the instruction is not a new Code of laws, and, except when it refers to the existing common law of the Code or clearly establishes a precept (as the *Nihil Obstat*), it is of obligation only in the measure enacted by the local Ordinary, particularly as regards the list of questions.

i. No difficulty arises when the facts are publicly known, for example if a party, after a civil divorce, has attempted marriage in a registry office and cohabited either before or after this attempt; nor is there any difficulty if the parties, without even a civil marriage, have been living in public concubinage, for the added element of the "promise of marriage" necessary to establish the impediment is not one about which people normally would have any shame in revealing; on the contrary, it will usually be considered the right and proper thing to do. Possessing these publicly known facts, the investigating priest, having decided that the impediment actually exists,[1] will apply for a dispensation in the *external forum* as he would for any other.

ii. Usually the impediment, as the instruction observes, is occult. The guiding principle then is that the investigating priest should not put any questions about this impediment unless he has prudent grounds for suspecting its existence. The Sacred Congregation itself, in the section about adequate religious knowledge, notes that this inquiry is not always necessary,[2] and the same must apply to the inquiry about crime. It is necessary, as the footnote to Allegatum I, n. 9, points out, only when there is a well-founded suspicion that it may exist, for example if the parties have adulterous children, or if they are related by affinity. The minimum required, in our view, from an investigating priest who has a well-founded suspicion about this impediment, is for him to inform the parties about impediments in general including that of crime, thereby becoming assured that the parties know the law. If the impediment is discovered the priest may send the parties to a confessor, or he may himself function as such, in a case which is wholly occult, and the dispensation will be for the sacramental forum of conscience alone; alternatively, if there is some prospect of the impediment becoming divulged, he may get the dispensation in the internal non-sacramental forum, with the procedure of canon 1047. In neither case will any mention be made of the impediment on the marriage form, and secrecy is assured either by reason of the inviolable confessional seal, or by the grave

[1] Cf. commentators on canon 1075—*res odiosa* and to be strictly interpreted.
[2] N. 8. Ulterius exploret parochus, nisi personarum qualitas hanc explorationem inutilem reddat.

obligation of preserving a natural secret or one discovered by reason of a person's office.

The solution of this difficulty given above applies also, in our opinion, when the local Ordinary, implementing the instruction, directs questions to be put about this impediment, for it is to be assumed that his directions are to be interpreted as in the footnote to *Sacrosanctum*.

187. DISPENSATION FROM OCCULT IMPEDIMENT OF CRIME

A priest when interviewing a Catholic widower who was engaged to a Protestant lady discovered the impediment of "crimen, neutro patrante". He was about to mention this impediment on the mixed marriage petition form, when he was told by a priest friend that the dispensation from the occult impediment must be asked separately, and fictitious names used. The dispensation from crime was duly granted, and as it was not granted "in foro sacramentali", the priest thought he was bound to send the names, after the marriage, to the Ordinary for entry in the secret archives. But his friend again disagreed, saying that it would be wrong to do this in the case of an occult defamatory impediment. Would you kindly say what should the priest have done in the case?

Canon 202, §2: Potestas collata pro foro interno exerceri potest etiam in foro interno extra-sacramentali, nisi sacramentale exigatur.

Canon 1031, §2: Detecto impedimento certo: 1. si impedimentum sit occultum, parochus . . . rem deferat, reticens nomina, ad loci Ordinarium vel ad Sacram Poenitentiariam.

Canon 1047: Nisi aliud ferat S. Poenitentiariae rescriptum, dispensatio in foro interno non sacramentali concessa super impedimento occulto, adnotetur in libro diligenter in secreto Curiae archivo de quo in can. 379 asservando, nec alia dispensatio pro foro externo est necessaria, etsi postea occultum impedimentum publicum evaserit; sed est necessaria, si dispensatio concessa fuerat in foro interno sacramentali.

i. The difference between "public" and "occult" is a well-established difficulty both for impediments and other laws.[1] It is evident that in some instances, as in the latter part of canon 1075.1, the impediment is certainly public, and the dispensation will be obtained for the external forum like any other; the books give the formula for application in such cases.[2]

[1] Cf. *Apollinaris*, 1936, p. 243; *Angelicum*, 1945, p. 40.
[2] Mothon, *Formulaire*, p. 353.

It is equally clear that, from the nature of the impediment, it will usually be occult in every sense of the word, as well as being defamatory to the parties concerned. If the priest hears of it as the confessor of parties about to be married, he will as a matter of course seek a dispensation using fictitious names, unless he is able to dispense it himself by using the powers he possesses from canons 1043–1045.[1] The parish priest making the pre-matrimonial investigations is bound to inquire about this impediment, if he suspects its existence, as directed by *S.C. Sacram.*, 29 June, 1941, *Alleg.* I, 9, and he will send the parties to a confessor if it is wholly occult and defamatory, or deal with it himself exactly as a confessor would.

ii. The difficulty arises when the circumstances of the impediment are such that, though at the moment occult, it is likely to become publicly known at some future time. For there is no record of a dispensation granted in the confessional, and in the external forum the Church must regard the marriage as invalid owing to an undispensed diriment impediment; even with the penitent's permission to speak the confessor is *incapax* as a witness from canon 1757, §3, 2.[2] This very undesirable, dangerous, and unnecessary conflict between the internal and the external forum is met by the procedure of canon 1047. If the facts are likely to become publicly known, it is for the priest, whether acting as confessor or not,[3] to urge the parties to seek dispensation in the internal non-sacramental forum with all the safeguards of secrecy provided for in the law. If the parties are unwilling, the priest will apply for the dispensation in the sacramental forum, with fictitious names, outlining the circumstances of a feared divulgation of the impediment, and the bishop will grant the petition or not according to his discretion. Episcopal quinquennial faculties usually cover the occult impediment of crime, and permit its dispensation to be either in the sacramental or non-sacramental internal forum.[4] The parties should be urged to adopt this method, but only when there is a prospect of the impediment becoming publicly known, for the necessary secrecy will be securely maintained: application may be made to the Sacred Penitentiary, and the registration entered in its own secret archive, if for any reason it is undesirable to approach the local Ordinary.[5]

iii. The problem and the difference of opinion in the above

[1] Cf. *The Clergy Review*, 1943, XXIII, p. 514.
[2] Previous to the formulation of the clear rule in canon 1047, a confessor's testimony used to be accepted. Cf. *Ephemerides Theologicae Lovanienses*, 1925, p. 54.
[3] Cappello, *De Matrimonio*, §238.
[4] Cf. formula in Beste, *Introductio*, p. 1003.
[5] Cappello, *De Matrimonio*, §242, 4.

question has arisen, it appears, because the priest was not clear in his own mind, at the time of sending the petition, whether it was being sought in the sacramental or the non-sacramental forum. A decision should have been made on this point from the outset, and if it was in the sacramental forum the procedure is described in (i). If for the non-sacramental forum, Heylen recommends that the real names of the parties should appear in the petition,[1] but canon 1031.2 has "reticens nomina" without any distinction, and many commentators assume that names will never be mentioned in the petition. We think it best not to mention them, but the petition should at least make it clear that the dispensation is being sought in the non-sacramental forum.[2]

When the rescript granting the petition is received, the directions may be that the faculty is to be used only in the act of confession, or there may be other indications that it is solely for the sacramental forum, in which case the situation is that dealt with in (i).[3]

We have not discovered any formula of rescript granting a dispensation in the internal non-sacramental forum. In the above question it seems that it was of this character, and the recipient has no option except to obey the terms of canon 1047; the words *nisi aliud*, etc., refer to registration in the secret archive of the Sacred Penitentiary.

188. "VETITUM ECCLESIAE"

In what circumstances is the Church accustomed to forbid a marriage which is not forbidden by any of the prohibiting or diriment impediments of the Code?

Canon 1038, §2: Eidem supremae auctoritati (ecclesiasticae) privative ius est alia impedimenta matrimonium impedientia vel dirimentia pro baptizatis constituendi per modum legis sive universalis sive particularis.

Canon 1039, §1: Ordinarii locorum omnibus in suo territorio vetare possunt matrimonia in casu particulari, sed ad tempus tantum, iusta de causa eaque perdurante.

§2: Vetito clausulam irritantem una Sedes Apostolica addere potest.

The power of the Ordinary in canon 1039, §1, could be exercised when there is the suspicion of an impediment, pending its investigation, or the necessity of avoiding grave scandal; the person affected may have recourse to the Holy See. Some hold that the parish priest

[1] *De Matrimonio*, p. 682. [2] De Smet, *Praxis Matrimonialis*, §45.
[3] Cf. a list of clauses likely to occur in Heylen, *De Matrimonio*, p. 696.

enjoys a similar power,[1] but a more correct estimate is that he cannot constitute an impediment in the strict sense: what he can do is to refuse to assist at a marriage because of some possible infringement of the common law and pending a clarification of the issue.

The commonest use of the *vetitum* on the part of the Holy See is when a marriage is declared invalid owing to the impediment of impotence, or when it is dissolved by the Holy See *ratum non consummatum*; it is then customary for the judicial decision, for example, of the Rota, to contain a phrase such as "vetito tamen viro transitu ad alias nuptias inconsulta Sancta Sede." The prohibition is also found attached to judgements where a nullity decision has been obtained notwithstanding the fact that the party is the cause of the nullity: "vetito mulieri transitu ad alias nuptias, donec sub fide iurisiurandi coram Ordinario loci promiserit se in novo matrimonio contrahendo non amplius exclusuram esse bonum prolis seu generationem filiorum."

The prohibition, whether of the Holy See or of local Ordinaries, binds *sub gravi*. It is rare, however, for this *vetitum* to have the invalidating effect mentioned in canon 1039, §2.

The right of attaching this prohibition, as an administrative act, to a judicial decision is vindicated in Decisio LVIII *coram Quattrocolo*, of Vol. XXXII of the Rotal decisions for the year 1940. It is by way of a safeguard to protect the rights of some future partner of the person under the *vetitum*, and it is withdrawn after suitable enquiry.[2]

[1] Heylen, *De Matrimonio*, p. 467.
[2] Cf. *Monitor Ecclesiasticus*, 1950, p. 313.

XVI. MARRIAGE IN URGENT CASES

189. CONFESSOR RECTIFYING MARRIAGE "IN PERICULO MORTIS"

Within the limits set by canon 1044 a confessor may dispense the form of marriage as well as most of the ecclesiastical impediments when the penitent is in danger of death. What is the procedure to be followed, and what happens if the danger passes, in the case of a person publicly considered unmarried, or barred by a public diriment impediment?

Canon 1044: In eisdem rerum adiunctis de quibus in can. 1043 (Urgente mortis periculo, locorum Ordinarii etc.) et solum pro casibus in quibus ne loci quidem Ordinarius adiri possit, eadem dispensandi facultate pollet tum parochus, tum sacerdos qui matrimonio, ad normam can. 1908, n. 2, assistit (Si haberi vel adiri nequeat sine gravi incommodo parochus), tum confessarius, sed hic pro foro interno in actu sacramentalis confessionis tantum.

i. A confessor discovers in the course of a confession that a penitent in danger of death needs, for the relief of conscience, to be married; that the party is free to marry except for the obstacle of a diriment or prohibiting impediment of ecclesiastical law; and that time does not permit the marriage to take place with the usual canonical form and procedure. He should dispense the impediment verbally by any appropriate words such as: "With the authority conceded to me by the law of the Church over persons in danger of death I dispense you from the impediment N. N., enabling you to marry N. N. (or enabling you, on renewing consent, to revalidate your union with N. N.). In the name of the Father, etc."[1] If the impediment is occult and the parties have already observed the form, renewal of consent is effected privately as directed in canon 1135; if it is public, the confessor using a similar verbal formula will dispense from the ecclesiastical law requiring consent to be renewed with the canonical form. Similarly, if the parties, e.g. living in concubinage, have not yet exchanged any marriage consent, the confessor will dispense from the canonical form and instruct the penitent to exchange a true marriage consent with the other party when the opportunity offers. The marriage is not registered and the priest does not inform the Ordinary. This law and procedure illustrates

[1] Heylen, *De Matrimonio*, p. 672.

in a rather sweeping way the age-long doctrine of the Church *matrimonium facit consensus*, and puts the clock back, as it were, to times before the Tridentine decree *Tametsi*.

ii. Unfortunately, and from the nature of the case, a marriage of this kind creates a conflict between the internal forum of conscience and the external forum of ecclesiastical law and government; so alarming is this conflict that many commentators restrict a confessor's powers in canon 1044 to impediments which are occult in nature and in fact, e.g. crime.[1] Others, more correctly in our opinion, extend his powers to all impediments of ecclesiastical law whether occult or not,[2] a view which is more consonant with the terms, purpose and spirit of canon 1044, as well as with the essentials of marriage consent and the natural right to marry.[3]

The conflict, however, can often be avoided. For the confessor of canon 1044 automatically becomes the priest mentioned in canon 1098, whenever the parish priest cannot be obtained, or very likely the confessor may himself be the parish priest or one delegated for marriages. He should then rectify the situation by dispensing the impediment, and if necessary the form of marriage, with effect in the external forum, or at least in the internal non-sacramental forum of canon 1047: it will be registered, the Ordinary will be informed and the marriage will enjoy the status of any other; for this procedure the priest as confessor must persuade the penitent to open the matter to him outside the tribunal of Penance.

If this is not possible, either because the penitent is unwilling or because the other party is absent or for any other reason, the confessor dispensing a public impediment in danger of death must instruct the penitent to regulate the marriage before a parish priest immediately the danger of death ceases; that his own rectification in confession has no value whatever for the external forum; and that the penitent will be regarded as living in concubinage, liable to be refused the sacraments, for example, until the marriage is ratified in the public law of the Church.

iii. The preliminaries of marriage, which in normal contracts since *Sacrosanctum* are considerable, obviously cannot be complied with in danger of death. In place of baptismal certificates, certificate of freedom, *nihil obstat* and what not, the priest will have to accept an oath, provided for in canon 1019, §2; and he will question and

[1] Wernz-Vidal-Aguirre, *De Matrimonio*, §428.
[2] Prümmer, *Theologia Moralis*, III, §859.
[3] For the details of this dispute cf. Cappello, *De Matrimonio*, §238; *Apollinaris*, 1928, p. 81; *Jus Pontificium*, 1929, p. 62; *Ephemerides Iuris Canonici*, 1946, p. 116. Canon 1031, §2.2, allows for a public impediment being dispensed in the forum of conscience.

instruct the party, as far as time and opportunity permit, about marriage consent.

190. AFFINITY IN THE DIRECT LINE—WHY EXCEPTED?

Why is the law of canons 1043 *and* 1044 *so strict in excluding a dispensation from affinity in the direct line? Other more serious impediments of closer relationship, e.g. uncle and niece, which are of ecclesiastical law, are not excluded from dispensation in danger of death.*

Canon 1043: Urgente mortis periculo, locorum Ordinarii . . . possunt . . . super omnibus et singulis impedimentis iuris ecclesiastici . . . exceptis impedimentis provenientibus ex sacro presbyeratus ordine et ex affinitate in linea recta, consummato matrimonio, dispensare. . . .

Canon 1044: In eisdem rerum adiunctis de quibus in can. 1043 et solum pro casibus in quibus nec loci quidem Ordinarius adiri possit, eadem dispensandi facultate pollet . . . parochus. . . .

Canon 1076, §3: Nunquam matrimonium permittatur, si quod subsit dubium num partes sint consanguineae in aliquo gradu lineae rectae. . . .

i. The church cannot dispense from impediments which are of natural or divine law (e.g. impotence or the bond of a previous marriage). On the fringes of both classes instances may occur which are doubtfully to be included because it is in dispute whether they are of divine law or not. It will be remembered that the validity of a papal dispensation permitting Henry VIII to marry his deceased brother's wife was contested at the time by regal theologians, though the affinity was only in the collateral line. It is now agreed that affinity even in the direct line (e.g. the relationship between stepfather and stepdaughter) is not of divine law, and canon 1043, which codifies a papal document dated 20 February, 1888,[1] supports this view. But in the fairly recent past it was not agreed, and the reason usually given for the Church declining to dispense the impediment was the possibility that it might be of divine law.[2] This reason must now be abandoned.

ii. If, however, the marriage which creates affinity has been consummated, the possibility of infringing divine law in dispensing it may arise from another cause: the relationship may possibly be consanguinity. The Code in canon 97, §1, has changed the pivot of affinity from *copula* to *matrimonium validum*, and what we now call

[1] *Fontes*, n. 1109.
[2] Zitelli, *De Dispensationibus Matrimonialibus* (1887), p. 55.

affinity in the direct line arising from a consummated valid marriage is the exact equivalent of the pre-Code affinity arising from lawful copula. The *Code Commission*, 2 June, 1918, decided that if unlawful copula preceding marriage causes doubt whether a relationship is consanguinity or affinity, the impediment cannot be dispensed since this is barred by canon 1076, §3. In pre-Code law, affinity in the direct line arising from unlawful copula was occasionally dispensed, provided it was established that the copula was subsequent to the birth of the person desiring to marry a step-parent.[1] Similarly under the Code any possible infringement of divine law arising from suspected consanguinity under the appearance of affinity is met by canon 1076, §3. Therefore it would seem that this particular point must also be abandoned in establishing the ultimate reason for the law of canon 1043, which denies the power of the Ordinary and others to dispense affinity in the direct line arising from a consummated marriage, though many writers give this reason as the explanation.[2]

iii. It may well be that the outlook described in (i) and (ii) has influenced the unwillingness of the Church to dispense affinity in the direct line once the marriage which causes it has been consummated. But if these influences are put aside, the ultimate reasons for this attitude can only be the social and moral ones which apply equally to consanguinity in the collateral line; except for the possibility of defective offspring they are the same in both impediments. Affinity even in the direct line, however, being of ecclesiastical not divine law, dispensations are possible though extremely rare, and examples are quoted occurring both before and after the Code.[3] They are so rare that we regard it as a principle that the Church can but does not dispense, exactly as for the priesthood, and therefore excludes the dispensing power from the faculties of Ordinaries and others even in danger of death. A petition for a dispensation may be sent to the Holy See, and meanwhile, provided the person is prepared to accept the decision, the last sacraments may be administered.

191. AFFINITY IN THE DIRECT LINE: PROOF OF NON-CONSUMMATION

If the marriage which gives rise to affinity has not been consummated, a dispensation may be given in danger of death from affinity in the direct line by

[1] Oesterle, *Consultationes de Iure Matrimonio*, p. 119.
[2] *Ephemerides Theologicae Lovanienses*, 1925, p. 57.
[3] De Smet, *De Matrimonio*, §622; Chrétien, §178.

Ordinaries and others, from canons 1043, 1044. *How is non-consummation established in these circumstances, especially when the alleged non-consummation is due to the practice of contraception?*

Canon 1015, §2: Celebrato matrimonio, si coniuges simul cohabitaverint, praesumitur consummatio, donec contrarium probetur.

Canon 1076, §3: Nunquam matrimonium permittatur, si quod subsit dubium num partes sint consanguineae in aliquo gradu lineae rectae.

S.C. Sacram., 7 May, 1923, n. 11, §§1 and 2: Si . . . constiterit matrimonii consummationem coniuges omnimode devitasse ex detestabili onanismi vitio . . . iudex rem deferat ad H.S.C.

It is correct that, other things being equal, the impediment may be dispensed if the marriage which has given rise to it has not been consummated. One answer to the present query might be that non-consummation is to be proved by the process explained in *S.C. Sacram.*, 7 May, 1923, which might take a few months or years to complete, and which will be unusually difficult if the marriage has been dissolved by the death of one party, as would normally be the case. In the circumstances of canons 1043, 1044, this process is clearly out of the question.

Following Oesterle, Fr Dowdall, O.P., in his doctorate thesis *The Celebration of Matrimony in the Hour of Death*, p. 70, gives the following solution which we believe is, in principle, correct. The presumption of canon 1015, §2, can be disproved, on analogy with canon 1019, §2, by an oath of the party desiring a dispensation, affirming non-consummation of marriage.

We cannot, however, find any commentator who deals with the situation when the alleged non-consummation is due to contraceptive intercourse. It is our opinion, on analogy with the direction of *S.C. Sacram.*, 7 May, 1923, n. 11, that in these circumstances canon 1043 may not be used to dispense the impediment, and that it will be necessary to have recourse to the Holy See.

192. MARRIAGE BY PROXY IN DANGER OF DEATH

During the war a parish priest assisting a dying woman declined to rectify her civil marriage unless he had an instrument of proxy from her consort, a soldier in the Far East, and she died before it could be obtained. Could this priest have acted otherwise?

Canon 1044: In eisdem rerum adjunctis de quibus in can. 1043 et solum pro casibus in quibus ne loci quidem Ordinarius adiri possit, eadem dispensandi facultate (i.e. super forma) pollet tum parochus, tum sacerdos qui matrimonio, ad normam can. 1098, n. 2, assistit, tum confessarius, sed hic pro foro interno in actu sacramedtalis confessionis tantum.

Canon 1088, §1: Ad matrimonium valide contrahendum necesse est ut contrahentes sint praesentes sive per se ipsi sive per procuratorem.

Canon 1089, §1: Firmis dioecesanis statutis desuper additis, ut matrimonium per procuratorem valide ineatur, requiritur mandatum speciale ad contrahendum cum certa persona, subscriptum a mandante et vel a parocho aut Ordinario loci in quo mandatum fit, vel a sacerdote ab alterutro delegato, vel a duobus saltem testibus.

§2: Si mandans scribere nesciat, id in ipso mandato adnotetur et alius testis addatur qui scripturam ipse quoque subsignet; secus mandatum irritum est.

§3: Si, antequam procurator nomine mandantis contraxerit, hic mandatum revocaverit aut in amentiam inciderit, invalidum est matrimonium, licet sive procurator sive alia pars contrahens haec ignoraverint.

§4: Ut matrimonium validum sit, procurator debet munere suo per se ipse fungi.

Canon 1091: Matrimonio per procuratorem vel per interpretem contrahendo parochus ne assistat, nisi adsit justa causa et de authenticitate mandati vel de interpretis fide dubitari nullo modo liceat, habita, si tempus suppetat, Ordinarii licentia.

The priest, if time permitted, should have had recourse to the Ordinary, who could, perhaps, have granted a *sanatio* if the parties were free to marry. In what follows we assume that recourse to the Ordinary was impossible.

Two recent Roman decisions have clarified the law on proxy marriages,[1] but they bear only remotely on the above question, which we cannot find discussed by the commentators. The kernel of the doubt is whether the power of dispensing from the canonical form of marriage in canon 1044 includes dispensing from the law on proxies in canon 1089.

i. In the case presented above the civil law has been observed and it is assumed that the parties are free to marry. In recent years, owing to the exigencies arising from war, many countries have

[1] *Code Commission*, 31 May, 1948 (mandans ipse procuratorem designare debet); *S. Off.*, 26–30 June, 1949 (canon 1088, §1, applicatur etiam matrimoniis acatholicorum baptizatorum). Cf. *The Clergy Review*, 1949, XXXI, p. 201, and XXXII, p. 345.

brought the civil law into line with canon law by making provision for the marriages of absent army *personnel*, the contract being effected through some method other than the verbal exchange of consent between two parties in the presence of each other, and the Church with all due precautions has sanctioned these methods by assuring the observance of canon 1089 in substance.[1] In England the civil law makes no provision for marriages of this kind, except that a proxy marriage validly contracted elsewhere is held to be valid in English law on the principle *locus regit actum*.[2] If in a case of this kind the civil law has not been observed, the civil penalties to which a priest is liable may very likely be avoided by arranging for the contract to be made without a priest's assistance, i.e. by dispensing from the canonical form.

ii. There is some doubt, however, whether this dispensing power extends to the positive law on marriage proxies, for the two recent Roman replies mentioned above interpret the law very strictly; canons 1043 and 1044 have in mind chiefly, if not exclusively, dispensing from the law requiring the assistance of a competent priest and two witnesses; the law about proxies comes within Cap. v "de consensu matrimoniali", not within Cap. vi "de forma celebrationis matrimonii"; a marriage by proxy is always attended by serious difficulties and it may well be that the Church does not sanction the process, even in danger of death, unless the positive law of canon 1088 is observed.

Nevertheless, we can see no compelling reason for accepting this strict view. Throughout the centuries the Church has always upheld the principle *matrimonium facit consensus*, the positive law being merely a safeguard thereto. In the period immediately following the Tridentine decree *Tametsi*, which required the parties themselves to exchange consent before parish priest and witnesses, some canonists thought that a proxy marriage was no longer valid, but the sounder view prevailed and became codified in canon 1088. The strict interpretation in the two recent replies mentioned above is applicable to a proxy marriage outside danger of death, and notwithstanding the agreed principle that invalidating laws affecting the public welfare must be upheld the canonists have always been prepared to admit *epikeia* in extreme circumstances affecting the natural right to marry.[3] By limiting its application to the baptised, the Holy Office in the reply 26–30 June, 1949, clearly allows for

[1] *S.C. Sacram.*, 10 September, 1941, mentioned by Bouscaren, Supplement to *Digest*, 1948, p. 155; the text of an earlier instruction, 1 May, 1932, is in *Apollinaris*, 1932, p. 413.

[2] Cf. Apt v. Apt, *The Times*, 19 March and 11 November, 1947.

[3] Riley, *The History, Nature and Use of Epikeia*, p. 418 seq.

the validity of marriage between two unbaptised persons when the canon law on proxies has not been observed. Apart from the dispositions of positive law, the only thing required for a valid marriage contract between parties free to marry is consent, which could be effectively given by an exchange of letters without the intervention of any proxy, not even one informally appointed by the principal; a Rotal pre-Code decision, 19 January, 1910,[1] upheld the validity of a marriage contract in which the groom's consent expressed in a letter was read before the bride's pastor and two witnesses.

iii. Failing any more explicit and authoritative solution, we suggest the following as the best procedure for a priest to follow in the circumstances of the question. He will obtain the sworn testimony of the woman as to freedom to marry, and will obtain evidence that the absent groom expressly wishes this marriage to take place. Thereupon he will explain to the woman that acting as a confessor he declares the positive law on proxies to have ceased and that he dispenses from the necessity of witnesses, so that by expressing her own consent before him as a confessor she may in conscience hold herself to be validly married; but he will also explain that this act is of no value whatever for the external forum, and if she survives the danger of death the normal procedure must be observed.

193. MARRIAGE: "CASUS PERPLEXUS"

A parish priest forgot to apply for a dispensation, third degree consanguinity collateral line, until the parties and guests were at the church. It is a public impediment in every sense, and therefore cannot be dispensed from canon 1045, §3. *Short of sending the parties away, what is the remedy?*

Canon 83: Parochi nec a lege generali nec a lege peculiari dispensare valent, nisi naec potestas expresse eisdem concessa sit.

Canon 1045, §3: In iisdem rerum adiunctis (cum iam omnia sunt parata ad nuptias), eadem facultate (super impedimentis in canon 1043) gaudeant omnes de quibus in canon 1044 (parochus, sacerdos ad normam canon 1098.2, confessarius), sed solum pro casibus occultis in quibus nec loci quidem Ordinarius adiri possit. . . .

Canon 1092: Conditio semel apposita et non revocata . . . 3. si de futuro licita, valorem matrimonii suspendit.

i. The priest should first try to get in touch with the Ordinary by telephone. The rule which discourages this method has its importance, inasmuch as the Ordinary is held "not to be reachable"

[1] *A.A.S.*, II, p. 297; Bouscaren, *Digest*, I, p. 530.

if he can be approached only by telegraph or telephone[1]; but an impediment can validly be dispensed in this way, and it is the obvious course to take.

ii. Failing a dispensation from the Ordinary it is certain that the priest cannot himself dispense the impediment. He must decide, firstly, whether it is an impediment which the Church is accustomed to dispense: in the above case it is. Impediments of ecclesiastical law which are not usually dispensed are, for example, the priesthood, affinity in the direct line *consummato matrimonio*, and crime in its second and third degrees: in such cases the priest can do nothing and the parties must be sent away even if the impediment is occult, unless his knowledge is a confessional secret, in which case he cannot refuse to assist at the celebration of an invalid marriage but must try to dissuade the parties from attempting it.

He must decide, secondly, whether in the case of an impediment which the Church is accustomed to dispense there exists a canonical cause. In the above case, even if there are no others, "everything prepared for the wedding" is in our view a canonical cause[2]; moreover it is a minor diriment impediment and the law is generous in overlooking defects in the final cause.[3] The graver diriment impediments are invalidly dispensed unless the final cause is adequate, and the matter is not always easy to determine. The kind of canonical causes required, for example, in dispensing certain very near degrees of consanguinity are defined in an Instruction, *S.C. Sacram.*, 1 August, 1931.[4] If the priest cannot decide that there is an adequate canonical cause he must refuse to assist at the marriage, unless his knowledge of the impediment is a confessional secret, as in the previous paragraph.

iii. We suppose, then, that it is an impediment from which the Church is accustomed to dispense and that there exists a canonical cause. The remedy rightly recommended by many[5] is for the parties to make the contract with a suspensive condition "provided a dispensation is obtained". This must be explained to them and they must clearly understand that they will not be married, notwithstanding the marriage ceremony, until the dispensation is obtained from the Ordinary. The priest should set about obtaining it as speedily as possible and inform the parties immediately.

It is true that normally the contracting parties should not introduce a lawful condition into their consent except after consulting

[1] *Code Commission*, 12 November, 1922.
[2] *The Clergy Review*, 1944, XXIV, p. 515.
[3] Canons 1042 and 1054.
[4] Cf. *The Clergy Review*, 1931, II, p. 550.
[5] E.g. Heylen, *De Matrimonio*, p. 676.

the Ordinary,[1] but in our view this is a positive law or recommendation which does not bind in the circumstances.

Could it not, however, be argued that since in the circumstances the parties and the public in general probably think that a dispensation has been obtained, the existence of the impediment is actually occult, and therefore it can be dispensed as such by the parish priest?

i. Since the intention of the legislator in canon 1045, §3, is to provide ample faculties for meeting the situation when an impediment is not detected until everything has been prepared for the marriage, the law is rightly to be interpreted as generously as possible. An official interpretation of this kind, which does not, however, cover the case we are discussing, decided that impediments public in nature though occult in fact come within the terms of canon 1045, §3.[2] Some commentators use another distinction for describing a situation where the fact giving rise to an impediment is public, but where it is not publicly known that the law has established an impediment: the impediment is said to be "materialiter publicum, formaliter occultum", for example, in a case where it is known that one party is the baptismal sponsor of the other party, but where it is unknown that this constitutes a diriment impediment of spiritual relationship. It may be held as probable that a case of this kind is occult within the meaning of canon 1045, §3.[3]

ii. A writer in *Periodica*, 1926, p. 85, extends this notion of "impedimentum formaliter occultum" to a case where the priest applied for a dispensation and the Ordinary failed to reply. It is analogous to our case since in both instances it could happen that the parties and the public in general think that the impediment has been dispensed. The writer's solution is: "Si ita res se habent, dicemus casum considerari posse ut occultum, ad mentem c. 1045, si defectus obtentae dispensationis non possit revelari sine probabili gravis mali periculo." He is supported by Arendt in *Jus Pontificium*, 1926, p. 152, and quoted with approval by Oesterle in *Consultationes De Iure Matrimoniali*, p. 143; there is, moreover, some support for the distinction between "materialiter" and "formaliter" in canon 2197.4, which applies the distinction to "delicta" in the penal law.

iii. In solving the query in *The Clergy Review*, 1949, XXXII, p. 47, we did not deal with the case of an impediment which is public materially but formally occult, and indeed the statement in the

[1] *Sacrosanctum*, n. 9, and Appendix I, n. 17.
[2] *Code Commission*, 28 December, 1927.
[3] Vromant, *De Matrimonio*, §116; Payen, I, §669; id est vulgo notum, quatenus est factum, sed vulgo ignotum, quatenus est impedimentum.

question that it was a public impediment "in every sense" was taken to exclude the distinction altogether. Nevertheless it certainly could be argued that, in the circumstances, everyone assumes that the dispensation was obtained. We think that the opinion outlined above in (ii) is probable and that it can be applied to this case, if desired; as an alternative to a conditioned marriage contract, which is always to be avoided if possible, the parish priest could dispense from the impediment of third degree consanguinity, relying on the opinion that "pro casibus occultis" of canon 1045, §3, includes impediments which are public materially but formally occult.

194. DISPENSATION GRANTED: ORDINARY TO BE INFORMED

Why does the law require a priest who dispenses a marriage impediment to inform the Ordinary? Is this information necessary for the validity of his dispensation?

Canon 204, §2: Attamen rei ad Superiorem delatae ne se immisceat inferior, nisi ex gravi urgentique causa; et hoc in casu statim Superiorem de re moneat.

Canon 1046: Parochus aut sacerdos de quo in can. 1044 de concessa dispensatione pro foro externo Ordinarium loci statim certiorem faciat; eaque adnotetur in libro matrimoniorum.

Canon 1048: Si petitio dispensationis ad Sanctam Sedem missa est, Ordinarii locorum suis facultatibus, si quas habeat, ne utatur, nisi ad normam can. 204, §2.

The question relates to the dispensing powers enjoyed by Ordinaries and by parish priests either in danger of death or in cases of other urgent necessity, and as regards priests, a chart analysing the intricate legislation of canons 1043–1045 was suggested in *Questions and Answers*, Vol. I, qu. 287.

The direction that the dispensing priest must inform the Ordinary of what he has done is a grave law, but it clearly has no relevance to the validity of the dispensation, which is valid or invalid according as the use of the priest's powers is or is not contained within the terms of canons 1043–1045. The reason for the law is to provide a check on the priest's action. It is an extraordinary and unusual occurrence and most priests, even in large parishes, have never used the faculty. For this reason there is some likelihood of the priest exceeding his powers in one direction or another, and it is for the Ordinary to survey the case and either ratify the priest's action or apply a suitable remedy, such as *sanatio*, if it transpires that the

dispensation was invalidly given. "Ratio obligationis est quia agitur de re gravissima. Ne abusus irrepant aliaque haud levia incommoda Ordinarius prudenti suo iudicio videre debet, num causa pro dispensatione concedenda adfuerit, num conditiones, et clausulae a iure requisitae servatae fuerint, num scandalum remotum fuerit etc."[1] The words "pro foro externo" in canon 1046 make it clear that a confessor dispensing in the internal forum of the confessional is under no obligation to inform the Ordinary. But he could usefully do so, whilst carefully preserving the sacramental seal, if he is not sure of the valid use of his powers.

A further reason exists in a petition for a dispensation which has been sent to the Ordinary in the usual way and which the priest has himself dispensed before receiving a reply; the principle of canon 204, §2, requires the Ordinary to be informed, and the rule applies equally to dispensations granted by the Ordinary in similar circumstances, as canon 1048 declares.

[1] Cappello, *De Matrimonio*, §241.

XVII. MARRIAGE IMPEDIMENTS

195. MIXED MARRIAGE—NULLITY THROUGH INSINCERE GUARANTEES

Can you suggest an explanation of a statement in "The Times", *from the Roman correspondent,* 15 *June,* 1953, *to the effect that a marriage had been declared invalid because the non-Catholic did not keep his promise to allow the children of the marriage to be brought up in the Catholic faith?*

The Times, 15 June, 1953: Another marriage was declared void because the husband, a non-Catholic married to a Catholic, did not keep his promise to allow the children of the marriage to be brought up in the Catholic faith.

A.A.S., 1953, p. 334 (Causae quae in Tribunali Sacrae Romanae Rotae actae sunt anno 1952 . . .) XXXII DETROITEN. Nullitatis matrimonii ob non adimpletam conditionem. . . . Constat de nullitate matrimonii in casu . . . diei 19 Februarii.

Monitor Ecclesiasticus, 1952, p. 590. DETROITEN, Nullitatis matrimonii (Fallow-Binzit) c.R.P.D. Augusto Fidecicchi, Ponente. n.8. Momentosa et procul dubio est praesens causa, cuius caput nullitatis rarissime recurrit. . . . n.11. Aliud quod condicioni subiecit Silvestra fuit promissio et quidem sincera et ex animo facta cautiones ab Ecclesiae lege statutas adimpletum iri. . . . n. 12. Hanc condicionem ultra et praeter legem non semel sponso clare atque aperte declaravit. . . . Condicionem renovavit occasione traditionis annuli sponsalitii, coramque testibus. . . . n.24. Quam ob rem tenuerunt Patres, toto causae complexu diligenter rimato, actricem veram condicionem sui consensus matrimonialis validitati apposuisse, quae verificata non fuit. . . . 19 Februarii 1952. . . .

i. The decisions of the Roman Rota, not normally published until ten years have elapsed, are occasionally printed in the canonical journals, such as *Monitor Ecclesiasticus* or *Ephemerides Iuris Ecclesiastici*. From the diocese named (Detroit) and from the date of the judgement, it is as certain as anything can be that *Monitor Ecclesiasticus* has printed the main part of the judgement mentioned as n.XXXII amongst the causes decided by the Rota in 1952. But it is not equally certain that it was this judgement that *The Times* correspondent had in mind. Even if it was some other similar judgement amongst the causes (188) decided in 1952, there can be only

one explanation of the words used in relation to "mixed marriage".

ii. The explanation is that the Catholic party put a condition determining that consent would not be given to the marriage contract unless the non-Catholic was favourably inclined towards Catholicism and seriously intended to be bound by the promises and guarantees always required by canon law in mixed marriages. The impediment is not diriment and therefore, if a dispensation were invalidly granted, the validity of the marriage would be unaffected. A condition, however, could have a nullifying effect if it were proved, as it was in the present case, to exist. The circumstances are unusual, indeed, but there have been similar cases in the past. To state that the marriage was declared invalid because the non-Catholic did not keep his promises is a careless way of describing the situation, besides being utterly at variance with the Catholic doctrine and law of marriage.

iii. The law and its application to the facts of the case occupy eight pages of the *Monitor Ecclesiasticus*, and much of the judgement has been omitted. The reader is referred to this Roman journal for all the details. One aspect, however, seems important enough to discuss very briefly. It may be asked whether it is not true that in all mixed marriages the Catholic party gives a conditioned consent; and some may be tempted to think that it would be a good thing if the Catholic party were always advised, as a matter of course, to limit consent in this way. The answer to the first point is that it is patently untrue to suppose that all mixed marriages are conditioned contracts: the Catholic party being assured of the promises being given normally contracts marriage without introducing any condition whatever. To the second point the answer is that it would be gravely wrong to advise parties in this sense: the Ordinary's permission is required before limiting the contract by any condition.[1] It is unlikely that permission would ever be given, and if it were, the parties would be forbidden by the natural law to use their marriage rights until the condition was verified.

196. MARRIAGE OF COMMUNISTS

Is it necessary to obtain a dispensation from the impediment of mixed religion before assisting at the marriage of a Catholic to a Catholic who is a member of the communist party?

S. Off., 11 August, 1949: Quaesitum est utrum exclusio communistarum ab usu Sacramentorum in Decreto S. Officii diei 1 iulii

[1] *Sacrosanctum*, n. 9, and *Appendix*, n. 17.

1949 statuta, secum ferat etiam exclusionem a celebrando matrimonio: et quatenus negative, an communistarum matrimonia regantur praescriptis canonum 1060–1061.

Ad rem Sacra Congregatio S. Officii declarat: Attenta speciali natura sacramenti matrimonii, cuius ministri sunt ipsi contrahentes et in quo sacerdos fungitur munere testis ex officio, sacerdos assistere potest matrimoniis communistarum ad normam canonum 1065, 1066.

In matrimoniis vero eorum, de quibus agit n. 4 praefati Decreti, servanda erunt praescripta canonum 1061, 1102, 1109, §3.

The communist may be a non-Catholic: as such, and quite apart from his profession of communism, his marriage to a Catholic must be preceded by a dispensation from the impediment either of mixed religion or difference of worship. In what follows we have in mind a Catholic who has become a communist.

i. There have been a number of Roman decisions in which, as Dr McReavy pointed out,[1] the Church draws a distinction between communists in the complete sense of the word, those namely who profess materialistic and anti-Christian doctrine, and those who have no interest in the philosophy or doctrine of the party but who join it in the mistaken belief that the just claims of the workers will be more effectively secured under the communist label. The first kind are apostates from the Catholic faith and for that reason come under the excommunication of canon 2314. From the fact, firstly, that the above declaration of the Holy Office refers to canon 1061 which describes the procedure for dispensing the impediment of mixed religion, and, secondly, from the *Code Commission* reply, 30 July, 1934,[2] which declares members of an atheistical sect to be juridically equivalent to members of a non-Catholic sect as regards marriage law, it might be thought that a communist-apostate may not marry a Catholic except after a dispensation from the impediment of mixed religion has been granted.[3] This would not, however, be a correct conclusion to draw, since the impediment must be kept within the terms of its definition in canon 1060.[4] Guarantees must, nevertheless, be obtained before a priest assists at these marriages.

Members of the party who do not subscribe to its materialistic and anti-Christian doctrines—they may be called "aggregate" members—are obviously still less to be regarded as barred by the impediment of mixed religion from marrying a Catholic. They are

[1] *The Clergy Review*, 1949, XXXII, p. 397.
[2] *The Clergy Review*, 1934, VIII, p. 491.
[3] Cloran, *Previews and Practical Cases*, p. 96.
[4] *Periodica*, 1949, p. 306; *Apollinaris*, 1949, p. 102; *Monitor Ecclesiasticus*, 1950, p. 480.

public sinners and members of a forbidden society: the Ordinary may require guarantees before permitting the marriage, as in the common law of canon 1065.

ii. What then is the difference, for practical purposes, between the two groups, since both are condemned, and guarantees must be obtained (for communist-apostates) or may be required by the Ordinary (for aggregates)? The difference is twofold. Firstly, in the case of a communist-apostate, the guarantees must be obtained and normally in writing exactly as in the case of a mixed marriage; whereas in the case of an aggregate member the prudent judgement of the Ordinary suffices that the faith of the Catholic and of the offspring is not imperilled. Secondly, the law forbidding a nuptial Mass and all sacred rites applies only to the communist-apostate: Mass is always forbidden, but the Ordinary may permit some sacred rites in church, as is the practice in most English dioceses for mixed marriages; whereas in the case of a merely aggregate member, unless the Ordinary has ruled to the contrary, sacred rites including a nuptial Mass are not forbidden, though Holy Communion must be refused the member. This seems to us the only logical conclusion to be drawn from the instructions of the Holy Office on the subject. They are difficult to interpret correctly, but one may simplify the situation, perhaps, by approximating the communist-apostate to a person who is not a Catholic, and by regarding the communist-aggregate as a Catholic who has forfeited his rights to the sacraments, excepting marriage, through joining a forbidden society.

197. MARRIAGE OF NOMINAL CATHOLICS

The number of foreign Catholics in this country, many of whom are merely nominal, raises the question whether one is entitled to refuse to assist at their marriages, or to baptise their offspring, seeing that the persons about to be married do not practise their religion, and that the prospects of the Catholic education of offspring are dubious.

This topic is frequently raised in the form of a question on the lawfulness of refusing the sacraments to indifferent Catholics, and the view is sometimes defended that it is a liability rather than an asset to the Church to encourage religious indifference, and that refusal might be a salutary remedy. Questioners are not always conscious of the fact, but their contention actually is that it would be advisable to have the law changed in regard to marriage or Baptism, making for example the omission of Easter duties an impediment to marriage, or a bar to the baptism of the offspring of

non-practising Catholics. It is open to anyone, of course, to make a plea for a change in the existing law. But, if it is a question of the law as we have it at present, the principle is that no priest may refuse the sacraments to persons who have the dispositions required by the law, no matter how strongly he may feel that their administration is a lamentable abuse; and in doubtful cases he must approach the Ordinary.

If a child is in danger of death, Baptism should be administered even though the parents are infidels and are positively averse to its Baptism.[1] If there is no danger of death, Baptism should be administered if one parent consents and there exists a possible hope of its Catholic education. The replies of the Holy See and the teaching of the commentators permit a very liberal meaning to be given to the words "dummodo catholicae eius educationi cautum sit" of canon 750. This condition may be verified even though the parents have not made their Easter duties and affirm that they have no intention of doing so.[2]

The law on assisting at marriages has been considerably tightened by *Sacrosanctum*, 29 June, 1941. The new regulations, however, are chiefly designed to secure a valid consent by holding a more careful investigation of the parties' freedom to marry. Their religious knowledge and practice is also mentioned, and should be investigated, but it is very clear that marriage may not be refused solely because a person neither practises nor knows anything about the Catholic religion. The existing law is affirmed and no changes are introduced in this respect. Frequently, the law requires consultation with the Ordinary before assisting at the marriages of dubious Catholics.[3]

198. MALE STERILISATION AND IMPOTENCE

Does the weight of theological and canonical opinion favour the existence of impotence in the case of a sterilised male?

Canon 1068, §1: Impotentia antecedens et perpetua, sive ex parte viri sive ex parte mulieris, sive alteri cognita sive non, sive absoluta sive relativa, matrimonium ipso naturae iure dirimit.

§2: Si impedimentum impotentiae dubium sit, sive dubio iuris sive dubio facti, matrimonium non est impediendum.

§3: Sterilitas matrimonium nec dirimit nec impedit.

[1] Cf. *The Clergy Review*, 1945, XXV, pp. 417, 560.
[2] Cf. ibid., 1945, XXV, p. 370.
[3] Cf. *The Clergy Review*, 1939, XVII, p. 451; 1942, XXII, p. 280.

S. Off., 16 February, 1935 (private). *Periodica*, 1947, p. 14: An vir qui subiit vasectomiam bilateralem, totalem et irreparabilem vel aliam operationem chirurgicam eiusdem effectus, qua scilicet omnis communicatio cum testiculis irreparabiliter ita intercluditur ut nulla spermata ex iis traduci et transferri naturali via possint, nihilominus ad matrimonium ineundum admitti tuto possit iuxta normam in §2 can. 1068 statutam. *Resp.* In casu sic dictae sterilizationis iniqua lege impositae, matrimonium ad mentem p. 2 can. 1068 non esse impediendum.

S.R. Rota, "coram Maximo Massimi", 14 June, 1923; R.D. XV, p. 104: Sed impotentes quoque sunt, qui testes habent adeo informes, ut semen elaborare nequeant, vel semen forte in testibus elaboratum transitu clauso nequeunt emittere. . . . Difficilior quidem, quam de testium carentia, sit probatio de eorum perfecta atrophia vel de seminis transitu absolute impedito; probatione vero data, par est omnium horum impotentia, cum omnes verum semen emittere non possint, et humorem forsan quemdam similem semini effundant ad generationem et matrimonii causam minime aptum. Rursus non interest, utrum veri seminis transitus interclusus fuerit per operationem chirurgicam, quam *vasectomiam* appellant, an alio modo, e.g. in exitum venerei morbi, dummodo scilicet obstructio sit absoluta, atque insanabilis.

"Coram Wynen", 20 January, 1946; Torre, *Processus Matrimonialis*, p. 311: Ad effectum de quo agitur, requiritur utique ut vir, post penetrationem in vaginam intra eamdem vaginam semen in testiculis elaboratum deponere valeat et reapse deponat.

i. Though there is no doubt or difficulty about the principle of canon 1068 that impotence is diriment of marriage, yet from the nature of the case the fringes of the law produce a number of obscurities, one of which is in the above question, obscurities which arise from differences of opinion concerning the conditions required in the faculties of generation for an act consummating marriage, and also from developments in medical and surgical science whereby what used to be thought a permanent disability is discovered to be curable. Hence it is not surprising that, in many cases of impotence, certain Rotal decisions are apparently inconsistent, as the tribunal itself occasionally admits.[1] There has been, however, a marked consistency in Rotal judgements on the necessity of "verum semen naturale in testiculis elaboratum", a phrase constantly recurring as in the two extracts quoted above, a view which is traceable ultimately to the famous Bull *Cum Frequenter* of Sixtus V on eunuchs, 27 June, 1587.[2] Though this requirement is lacking in the sterilised

[1] E.g. R.D., 1926, XVIII, p. 407. [2] *Fontes*, n. 161.

man, there are notable differences between his condition and that of one castrated; nor can it be said with certainty to be permanent, and notwithstanding the prevailing Rotal jurisprudence on the principle of the matter a number of writers have held that the sterilised man is not necessarily impotent. For the details of this controversy we must refer the reader to three excellent and fairly recent articles.[1]

ii. The existing obscurity and uncertainty is increased by the difficulty of obtaining authentic recent Roman decisions, though many privately given appear in various journals. Thus, writing in 1945, Fr Nowlan could only refer to the 1936 reply of the Holy Office as being a rumour.[2] We must await a public and authentic decision of the Holy Office before a certain solution of this difficulty can be accepted, and until that happens the Rotal decisions may or may not adhere to the view which is the tradition in that tribunal. Personally we have so far favoured the opinion that sterilisation of the male, or what some call a double vasectomy, causes the impediment of impotence, but in view of these decisions of the Holy Office, even though they are not public, this opinion must be modified. Owing to the haze, obscurity and uncertainty surrounding the whole subject, it is at least doubtful whether the impediment exists, and therefore marriage may be permitted from canon 1068, §2.[3] On the other hand, owing to the doubt, nullity causes may properly be introduced under this heading, and a decision sought through the usual channels. There is not, so far as we are aware, any Rotal judgement explicitly deciding this issue of impotence in a sterilised man; the quotations given above and others in the articles referred to are, as it were, *obiter dicta* in the course of an argument on some kindred question. But a recent decision of "Tribunale Regionale Picenum"[4] does maintain that in such cases there is no certain impotence, owing, amongst other reasons, to the doubt about the perpetuity of vasectomy, a decision which has perhaps been influenced by the private replies of the Holy Office, although these are not mentioned.

[Editorial Note.—At the time of editing this reply, the controversy has still not been authoritatively settled. The Rota holds to its principle that there is impotence when the spermatic ducts are

[1] Nowlan, S.J., in *Theological Studies*, 1945, VI, p. 392; Aguirre, S.J., in *Periodica*, 1947, XXXVI, p. 1; Fedele in *Ephemerides Iuris Canonici*, 1945, I, p. 183.
[2] Op. cit., p. 426, where another private reply of the Sacred Congregation, 8 June, 1939, approximately in the same sense is given.
[3] *American Ecclesiastical Review*, 1947, 116, p. 70.
[4] This is printed, without a date, in *Monitor Ecclesiasticus*, 1950, p. 77.

definitely closed (cf. *coram* Wynen, 17 February, 1951, in *Monitor Ecclesiasticus*, 1951, p. 261 ff.), but eminent theologians continue to defend the contrary. Among those who have written in this sense since the above reply was written, or have maintained that there is sufficient doubt to make marriage and/or its use lawful, and its nullity on this score unprovable, the following can be quoted: McCarthy (*The Irish Theological Quarterly*, 1951, p. 72 ff; 1953, p. 333 ff.), Bender (Vlaming-Bender, *Praelectiones Iuris Matrimonii*, 4th edition, p. 190), Ford (*Theological Studies*, 1955, p. 533 ff.), Lanza-Palazzini (*De Castitate et Luxuria*, ed. 1953, p. 259). It is true that His Holiness Pope Pius XII, in his allocution to a congress of Geneticists, 7 September, 1953 (*A.A.S.*, 1953, p. 606 ff.), rejected the claim that eugenic sterilisation *certainly* has no effect on the right to marry, adding: "cette assertion permit les doutes les plus fondées"; but though these words may be interpreted as implying a preference on the part of the Holy Father for the Rotal point of view, they equally clearly indicate that he did not choose, as yet, to settle the controversy outright.]

199. "LIGAMEN": INTERNAL AND EXTERNAL FORUM

Titius is certain in his own mind of defective consent in his marriage contracted "coram Ecclesia" *with Bertha. After obtaining a civil divorce he marries Anna with the canonical form in a distant country. Is this second marriage valid in conscience; or, if not, may Titius be left in good faith about it, provided there is no scandal?*

Canon 1019, §1: Antequam matrimonium celebretur, constare debet nihil eius validae ac licitae celebrationi obsistere.

Canon 1069, §2: Quamvis prius matrimonium sit irritum aut solutum qualibet ex causa, non licet aliud contrahere, antequam de prioris nullitate aut solutione legitime et certo constiterit.

Sacrosanctum, 29 June, 1941, n. 6: Ob rei momentum, specialia sunt animadvertenda *de impedimento ligaminis*. Pervigilent parochi ne contra ius, bona vel mala fide, nova coniugalia foedera ineant qui praecedentis matrimonii vinculo vinciantur, etsi de huius valore haud temere ambigatur, immo nullitas ipsa sit in aperto. (*a*) Praescriptum can. 1069, §2, optime norint, matrimonii nempe nullitatem *canonica dumtaxat probatione esse evincendam*, id est ordine iudiciali servato usque ad alteram sententiam conformem contra matrimonii valorem a qua appellatum non fuerit a vinculi defensore; vel in casibus exceptis (can. 1990–1992) expletis regulis traditis in supra memorata Instructione huius S.C. diei 15 Augusti 1936, art. 226 seq.

i. The second marriage of Titius with Anna is invalid in conscience as well as in the external forum of canon law, owing to the impediment of *ligamen*, the bond of a previous marriage. Marriage is of its nature a public act with a public status, and cannot validly and lawfully take place, if barred by a previous marriage, except after obtaining an official ecclesiastical decision that the previous marriage is non-existent. This decision is easily obtained, when its nullity is caused through an undispensed diriment impediment, by the summary process of canons 1990–1992; and still more easily when its nullity is due to defect of canonical form.[1] It is difficult to obtain, owing to the lengthy double process, when the nullity is due to defective consent, as in the above case. The term "marriage of conscience" has no relation to the circumstances we are discussing, but refers to one contracted *coram Ecclesia* with the minimum of publicity as provided for in canons 1104–1107. Titius may marry Anna after his marriage with Bertha is dissolved or declared null, but he will need a dispensation from the first degree of *crimen*.

ii. The principle about leaving persons in good faith concerning material sin, on the assumption—amongst other things—that their conscience is clear and cannot safely be disturbed, seems to us wholly inapplicable to Titius. Since he knows enough about the marriage contract to discern what he thinks is defective consent, he must also know, it would seem, that a marriage once contracted *coram Ecclesia* cannot be set aside by his own private judgement. His conscience on the matter would make it unlawful for him to seek the marriage debt from Bertha, but it does not entitle him to contract a fresh marriage until the first is disposed of; if he thinks it does, his conscience is vincibly erroneous, and he is not in good faith. Pending a settlement of the nullity question of his first marriage, he could be permitted, provided there is no scandal, to live under the same roof with Anna but not as a married man.

[Editorial Note.—The author's solution was disputed in *The Clergy Review*, 1952, XXXVII, p. 191, 319, as involving an extensive interpretation of canon 1069, §2 (which merely says "non *licet* aliud contrahere, antequam . . ."), and as equivalent to creating a new diriment impediment, distinct from *ligamen* which, if Titius' unproved claim happens to be true, does not in fact exist; because although the law *presumes* his first marriage to be valid, until the contrary is judicially established, and *forbids* him meanwhile to contract another, and would presume any such further marriage to be invalid, it neither does nor can *make* his first marriage valid, if his consent to

[1] *Provida*, art. 231.

it was in fact substantially defective. These and other objections were further developed by the Rev. Joseph J. Farraher, S. J., of Alma College, Alma, California (ibid., p. 379). The author, however, while modifying slightly his initial statement (ibid., p. 255) and admitting that the weight of opinion was against him, held substantially to his position and accepted the conclusion that "presumed *ligamen* has the same effect as real *ligamen*" (ibid., p. 381).]

200. SUPERVENING "DISPARITAS CULTUS"

An unbaptised woman, validly married to an unbaptised man, is about to become a Catholic. There is no question of invoking the Pauline Privilege since she is happily married and wishes so to remain. But the husband will not consent to the baptism and Catholic education either of their two infant children or of any other children who may be born. May this woman, nevertheless, become a Catholic? If so, is a dispensation required from the impediment of difference of worship?

S. Off., 14 December, 1848; *Fontes*, n. 908: 1. An (in casu matrimonii in infidelitate contracta, et conversionis unius coniugis) si non daretur talis dispensatio (disparitatis cultus), pars conversa non posset nec licite nec valide remanere cum sua parte infideli, sine contumelia Creatoris cohabitare consentiente?

2. Quid si pars infidelis, equidem sine contumelia Creatoris cohabitare consentiret, sed recusaret sincere ut proles nata vel nascitura in religione instituatur?

Resp. Ad 1. Quando pars infidelis consentit habitare cum fideli absque contumelia Creatoris matrimonium consistere iuxta D. Paulum, atque ad huiusmodi effectum nullam in casu necessariam esse dispensationem. Ad 2. Posse in casu partem fidelem transire ad alias nuptias cum alia parte catholica; recusatio enim educationis prolis in religione catholica aequivalet contumeliae Creatoris. R.P.D. autem Vicarius Ap. efficaciter insinuet parti fideli ut curet, eo meliori modo quo potest, pertrahere prolem, si quam habuit, ad catholicam religionem.

i. Difference of worship supervening is not, canonically speaking, a diriment impediment, for the marriage contracted in infidelity is valid and it remains valid after the baptism of one party, though not a sacrament. The practice of seeking, in a case of this kind, a dispensation from difference of worship, and of renewing marriage consent after obtaining it, is rightly described by Payen as unnecessary, useless and of no value whatever.[1] The woman, a candidate for baptism, must keep quite distinct two different questions:

[1] *De Matrimonio*, §2226.

the first is her grave obligation to receive baptism in the Catholic Church, the second is concerned with her rights and obligations after becoming a Catholic. But, since her awareness of these rights and obligations may influence her decision to be baptised, she should be informed about them beforehand.

ii. It is certain that the refusal of the unbaptised party to allow any future children to be baptised and educated in the Catholic faith comes within the notion of "departure" of which St Paul speaks in 1 Cor. vii, 15, and is so interpreted by the Holy Office. From an analogy with the reply of the *Code Commission*, 16 January, 1942,[1] which denied that the guarantees of canon 1061 applied to children already born, it seems to us likely that the refusal of the unbaptised party to permit their baptism is not, by itself, to be considered "departure". His refusal with regard to future children certainly is, and the baptised party is therefore entitled with the appropriate canonical procedure, to use the Pauline Privilege.

iii. In *The Clergy Review*, 1947, XXVII, p. 266, the question was discussed whether the baptised party, assuming that the unbaptised had given all the canonical assurances, was bound to continue cohabitation, and the solution was that a decision rested with the Ordinary of the convert. The same must be said of the exactly opposite situation, as in the present case, where the baptised party desires to cohabit with the unbaptised, even though this is accompanied by danger to the offspring. The Holy Office, 18 June, 1856,[2] directed: ". . . neque coniux ad fidem conversus cogendus est ut infidelem coniugem pacifice ac sine contumelia Creatoris cohabitare volentem deserat, nisi revera adsit perversionis periculum sive respective coniugis fidelis, sive prolis".

Without in any way prejudging what the Ordinary's decision will be, it is clear that all the circumstances in a situation of this kind call for an indulgent decision in accordance with the desire of the baptised party to continue cohabitation. For one thing, whatever the theory or principle may be which might establish a duty to cease cohabitation, the difficulties are so imposing, having regard to the civil law as well as to the wishes of the prospective convert, that one may rightly see in them moral impossibility. It is rather analogous to the far more serious situation where entering upon marriage, and not merely its continuance, must be tolerated, even though accompanied by the prospect of the offspring being brought up in infidelity.[3]

[1] *The Clergy Review*, 1942, XXII, p. 283. [2] *Fontes*, n. 936.
[3] Cf. *S. Off.*, 28 April, 1938; *Sylloge*, n. 206 bis; *The Clergy Review*, 1938, XV, p. 548; 1948, XXIX, p. 104.

We think, therefore, in a case of this kind, that it suffices for the prospective convert to be aware of her obligation regarding the faith of her children, and to undertake to fulfil it, as the Holy Office states, "eo meliori modo quo potest". She must do what in her lies to secure the baptism and Catholic education of all the children after her own conversion to the Catholic faith; but the decision is with the Ordinary, who should be informed of these circumstances when the Convert Form is forwarded to him.

201. "DISPARITAS CULTUS"—EASTERN CHRISTIANS

John, a Russian orthodox schismatic, married and then divorced Mary, an unbaptised person. He now wishes to marry a Catholic, and it is contended that his first marriage can be declared null by the summary process of canon 1990, owing to the undispensed impediment of disparity of worship. Is this correct?

Canon 1070: Nullum est matrimonium contractum a persona non baptizata cum persona baptizata in Ecclesia Catholica vel ad eandem ex haeresi aut schismate conversa.

Code Commission, 3 December, 1919 (private); *Sylloge*, n. 75: Protestantes vel schismatici in haeresi vel schismate licet valide baptizati, nec ad Ecclesiam catholicam in (probably a misprint for *ex*) haeresi vel schismate conversi, cum Ethnicis matrimonium contrahentes, valide contrahunt ex novo Codice, quia nec detinentur impedimento disparitatis cultus, nec tenentur ad formam canonicam celebrationis matrimonii servandam.

S.C. pro Ecclesia Orientali, 23 November, 1943 (private); *The Jurist*, 1946, p. 40: 2. An Patricia, baptizata et educata in Ecclesia russiaca dissidentium, volens inire matrimonium cum Roberto, methodista non baptizato, tenetur, sub poena nullitatis, petere et obtinere dispensationem super impedimento disparitatis cultus . . .? *Resp.* Matrimonium Patriciae cum Roberto ex impedimento disparitatis cultus invalidum est.

The commentator in *The Jurist* on the reply dated 23 November, 1943, which we presume to be private, thinks that it nullifies the *Code Commission* reply, 3 December, 1919. This may well be, since American writers have great experience of dissident Eastern Christians, but it occurs to us that there is not, perhaps, any conflict between the two replies. For canon 1 rules that the laws of the Code do not apply to the Eastern Church "nisi de iis agatur, quae ex ipsa rei natura etiam Orientalem afficiunt".[1] The *Code*

[1] An example of this—the Index legislation—may be seen in *The Clergy Review*, 1946, XXVI, p. 383.

Commission reply may be held to refer to those Western schismatics, e.g. the Old Catholics of Holland, who have neither been baptised in the Catholic Church nor converted to it; Eastern schismatics were not, perhaps, contemplated in this reply because of the principle in canon 1.

The reply given by the Holy See, however, in 1943, emanates from the Congregation which has charge of the Eastern Church, and its content must not be held to apply to Western schismatics. Eastern Christians, whether dissidents or Uniates, are governed by their own laws, in so far, at least, as these are sanctioned by the authority of the Church. It is established that in all Eastern rites marriage between a baptised person and an unbaptised is invalid,[1] and the modification of this law introduced into the West by canon 1070 is irrelevant to the marriages of Eastern Christians.[2]

It seems therefore that the contention in the above question is correct in principle, though we hesitate to say that a case so unusual could be dealt with under canon 1990, except under instructions from the Holy See. Amongst other conditions for the application of this canon it must be proved that a dispensation from the impediment was not obtained; it appears that there will hardly ever be a dispensation in such cases, though the reply dated 23 November, 1943, directs under n. 3 that a dispensation from disparity of worship may be granted to a dissident Russian by the Holy Office.

202. "DISPARITAS CULTUS"—DISPENSATION "AD CAUTELAM"

The diocesan rescript dispensing from the impediment of mixed religion adds a dispensation from the impediment of difference of worship "ad cautelam", *in order to cover cases of doubtful baptism. Is the doubt* "dubium iuris" *or* "dubium facti"*?*

Canon 15: Leges, etiam irritantes et inhabilitantes, in dubio iuris non urgent; in dubio autem facti potest Ordinarius in eis dispensare, dummodo agatur de legibus in quibus Romanus Pontifex dispensare solet.

Episcopal Quinquennial Faculties, Formula III; *Irish Ecclesiastical Record*, 1948, p. 375: "Dispensandi . . . super impedimento mixtae religionis, et, si casus ferat, etiam super disparitate cultus, ad cautelam; quoties prudens dubium oriatur de collatione baptismi partis acatholicae. . . ."

[1] Cappello, *De Matrimonio*, §906.
[2] *Periodica*, 1936, XXV, p. 41; 1938, XXVII, p. 16.

In our opinion the rescript covers both kind of *dubia*, but it refers immediately and directly to *dubium facti*, being obviously an application of the rule in canon 15. We refrain from referring to doubts arising about the meaning of *dubium*, and will note instead that whatever "obscurity" there may be in this matter is due partly to the way in which some writers explain the difference between the two kinds of doubt, and partly to the wording of the Quinquennial Faculties.

i. Cappello, discussing the whole subject of doubtful baptism in relation to marriage, writes: "Dubium versari potest circa collationem baptismi (dubium facti), aut valorem collati baptismi (dubium iuris)."[1] It may be questioned, however, whether a doubt arising about the validity of a baptism administered by a minister who, let us suppose, is accustomed to make with his moistened thumb a sign of the cross on the candidate's forehead, should rightly be called *dubium iuris*. The water might have flowed or it might not, which is a question not of law but of fact, since there is no doubt concerning the law.[2] Michiels describes *dubium facti* as follows: ". . . quando dubitatur scilicet num in casu quodam particulari, relate ad factum concretum seu rem aut personam determinatam, reapse verificentur conditiones physicae vel iuridicae ad hoc ut lex illi applicetur; puta, quando dubito num persona, de qua in concreto agitur, sit valide baptizata (ideoque legibus ecclesiasticis de facto ligata)."[3] Even the *dubium iuris* about baptism *in utero*[4] is reducible in the concrete to a *dubium facti*. The true doctrine, therefore, would appear to be that whenever a doubt exists about the baptism of this man John Jones, it must always be a *dubium facti*, whether the validity of the rite used is in question or whether it cannot be determined if he ever was a candidate at any rite valid or invalid. An example of the application of this canon's *dubium iuris* in a matter relating to the impediment of difference of worship is seen in the doubt arising from the words "baptizata in Ecclesia Catholica" of canon 1070, §1: the law is doubtful in certain borderline instances and, therefore, the ecclesiastical impediment of difference of worship does not apply;[5] nor is the case contemplated in the terms of the Quinquennial Faculty printed above which we have next to consider.

ii. The phrase "quoties prudens dubium oriatur de collatione baptismi partis acatholicae" is not found in some printed texts of this faculty: e.g. that enjoyed by the Bishop of Bruges in 1922.[6]

[1] *De Matrimonio*, §417.
[2] Prümmer, *Theol. Moralis*, VI, p. 82.
[3] *Normae*, I, p. 147.
[4] Canon 746, §§1 and 5.
[5] *The Clergy Review*, 1943, XXIII, p. 466.
[6] *Collationes Brugenses*, p. 410; Wernz-Vidal, *De Matrimonio* (1925), p. 503.

Without the phrase the faculty is clearer and certainly of much wider application.

It occurs in Formula III obtained in 1927 and 1948 by the Irish bishops; in Formula IV which circulates in the United States,[1] and in the one obtained by Bruges in 1937.[2] The semi-colon after the word "cautelam", which appears to limit the faculty of dispensing mixed religion to cases of doubtful baptism and hardly makes sense, should be a comma, according to Dr Kinane's commentary on the faculty,[3] and it appears as a comma in the Bruges formula.

A further point to observe is that some of these *formulae* grant the faculty, with certain restrictions, to dispense difference of worship, in addition to mixed religion and difference of worship *ad cautelam*. It is not too clear why the *ad cautelam* clause then continues to be printed. In the very wide powers granted by *Propaganda*, faculties over both impediments are given straightforwardly without any *ad cautelam* clause.[4]

If it is asked why the clause is added, even when the faculty is limited to mixed religion, seeing that every Ordinary possesses the power already from canon 15, one reason might be that it makes clear that difference of worship is an impediment which the Church is accustomed to dispense; another reason is the practice of the Roman Curia of adding to faculties certain phrases which, though not strictly necessary and though occasionally the cause of obscurity, do serve as a useful reminder to the recipient of the powers he enjoys by the common law. The faculties given to army chaplains, for example, at the outbreak of war[5] contain points which are merely declarations of the law of the Code. The faculties issued by *Propaganda* also contain many explanatory notes and warnings: amongst these might have been included, with perfect propriety, a reminder of canon 15 as given in the *ad cautelam* clause appearing in faculties elsewhere.

203. ADULTERY IN THE IMPEDIMENT OF CRIME

Is an act of intercourse with contraceptives considered adultery in the meaning of the word used in defining the impediment of crime?

Canon 1075: Valide contrahere nequeunt matrimonium: 1. Qui perdurante eodem legitimo matrimonio, adulterium inter se consummarunt et fidem sibi mutuo dederunt. . . .

[1] Beste, *Introductio* (1946), p. 997; Eagleton, *Diocesan Quinquennial Faculties*, p. 50.
[2] *Collationes Brugenses*, 1938, p. 414.
[3] *Irish Ecclesiastical Record*, March 1933, p. 312.
[4] N. 22. Cf. Paventi, *Brevis Commentarius*, p. 31.
[5] *The Clergy Review*, 1940, XVIII, p. 304.

Any sexual infidelity on the part of married persons has the moral deformity of adultery, since in addition to the unlawful sexual pleasure there is injustice towards the innocent party. Considered, however, as one of the constituents of the rather intricate canonical impediment of crime, it is certain that the act must be of the kind required for the consummation of marriage, as described in *The Clergy Review*, 1948, XXIX, p. 51. Contraceptive intercourse may, indeed, be a graver sin, but the law constituting the impediment, being of a penal character, must be strictly interpreted, and the doctrine that there is no impediment unless the adultery is an act of natural intercourse is firmly established in the teaching of canonists, e.g. Gasparri: "Praeterea impedimentum non oritur, nisi adulterium fuerit consummatum per copulam perfectam, quae constat penetratione membri virilis in vaginam mulieris ibidem verum semen immitentis"[1] It is sustained also in Rotal judgements, e.g. "Adulterium autem, ut nuptiarum nullitatem inducat, debet esse *perfectum*, idest peractum per copulam ad prolis generationem per se aptam".[2]

204. DOUBTFUL IMPEDIMENT OF PUBLIC PROPRIETY

John is living in concubinage with Mary, a widow with a daughter Bertha by her former marriage, but everyone considers that John is married to Mary, and the fact that they are unmarried is wholly occult. What impediment, if any, exists between John and Bertha?

Canon 97, §1: Affinitas oritur ex matrimonio valido sive rato tantum sive rato et consummato.

Canon 1077, §1: Affinitas in linea recta dirimit matrimonium in quolibet gradu. . . .

Canon 1078: Impedimentum publicae honestatis oritur ex matrimonio invalido, sive consummato sive non, et ex publico vel notorio concubinatu; et nuptias dirimit in primo et secundo gradu lineae rectae inter virum et consanguineas mulieris, ac vice versa.

This difficulty, which has not been officially solved, arises because the relationship between John and Bertha is apparently neither affinity, which under the Code discipline arises only from valid marriage, nor public propriety, which under the Code discipline arises only from an invalid marriage or from public and notorious concubinage.

i. In his first edition *De Matrimonio*, Cappello held that there is

[1] *De Matrimonio* (1932), §673.
[2] R. D., XVI, 1924, p. 174, coram Florczak.

most certainly an impediment between John and Bertha, arising either from their union considered as an invalid marriage or from their concubinage: for in the common estimation there is present that "impropriety" which is the basis of the impediment. In his current edition, however, this view is modified: "Impedimentum verius adest; sed practice dubium est."[1]

The other commentators we have consulted on the point[2] agree that the impediment is certainly not affinity and is doubtfully public propriety; the *dubium iuris* calls for an official solution, pending which the marriage between John and Bertha would be valid, and also lawful if it could be contracted without scandal.

ii. We agree with the view that the impediment is doubtful. In practice, perhaps, there should be no serious difficulty, provided the canonical investigations previous to the marriage were properly made: if in the common estimation John and Mary are married, there is in the common estimation affinity between John and Bertha, and this could be disproved only by admitting concubinage, which would then be publicly known[3] with the resulting impediment of public propriety. If the doubt is ever officially settled, it will very likely be in the sense that there is between John and Bertha an impediment of public propriety, based on the publicity of the union between John and Mary, which though not indeed formally known to be concubinage, is nevertheless materially known to exist on the mistaken assumption that the parties are married.

205. MATRIMONIAL CONSENT—EXCLUSION OF "EDUCATIO PROLIS"

The primary purpose of marriage is defined as the procreation and education of children, and about the first mentioned there is no particular difficulty. But to what extent does the exclusion of the second, namely education of the children, make the marriage consent invalid?

Canon 1013, §1: Matrimonii finis primarius est procreatio atque educatio prolis. . . .

Canon 1080, §2: Consensus matrimonialis est actus voluntatis quo utraque pars tradit et acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad prolis generationem.

Canon 1086, §2: At si alterutra vel utraque pars positivo voluntatis actu excludat matrimonium ipsum, aut omne ius ad coniugalem

[1] *De Matrimonio* (1939), §554.5.
[2] Ferreres, *Theologia Moralis*, II, §1043; Wernz-Vidal, *Ius Canonicum*, V, §378, n. 32; Chrétien, *De Matrimonio*, §180; Gasparri, *De Matrimonio*, §739.
[3] Canon 2197. 1.

actum, vel essentialem aliquam matrimonii proprietatem, invalide contrahit.

Canon 1092: Conditio semel apposita et non revocata: 1. si de futuro necessaria vel impossibilis vel turpis, sed non contra matrimonii substantiam, pro non adiecta habeatur. 2. Si de futuro contra matrimonii substantiam, illud reddit invalidum.

Summa Theol. Suppl. 49, 2, ad 1 . . . in prole non solum intelligitur procreatio prolis, sed etiam educatio ipsius; ad quam, sicut ad finem, ordinatur tota communicatio operum, quae est inter virum et uxorem, inquantum sunt matrimonio coniuncti. . . .

In order to avoid numberless problems which arise whenever the validity of marriage consent is in question, we assume that the consent is good in all other respects, but that a condition or positive act of the will is introduced relating solely to the well being or education of offspring, for example, that any children of the marriage should be killed, given to an orphanage or to adoptive parents, or educated in heresy or infidelity. We must also take it for granted that the limitation is introduced not merely in the sense of refusing to fulfil an obligation assumed, but in the sense of refusing the obligation itself, a rather fine distinction which enters closely into the analysis of a valid marriage consent.[1]

i. The clearest and the neatest solution is to maintain, with Vromant,[2] and Vermeersch-Creusen[3] that "educatio prolis" does not pertain to the substance of marriage, from which it follows that a condition determining even to kill the offspring, though grossly immoral, is considered not to have been made, as in canon 1092.1, a legal presumption *iuris et de iure* admitting of no proof to the contrary in De Smet's view.[4]

It is for those holding this opinion to explain how it comes about that something pertaining to the primary purpose of the contract is not of its substance. The Catholic tradition linking procreation and education of children as the primary purpose of marriage is repeatedly expressed in *Casti Connubii* and all the official documents, including the most recent one of the Holy Office, 1 April, 1944.[5] Though the opinion has much to recommend it, particularly its simplicity, the common teaching of theologians and canonists seems to be against it.[6]

ii. At the other extreme is the position accepting education of

[1] Cf. *The Clergy Review*, 1931, I, p. 36; 1937, XIII, p. 124; 1947, XXVII, p. 120.
[2] *De Matrimonio*, §175. [3] *Epitome*, II, §381.
[4] *De Matrimonio*, §154.
[5] *The Clergy Review*, 1944, XXIV, p. 565.
[6] Cf. Tomlin, *Conditional Matrimonial Consent*, p. 298.

offspring as belonging to the substance of marriage, and making it include spiritual formation in the true religion, so that a pact to bring up the children in heresy or infidelity is against the substance of marriage, and as such invalidates the contract. This view, held by some of the older writers,[1] is antiquated and in our view to be rejected, as regards both heresy and infidelity, even when the parties are Catholics.[2] The reason for its rejection is that the contract is a natural one, with the natural good of offspring in view: married people as such undertake to secure this natural good for their children, though as Christians they are also bound to bring up their children in the true religion. The Church repeatedly insists on this obligation, even to the extent of attaching a censure, in canon 2319.2, to its non-observance; but the lack of it is not, we think, to be regarded as invalidating the contract on the ground of being "contra bonum prolis". Occasionally, however, it can be shown that a Catholic party imposed on the non-Catholic a condition *de praesenti*, as in canon 1092.4, safeguarding the faith of the offspring, and that the non-Catholic did not accept it: the marriage might then be invalid, not because of a condition "contra bonum prolis" but because of an unverified condition "de praesenti".[3]

iii. We have, lastly, the view which is now commonly held, and which we believe to be the correct solution: it belongs to the substance of marriage, because entering into its primary purpose, that parents assume the right and the obligation of physically educating their children, and if this is positively excluded there is no true and valid marriage consent.

The exclusion may take the form of an intention to practise abortion, or to kill the children if born, or to cause them some grave physical injury. Apart from those who defend the view explained in (i), there is agreement that this does manifestly constitute an intention "contra bonum prolis" invalidating the contract.[4]

Or it may take the form of intending to exclude the children from the paternal home, by getting them adopted or brought up in an institution. This, though morally wrong on other grounds, is generally held not to invalidate the contract, because not wholly and necessarily against the physical good of the offspring.[5] In our view, a better explanation is that the parties do, in these circumstances, accept the obligation of educating their children, since they do at least intend to effect it through some other agency; it is firmly established that the acceptance of the obligation suffices for a valid contract.

[1] Cf. Tomlin, op. cit., p. 310; *Wernz-Vidal*, IV, §518, n. 32.
[2] Gougnard-Heylen, *De Matrimonio*; Prümmer, *Theol. Moralis*, III, §739, p. 235; Cappello, *De Matrimonio*, §631.4, retains it in the case of Catholic parties.
[3] Cf. *Apollinaris*, 1928, I, p. 120.
[4] E.g. Gasparri, *De Matrimonio*, §905; Payen, *De Matrimonio*, II, §78.
[5] Bayon, *De Matrimonio*, §773.

206. "BONUM FIDEI" IN THE MARRIAGE CONTRACT

We are, unfortunately, familiar with defective marriage consent in relation to the procreation of children ("bonum prolis") and the indissolubility of marriage ("bonum sacramenti"). Is it at all common for a marriage to be accused of invalidity owing to the exclusion of mutual fidelity ("bonum fidei")?

Canon 1013, §2: Essentiales matrimonii proprietates sunt unitas ac indissolubilitas . . .

Canon 1081, §2: Consensus matrimonialis est actus voluntatis quo utraque pars tradit et acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad prolis generationem.

Canon 1086, §2: At si alterutra vel utraque pars positivo voluntatis actu excludat matrimonium ipsum, aut omne ius ad coniugalem actum, vel essentialem aliquam matrimonii proprietatem, invalide contrahit.

The Augustinian *triplex bonum* is equivalent, in the more modern analysis, to the primary purpose of marriage, and the two essential properties which must accompany it. "Nullitas matrimonii porro sequitur ex defectu consensus . . . etiam quando partialis sit, ut in casu quo quis alteri parti ius coeundi concedit non autem perpetuum (contra bonum sacramenti seu indissolubilitatem matrimonii), vel perpetuum sed non exclusivum (contra bonum fidei seu fidelitatis coniugalis) vel perpetuum et exclusivum sed non in ordine ad generationem (contra bonum prolis). Haec enim tria bona sunt de substantia matrimonii . . . Si deficiat igitur unum ex hisce tribus bonis, deficit substantia contractus, qui proinde est nullus."[1]

In the canons cited above "bonum fidei" is represented by "unitas" in canon 1013, §2, and "exclusivum" in canon 1081, §2. The meaning is that the marriage contract necessarily implies a union between one man and one woman, establishing the right to the marriage debt between these two parties alone, and consequently excluding it between either of them and a third party. In a polygamous society this good or quality would usually be lacking, in a monogamous society hardly ever.

In respect to "bonum fidei", the distinction between assuming

[1] *Coram Prior*, 10 July, 1922.

the obligations and not fulfilling the obligations assumed is of capital importance, since the first alone is essential to the contract: "Quoties vero agitur de intentione contraria bono fidei vel prolis, diligenter cavendum est, ne cum intentione sese non obligandi, quae matrimonii nullitatem importat, confundatur intentio susceptas obligationes non implendi, quae matrimonii validitati non obstat. Quod enim attinet ad executionem seu implementum obligationis, bonum prolis et fidei de essentia matrimonii non sunt."[1] Quite often, no doubt, even in a monogamous society, the man contracting marriage may intend to continue intercourse with a mistress, but the presumption is that, in so doing, he has accepted the marriage obligation of fidelity to his wife but has also resolved to violate the obligation assumed. It is accordingly rare, in a monogamous society, to have the marriage contract invalidated because of an intention "contra bonum fidei". Even if the intention was so formed, it will usually be most difficult to prove. Cases, however, exist where a marriage has been successfully impugned on this head alone, as in the one *Coram Massimi* just quoted; it was proved from documents that the man, of a wholly dissolute life, excluded from his marriage contract the obligation of fidelity to his wife.

[1] *Coram Massimi*, 7 February, 1925.

XVIII. MARRIAGE—FORM AND CANONICAL EFFECTS

207. MARRIAGE DELEGATION AND REGISTRATION

The parish priest of "A", who at present has only a school building not available on weekdays, assists at the marriages of his parishioners in a neighbouring parish church by courtesy of its rector "B". Must "B" give express delegation each time to "A"? In which parish register should the details be entered?

Canon 1095, §1: Parochus et loci Ordinarius valide matrimonio assistunt . . . intra fines dumtaxat sui territorii.

§2: Parochus et loci Ordinarius qui matrimonio possunt valide assistere, possunt quoque alii sacerdoti licentiam dare ut intra fines sui territorii matrimonio valide assistat.

Canon 1096, §1: Licentia assistendi matrimonio concessa ad normam can. 1095, §2, dari expresse debet sacerdoti determinato ad matrimonium determinatum, exclusis quibuslibet delegationibus generalibus, nisi agatur de vicariis cooperatoribus pro paroecia cui addicti sunt; secus irrita est.

Canon 1103, §1: Celebrato matrimonio, parochus vel qui eius vices gerit, quamprimum describat in libro matrimoniorum nomina coniugum . . . idque licet alius sacerdos vel a se vel ab Ordinario delegatus matrimonio adstiterit.

i. Since "A" is not the *vicarius cooperator* of "B", express delegation is required for the validity of each marriage contracted within the limits of the parish of "B", even when the contracting parties are both domiciled in the parish of "A" and the parish priest of "A" is assisting at the marriage.

ii. The details must be entered into the register of "B" by the parish priest of "B" or by the priest who is taking his place; "qui eius vices gerit" refers to an assistant priest of "B" or to a priest supplying for "B" during his absence. "A" may sign his own name in the register in the space supplied for the name of the priest assisting at the marriage. Unless local law directs otherwise in the above circumstances, there is no need for "A" to enter the details into his own marriage register as well. The entry in that of "B" suffices, though an entry is also to be made in the baptismal register of the place where the parties were baptised, and the obligation of

seeing that this is done also belongs from canon 1103, §2 (matrimonii parochus), in our opinion, to the parish priest of "B". Cf. Chrétien, *De Matrimonio*, p. 373; Gougnard, *De Matrimonio*, p. 283.

208. COMPETENT PRIEST IN MIXED MARRIAGES

Who is the competent priest lawfully to assist at mixed marriages? Are the rights and obligations of the parish priest of the baptised non-Catholic to be respected exactly as they would be in the case of his Catholic parishioners? Or is it more correct to hold that, in such cases, he has no rights with respect to the marriage of a baptised non-Catholic parishioner?

Canon 1097, §1: Parochus autem vel loci Ordinarius matrimonio licite assistunt:

1. Constito sibi legitime de libero statu contrahentium ad normam iuris;

2. Constito insuper de domicilio vel quasi-domicilio vel menstrua commoratione aut, si de vago agatur, actuali commoratione alterutrius contrahentis in loco matrimonii;

3. Habita, si conditiones deficiant de quibus n. 2, licentia parochi vel Ordinarii domicilii vel quasi-domicilii aut menstruae commorationis alterutrius contrahentis, nisi de vagis actu itinerantibus res sit, qui nullibi commorationis sedem habent, vel gravis necessitas intercedat quae a licentia petenda excuset.

The common law of the Code makes no express provision for these cases. Accordingly, unless local law intervenes, two views are possible.

i. The law makes no distinction and no special rules for the marriages of baptised non-Catholics who, therefore, come within the common law of canon 1097. This view is held by Cappello,[1] Woywod,[2] Sabetti-Barrett,[3] and by Kelly in a doctorate dissertation on parochial rights.[4]

ii. Others, more correctly we think, hold that the parish priest of the non-Catholic is not competent, his interest in non-Catholic parishioners being of the very general character expressed in canon 1350, §1, "commendatos in Domino habeant". This view is defended when dealing with the more limited question of the rights of the bride's parish priest,[5] and the same conclusion must follow in deciding who is competent for all marriage purposes: the competent priest for mixed marriages is the parish priest of the Catholic

[1] *De Matrimonio*, §683.6. [2] *Practical Commentary*, I, §1118. [3] *Compendium*, p. 918. [4] *The Functions Reserved to Pastors*, p. 84, quoted in *Ecclesiastical Review*, 1951, p. 388.
[5] Question 210.

party. This view is supported by analogy with canon 1964 which decides who is the competent judge in marriage causes: ". . . iudex competens est iudex loci in quo matrimonium celebratum est aut in quo pars conventa vel, si una sit acatholica, pars catholica domicilium vel quasi-domicilium habet". It is the solution favoured by Fanfani, a canonist on whom we all chiefly rely in defining parochial rights: ". . . si agatur de matrimoniis mixtae religionis . . . tunc semper coram parocho sponsi catholici matrimonium est celebrandum".[1] He quotes canon 1097, §2, perhaps because of a certain analogy with the rule which, apart from local law to the contrary, favours the rite of the man in marriages of mixed rite. One is on surer ground in justifying this opinion from the exception "gravis necessitas" in §1, 3 of the canon.[2] Mulder, a Dutch canonist who has specialised in the subject of parochial rights, states unhesitatingly "Mixed marriages are always contracted before the pastor of the Catholic party".[3] Martin in a practical treatise on marriage widely used in France, and Feuntun in explaining the instruction *Sacrosanctum* give the same solution.[4]

iii. The rather curious thing is that the Code makes no reference to this point, and consequently the majority of commentators do not advert to it, whilst going very fully into the law about diverse rite. It is a question which could be very suitably settled by local legislation.

Perhaps one should add a note for the unwary. The question is not whether the parish priest of the non-Catholic can validly assist at marriages of non-Catholics within his parish, about which there can be no dispute whatever: his assistance is valid for all comers in his territory. It is solely a question of deciding which of the parish priests who can validly assist is entitled to do so lawfully: we think it is the parish priest of the Catholic party, who can of course give permission for the marriage in the non-Catholic's parish, and even (if he is lucky) get the parish priest to act as his delegate in the marriage preliminaries required by the instruction *Sacrosanctum*.

209. ORGAN AT MIXED MARRIAGES

Can you give the text of the law in England on this subject, and also say whether it may be modified when the non-Catholic is under instruction at the time of the wedding?

[1] *De Iure Parochorum*, §325 B.
[2] Ayrinhac, *Marriage Legislation*, p. 242; Aertyns-Damen, *Theol. Moralis*, II, §841.
[3] *The Parish and its Clergy*, Eng. tr. by Van Vliet, p. 140.
[4] *Le Mariage*, §253; *L'Instruction Sacrosanctum*, p. 14.

Propaganda, 25 March, 1868, Instructio ad episcopos Angliae, *Conc. Westm.* IV, p. 316; . . . Quod si aliquando, in memorata Instructione, mos adhibendi ritum pro matrimoniis contrahendis in Dioecesano Rituali legitime praescriptum, exclusa tamen semper Missae celebratione, in mixtis conjugiis contrahendis tolerari posse perhibetur, id tamen nonnisi per modum exceptionis indulgetur, ac sub conditione ut omnia rerum, locorum ac personarum adjuncta diligentissime perpendantur, atque onerata episcoporum conscientia super omnium circumstantiarum veritate ac gravitate. . . .

Leeds Synods, 1911, p. 91: At the Annual Meeting, 1898, it was the general feeling of the Bishops that at Mixed Marriages, instrumental music might be allowed as the bridal party were leaving the church; that the cope should not be worn; that there should be no special adornment of the sanctuary; that the altar candles should not be lighted; and that the contracting parties should not enter the sanctuary.

Westminister Diocesan Synod, 1898, p. 9: The question of the celebration of mixed marriages was under discussion at the Bishops' annual meeting. . . . In order to steer between the two dangers alluded to, the Bishops discussed the following points; and they are hereby promulgated as the law, in respect to the celebration of Mixed Marriages, to be followed in future within this Diocese. . . . n. 8. When the marriage service has been concluded, the organ may be played as the parties are leaving the Church.

From the above texts it is evident that the Holy See left the arrangement of details to the Bishops, each for his own diocese, and that at the meeting of the Bishops, Low Week, 1898, the matter was discussed by their Lordships. No law was made for the whole country, since this annual meeting is not a Provincial Council; the Bishops may agree on a common policy, but before it can be regarded as a law it must be promulgated by each Bishop in his own diocese, and it has no force outside of that territory.

Accordingly the practice is different in various dioceses, and it is for the clergy, having ascertained their own diocesan law, to observe it or seek a dispensation from the Ordinary.

In our view, if the diocesan law forbids the organ, or any other kind of music, it must be held to apply even to a mixed marriage of which one party is under instruction. It is clearly an instance when a dispensation could properly be sought.

210. PARISH PRIEST OF NON-CATHOLIC BRIDE

Does the rule of canon 1097, §2, *apply when the bride is a non-Catholic who is marrying a Catholic, the subject of another parish priest?*

Canon 1097, §2: In quolibet casu pro regula habeatur ut matrimonium coram sponsae parocho celebretur, nisi iusta causa excuset. . . .

i. This rule is not considered grave in the common law even when the bride is a Catholic, though local law frequently determines the rights of the bride's parish priest very strictly.[1] Since the rule has its origin in social etiquette, it might apply equally to the case of a non-Catholic bride, and Cappello assumes that it does in commenting on canon 1097: "Nihil refert utrum quis tamquam catholicus an tamquam acatholicus commoretur in loco."[2] There is also a decision of the Congregation of the Sacraments, 28 January, 1916,[3] which in giving a decision about the month's residence of a bride, received into the Church towards the end of the month, seems to assert that it is immaterial, as regards the marriage rule, whether she is a Catholic or not: "Liquido patet sufficere, ad liceitatem, factum mere externum commorationis, praescindendo a facto conversionis sponsae in fidem catholicam. . . . In Decr. *Ne Temere* requiritur tantummodo menstrua commoratio alterutrius contrahentis, quin ullus sermo habeatur de eorundem religione." Some writers rely on this decision[4] for the view that the parish priest of the non-Catholic bride enjoys the prior right of assisting at her marriage, and possibly this is a correct solution. Others concede the right only if the non-Catholic is baptised.[5]

ii. Whilst open to conviction that the above opinion is correct, we favour the opposite view denying any canonical precedence to the parish priest of a non-Catholic bride. We may conclude from the decision in *Fontes*, n. 2113, only that a month's residence immediately preceding the marriage (and *a fortiori* a domicile or a quasi-domicile) suffices even though the bride is not a Catholic for the whole period. For non-Catholics are not parishioners, i.e. subjects of the parish priest of their residence, nor has the parish priest any rights and obligations regarding their religious needs, except only in the wide sense of canon 1350, §1: "parochi acatholicos in suis paroeciis degentes commendatos in Domino habeant"; otherwise even an unbaptised non-Catholic must belong to a parish priest even before he becomes a member of the Church, which is somewhat absurd. The right to assist at the marriage of a non-Catholic bride would imply the correlative obligation of investigating her freedom to marry and of obtaining the necessary

[1] *The Clergy Review*, 1940, XIX, p. 67.
[2] *De Matrimonio*, §683.6.
[3] *Fontes*, n. 2113.
[4] E.g. *Homiletic Review*, September 1938, p. 1293.
[5] Woywod, *Practical Commentary*, I, §1118.

dispensations from the Ordinary; but we find, firstly, that the authors who advert to the point[1] rightly affirm that in mixed marriages the obligation of investigating is on the parish priest of the Catholic party; and, secondly, it is fairly certain that an Ordinary may not, or as some think cannot, use his quinquennial faculties for directly dispensing a non-Catholic from a marriage impediment.[2] And, lastly, whatever may be the correct interpretation of the rule of canon 1097, §2, in the common law, we think that the local custom and practice at least in this country denies the right to the parish priest of a non-Catholic, and that in any case there always exists a just cause for disregarding it. He may, nevertheless, be requested to assist in examining the non-Catholic's freedom to marry, in which case he acts as the delegate of the parish priest of the Catholic party; the marriage also, of course, may take place in his church, if the parties so desire, in which case he assists lawfully by reason of the permission mentioned in canon 1097, §1, 3, and not by reason of his native right in §2 of the same canon.

211. CIVIL MARRIAGE IN THE CIRCUMSTANCES OF CANON 1098

Parties subject to the canonical form of marriage may, in certain circumstances, contract validly before witnesses alone. In this event, if all other requirements are observed, would a marriage contracted before witnesses in a registry office suffice?

Canon 1098: Si haberi vel adiri nequeat sine gravi incommodo parochus vel Ordinarius vel sacerdos delegatus qui matrimonio assistat ad normam canonum 1095, 1096:

1. In mortis periculo validum et licitum est matrimonium contractum coram solis testibus; et etiam extra mortis periculum, dummodo prudenter praevideatur eam rerum conditionem esse per mensem duraturam;

2. In utroque casu, si praesto sit alius sacerdos qui adesse possit, vocari et, una cum testibus, matrimonio assistere debet, salva coniugii validitate coram solis testibus.

S.C. Sacram., 4 March, 1925 (private); *Apollinaris*, 1937, X, p. 277: Si omnes conditiones extiterint, quae a can. 1098 requiruntur pro validitate matrimoniorum coram solis testibus, circumstantia qua huiusmodi matrimonia fuerunt benedicta in ecclesia acatholica, non validitati sed liceitati obstat.

[1] E.g. Feuntun, *l'Instruction Sacrosanctum*, p. 14.
[2] Cf. *The Jurist*, 1945, V, p. 68.

The case, it seems to us, is scarcely a practical possibility in this country, except perhaps in cases of danger of death arising from causes other than sickness. For the many official interpretations of *grave incommodum* suppose that the civil law forbids even civil marriage under penalties,[1] so that the parties could not, in any case, contract before a civil registrar.

In theory, however, if not also in practice, it is certain from canon 1098 and the reply, 4 March, 1925, that a marriage may be canonically valid when thus contracted, not because of the presence of a civil registrar as such, but because of his presence as one of the two witnesses required by canon law; the witnesses need not be Catholics.[2]

Though valid, it is unlawful because the contract being a sacrament should be made religiously and not merely as a civil contract.[3] In some localities, moreover, civil marriage is punished by an ecclesiastical censure.

212. MARRIAGE BEFORE WITNESSES ONLY

A marriage attempted in a Protestant church in this country, even though it is civilly valid, requires the presence of a registrar at its revalidation with the canonical form, under pain of serious civil penalties to which the priest is liable. Is this not the "grave incommodum" *of canon 1098 which justifies the parties contracting marriage before witnesses alone? If so, why have recourse to a* "sanatio" *as an alternative to the awkward and troublesome procedure of re-marriage with the registrar's intervention?*

S.C. Sacram., 24 April, 1935 (private); Bouscaren, *Digest*, II, p. 336: An, scilicet, ratione habita responsi dati a Pontificia Commissione ad Codicis Canones authentice interpretandos diei 25 Iulii, 1931, relate ad can. 1098, ad hunc canonem referendus sit casus, quo Parochus vel Ordinarius celebrationi matrimonii religiosi assistere nequit, quia lege civili prohibetur, etiam sub poena, matrimonium coram Ecclesia celebrare, nisi praecesserit matrimonium sic dictum civile, et hoc ab auctoritate civili omnino recusatur, v.g. ob defectum instrumentorum quae lex civilis requirit? *Resp.* Affirmative.

i. The rather curious state of our civil law is not due, we think, to any particular bias against the Catholic Church or in favour of the Protestant Church, but is a correct deduction from the wording

[1] Cf. *The Clergy Review*, 1947, XXVIII, p. 47; 1950, XXXIII, p. 341.
[2] *The Clergy Review*, 1938, XIV, p. 362.
[3] Op. cit., 1949, XXXI, p. 56.

of the Statutes on the subject.[1] The *Code Commission* reply, 25 July, 1931,[2] decided that the law on marriage before witnesses alone included "etiam casus, quo parochus vel Ordinarius, licet materialiter praesens in loco, ob grave tamen incommodum celebrationi matrimonii assistere nequeat", a ruling which the private reply, 24 April, 1935, expressly applies to avoiding civil penalties. A further elucidation, 3 May, 1945,[3] declared that the *grave incommodum* in canon 1098 is also that which threatens either or both of the parties.

ii. If it could be maintained that the tiresome business of civil re-marriage is of itself a *grave incommodum*, within the meaning of canon 1098, an affirmative answer to our correspondent's first question would automatically follow, and the practice in many dioceses of revalidating these marriages by *sanatio* supports perhaps the view that the alternative and more cumbersome process is a *grave incommodum*. The question is merely one of positive law, and it might well be that at some future time a further official reply sanctioning this interpretation will be added to the interpretations already given; or a declaration of nullity alleged *ex defectu formae* might be refused in a case where the parties, in the circumstances we are discussing, failed to observe the canonical form.

iii. A careful examination, however, of all the interpretations officially given supports the opinion that this case, in the present stage of the canon law, does not come within the *grave incommodum* of canon 1098. For, apart from the case of physical absence of the parish priest, the interpretations suppose that the civil law unjustly forbids the marriage to take place and threatens either the priest or the parties with penalties if the civil law is violated. In the case under discussion the marriage is not forbidden and the priest is not threatened provided the parties obey the law by obtaining the presence of the registrar; neither are the parties themselves under any *incommodum* beyond that which, in this country, applies to nearly every marriage contracted in a Catholic church.

iv. The *sanatio* procedure is an opportune method of avoiding a lot of trouble and commotion, particularly as many district registrars are unaware of the interpretation of the civil law requiring their presence at a marriage which is already civilly valid. But this trouble and inconvenience is not, in our view, of the character which excuses observance of the canonical form.

[1] Cf. *The Clergy Review*, 1946, XXVI, p. 380.
[2] Op. cit., 1931, II, p. 447.
[3] Op. cit., 1946, XXVI, p. 48.

213. MARRIAGE BEFORE WITNESSES ONLY—RELIGIOUS RITE

In the unusual event of a marriage before witnesses only, without the presence of a priest, what is the religious or liturgical formula to be used?

Propaganda, 23 June, 1830; *Fontes*, n. 4749. Secundo, si missionarius adiri nequeat, et ineundi matrimonii urgeat necessitas, atque aliunde nullum omnino obstet impedimentum, tali casu, parentes duos testes eligant, qui una cum sponso et sponsa, eorumque propinquis ad ecclesiam loci se conferentes, flexis genibus, consuetos fidei, spei, charitatis et contritionis actus in communi recitent, sicque sponsus et sponsa ad contrahendum matrimonium rite se disponant. Post haec surgentes sponsus et sponsa coram praedictis testibus per verba de praesenti mutuum exprimant consensum, et post gratias Deo actas domum revertantur. Si autem ad ecclesiam ire nequeant, in privatis domibus praedicta observentur.

There can be no question of a liturgical formula in such cases, but merely of securing at the reception of the sacrament a due measure of religious observance, and the suggestions of *Propaganda* offered to a Chinese Vicar-Apostolic, without being of strict obligation, do give us some idea of what the Church expects from Christians contracting marriage: preparation by making acts of the theological virtues and thanksgiving afterwards.

In places where the *Ordo Administrandi* is used, the exhortation which is printed in the editions previous to 1915 could be read by the oldest man present before and after the contract, with the exception of the last few lines of each which suppose a priest to be reading the text.

The exchange of consent could be expressed as in nn. 2 and 3 of the English rite, and even though the ring has not been blessed we can see no reason why the formula in n. 6 "With this ring I thee wed" should not also be used.

The parties and the witnesses are bound "in solidum", from canon 1103, §2, to see that a marriage thus contracted is inscribed in the parochial register of the place; and later, when the opportunity offers, the full liturgical form exclusive of the words "Ego coniungo vos", etc., should be supplied, as directed on other occasions by *Propaganda*.[1]

214. "BAPTISED IN THE CATHOLIC CHURCH"

Is there any official decision or definition of what constitutes baptism in the Catholic Church, for determining subjection to the laws of canons 1070, §1

[1] Vromant, *Ius Missionariorum*, V, §213.

("*disparitas cultus*"), *and* 1099 ("*forma canonica*"), *in cases where an infant is baptised by a lay person, who may or may not be a Catholic?*

Propaganda, 1 April, 1922 (private); Sabetti-Barrett, *Theol. Moralis*, p. 1158: Quidam vir, nomine Thac, anno 1898 ex parentibus infidelibus natus, in infantili aetate a medico quodam catholico, periculo mortis imminente, insciis parentibus baptizatus, postea in infidelitate omnino educatus, matrimonium more patrio contraxit, circa finem anni 1918, cum puella pagana, nomine Nam . . . *Resp.* . . . . matrimonium hoc Thac-Nam a te declarandum esse nullum, ob impedimentum disparitatis cultus.

i. The *Code Commission*, 29 April, 1940,[1] decided that exemption from the canonical form, as provided for in the latter part of canon 1099, §2, did not apply to exemption from the impediment of difference of worship. The latter part of this canon 1099, §2, is abrogated from 1 January, 1949,[2] thus bringing the law into harmony with that of canon 1070, §1.

A difficulty, however, remains about the interpretation in both canons of the words "in Ecclesia Catholica baptizatus". We exclude from the inquiry the case of baptism or conversion to the Catholic Church which has taken place after a child has attained the use of reason, even when the conversion is merely implied,[3] and confine ourselves solely to the case of an infant privately baptised by a lay person; the circumstance of being brought up from infancy in heresy is now irrelevant, and the issue turns on whether the case comes within the phrase "in Ecclesia Catholica baptizatus".

ii. From canon 87 an infant validly baptised is necessarily a member of the Catholic Church, and in a true dogmatic sense "in Ecclesia Catholica baptizatus". But it is clear that, for legal purposes, the phrase used in these canons 1070, §1, and 1099, §2, draws a distinction between those who by valid baptism intend aggregation to the Catholic Church and those who do not. For the baptism of infants the intention to be examined is that of the parents or guardians; if there are no parents or guardians, or if they have no interest in the matter, the intention is that of the lay minister. Thus Cappello: "Nisi contrarium constet, semper praesumitur ministrum in baptismo conferendo habere intentionem aggregandi subiectum religioni quam ipse profitetur. Quae praesumptio destrui debet contraria voluntate baptizandi, aut parentum vel tutorum ipsius si de infante agitur."[4] The words "Nisi contrarium constet" are meant to cover an exception to the foregoing rule, namely when in danger of death an infant is baptised by a lay Catholic and the intention of the parents is to aggregate it to their heretical sect. Since, in danger of death, from canon 750, §1, any infant may lawfully be baptised "etiam invitis parentibus", the minister's intention prevails against that of the parents, as Cappello concludes in n. 7 of the same section, a conclusion supported by *Propaganda*, 1 April, 1922, which though not promulgated is in agreement with the commentators on this point. By declaring that at the end of 1918, namely after the Code's promulgation, Thac was held by the impediment of difference of worship, it follows that he comes within the phrase "in Ecclesia Catholica baptizatus". Notwithstanding the rule regarding the intention of parents or minister, there will always be some cases which are doubtfully within the phrase "in Ecclesia Catholica baptizatus", especially when an infant is baptised by a lay minister outside the danger of death; in such cases, pending the resolution of the doubt, we must apply the axiom: *impedimentum dubium, impedimentum nullum.*

In addition to the usual commentators on this canon, cf. *Periodica*, 1931, p. 74; *Perfice Munus*, 1948, p. 9; *Irish Ecclesiastical Record*, December, 1948, p. 1107; Doheny, *Canonical Procedure in Matrimonial Cases*, p. 1042.

[1] *The Clergy Review*, 1940, XIX, p. 270.
[2] Op. cit., 1948, XXX, p. 341.
[3] Op. cit., 1947, XXVII, p. 348.
[4] *De Matrimonio*, §412.12.

215. CANONICAL FORM—MEANING OF "CONVERT"

A child baptised validly in the Church of England attends a Catholic school, and the circumstances of his baptism being unknown to the authorities he makes his First Communion and is brought up religiously in all respects like the other children. Is he subject to the canonical form for his valid marriage later on in life?

Canon 1099, §1: Ad statutam superius formam servandam tenentur: 1. Omnes in catholica Ecclesia baptizati et ad eam ex haeresi aut schismate conversi, licet sive hi sive illi ab eadem postea defecerint, quoties inter se matrimonium ineunt.

§2: Firmo praescripto §1, n. 1, acatholici sive baptizati sive non baptizati, si inter se contrahant, nullibi tenentur ad catholicam matrimonii formam servandam.

This and other border-line cases, in which it is not clear whether the person is to be regarded as a Catholic or a non-Catholic for the purpose of marriage, have not been officially decided by the Holy See, and we know of no published nullity causes which would assist in reaching a decision. The difficulty existed under *Ne Temere* and

most of the Code commentators follow the teaching of Van Den Acker, *Decreti Ne Temere . . . Interpretatio* (1915), pp. 100–105.

i. The parents, after the child's baptism in the Church of England, may have themselves been reconciled to the Church, in which case the child not of the age of reason becomes a Catholic also; the proper course would have been to supply at least the ceremonies, if there was proof of valid baptism, and to make the appropriate inscription in a Catholic baptismal register,[1] thus putting the "Catholic" status of the infant beyond all question. But even though this proper course was not followed, it is clear that an infant in such circumstances must be regarded as becoming a Catholic together with the parents: "durum et inauditum videtur huiusmodi parentum nunc catholicorum infantes, qui catholice educantur, vocare acatholicos, praesertim si parentum neo-conversorum cura horum infantium nomina in libro baptizatorum . . . descripta sunt. (Nota vocabulum *praesertim*, quia hanc inscriptionem non consideramus tamquam conditionem sine qua non.) Neque mirum videtur, eosdem infantes absque propriae voluntatis actu ab acatholicis fieri catholicos simul cum parentibus, quum etiam in baptismo parvulorum voluntas infantium censeatur inclusa in voluntate parentum.[2]

ii. If the parents remain non-Catholics, the Catholic status of the child before the age of reason cannot be established unless at least one parent guarantees its Catholic education, as in canon 750. It is difficult to see how this could possibly be effected without getting the child's name inscribed in a Catholic baptismal register, or by some such other express and formal declaration as might be given, for example, if the parents surrendered the child for adoption. The point need not detain us since the above question does not raise the issue. For when the child comes to the age of reason, whatever doubt there may be is removed by its profession of the Catholic faith: ". . . conversio ad catholicam ecclesiam fieri non videtur nisi per actum voluntarium; qui si postulatur, hi infantes dicendi sunt acatholici, quoadusque ipsi postea, rationis compotes, talem actum posuerint, quo appareat eos voluntarie ecclesiae catholicae adhaerere; quod manifestabunt per sacramentorum susceptionem et praecipue per primam communionem."[3] The proper course would have been for the child at the age of reason to be received into the Church like any adult convert without absolution from censure. But even though this was omitted, it

[1] Cf. *The Clergy Review*, 1941, XX, p. 544; 1942, XXII, p. 373.
[2] Van Den Acker, op. cit., p. 102.
[3] loc. cit.

appears that a person becomes subject to the canonical form of marriage by professing and practising the Catholic faith, in the circumstances of the above question, even without the ceremony of a formal reception into the Church. This view is held by Gougnard, *De Matrimonio*, p. 281; Oesterle, *Apollinaris*, 1939, XII, p. 103; Chrétien, *De Matrimonio*, §221; Cf. also *Periodica*, 1941, p. 48. The reason is that conversion or adherence to the Catholic faith is implied in a person's actions and manner of life.

iii. The conclusion about Catholic status given in (i) is certain and is taught by all the commentators we have consulted. The conclusion in (ii) is less certain: many do not advert to the point at all, and there is some difference of opinion in defining the conduct or actions which tacitly imply adherence to the Catholic faith, the common view being that the reception of sacraments is necessary. We think that this is correct, but in all such cases there are sufficient reasons for submitting the validity of the marriage to the Ordinary.

216. DISPENSING LAPSED CATHOLICS FROM THE FORM

Two parties, baptised Catholics, the offspring of mixed marriages and educated from infancy in heresy, are now bound to observe the canonical form. They are in good faith but naturally decline either to make the contract canonically or to give assurances that their offspring will be baptised and educated as Catholics. What can a priest who knows of the situation do to secure the validity of the marriage?

Canon 1045, §1: Possunt Ordinarii locorum, sub clausulis in fine can. 1043 statutis (praestitis consuetis cautionibus), dispensationem concedere super omnibus impedimentis de quibus in cit. can. 1043 (urgente mortis periculo . . . tum super forma . . . tum super omnibus et singulis impedimentis . . .), quoties impedimentum detegatur, cum iam omnia sunt parata ad nuptias. . . .

Canon 81: A generalibus Ecclesiae legibus Ordinarii infra Romanum Pontificem dispensare nequeunt, ne in casu quidem peculiari, nisi . . . difficilis sit recursus ad Sanctam Sedem et simul in mora sit periculum gravis damni, et de dispensatione agatur quae a Sede Apostolica concedi solet.

i. The Church, anxious to secure the validity of marriages between baptised non-Catholics, exempts them from contracting with the canonical form,[1] and under the Code discipline in force up to 1 January, 1949,[2] extended the exemption to baptised Catholics in the condition of each of the two parties in the above question, an

[1] Canon 1099, §2.
[2] *The Clergy Review*, 1948, XXX, p. 341.

exemption now abrogated. Notwithstanding the abrogation the Church is still anxious to secure the validity of such marriages, which can be done by dispensing them from observing the canonical form. If the Holy See cannot be reached, which in this context includes the local Legate of the Holy See,[1] the priest who knows of the situation can properly, in our opinion, have recourse to the Ordinary for a dispensation. The Ordinary's powers in canons 1043–1045 cover the form of marriage only in danger of death, but his powers under canon 81 are wider, as the *Code Commission*, 27 July, 1942, decided.[2] Although this decision mentions only impediments, it cannot be doubted that the Ordinary *servatis servandis* can dispense also from the canonical form, and a section to this effect is added to the equivalent of canon 1045 in the canons codifying Oriental marriage law.[3] The lack of guarantees is a difficulty which can be met: for the marriage is not, in the above case "mixed", nor even the kind of marriage dealt with in canon 1065; it is *sui generis* and the rules about guarantees cannot properly apply.[4]

If the Ordinary cannot be reached, it is our opinion that the priest's powers under canon 1045, §3, even if the case is occult, do not cover dispensing from the form of marriage, for except in danger of death the law does not mention it.[5] The priest will do what is possible by acquainting the Ordinary, who will either remedy the situation by *sanatio* or decide that the parties had better be left in good faith.

ii. In the question as submitted the parties decline to observe the canonical form. Laws concern what is likely to happen in human affairs, and it is rather unlikely that two lapsed persons brought up from infancy as non-Catholics would ever consider observing the canonical form. But it is not impossible, for example, when urged thereto by a Catholic relative, that they might be prepared to do so for the purpose of making their marriage valid in the eyes of the Church. We can find no commentator dealing with this situation, for the law in canon 1065 considers only the case where a Catholic desires to marry an apostate, not the case of both parties being apostates. The direction of canon 1066, §2, that the Ordinary must be consulted seems to us to apply also to the case where both parties

[1] Op cit., 1948, XXIX, p. 62. [2] Op. cit., 1943, XXIII, p. 89.
[3] *A.A.S.*, 1949, XLI, p. 97, canon 35, §4.
[4] Cf. what is, perhaps, an analogous situation, when a dispensation may be granted without guarantees, for the purpose of respecting the natural right to marry: *The Clergy Review*, 1938, XV, p. 548.
[5] *Apollinaris*, 1928, p. 254; *Jus Pontificium*, 1927, p. 87; Oesterle, *Consultationes*, p. 136.

are apostates, and if they agree to the Catholic education of the offspring there is no grave obstacle preventing the Ordinary's assent. If, as will usually happen, they refuse any guarantee or promise about the offspring, the case nevertheless could still quite properly be presented to the Ordinary for a decision, and the priest might be instructed to assist at the marriage for the same reasons as would incline the Ordinary to dispense from the canonical form, as explained at the end of (i). An analogous instance existed in France when both parties, members of *l'Action Française*, refused to retract yet desired marriage *coram Ecclesia*; they both came within canon 1065, §1, as members of a society forbidden by the Church. The direction of the French episcopate was that the priest could assist at the marriage though without Mass or any religious ceremony,[1] but presumably in these cases it was taken for granted that the offspring would be given a Catholic education.

217. EXEMPTION FROM THE FORM—"AB ACATHOLICIS NATI"

"A", a Catholic, is married to "B", a convert, and they have a son "C" baptised immediately after birth in the Catholic Church. When "C" is two years old, "A" dies, and "B", relapsing completely into heresy, secures the education of "C" as a non-Catholic. Is "C" bound to observe the canonical form of marriage?

Canon 1099, §2: Firmo autem praescripto §1, n. 1 (ad formam tenentur omnes in Catholica Ecclesia baptizati) acatholici sive baptizati sive non baptizati, si inter se contrahant, nullibi tenentur ad catholicam matrimonii formam servandam; item ab acatholicis nati, etsi in Ecclesia catholica baptizati, qui ab infantili aetate in haeresi vel schismate aut infidelitate vel sine ulla religione adoleverunt, quoties com parte acatholica contraxerint.

A *motu proprio* dated 1 August, 1948, has expunged from this canon the words "item ab acatholicis", etc., the abrogation coming into force from 1 January, 1949.[2] If the marriage of "C" took place after that date it is now quite certain that he is bound to observe the canonical form. But the difficulty of interpreting this clause of the canon will remain if it is a question of deciding the validity of a marriage contracted by "C" on or before 31 December, 1948.

i. The meaning of "ab acatholicis nati", and the official Roman

[1] *Documentation Catholique*, 1928, XIX, col. 899.
[2] *The Clergy Review*, 1948, XXX, p. 341.

replies thereto, were set out very fully in *The Clergy Review*, 1939, XVI, p. 511. In order to keep the subject within just limits we will assume that the reader is acquainted with the main outlines of the question, and there is no doubt whatever about the complete lapse of "B", nor about the non-Catholic education of "C". It is not in dispute that if "B" was a non-Catholic at the time when "C" was baptised, "C" would be exempt from observing the canonical form; the doubt relates to the meaning of the term "ab acatholicis nati" when one parent apostatises after the Catholic baptism of the offspring. Cappello observes: "Si parentes catholici ante usum rationis pueruli in haeresim vel schisma labuntur, et puer in secta haeretica vel schismatica educetur, subestne formae? Attentis verbis can. 1099, §2, videtur affirmandum; attento fine et ex analogia, videretur negandum. Res igitur dubia. Optanda authentica responsio".[1]

ii. That "C" is not bound to the canonical form of marriage is held to be a probable opinion by Dr Schaaf writing in the *Ecclesiastical Review*, June, 1936, p. 631, who quotes Oesterle for the same opinion; Sipos, *Enchiridion*, p. 621, supports this view and doubtless others could be cited, though the manualists do not usually advert to the difficulty. These commentators rely on pre-Code law as formulated in the Benedictine declaration of 4 November, 1741; they hold that the *Code Commission* decision, 17 February, 1930, ad iv, favours this interpretation, since it brought apostates within the definition of "acatholici"; also, as must be admitted, since persons in the position of "C" are usually guiltless, and the Church from 1918–1948 was anxious to extend exemptions, it would seem that there is as much reason for exempting them from the canonical form whether one parent apostatised before or after their baptism.

This view will obviously be held by those few commentators who teach that a child baptised a Catholic, but brought up from infancy in heresy, is exempt from the canonical form, even though both parents are Catholics. Oesterle and Leitner are cited for this opinion by Dr. Schaaf, *loc. cit.* and occasionally Gasparri, *De Matrimonio*, §1029, is wrongly credited with teaching it, relying on a declaration of the Holy Office, 6 April, 1859, printed in *Fontes*, n. 950. We think that in the Code law there is no foundation for this view.

iii. The weight of argument, as well as the extrinsic authority of the writers, favours the opposite opinion, which we think correct, and regards "C" as being bound to observe the canonical form of marriage: Maroto in *Apollinaris*, 1930, III, p. 612; a writer in *The*

[1] *De Matrimonio* (1947), §702.6.

Ecclesiastical Review, May, 1931, p. 522, summarised in *Jus Pontificium*, 1931, p. 238; Dr Gennaro in *Perfice Munus*, 1948, p. 10; Vermeersch-Creusen, *Epitome*, II, §407. Our own opinion, after examining the question again, is the same as that recorded in *The Clergy Review*, 1939, XVI, p. 516. The reason for this interpretation is the plain statement of the law "ab acatholicis nati": the exemption was in favour of those born of at least one non-Catholic parent, and it cannot be said that a child is born of a non-Catholic if the parent's lapse took place after the child was born. There would appear to be, indeed, on grounds of equity, a just reason for exempting "C", but one must not confuse a legal decision as to the validity of an act with moral questions concerning a person's responsibility. "C" is in good faith, and though invalidly married unless the form is observed, is not guilty of any formal sin.

iv. The case will not become a practical issue unless "C", having married (invalidly?) later desires to marry a Catholic after the civil divorce of his first wife. If it were presented to a diocesan curia for a summary decision under canon 1990, a declaration of freedom to marry would not be obtained owing to the doubt existing about the validity of the first marriage; and the case would be remitted for a formal trial, as directed in *Provida*, art. 231, §2; the *defensor vinculi* would have to appeal against a nullity verdict, and a decision one way or the other would eventually be given. The best thing, of course, would be to obtain from the *Code Commission* an authentic solution of this *dubium iuris*, as Cappello suggests.

218. CONVERTS AND THE NUPTIAL BLESSING

Is there an obligation on married converts to receive the nuptial blessing after their reconciliation to the Church?

Canon 1101, §1: Parochus curet ut sponsi benedictionem sollemnem accipiant, quae dari eis potest etiam postquam diu vixerint in matrimonio, sed solum in Missa, servata speciali rubrica et excepto tempore feriato.

S. Off., 26 June, 1860; *Fontes*, n. 961. Quaeritur utrum coniugibus qui, postquam in infidelitate nupserunt, ad fidem convertuntur, supplendae sint caeremoniae matrimonii. *Resp.* Coniuges infideles, si fideles facti sint, optime facere si Ecclesiae benedictiones recipiant; adstringi tamen ad id non debere.

The question can only arise, of course, when both parties are Catholics. Firstly, there is no obligation to receive the nuptial blessing if they do not want it. This is clear from *Fontes*, n. 961, and

from the word *curet* in canon 1101, §1, which must be given, in our opinion, the meaning attached to it by the *Code Commission*, 12 November, 1922, interpreting canon 1451; namely it means "suadendum".

They should, however, be encouraged to receive it because the Church has always attached great value to this blessing. The practice is not common, but it cannot be said that the contrary custom has obtained the force of law with us. It will be necessary to make it quite clear to the parties and to others present in the church that the ceremony is not the sacrament of marriage. Since a nuptial Mass is always preferable, this is also to be recommended; the words "solum in missa" of the canon explain the common law on the subject, without taking account of the indult, which we enjoy, permitting the nuptial blessing to be given *extra missam*.

The other ceremonies, subsequent to the exchange of consent, are equally advisable from the reply of the Holy Office, namely those contained in the *Ordo Administrandi*: n. 5 "Benedictio annuli" and n. 7. We think n. 6 "With this ring" etc. should be omitted since it is a part, though not an essential part, of the consent.

219. MARRIAGE REGISTRATION IN CHURCH OF BAPTISM

In diocese "X" local law requires the parish priest of the place of baptism not only to enter marriages in the baptismal register, but also to inform the parish priest of the place where the wedding was contracted that this entry has been made in the baptismal register. But in diocese "Y" there is no such regulation. How can the priests in "X" observe the law if those in "Y" decline to be bound by it, in cases where a party married in "X" was baptised in "Y"?

Canon 470, §2: In libro baptizatorum adnotetur quoque si baptizatus . . . matrimonium contraxerit. . . . Cf. also canon 1103, §2.

Sacrosanctum, 29 June, 1941; *A.A.S.*, 1941, XXXIII, p. 305, n. 11, b: Hi autem receptas notitias transcribant ad normam can. 470, §2. . . . et nuntium scriptum de peracta transcriptione mittant ad parochum, qui matrimonio adsistit. Is vero non acquiescat donec hunc nuntium receperit; receptum autem alliget fasciculo documentorum celebrati matrimonii.

i. In "X" and "Y", and in every diocese throughout the world, it is not the local law but the common law, at least since the publication of the Code, which requires marriages to be entered in the baptismal register of the place where each party was baptised. This

provision of the common law was confirmed in the instruction from the Congregation of the Sacraments, 26 June, 1921, and again more recently in *Sacrosanctum*. There can be no doubt that it is an obligation, and to this extent parish priests in both "X" and "Y" are bound to observe it.

ii. The further provision, however, that the parish priest of the place of baptism must inform the priest of the wedding that the registration has been made, and that the latter must insist on receiving the notice, is one of the new safeguards in *Sacrosanctum*. In our view, it is unmistakably one of the points which the Sacred Congregation leaves to local Ordinaries to accept, following the principle of n. 3 of the document which declares that the Sacred Congregation has issued an instruction "qua adiutricem praebendo manum Revmis Ordinariis . . . eis suppeditaret idoneas normas. . . ." Inevitably there will be some little disagreement when two dioceses have not precisely the same regulations, for it is certain that priests in "Y" are not bound by the regulations made by the Ordinary of "X".

iii. The remedy is for the priest of "X" to inform the priest of "Y" of the law in "X". The requisite notice will then, no doubt, be forthcoming, especially if a stamped addressed postcard for the purpose is sent. If it is not forthcoming, he may inform his own curia of "X", and the officials may take up the matter with the curia of "Y" if they think it sufficiently important. But he is not bound, we think, to refer to his curia: having sent the notice and requested a confirmation he has fully observed the common law and, as far as in him lies, the local law as well.

220. REGISTRATION OF "SANATIO"

Where is the entry (if any) to be made of a marriage revalidated by "sanatio"? Is it in the curia register or in that belonging to the parish? Must one also secure its registration in the baptismal register? There seems to be no uniform practice in this country.

Episcopal Quinquennial Faculties, *Facultates Additionales S. Officii*, as given in *Irish Ecclesiastical Record*, April, 1948, p. 376, and *Sylloge*, n. 213.18: Cum autem de matrimonii validitate et prolis legitimatione in foro externo constare debeat, Excmus P. D. Episcopus mandet ut singulis vicibus documentum sanationis cum attestatione peractae executionis diligenter custodiatur in Curia locali, necnon curet, nisi pro sua prudentia aliter iudicaverit, ut in libro baptizatorum paroeciae, ubi pars catholica baptismum recepit, trans-

scribatur notitia sanationis matrimonii, de quo actum est, cum adnotatione diei et anni.

Unless the revalidation is for the internal sacramental forum of Penance alone it is certain that a marriage revalidated by *sanatio* must be registered like any other, both in the marriage register and also normally in the baptismal register of the place of baptism, as required by canon 1103 for all marriages.

i. The practice is not uniform owing to the fact that Ordinaries, within the limits of their own faculties, may favour different procedures and issue different instructions to their clergy. Registration in the curial register is required in all cases from the above text of the quinquennial episcopal faculties; in some dioceses the Ordinary explicitly requires an entry to be made in the parish matrimonial register as well, a procedure which many writers direct as a matter of course,[1] even though the text of the above faculty does not mention it; occasionally, also, an explicit direction is given about inscribing or not inscribing the details in the baptismal register.

ii. If no instructions about registration are given in the document issued by the episcopal curia, and if there is no local law on the subject, we think that priests should always enter the marriage in their parish matrimonial register, and also that they should send the details to the parish priest of the place of baptism for inscription in the baptismal register. The entry will be made in these books exactly as for any other marriage with the words added "obtenta sanatione in radice", and it is also advisable to note in the margin the previous date of the attempted marriage. The date of the marriage ("celebrato matrimonio"—canon 1103) will be that on which the *sanatio* was executed: more usually it is executed by a curial official, the date being given on the document, but in some dioceses execution is left to the priest.

221. MARRIAGE OF CONSCIENCE TO SAVE PENSION

A widow forfeits her pension upon her second marriage. A case has arisen where a second marriage is desirable on every ground, moral and canonical, except that the man is an invalid. If the pension continued the parties could manage to live. Would it be feasible, in these circumstances, for the parties to petition for a marriage of conscience, valid in the eyes of the Church but not in civil law?

Canon 1104: Nonnisi ex gravissima et urgentissima causa et ab ipso Ordinario, excluso Vicario Generali sine speciali mandato,

[1] E.g. Cappello, *De Matrimonio*, §856.6.

permitti potest ut *matrimonium conscientiae* ineatur, idest matrimonium celebretur omissis denuntiationibus et secreto, ad normam canonum qui sequuntur.

Canon 1105: Permissio celebrationis matrimonii conscientiae secumfert promissionem et gravem obligationem secreti servandi ex parte sacerdotis assistentis, testium, Ordinarii eiusque successorum, et etiam alterius coniugis, altero non consentiente divulgationi.

Gasparri. *De Matrimonio*, §1295: Quoad ipsas viduas post bellum eadem S. Congregatio (de Sacramentis), ab Ordinariis rogata, respondit: "Non esse recedendum a praxi Congregationis, ideoque amissionem pensionis non esse causam sufficientem permittendi celebrationem matrimonii absque ritu civili." The dates of this reply, not given by Gasparri, are 20 June, 1919, 10 June, 1922, 25 January, 1927, according to Cimetier, *Consultationes*, I, p. 350.

The application of canons 1104 seq. on marriages of conscience is extremely rare, and restricted to most grave causes, such as the unjust refusal of the civil law to recognise a marriage which is capable of ratification *coram ecclesia* when, at the same time, its celebration is the only remedy in conscience for the two parties. Owing to the secrecy surrounding it difficulties naturally arise if the married parties are living together, because in the eyes of the world they are not married. A further difficulty in England and many other countries is that the officiating priest is guilty of a felony in assisting at marriage without a registrar's intervention, except when the same marriage has already been contracted in a register office of England or Wales. The Ordinary might be prepared to accept this risk if the necessity of the marriage of conscience arose from an unjust civil law. But, in the circumstances of the case as outlined above, there is no injustice in the civil law: it permits this widow's marriage but with the effect of her pension ceasing. The injustice would be on the part of the Church in conniving at an illegal action whereby money is obtained from the State under false pretences. This seems to us the chief reason why a petition to the Ordinary, as suggested, is not feasible and should never be considered.

222. LEGITIMACY FROM PUTATIVE MARRIAGE

May the view be defended that the reply of the Code Commission, 26 *January*, 1949, *deciding that a civil marriage cannot be putative, does not apply to a diocese where the Ordinary has, for grave reasons, ruled that it can be regarded as putative?*

Code Commission, 26 January, 1949, II: An sub verbo *celebratum* can. 1015, §4, intelligi debeat dumtaxat matrimonium coram Ecclesia celebratum? *Resp.* Affirmative.

Canon 5: Vigentes in praesens contra horum statuta canonum consuetudines sive universales sive particulares, si quidem ipsis canonibus expresse *reprobentur*, tanquam iuris corruptelae corrigantur, licet sint immemorables, neve sinantur in posterum reviviscere; aliae, quae quidem centenariae sint et immemorabiles, tolerari poterunt, si Ordinarii pro locorum ac personarum adiunctis existiment eas prudenter submoveri non posse; ceterae suppressae habeantur, nisi expresse Codex aliud caveat.

Canon 30: Firmo praescripto can. 5, consuetudo contra legem vel praeter legem per contrariam consuetudinem aut legem revocatur; sed, nisi expressam de iisdem mentionem fecerit, lex non revocat consuetudines centenarias aut immemorabiles, nec lex generalis consuetudines particulares.

Canon 1015, §4: Matrimonium invalidum dicitur *putativum*, si in bona fide ab una saltem parte celebratum fuerit, donec utraque pars de eiusdem nullitate certa evadat.

Canon 1114: Legitimi sunt filii concepti aut nati ex matrimonio valido vel putativo. . . .

i. A correct application of the legal principles on customs contrary to the common law is always a difficult enterprise. The *Code Commission* reply is an authentic interpretation of the common law, but it does not reprobate or revoke a particular or local "customary" interpretation. Indeed, we are not aware of any reply emanating from the *Code Commission* which provides for contrary customs; this would be an application of the law which belongs to the Sacred Congregations to deal with, and the *Code Commission* remits such points to them.[1] Thus the *Code Commission* decided, 16 June, 1931, that Confirmation before the age of seven years was lawful only in the cases mentioned in canon 788; in the following year, 30 June, 1932, the *Congregation of the Sacraments* allowed that, in Spain, grave and just causes might sanction a contrary custom of confirming infants before the age of reason.[2]

ii. Up to the recent reply some commentators, interpreting the common law, held that *servatis servandis* a civil marriage could be putative, a view of the common law that can no longer be defended; there can be no question of an Ordinary now giving a ruling contrary to that of the *Code Commission*, but he can declare and sanction for his diocese the existence of a custom contrary to the higher law.

[1] Van Hove, *Prolegomena*, §569.
[2] *The Clergy Review*, 1931, II, p. 446; 1932, IV, p. 427.

A declaration of this kind, even though given before the reply of the *Code Commission*, satisfies the first and chief condition for a lawful custom required in canon 25.

It can be proved, secondly, without great difficulty, that the customary interpretation is with us centenary and immemorial; for in this country, up to the promulgation of *Ne Temere* in 1908, a civil marriage, other things being equal, was a valid contract, to which people were accustomed to concede all the canonical effects, and the effect of canon 1114 continued to be conceded after *Ne Temere*; indeed, some Catholics are still to be found who think erroneously that their civil marriage is in all respects equivalent to a marriage with the canonical form.

The interpretation is "reasonable", not only in the negative sense of canon 27, §2, which declares a custom expressly reprobated by the legislator to be unreasonable, but in the positive sense required by some canonists,[1] namely that it has a utility in furthering the common good. The law, which now denies canonical legitimacy to the offspring of a civil marriage, is undoubtedly a cause of offence in this country to non-Catholics, and we should continue to maintain a more friendly view, relying on a customary interpretation, until it is positively rejected by the appropriate ecclesiastical authority.

[Editorial Note.—The above solution was challenged by the present editor (*The Clergy Review*, 1950, XXXIV, p. 431) arguing that, since the *Code Commission's* reply was merely declarative, it has never been correct, under the law of the Code, to apply the term "putative" to a clandestine marriage of anyone subject to the canonical form, and therefore that the maintenance of a custom incompatible with this declaration must be judged by the rule of canon 5, which does not allow an Ordinary to "declare and sanction for his diocese" a pre-Code contrary custom, but at most to tolerate it, in certain circumstances. It was further suggested that we have no immemorial custom of regarding the offspring of *invalid* clandestine marriages as legitimate, because, up to *Ne Temere*, 1908, clandestine marriages were valid in this country, and therefore the custom of regarding their offspring as legitimate was not *contra ius*. Canon Mahoney (op. cit., 1951, XXXV, p. 71) agreed that "tolerate" was preferable to "declare and sanction", but maintained that the custom of conceding legitimacy was not limited to valid clandestine marriages, but extended to invalid marriages, at least when one party was in good faith, and that the maintenance

[1] Guilfoyle, *Custom*, p. 101.

of this custom was necessary in order to avoid giving offence. The present editor replied (ibid., p. 143) that needless offence could be avoided by observing the distinction between canonical and civil legitimacy and refraining from impugning the latter, about which alone the non-Catholic can be presumed to be concerned. Canon Mahoney admitted (ibid., p. 215) that this distinction exists in fact, but observed that it had no juridical basis in the divine law of Christian marriage and could only be affirmed with a mental reservation. He concluded therefore that, though he would fall back on this solution if his own position was shown to be untenable, he preferred in the meanwhile to stand his ground.]

223. LEGITIMACY BY SUBSEQUENT MARRIAGE

Is the offspring rendered legitimate by subsequent marriage in the two following instances? (1) *The offspring was born of a marriage invalid owing to difference of worship, but the impediment was removed by baptism and the marriage revalidated after birth;* (2) *the offspring was born of a marriage invalid owing to* "ligamen", *but the previous marriage was declared null and void by an ecclesiastical court after birth and the parties to the second union became validly married.*

Canon 1051: Per dispensationem super impedimento dirimente concessam sive ex potestate ordinaria, sive ex potestate delegata per indultum generale, non vero per rescriptum in casibus particularibus, conceditur quoque eo ipso legitimatio prolis, si qua ex iis cum quibus dispensatur iam nata vel concepta fuerit, excepta tamen adulterina et sacrilega.

Canon 1116: Per subsequens parentum matrimonium sive verum sive putativum, sive noviter contractum sive convalidatum, etiam non consummatum, legitima efficitur proles, dummodo parentes habiles exstiterint ad matrimonium intra se contrahendum tempore conceptionis, vel praegnationis, vel nativitatis.

Code Commission, 6 December, 1930: An vi canonis 1116 per subsequens parentum matrimonium legitima efficiatur proles, ab eisdem genita detentis impedimento aetatis vel disparitatis cultus, quod cessaverit tempore initi matrimonii? *Resp.* Negative.

Canon 1069, §2: Quamvis prius matrimonium sit irritum aut solutum qualibet ex causa, non ideo licet aliud contrahere, antequam de prioris nullitate aut solutione legitime et certo constiterit.

i. The reply of the *Code Commission* occasioned some surprise and a more generous solution was expected in many quarters,[1] on analogy with the rule of canon 1051.

[1] *Periodica*, 1930, p. 26, and 1931, p. 150.

ii. The above reply does not necessarily affect the second query, and it might be thought that, since the first marriage was subsequently declared to be non-existent, the parties were actually free to marry and the benefit of canon 1116 could be extended to their progeny after obtaining a declaration of nullity. We cannot find the point discussed, but in our view legitimation does not occur in this case because persons who have contracted marriage, even though it is certainly invalid owing to a defective consent, are not *habiles* (canon 1116) for contracting a second until the first has been disposed of lawfully and certainly (canon 1069). Legitimacy is a matter for the external forum and must be decided on external rules: in this case, before the first marriage may be disregarded in the external forum, an ecclesiastical process of nullity is required.

224. LEGITIMACY BY SUBSEQUENT MARRIAGE: REGISTRATION

At the baptism of the child of an unmarried mother, the mother's name alone was entered into the baptismal register. Subsequently she married the father of the child who thereby, from canon 1116, becomes legitimate. Is there any way of preventing the issue of a baptismal certificate containing the mother's name alone?

Canon 777, §2: Ubi vero de illegitimis filiis agatur, matris nomen est inserendum, si publice eius maternitas constet, vel ipsa sponte sua scripto vel coram duobus testibus id petat; item nomen patris, dummodo ipse sponte sua a parocho vel scripto vel coram duobus testibus id requirat, vel ex publico authentico documento sit notus. . . .

Canon 1116: Per subsequens matrimonium parentum sive verum sive putativum, sive noviter contractum sive convalidatum, etiam non consummatum, legitima efficitur proles, dummodo parentes habiles extiterint ad matrimonium inter se contrahendum. . . .

i. It is assumed that the parents would like some modification of the entry. If the father informs the parish priest that he wishes his name to be entered in the baptismal register, this necessary addition must be made, and copies of the entry should always contain it. If, also, the parish priest is assured by the priest who assisted at the marriage that there was no impediment to the union, there is agreement amongst the commentators on canon 1116 that a marginal note affirming this marriage, and the legitimacy of the offspring, should, with the Ordinary's sanction, be added to the

entry in the baptismal register,[1] and frequently local law makes this obligation quite clear.[2]

ii. But it is not permitted to obliterate or alter the entry itself, except for the addition of the father's name, since it was correctly made at the time. Moreover, the legitimacy effected by subsequent marriage is not quite the same, with respect to its canonical effects, as legitimacy pure and simple: the child remains excluded, for example, from the episcopate,[3] and there should be some available record of its actual origins.

iii. The problem is how to prevent this record becoming known to the baptised party years later, when a copy of the extract is requested, say, for the purpose of marriage. A reply of the *Code Commission*, 14 July, 1922, though not directly bearing on this question, states "Nomina parentum ita inserenda esse, ut omnis infamiae vitetur occasio. . . ."[4] Whatever loss of good name attached to the mother at the time of the child's baptism has lapsed, we may suppose, with the passing of time, and the child is ignorant of the circumstances attending its birth. It is clearly necessary, on principles of the natural law, to safeguard the mother's good name if possible. This can be done by issuing a certificate of baptism which is not a verbally exact copy of the original entry, though a true one in accordance with the facts recorded in the marginal entry. If the formula authorised in our *Ordo Administrandi* is being used, the certificate will be in the same terms as one issued for a person born during marriage: ". . . baptizatus est Gulielmus Jones filius Jacobi et Mariae Jones (olim Brown) coniugum". This is a substantially faithful copy of the inscription in the register, for the father's name is there by right, the parents are married, and the child's surname,[5] though originally inscribed, perhaps, as that of the mother, rightly appears now as that of the father.[6]

iv. We can find no indication anywhere as to the phrase to be inscribed in the margin recording the legitimacy of the infant subsequent to the marriage of its parents. It will have to be as brief as possible and, if there are no directions of the local Ordinary on the point, we suggest the following: "Ex can. 1116 C.J.C. et Regist. Matrim. Paroeciae N.N. die . . ., extractum debet esse in forma consueta pro filiis legitimis, nisi lex aliud exigat."

[1] *Collationes Brugenses*, 1949, p. 150; Cappello, *De Baptismo*, §183.
[2] E.g. Bruges *Statuta*, 1939, n. 94; Malines *Statuta*, 1924, n. 253, and Gougnard, *Collationes*, 1932, p. 54.
[3] Canon 331, §1, 1.
[4] *A.A.S.*, XIV, 528.
[5] This particular difficulty does not arise if the formula in use is that of *Rit. Rom.*, Appendix IV, cap. ii.
[6] Cf. *Irish Ecclesiastical Record*, 1945, LXV, p. 52.

XIX. MARRIAGE DISSOLUTION AND CONVALIDATION

225. PAULINE PRIVILEGE: CATECHUMEN INTERROGATED

If the interrogated party refuses to cohabit peacefully but wishes to be baptised, may the privilege be used?

Canon 1121: Antequam coniux conversus et baptizatus novum matrimonium valide contrahat, debet, salvo praescripto can. 1125, partem non baptizatam interpellare: 1. An velit et ipsa converti ac baptismum suscipere; 2. An saltem velit secum cohabitare pacifice sine contumelia Creatoris.

S. Off., 8 July, 1891, *Collectanea*, ed. 1893, n. 1362: Vir fidelis mulierem infidelem in ipsius viri infidelitate ductam habet, quae quidem vult converti, sed nullo modo cum eo habitare consentit. *Quaer.* I. An vir uti privilegio Paulino, et, facta interpellatione de cohabitandi voluntate, ad alias nuptias transire possit? II. An talis vir, si sit adhuc catechumenus, possit ad baptismum admitti et tunc privilegio uti. *Resp.* Affirmative ad utramque partem dummodo uxor in infidelitate permaneat. Another reply in the same sense is quoted by De Smet dated 26 April, 1899.

Usually, if the reply to the first question mentioned in canon 1121 is affirmative, the reply to the second will also be affirmative. But it need not necessarily be so, for the marriage contracted in infidelity by A and B may have been wrecked by a civil divorce, subsequent to which A desires to use the privilege and B, now civilly married to someone else, wishes also to be baptised, but refuses to live again with A. The condition "dummodo in infidelitate permaneat" is imperative, because if B receives baptism before A uses the privilege, the marriage of A and B is *ratum* by the baptism of both parties, and it is no longer within the terms of the Pauline privilege, though it can be dissolved by the Holy See if not consummated after baptism.[1] From this well-established doctrine and practice is perceived the force of the condition *dummodo*, etc., and also the necessity of asking the first question even when the second is answered negatively; if both are answered affirmatively the privilege cannot be used. Writers who state that the privilege cannot be used if the interrogated party is willing to be baptised[2]

[1] Cf. *The Clergy Review*, 1946, XXVI, p. 154.
[2] E.g. Doheny, *Canonical Procedure—Informal*, p. 512.

must be understood to refer to cases where the answer to the second question is affirmative. Similarly a reply *S. Off.*, 11 July, 1866: "Ideoque non esse locum dissolutioni quoad vinculum matrimonii legitime contracti in infidelitate, quando ambo coniuges baptismum susceperunt, vel suscipere intendunt" is the solution of a case where the answer to the second question was affirmative.[1]

226. PAULINE PRIVILEGE: CONVERTS' MARRIAGES

Converts on being reconciled are usually baptised conditionally because their previous baptism is considered doubtful. Since they are doubtfully baptised, and the law favours the use of the Pauline privilege in doubtful issues, it would often help to unravel their marriage tangles if the Pauline privilege could be used. Why is this not permitted?

Canon 1014: Matrimonium gaudet favore iuris; quare in dubio standum est pro valore matrimonii, donec contrarium probetur, salvo praescripto can. 1127.

Canon 1127: In re dubia privilegium fidei gaudet favore iuris.

S. Off., 10 June, 1937; *A.A.S.*, 1937, xxix, p. 305: In plenario conventu huius Supremae Sacrae Congregationis Sancti Officii, habito Feria iv, die 5 maii 1937, propositis dubiis:

(1) Utrum in matrimonio contracto a duobus acatholicis dubie baptizatis, in casu dubii insolubilis circa Baptismum, possit permitti alterutri ad Fidem conversae usus Privilegii Paulini vi can. 1127 Codicis Iuris Canonici? *Resp.* Negative.

(2) Utrum in matrimonio contracto inter partem non baptizatam et partem acatholicam dubie baptizatam, in casu dubii insolubilis de Baptismo, possint Ordinarii alterutri parti ad Fidem Catholicam conversae permittere usum Privilegii Paulini vi can. 1127? *Resp.* Recurrendum ad S. Officium in singulis casibus.

i. Before this reply of the Holy Office, there were a few canonists who were prepared to apply canon 1127 to two married converts whose previous baptism in some heretical sect was doubtful, either because it was uncertain whether they had ever been baptised or because the validity of its administration was uncertain.[2] The majority, however, were opposed to this view, relying on decisions of the Holy Office quoted by Payen, 5 June, 1853, and 18 December, 1872, and their reasons are easily understood. For if both baptisms are actually valid, the marriage is *ratum* and, being consummated,

[1] *Fontes*, n. 996.

[2] References to these authors are in Vermeersch-Creusen, *Epitome* (1934), §437; Payen, *De Matrimonio*, §2269; *Apollinaris*, 1937, p. 334.

is absolutely indissoluble; the Church rightly declines to run the risk even of appearing to dissolve a marriage which might be by divine law indissoluble. If the marriage in question is between two unbaptised parties, the Pauline privilege may be stretched to its utmost limits, and doubts are solved in favour of the Christian, e.g. concerning the interpellations or the willingness of the infidel party to cohabit peacefully. Canon 1127 is a legal presumption which, in solving doubts concerning the use of the Pauline privilege, takes precedence over the presumption of canon 1014, but it may not be used when there is danger of breaking the divine law.

ii. The force of the second reply is merely to deny to Ordinaries the right to start a process for applying the Pauline privilege in cases where the baptism of only one party is doubtful, a right which the majority of canonists had formerly conceded.[1] For it is now completely certain that if one of the parties to a valid marriage is unbaptised the marriage is not *ratum*; it can be dissolved by the Holy See without any possible fear of infringing the divine law,[2] and it is a purely academic question whether the dissolution is effected by an extension of the Pauline privilege or by the use of the Papal power. In practice it means that the case being brought to the Holy Office, as directed in this reply, the Papal power of dissolution could be used *ad cautelam*.

iii. Converts are baptised conditionally because by divine law this sacrament is necessary for salvation. The doctrine given above does not conflict with this practice; on the contrary, it is in accordance with it, since a marriage which is ratified and consummated is necessarily indissoluble by divine law; when baptism is doubtful the Church baptises conditionally because of the reverence due to this law, and for the same reason declines to sanction the use of the Pauline privilege.

227. PAULINE PRIVILEGE INOPERATIVE (1)

In the event of the unbaptised party giving all the canonical assurances but refusing Baptism, it is agreed that the Privilege may not be used; in this case is the baptised party bound to continue married life with the unbaptised party?

I Corinth. vii, 12 (Knox): To those others, I give my own instructions not the Lord's. If any of the brethren has a wife, not a believer, who is well content to live with him, there is no reason why he

[1] Cf., in addition to the above references, *The Ecclesiastical Review*, October 1937, p. 370.

[2] Cf. *The Clergy Review*, 1932, IV, p. 503; 1940, XVIII, p. 263.

should put her away, nor is there any reason for a woman to part with her husband, not a believer, if he is content to live with her.

Canon 1127: In re dubia privilegium fidei gaudet favore iuris.

S. Off., 29 November, 1882, ad 3; *Fontes*, n. 1075: Sed quoniam tum periculum recens conversi cavendum est, ne si diu permanserit in toro infidelis, fidem Christi fortassis amittat, dum vult servare homini: tum vero libertati illius consulendum est, ne caelebs vivere cogatur qui forsan uritur, idcirco decernimus ut, transacto sex mensium spatio, res ad Episcopum deferatur, qui bene perspecta causa, fideli declaret, copiam esse aliud matrimonium ineundi propter fidei aut caritatis scandalum, quod patiatur. Quod si nullum esse periculum in cohabitatione viderit, iubeat expectare infidelem, vel etiam consulat cohabitare, si prodesse intelligit iuxta Pauli Apostoli consilium. Neque enim potest omnibus conversis eamdem regulam praefigi, cum occurrant profecto variae circumstantiae neque sit omnium infidelium eadem ratio.

The solution of this question turns on deciding whether the words of St Paul are a precept or a counsel. St Augustine regards the passage as a counsel, St Jerome as a precept,[1] and the majority of Latin commentators incline to St Augustine's view, though there are not wanting modern exegetes who prefer St Jerome's.[2] The canonists on the whole regard it as a counsel.

If the Christian desires to contract a fresh marriage, this can generally be effected either by a wide interpretation of the Pauline privilege which includes dispensation from the interpellations, or, if the privilege is judged to be inapplicable, by petitioning for a papal dissolution of the natural bond of the existing marriage.

The Christian may desire, on the other hand, neither to contract a fresh marriage, nor to live in conjugal intercourse with the partner of the existing marriage; he may desire to live a celibate life, or even, with the appropriate dispensations, to enter the priesthood or the religious life, which he is entitled in principle to do.[3] Certainly, *Fontes*, n. 1075, strongly supports the view that the Pauline words are a counsel, not a command, and all the ecclesiastical legislation on the subject favours the liberty of a convert to Christianity to begin a new life.

Whilst agreeing with this solution, due attention should be given to the warning of Gasparri[4] that an obligation of charity might, in some cases, turn this counsel into a precept. The issue in a given case must, it seems to us, be decided by the Ordinary of the convert,

[1] Joyce, *Christian Marriage*, p. 468. [2] Prat, *Théologie de St Paul*, I, p. 133.
[3] Cf. De Becker, *De Matrimonio*, p. 266.
[4] *De Matrimonio*, §1152, b.

and this is the teaching of Payen, an author of great authority on this question: "Similiter parti conversae ex infidelitate et baptizatae per se integrum est, citra privilegium Paulinum, declinare, manente vinculo, 'auctoritate Ordinarii loci', a vitae consuetudine cum infideli, qui vult quidem pacifice cohabitare, at converti constanter renuit. Nec obstant verba S. Pauli: nam, in eo casu, satis probabiliter consulit, quin eam imponat, vitae coniugalis communionem. Insuper eam suadet propter spem, quae tunc temporis facilius suberat, infidelem ad veram adducendi fidem.[1]

228. PAULINE PRIVILEGE INOPERATIVE (II)

"A" and "B", both unbaptised, marry validly, and they are divorced. "B" later becomes a Catholic but refuses to cohabit with "A", as in the case discussed in qu. 227, and elects to live a celibate life. "A" is now anxious to become a Catholic and wishes to continue with the partner to his second marriage. Is this possible?

Canon 1126: Vinculum prioris coniugii, in infidelitate contracti, tunc tantum solvitur, cum pars fidelis reapse novas nuptias iniverit.

Under the Pauline privilege, "A" whilst he remains unbaptised is not free to marry again until his marriage contracted in infidelity has been dissolved by the marriage of "B". But we can see no radical reason why this legitimate marriage, since it is not *ratum*, could not be dissolved by the Holy See[2] if the party to the second (attempted) marriage is a Catholic and desires its revalidation.

Once "A" is baptised there can no longer be any question of using the Pauline privilege, for the baptism of both parties makes their marriage *ratum*.[3] But until this ratified marriage has been consummated subsequent to its ratification, it is not absolutely indissoluble and a petition could be properly directed to the Holy See for its dissolution.[4]

229. DISSOLUTION OF MARRIAGE "IN FAVOREM FIDEI"

I have to prepare for a parishioner the evidence of a "prima facie" *case for a papal dissolution of a marriage validly contracted and consummated between a baptised and a non-baptised person. Could I have an indication of what is required and especially the requirements of the proof that one party is not baptised?*

[1] *De Matrimonio*, §2218.
[2] Cf. *The Clergy Review*, 1940, XVIII, p. 263.
[3] *The Clergy Review*, 1946, XXVI, p. 154.
[4] Cf. *Periodica*, 1925, XIV, p. 72.

i. The Holy See possesses the power of dissolving a marriage validly contracted between a baptised person and one not baptised, provided the requisite conditions for the exercise of this power are present; two are absolutely essential: (*a*) the non-baptism of one party, during the period at least of conjugal life; (*b*) if the formerly unbaptised party is baptised at the time of the petition, it will be necessary to establish that marriage relations did not occur since baptism—otherwise the union is *ratum et consummatum* and is indissoluble except by death. In practice it is further required: (*c*) that the marriage, whose dissolution is being sought, has become wrecked beyond repair, which usually happens owing to a civil divorce; and (*d*) that the granting of the dissolution will not give rise to scandal.

ii. Often popularly confused with it, this method of dissolution is wholly distinct from the Pauline Privilege, though the papal prerogative is the best explanation of the way the Pauline Privilege has been widely interpreted in past centuries. The first express use of the papal power in recent times as something wholly distinct from the Pauline Privilege was a dissolution granted by Pius XI, 5 November, 1925,[1] and it has often been used since. It was referred to by the Pope in his Rotal address, 3 October, 1941: ". . . other marriages, though intrinsically indissoluble, do not possess an absolute extrinsic indissolubility, but given certain necessary prerequisites can (in cases which are of course relatively rare), even outside the case of the Pauline Privilege, be dissolved by the Roman Pontiff in virtue of his ministerial power."[2] It was in some dispute whether this power would ever be used to dissolve a marriage contracted with a dispensation from the impediment of difference of worship. Cardinal Gasparri affirmed, in the first Latin edition of his Catechism, that it could be used, and one instance of it, in the American diocese of Monterey-Fresno, 18 July, 1947, though admittedly in very unusual circumstances, is given by Bouscaren.[3]

iii. No instructions have been published on the details of the preliminary process, and the writers are not informative; Doheny's extensive volumes contain only six pages and many commentators have nothing at all on the subject. Some *Normae* for the use of the diocesan curia have been prepared by the Holy Office.

iv. As regards the proof of non-baptism, corroboration of the party's sworn declaration that he has not been baptised may be forthcoming: from the statements of relatives to that effect; from the tenets of the religious sect to which the party belongs; or from a

[1] Cf. *The Clergy Review*, 1932, IV, p. 503.
[2] Op. cit., 1942, XXII, p. 86.
[3] *Digest*, III, p. 485.

search of the baptismal registers of his place of origin. There exists, however, a presumption, in the case of one born of Catholic parents or of non-Catholics who observe in principle and in practice the law of infant baptism, that it was administered notwithstanding the lack of any written record. Except in the case of a pagan, a Jew or a Mohammedan, proof of non-baptism is difficult, and one must also bear in mind the recent declaration of the Holy Office, 28 December, 1949, that doubtful baptisms in Protestant sects are to be presumed valid in relation to all marriage causes which turn upon the fact of baptism.[1]

230. ORDINARY'S PERMISSION FOR CIVIL DIVORCE

A Catholic who appears entitled to a civil divorce in order to secure its civil effects is told by the parish priest that the Ordinary's permission must first be obtained. But on being asked for the chapter and verse of the law he could not produce it, and would like to be informed on this point.

i. In the common law there is no very firm and explicit statement directing persons to secure the Ordinary's permission before getting a civil divorce, the reason no doubt being that, in the conservative view at least, a civil divorce is intrinsically wrong and therefore can never be permitted. The liberal view, however, denying that the act is intrinsically wrong, is now generally held; otherwise Catholic judges and lawyers would be at a serious disadvantage in practising their professions, and might even have to abandon them altogether.[2] Nevertheless, we may not apply this liberal view to every case of a Catholic petitioning for a civil divorce, even when it is assumed that there is a just reason and no intention of remarrying. Unlike judges and lawyers, whose office may oblige them to administer the law, a petitioner is under no similar compulsion; scandal which can easily be removed in the one case is removed less easily in the second; and whereas in the one case the act is completed by working the legal divorce machinery, in the second case the act is accompanied by the proximate danger of attempting a second marriage.

ii. As regards explicit chapter and verse, lacking in the common law, one may rely in many places on the local law. An example is in decree 81 of the IVth Provincial Council of Malines, and in numbers of American dioceses[3] the act of seeking a civil divorce without the Ordinary's permission is a reserved sin. Where there

[1] *The Clergy Review*, 1950, XXXIII, p. 198.
[2] *The Clergy Review*, 1933, V, p. 236.
[3] Listed in *Theological Studies*, September, 1947.

exists no local law the act may, without great difficulty, be brought implicitly within the common law: firstly by reason of the canons requiring the Ordinary's intervention in judging the lawfulness of separation; or, if these canons are held not to apply, by reason of the law directing refusal of the sacraments to public sinners, a refusal to which a delinquent is liable so long as grave scandal attaches to his act of obtaining a civil divorce without permission.

iii. The Ordinary's intervention is required for two reasons: firstly, in order that a decision may be given on the necessity of civil divorce for the purpose of obtaining the civil effects, a decision which will depend on the circumstances of each case and on the civil law; secondly, for the purpose of removing the scandal caused by a Catholic apparently flouting the divine law on the indissolubility of Christian marriage, and manifestly affronting the Church by bringing an important marriage cause to a civil tribunal The Ordinary who gives permission will also direct the steps to be taken to avoid scandal, for example, a signed and witnessed statement to the effect that the party seeking a civil divorce is doing so for the civil effects only, and with no intention of re-marrying.

iv. Whilst admitting the necessity of the precautions outlined in (iii) (a judgement on the necessity of a civil divorce and the removal of scandal) it may be asked why it is absolutely necessary to seek this judgement from the Ordinary. Is a parish priest not fully competent to give a decision? Some commentators teach that, after the event, the parish priest may give a decision that repentance and due reparation of scandal justify the granting of the sacraments in such cases,[1] and that recourse to the Ordinary is necessary only when there is doubt on these points, on analogy with the law of canon 1240, §2, or when the sin is locally reserved to the Ordinary. But we can find no writer teaching that, before the event, a parish priest may authorise divorce proceedings. On the contrary those who have fully examined the matter hold that the case must always go to the Ordinary for the reasons outlined in (ii). "It is obvious that no Catholic may seek a civil divorce without first obtaining the permission of the Holy See, or at least of the local Ordinary."[2] "Propter periculum exceptionaliter momentosum in bonis fortunae vel quoad educationem liberorum, quod sola separatione corporum satis removeri non posse videatur, rem Episcopo exponere eiusque mandatis stare debent."[3]

[1] Cf. *l'Ami du Clergé*, 1949, p. 200. What we have written in *The Clergy Review*, 1941, XX, p. 182, needs modifying so as to allow for the view that recourse to the Ordinary in these cases, though advisable, is not always necessary.
[2] *The Jurist*, 1949, p. 198.
[3] *Collationes Brugenses*, 1946, p. 434.

231. REVALIDATION—PRESENCE OF REGISTRAR

Is it correct, as a registrar maintains, that it does not suffice for the parties to produce their civil marriage certificate, but that the registrar must also be present when a marriage of this kind is contracted before a priest in a Catholic church?

Marriage Act, 1856, 19 & 20 Vict., cap. 119, section 12: "If the parties to any marriage contracted at the registry office of any district conformably to the said recited Acts or any of them, or to the provisions of this Act shall desire to add the religious ceremony ordained or used by the church or persuasion of which such parties shall be members to the marriage so contracted, it shall be competent for them to present themselves for that purpose to a clergyman or minister of the church or persuasion of which such parties shall be members, having given notice to such clergyman or minister of their intention so to do; and such clergyman or minister upon the production of their certificate of marriage before the superintendent registrar, and upon the payment of the customary fees (if any), may, if he shall see fit, in the church or chapel whereof he is the regular minister, by himself or by some minister nominated by him, read or celebrate the marriage service of the persuasion to which such minister shall belong . . . but nothing in the reading or celebration of such service shall be held to supersede or invalidate any marriage so previously contracted, nor shall such reading or celebration be entered as a marriage in the parish register."

It is clear from the above that the only case in which a priest may, in accordance with the civil law, conduct a marriage without the presence of the registrar, is the case in which the parties have already contracted a marriage which is civilly valid in a registry office in England or Wales.

In all other cases of marriage which is civilly valid, for example that contracted before a minister of the Church of England in a Protestant church, the priest may not, in accordance with the civil law, conduct a religious ceremony of marriage, except with the presence of the registrar, the usual notice having previously been given at the registry office. This point was not clearly perceived till about 1936, when we received instructions from the bishops on the matter. Very likely this is what the registrar in the above question had in mind, or he was referring, perhaps, to a civil marriage contracted elsewhere than in a registry office in England or Wales.

232. MARRIAGE PRELIMINARIES BEFORE "SANATIO"

Must we hold, in principle, that a marriage revalidated by "sanatio" *is subject to the regulations contained in* "Sacrosanctum", *in the measure in*

which this Instruction is being enforced by the local Ordinary, e.g. the "nihil obstat", *the* "questionnaire", *religious instruction and registration?*

Canon 1138, §1: Matrimonii in radice sanatio est eiusdem convalidatio, secumferens, praeter dispensationem vel cessationem impedimenti, dispensationem a lege de renovando consensu, et retrotractionem, per fictionem iuris, circa effectus canonicos, ad praeteritum.

§2: Convalidatio fit a momento concessionis gratiae; retrotractio vero intelligitur facta ad matrimonii initium, nisi aliud expresse caveatur.

§3: Dispensatio a lege de renovando consensu concedi potest vel una vel utraque pars inscia.

i. Since §3 declares that this procedure can be applied to revalidating a marriage even when both parties are ignorant of what is being done, the answer to the question is that, in principle, a marriage revalidated by *sanatio* is not subject to the positive regulations of *Sacrosanctum*; moreover (even if the parties are aware of what is being done), seeing that the chief point about a *sanatio* is to dispense with the renewal of marriage consent, the regulations of *Sacrosanctum* which must precede the exchange of consent obviously do not apply, e.g. the *nihil obstat*. The procedure of a *sanatio* is subject, not to *Sacrosanctum* nor even to the common law of the Code on the canonical form of marriages in general, but firstly to the natural and divine law, and secondly to the positive law, whether general or local, expressly made for these cases. The requirements of the natural or divine law need no explanation. The positive law has often been changed and tends to become more exacting, as may be seen by comparing the additional faculties granted to certain Ordinaries by the Holy Office during the last few years: cf. *The Clergy Review*, 1937, XIII, p. 187; *Sylloge*, n. 213.18; Bouscaren, *Digest*, I, p. 63, and II, p. 32; *Irish Ecclesiastical Record*, 1948, LXX, p. 375.

ii. Securing the *validity* of the procedure should offer no difficulties for priests, since they have merely to observe the terms of the rescript received from the Ordinary, whether *in forma gratiosa* or *in forma commissoria*.[1] In accordance with the Ordinary's faculty the rescript may contain further directions affecting the lawfulness of the procedure, e.g. absolution from the censure of canon 2319, §1, 1, or the method of registration to be followed.

iii. In addition to the conditions imposed by the Holy Office, the Ordinary may decide not to use the faculty unless further

[1] Cf. *The Clergy Review*, 1942, XXII, p. 375.

precautions are observed, e.g. instructions to the non-Catholic party of a mixed marriage, or signed answers to a list of questions. But, in our view, a priest has no obligation to carry out any of the rules made for normal marriages, unless so directed by the Ordinary.

233. CONFESSION BEFORE EXECUTING A "SANATIO"

Should it not be held that in one matter, at least, the priest executing a "sanatio" *must observe the rule applicable to marriages contracted with the canonical form? Confession before the* "sanatio" *is executed should be urged (canon* 1033) *on the parties or even imposed (canon* 1066), *in order to ensure their being in a state of grace.*

Canon 1033: . . . eosdemque vehementer adhortetur ut ante matrimonii celebrationem sua peccata diligenter confiteantur, et sanctissimam Eucharistiam pie recipiant.

Canon 1066: Si publicus peccator aut censura notorie innodatus prius ad sacramentalem confessionem accedere aut cum Ecclesia reconciliari recusavit, parochus eius matrimonio ne assistat, nisi gravis urgeat causa, de qua, si fieri possit, consulat Ordinarium.

i. Certainly, any priest exercising the care of souls will try to ensure that the people in his care are in a state of grace, particularly when they are about to receive a sacrament; the "sanatio" is, in effect, the sacrament, since up to the moment of its execution the parties are not validly married. Some writers expressly advert to this point, e.g. Heylen[1]: "Cum coniuges sacramentum suscipiant, dum ita matrimonium convalidatur, curandum est, in quantum fieri potest, ut sint in statu gratiae."

ii. But, if we regard the priest uniquely as an ecclesiastic executing, or intervening in, the grant of a *sanatio*, he is bound to do only those things directed by the rescript, since this procedure is subject only to the positive laws expressly made for it and to the natural or divine law. It is open to the Holy See or to Ordinaries who issue the rescript to include the terms of canons 1033 and 1066 in the document, and the urging or imposing of confession will then be necessary by virtue of this injunction. Similarly, as pointed out at the end of our previous reply, the parties may be required to submit to other regulations normally to be observed when contracting marriage. It is, indeed, the divine law that a sacrament of the living should be received in a state of grace, but confession is not a necessary means to this end except *in voto*. Moreover, the formula

[1] *De Matrimonio* ,p. 719.

of quinquennial faculties relating to the *sanatio* directs the Ordinary amongst other things, previously to absolve the Catholic party from excommunication "si casus ferat"; but this absolution from censure can be granted outside and apart from sacramental confession, unless the rescript imposes confession as a condition when absolution is being obtained in the internal forum.[1] Accordingly, we think it is correct to state that confession before the execution of a *sanatio* cannot be imposed unless the terms of the rescript so direct.

[1] Cappello, *De Matrimonio*, §285.

XX. USE OF MARRIAGE

234. PAPAL TEACHING ON THE INFERTILE PERIOD

The papal teaching on the use of the infertile period, contained in the address of His Holiness, 29 October, 1951, seems to be stricter than the common teaching of moralists, for he requires serious reasons to justify the use of marriage exclusively during this period. Is it not true to say that, in substance at least, the writings of Catholics on this subject have not so far stressed the necessity of serious reasons?

Pius XII, Address, 29 October, 1951: *The Clergy Review*, 1951, XXXVI, p. 389: ". . . to enter upon the state of matrimony, to make constant use of the faculty proper to it and only in matrimony allowable, and on the other hand consistently and deliberately, and without a serious reason, to shirk the primary duty it imposes, would be to sin against the very meaning of married life.

"From the obligation of making this positive contribution it is possible to be exempt, for a long time and even for the whole duration of married life, if there are serious reasons, such as those often provided in the so-called 'indications' of the medical, eugenical, economic and social order. It therefore follows that the observance of the infertile periods may be *licit* from the moral point of view; and under the conditions mentioned it is so in fact."

i. It is true that the explanations given by some Catholic doctors on the subject have not always stressed the necessity of a serious reason, since these writers were chiefly concerned with the medical aspect of the matter. The earlier editions, for example, of Dr Sutherland's *Control of Life*, which is the best book of its kind for Catholics to consult, were wanting in this respect, a defect which has been remedied in the later editions.

It is equally true that a certain number of Catholic moral theologians became extreme propagandists of the sterile period, when the new Ogino-Knaus reckoning was discovered about 1929–30, and their enthusiasm often led them to ignore the conditions for its lawful use morally.[1] It may be doubted, nevertheless, whether any Catholic moralist expressly taught that Catholics could use this period exclusively without any compensating reason. It is often

[1] Cf. a correspondence on the subject in *The Clergy Review*, 1937, XIII, pp. 150, 273, 358, 412; 1938, XIV, pp. 92, 184.

pointed out that the teaching of Pius XI in *Casti Connubii* does not stress the necessity of serious reasons, but merely affirms: "Neque contra naturae ordinem agere ii dicendi sunt, qui iure suo recta et naturali ratione utuntur, etsi ob naturales sive temporis sive quorundam defectuum causas nova inde vita oriri non possit." But it is not certain that these words refer to the sterile period, neither are they concerned with the use of marriage exclusively during that time.

ii. The common teaching, however, of the generality of moral theologians writing on the subject insists on serious justifying reasons before permitting married people to use their rights exclusively during this period. Thus Fr Bonnar writes: "When, not for mere selfishness but for other reasons, e.g. poverty, the period of low fertility is used exclusively, husband and wife are voluntarily renouncing a part of their rights. Such voluntary renunciation is not morally reprehensible *when there is a good and sufficient reason.*"[1] Gougnard: "Continentia periodica certo concrete licita est, dato motivo diurnitati praxis proportionato. Quae motiva sunt v.g. periculum vitae . . . impossibilitas materialis numerosiorem prolem educandi. . . ."[2]

If it be asked whether those married people sin gravely who observe the agenetic period for no adequate reason, the answer is that its gravity cannot be established on theological reasoning, since *objectively* the action is in itself lawful, and it will be observed that the Holy Father himself refrains from stating that its wrongness may be gravely so.

iii. What the Holy Father has done in his address is expressly to sanction certain lawful reasons justifying the exclusive use of the sterile period. Hitherto the chief Roman directive on the subject, if we exclude the ambiguous phrase in *Casti Connubii*, is the reply of the Sacred Penitentiary, 16 June, 1880, found in all the manuals, which sanctions only one justifying reason—the remedy to be suggested to penitents who will not otherwise refrain from onanism. A later reply of the same tribunal, 20 July, 1932, is not so well known, and our readers may like to have it.[3]

"Sacra Poenitentiaria, die 20 julii 1932, ad novum Dubium (magis adaptatum ad theoriam Ogino-Knaus, tunc temporis divulgari coeptam): An licita in se sit praxis coniugum qui, cum ob iustas et graves causas prolem honesto modo evitare malint, ex mutuo consensu et motivo honesto a matrimonio utendo abstinent

[1] *The Catholic Doctor*, ed. 1951, p. 77 [2] *De Matrimonio*, p. 444.
[3] The text is in *Periodica*, 1951, p. 418, in the course of an excellent commentary on the papal address by Fr F. Hurth, S.J.

praeter quam diebus quibus secundum quorundam recentiorum theoremata ob rationes naturales conceptio haberi non potest? *Resp.* Provisum est per responsionem S. Poenitentiariae d.d. 16 iunii 1880 datam."

This reply is not, perhaps, very helpful, since it might be taken in the sense that the only justifying reason is its use as a remedy against onanism, as taught previously in 1880. However, we now happily have the teaching of the Holy Father, which goes far beyond the reply of 1880, that there may be justifying reasons of the medical, eugenical, economic and social order. (For subsequent correspondence, cf. *The Clergy Review*, 1952, XXXVII, pp. 316, 383, 510, 511, 638, 765.)

235. PUBLICISING KNOWLEDGE OF STERILE PERIOD

The attitude of most theologians and authorities in the past has been against bringing the facts about the sterile period to all and sundry, even when accompanied by the conditions which should be verified before using it. Seeing, however, that the papal address, 29 October, 1951, has been circulated everywhere and certain people have heard about this matter for the first time from the lips of the Sovereign Pontiff, does it not follow that we need no longer be so reticent about it?

Pius XII to *Unione Cattolica Italiana Ostetriche*, 29 October, 1951; *The Clergy Review*, December, 1951, p. 388: "It is not the priest's duty, it is yours, to instruct married people on the biological and technical aspects of the theory, without letting yourselves indulge in a propaganda which has neither justice nor decency to recommend it; and such instruction may be conveyed either in private consultation or by means of serious books on the subject. But here too your apostolate requires you, as women and as Christians, to know and uphold the moral standards which govern the application of the theory. And here the Church is the competent guide."

To *Il Fronte della Famiglia* and *La Federazione delle Associazioni delle Famiglie Numerose*, 26 November, 1951; *l'Osservatore Romano*, 1951, n. 277; *Periodica*, 1951, p. 400; *Documentation Catholique*, 1951, col. 1554: "In our last allocution on conjugal morality we affirmed the lawfulness and at the same time the limits—wide as they are—of a method of regulating births which, unlike what is called 'birth control', is compatible with the law of God. One may even hope that medical science (and in a matter of this kind the Church naturally relies on its judgement) will succeed in securing for this method a sufficiently certain basis, a hope which seems confirmed by the latest information."

It cannot be denied that, in matter of fact, some people may have first heard about the sterile period doctrine from the papal utterance. It must also be admitted that in some places, and notably in America, a practically unrestrained publicity about the matter was defended by some theologians, as though the new discovery, associated with the names Ogino-Knaus, were a kind of gospel, or at least a remedy discovered providentially just at the time when it was most needed, and therefore something to be thankfully received and brought to the knowledge of all and sundry.

Had the papal reference to this subject been restricted to the address given to the Union of Midwives, we think that the question concerning the rights and wrongs of publicising the matter would have remained unchanged; for the words were intended for the guidance of the medical profession, and the publicity which has followed, though inevitable, could be taken as accidental. But in the address given the following month to an audience composed of family associations this interpretation is inapplicable, and it seems to us that the Pope's words must be taken to modify the conservative view amongst the theologians which was, generally speaking, averse to any publicity being given to the new reckoning of the sterile period.[1] An unrestricted propaganda "which has neither justice nor decency to recommend it" must be avoided, but after this papal lead no one may criticise adversely those priests or social workers who bring the matter to the notice of married people, or to those contemplating marriage, in sermons, addresses and pamphlets.

236. NOLDIN'S OPINION ON STERILE PERIOD

May the opinions of Noldin in "De Sexto", §75, c, *be held after the recept papal teaching on the subject?*

Noldin-Schmitt, *De Sexto Praecepto*, §75, *c*: Ut coniuges pro tota vita coniugali hac methodo uti possint, ratio sufficiens non invenietur. Immo, si de ea conventio fieret, qua ius in corpus restringeretur ad tempora ageneseos, etiam matrimonium invalide contraheretur.

The opinions of theologians have, during the last few years, been modified in accordance with papal directions, and it is no reproach to any of them if they find that their own opinions, taught before the papal directions appeared, are occasionally either too strict or too liberal. The edition from which the two above extracts are taken is that of 1936, but the same phrase is found in the later edition of 1940.

[1] We were of this opinion. Cf. *The Clergy Review*, 1937, XIII, p. 150.

i. The second paragraph of §75, *c*, is fully supported by the papal teaching in the address to midwives, 29 October, 1951,[1] and has always been the common doctrine. From canon 1081, §2, a valid consent to the marriage contract requires the grant and the acceptance of the perpetual and exclusive right to actions fitted of their nature for procreation.

ii. The first paragraph is too severe as it stands. By changing "non" to "vix" it could be brought more in line with the papal teaching, which is that married people may possibly be exempt from making a positive contribution to the conservation of the human race for the whole duration of married life, if there exist serious reasons of the medical, eugenical, economic or social order.[2] Indeed, to the best of our knowledge, Noldin's teaching, even in 1936, was severer than the common view of theologians: they argued and still argue about the gravity of using the period of low fertility without an adequate reason, but granted an adequate reason there can be no time limit to its application.

237. "AMPLEXUS RESERVATUS"—HOLY OFFICE ADMONITION

What is the official attitude of the Church to the practice known as "amplexus reservatus"?

S. Off., 30 June, 1952, *Monitum* (*A.A.S.*, 1952, XLIV, p. 546): Gravi cum sollicitudine Apostolica Sedes animadvertit non paucos scriptores his ultimis temporibus, de vita coniugali agentes, passim palam et minute ad singula eam spectantia inverecunde descendere: praeterea nonnullos actum quemdam, *amplexum reservatum* nuncupatam, describere, laudare et suadere.

Ne in re tanti momenti, quae matrimonii sanctitatem et animarum salutem respicit, munere suo deficiat, Suprema Sacra Congregatio S. Officii, de expresso mandato SSmi D. N. D., Pii, divina Providentia Pp. XII, omnes praedictos scriptores graviter monet, ut ab huiusmodi agendi ratione desistant. Sacros quoque Pastores enixe hortatur ut in his rebus sedulo advigilent et quae opportuna sint remedia sollicite apponant.

Sacerdotes autem, in cura animarum et in conscientiis dirigendis, numquam, sive sponte sive interrogati, ita loqui praesumant quasi ex parte legis christianae contra "amplexum reservatum" nihil esset obiicendum.

[1] *The Clergy Review*, 1951, XXXVI, p. 389, para. 1.
[2] Ib., p. 390, para. 1.

The practice is described in our manuals s.v. *coitus reservatus*, in French *etreinte réservée*, an extreme and dangerous application of the principle permitting incompleted actions to the married. Cf. M. Paul Chanson, *Art d'Aimer et Continence Coniugale*, the *imprimatur* of which was subsequently withdrawn according to *l'Ami du Clergé*, 1950, p. 96; Hering, O.P., in *Angelicum*, 1951, p. 313; Janssen in *Ephemerides Theologicae Lovanienses*, 1951, p. 120; Dalpiaz in *Apollinaris*, 1933, p. 244.

XXI. CHURCHES, ALTARS, SACRED FURNISHINGS

238. FAST ON THE DAY PRECEDING CONSECRATION OF CHURCH

Is the law requiring certain persons to fast on the day preceding the consecration of a church strictly a precept or merely a counsel? Does it include all the parishioners when a parish church is being consecrated? and does it bind at the present time when, in the common law, the days of fasting are reduced to four?

Canon 1166, §2: Episcopus consecrator et qui petunt ecclesiam sibi consecrari, per eum diem qui consecrationem praecedit ieiunent.

Code Commission. 20 July, 1929, III: An ieiunium in consecratione ecclesiae, de quo in canone 1166, §2, moderandum sit secundum communem legem ieiunii ecclesiastici. *Resp.* Affirmative.

S.R.C., 29 July, 1780, 1: An ieiunium in Pontificali Romano praescriptum . . . sit strictae obligationis; vel potius tantum de consilio? *Resp.* . . . esse strictae obligationis pro Episcopo consecrante, et pro iis tantum qui petunt sibi Ecclesiam consecrari. . . .

The dedication of a church being relatively speaking rare the law relating to it is little known, commentators are not very informative, and various views are possible in the solution of the above questions. What follows is to the best of our knowledge correct.

i. The fast on the preceding day is a law, and not merely a counsel, binding at least *sub levi* those mentioned: the common and the more probable opinion is that it binds *sub gravi*.[1] The persons who ask for their church to be consecrated might be, for example, the Chapter of a collegiate church, the members of a religious community to whom the church belongs, and the parish priest. No doubt, in some instances, all the parishioners might come under the description "qui petunt ecclesiam sibi consecrari", but normally they do not since it is a ceremony which chiefly concerns the clergy, and the request is usually made by them.[2]

ii. The *Code Commission's* reply has clarified a number of points relating to the fast. It used to be thought by many that the fast was,

[1] Cappello, *Periodica*, 1929, p. 254.
[2] Many, *De Locis Sacris*, §13.

so to speak, part of the consecration rite, and was therefore to be interpreted more strictly than the law of the ordinary ecclesiastical fast: the faculty of dispensing the latter, conceded in canon 1245 to Ordinaries and parish priests, was held not to apply to the former. It is now clear that the common law on fasting applies to this day as to any other fasting day, for the reason of it is the same: it is to prepare for a coming festal occasion, as during Lent in preparation for Easter, or on a vigil in preparation for the feast day. There is not, however, unanimity in drawing the practical conclusions which should follow from this identification: we think there is sufficient authority for the view that the rule of canon 1252, §4, is applicable: the fast lapses if the day preceding the consecration rite is a Sunday or a holy day of obligation.[1] Meat is permitted at the chief meal unless the day happens already to be one of abstinence. Whatever excuses a person from the ordinary law of fasting excuses also on this occasion, and the relative norm in determining the amount permitted at subsidiary meals may be followed.

iii. The Congregation of the Council, 28 January, 1949, modifying a previous direction of the Holy See, by which local Ordinaries were permitted to dispense the law of fasting owing to war conditions, decided that four days were for the time being to be days of fast and abstinence: Ash Wednesday, Good Friday, and the vigils of the Assumption and Christmas Day.[2] We can find no one who discusses whether the vigil of the consecration of a church is, for the time being, excepted from the fasting laws. Bearing in mind the *Code Commission's* reply, and the fact that this day is not amongst those chosen by the Congregation of the Council, we think that the local Ordinary's general dispensation from the law of fasting includes this day.

239. BLESSING OF PROVISIONAL CHURCH

A substantial building which is eventually to be a parish hall is to be used as a church for at least five years. Should it be blessed with the formula of the Roman Ritual, IX, ix, 17, before Mass is said therein? If not, what blessing is appropriate?

Canon 1165, §1: Divina officia celebrari in nova ecclesia nequeunt, antequam eadem vel sollemni consecratione vel saltem benedictione divino cultui fuerit dedicata. §2. Si prudenter praevideatur ecclesiam conversum iri ad usus profanos, Ordinarius consensum eius aedificationi ne praebeat, aut saltem, si forte aedificata fuerit, eam ne consecret neve benedicat.

[1] Beste, *Introductio*, p. 1166.
[2] *The Clergy Review*, 1942, XXII, p. 234; XXXI, 1949, p. 279.

Canon 1170: Consecrationem vel benedictionem ecclesia non amittit, nisi . . . in usus profanos ab Ordinario loci redacta sit, ad normam can. 1187.

The problem arises when it is desired to have a building which is juridically a church, wherein Mass may be offered habitually without recourse *per modum actus* to the Ordinary, an exceptional procedure provided for in canon 822, §4. It is certain that the Ordinary may permit Mass habitually in a building which is being used provisionally as a church during or pending the construction of the permanent edifice,[1] and the words "per modum actus" of canon 822 are generously interpreted by many writers.[2] The only point which is not clear concerns the blessing of this provisional building.

i. If its character is provisional in the sense that the erection of a church is certain in the near future, and that the provisional building will then be a parish hall to be used for "profane" purposes,[3] it is clear that canon 1165, §2, forbids its blessing with the long formula "Ritus benedicendi novam ecclesiam".[4] Thus Collins: "Certainly an auditorium of a school, which is used as a temporary church, may not be solemnly blessed. . . ."[5] Bouscaren-Ellis: ". . . Ordinaries can permit services to be held regularly in a 'provisional' church not blessed, while the permanent church is awaiting construction."[6] The building may be blessed with a short formula such as in IX, iii, 10, 1952 edition.[7]

ii. In these days, however, owing to building difficulties and shortage of material everywhere, the expectation of a church is often little more than a pious hope, and no one can say what the conditions will be five years hence. In such circumstances we think that canon 1165, §2, is not applicable, since it cannot be foreseen with any assurance that the building will be converted to profane uses. We all know of such buildings erected long before the war, with a view to subsequent use as halls, which are still used as churches, and likely to be for years to come. It seems to us that these buildings may be blessed with the solemn blessing of the Ritual, a view which is supported by Coronata: "Si praevideatur quidem ecclesiam

[1] Gasparri, *De Eucharistia*, §155; Many, *De Locis Sacris*, §19, 3.
[2] Cf. Buckley, *The Celebration of Mass in "Extraordinary" Places*, p. 60.
[3] On the meaning of "profane" in this context, cf. *The Clergy Review*, 1942, XXII, p. 131.
[4] *Rit. Rom.*, IX, ix, 17, 1952 edition.
[5] *The Church Edifice*, p. 26.
[6] *Canon Law*, p. 587.
[7] O'Connell, *The Celebration of Mass*, I, p. 37; *The Clergy Review*, 1944, XXIV, p. 135

conversum iri post longum tempus ad usus profanos, at de praesenti cautiones dentur et per ipsam instantibus necessitatibus fidelium subveniri possit, ecclesia sin minus consecrari, benedici posse videtur."[1] It is a conclusion not explicitly contained in any official instructions but implied in some of them, and it seems a reasonable solution of the difficulty. For it is most desirable that a building which is going to be used for many years as a church should be expressly set apart for sacred uses, as the solemn blessing supposes, and that the faithful who use it should have the advantage of all the blessings intended by the Church in the rite, as Many points out: ". . . ecclesia benedicta aut consecrata se habet ad instar alicuius sacramentalis in favorem fidelium qui in ea orant."

iii. Two modern French canonists interpret canon 1165, §2, in the sense that, if it is foreseen that a church will be converted to a profane use, the Ordinary may bless it but not consecrate it. Naz: "La consecration doit être refusée, et la benediction peut seulement être donnée: aux églises qui risquent d'être converties à des usages profanes"[2]; Bayart offers as a translation of this canon: "On ne doit pas consacrer (on peut bénir) une église, si on prevoit. . . ."[3] Neither justifies this view by any argument and, the directions of the canon being so explicit, we think it cannot be followed except perhaps by relying on a lawful custom. In any case, a decision is always with the Ordinary, whose delegation is required for the solemn blessing, and a parish priest who desires it can do no more than try to persuade the Ordinary of its legality.

240. CONSECRATION OF A COMMUNITY CHAPEL

If the building is otherwise capable of being consecrated, is there any prohibition against it, having in mind the building's character as merely a semi-public oratory?

Canon 1165, §3: Sollemni consecratione dedicentur ecclesiae cathedrales et, quantum fieri potest, ecclesiae collegiatae, conventuales, paroeciales.

Canon 1191, §1: Oratoria publica oedem jure quo ecclesiae reguntur.

Canon 1196, §1: Oratoria domestica nec consecrari nec benedici possunt more ecclesiarum.

S.R.C., 5 June, 1899, n. 4025.5. In oratoriis autem, quae existunt in aedibus episcopalibus, Seminariis, Hospitalibus Domibusve regularium, relativum Titularis festum non celebrabitur, nisi in casu quo aliqua ex iis consecrata vel benedicta sollemniter fuerint.

[1] *Institutiones*, II, §736.
[2] *Traité de Droit Canonique*, III, p. 13.
[3] *Dict. Droit Canon.*, IV, 259.

There is no law expressly prohibiting the solemn consecration of a semi-public oratory, and the chapels of all religious communities, no matter what the size of the building may be, belong to this class from canon 1188, §2.2: "si in commodum alicuius communitatis vel coetus fidelium eo convenientium erectum sit, neque liberum cuique sit illud adire". The buildings enumerated in *S.R.C.*, n. 4025, are all semi-public oratories and the reply assumes that, in some instances, they will be consecrated.

The consecration of such is, nevertheless, unusual, and the writers for the most part take it for granted that these chapels will lack the permanence required from canon 1165, §2. But it might happen that, for one reason or another, a convent chapel is larger and more permanently constructed than many parish churches. It is for the Ordinary to use his discretion, either declining to consecrate the chapel since this is not the usual practice, or deciding to consecrate for appropriate reasons since there is no law against it. Thus Many, *De Locis Sacris*, §102.3: "Attamen, praesertim si agatur de cappella principali alicuius communitatis, quae sit definitive et in perpetuum dedicata cultui divino, potest benedici, imo, licet rarissime, consecrari; nec desunt exempla huiusmodi oratoriorum consecratorum."

241. CORNER-STONE OF NEW CHURCH

Are the size, shape, material and position of this stone fixed by liturgical laws?

The only directions we can discover about the stone and the rite of laying it are in the Roman Pontifical, since the blessing is reserved, and in the Roman Ritual, Tit. IX, cap. ix, 16, a slightly abridged form for use when a priest is authorised to perform the function. A good brief commentary is given by Nabuco[1] and an adequate description is found in the writings of liturgists on churches and the materials of divine worship.[2]

i. The material should be real natural stone not an artificial synthetic composition, even of a durable nature such as concrete; this rule must be observed in buildings of brick or of other material. Its size is not determined and will naturally vary with the size of the building. The shape is either square or oblong since it is

[1] *Pontificalis Romani Expositio*, II, p. 21.
[2] Collins, *The Church Edifice*, p. 11; *Irish Ecclesiastical Record*, October 1952, p. 302; Callewaert, *De Rebus Cultus Materialibus*, §409.

supposed to be situated on a corner. Martinucci's suggestion that the stone should be about eight inches square, to be inserted in the course of the ceremony within a large stone already in position and with a cavity prepared, is accepted by some modern commentators; this method makes it easier to move the stone during the rite and to mark crosses on each of its faces. Nabuco, rightly we think, objects to this device, since the whole rite supposes the blessing of a stone which is part of the foundations, and not merely a symbol of such: the crosses can be carved previously by a mason on the stone, which is usually suspended in position on a pulley, and the bishop observes the rubric sufficiently by delineating crosses on those already carved. The cavity device seems to have been responsible for the custom of inserting current coinage or other suitable memoranda in the stone, a fitting practice which is not, however, prescribed in the rubrics.

ii. All are agreed that the "corner" position of the foundation stone should be near the site of the altar on the gospel side, and if the church has an apse and transepts it should be where the walls of apse and transept meet. The rubrics suppose, indeed, that the stone is part of the foundations of the building "lapis primarius in fundamento", and this has been literally observed in many buildings: hence the mystification which so often arises many years later when someone tries to locate the foundation stone, especially if the stone contained an inscription which contemporary accounts have preserved and which can no longer be traced, as is the case for example with the church of The Holy Trinity, Brook Green, Hammersmith, and with the Chapel of St Edmund's College. The commentators, however, agree that it is not necessary for a "foundation" stone, *lapis primarius*, *lapis angularis*, to be actually a part of the foundations, and still less necessary for it to be actually the first stone laid; modern custom prefers it to be placed just above ground, and if it has an inscription this could be readable either from within or from without the church.

242. MEMORIAL TABLETS IN CHURCHES

A reply given in "Questions and Answers", *II, qu.* 722, *was against the lawfulness of memorial tablets erected in churches to the memory of deceased persons not buried therein. The custom, nevertheless, continues, and a fuller consideration of the matter would be useful.*

S.R.C., 2 March, 1641, n. 733: E.S. referente petitionem cuiusdam familiae, quae a fundamentis extruxerat Cappellam in Ecclesia parochiali, eamque sufficienter, ut asserebatur, dotavit: an in ea

liceret affigere inscriptiones virorum in dignitate ecclesiastica constitutorum ex eadem familia cum imaginibus et statuis ipsorum? *Resp.* Negative.

20 October, 1922, n. 4376: Utrum in ecclesiis earumque cryptis divino cultui destinatis apponere liceat tabulas cum inscriptionibus et nominibus fidelium defunctorum quorum corpora inibi tumulata non sunt nec tumulari possunt iuxta canonem 1205, §2. . . . *Resp.* Non licere, iuxta alias resolutiones et ad tramitem Decreti n. 733 . . . et canonis 1450, §2, 1.

i. We can find only one commentator disposed to argue, even after the reply of 20 October, 1922, that memorial tablets of this kind in churches are not always forbidden. A writer in *l'Ami du Clergé* quoted with approval by Regatillo,[1] relates the decision exclusively to monuments erected to the memory of patrons or donors: for n. 733 is concerned with such, and the two canons referred to deal, firstly, with persons who have the right of burial within churches, and secondly with the rights of patrons amongst which burial within the church is not included. If one may venture to disagree with a journal the replies in which are always so carefully weighed, we cannot see that this is a correct interpretation: the terms of the question are not limited to memorials of patrons, and if these are mentioned in the reply it is by way of illustration only. Clearly, if anyone is entitled to a memorial mural tablet within a church it is the donor or patron through whose generosity the church has been erected: if the common law refuses them this favour, *a fortiori* it must be refused to others.

ii. We agree that the law is not universally respected. There may be unusual reasons calling for an exception—in France it was desired to commemorate fallen soldiers in this way—in which case an indult could be obtained. Moreover, as we pointed out when dealing with this point in 1932, the law does not require memorial tablets erected in good faith to be removed,[2] an action which would always be deeply resented by friends and relatives. There is also the possibility in a given district of a lawful custom existing, a point which is stressed in a later discussion of the subject in *l'Ami du Clergé*[3] where the writer appears to view with some disfavour the interpretation given in 1922.

On the whole it seems to us that the clergy should welcome the law, since it provides an easy and inoffensive way of refusing

[1] *L'Ami du Clergé*, 1922, p. 759; cf. also 1920, pp. 640 and 656. *Interpretatio et Iurisprudentia*, p. 402.
[2] *Periodica*, 1922, p. 196, quoting *l'Ami du Clergé* precisely on this point and not, as Regatillo suggests, approving the interpretation of that journal.
[3] 1950, p. 250.

requests which, if yielded to, would greatly disfigure our churches, though possibly never to the awful degree reached by the monuments in some ancient churches such as Westminister Abbey. The law does not forbid mural tablets on the outside walls of churches nor within the porch, though the priest is within his right in refusing them.

It can be admitted, with a writer in *The Clergy Review*,[1] that the Sacred Congregation in its reply of 1922 had chiefly in mind abuses on the part of founders, patrons and benefactors.

243. ROYALTIES ON CHURCH MUSIC

Is it correct that rectors of churches are forbidden to pay composer and publisher the usual royalties due on each performance of works which are copyright? If this is correct how is the regulation harmonised with the principles of natural justice?

S.C. Conc., 25 February, 1932; *A.A.S.*, 1932, XXIV, p. 72: "For some time past attempts have been made to subject sacred music, composed for liturgical use in churches, to the laws on royalties which protect the rights of composers and publishers. These claims take no account of the special character of this kind of music nor of the honour due to God's house, and they have resulted in many disputes and unseemly incidents.

The Sacred Congregation of the Council has accordingly thought it opportune to give the following instruction to local Ordinaries in order to remove the origins and causes of these misunderstandings and doubts.

1. In places where composers and publishers require royalties for the performance of sacred music in churches during liturgical functions, local Ordinaries must take care that modern sacred musical compositions shall not be performed in churches unless the composers and publishers have stated in writing that such performances are not subject to royalties.

The observance of this rule will not in matter of fact deprive religious ceremonies of sacred music. For, in the first place, in addition to plain chant and classical polyphony, there are many famous pieces of sacred music of which the rights have expired, and which can freely be performed, provided they are in line with the requirements of the *Motu Proprio* of Pius X, 22 November, 1903. And, in the second place, many excellent modern composers and publishers have waived their rights and have declared that their sacred works may be freely performed.

[1] 1940, XIX, p. 442.

2. In choosing such compositions Ordinaries should be advised by the diocesan commission on sacred music instituted in accordance with the said *Motu Proprio*; and they may also consult the Roman Pontifical Institute of Sacred Music, for any necessary information on the subject.

G. Card. Serafini, Prefect."

i. We have given an English translation as the original is Italian. It will be observed that the ban is limited to sacred music *during liturgical functions*, such as Mass or Vespers, which leaves the matter open during functions which are not liturgical. The preceptive part of the instruction is addressed to local Ordinaries, and the word used, "cureranno", "take care", has officially been interpreted in rather similar circumstances affecting rights to mean "persuade".[1] Since the instruction directly concerns Ordinaries, rectors of churches have only to ascertain the directions of the local Ordinary, who is within his right in making an explicit local law on the subject.[2] It appears that in England the civil law exempts sacred music during sacred functions from the payment of royalties which would, in other circumstances, be due to the author and publisher.

ii. In natural justice the right to royalties, though evident in principle, cannot be accurately determined, and it is for the positive law, whether of Church or State, to determine them explicitly. "Ecclesia, cum de musica sacra agitur, eadem ac Status potestate pollere censenda est; ideo privatam proprietatem potest intuitu boni publici coarctare, eo vel magis quod finis ad quem musica sacra dirigitur est spiritualis, non oeconomicus."[3] The terms of the instruction do not violate natural justice, for we do not find therein that ecclesiastics are told that they may perform copyright works in liturgical functions and refuse to pay royalties: they are merely instructed to avoid raising the issue, which pertains both to the civil and the ecclesiastical forum, by refraining from having these works performed. Inasmuch as admission to churches during liturgical functions is *gratis* it is not unfair to expect the right to royalties to be waived; and if it be objected that, even in such functions, organist and singers are often paid for their services as a matter of course, and that the composer and publisher of what they

[1] *Code Commission*, 12 November, 1922, vi: Verbum *curent* cit. canonis (1451, §1) declarat ab Ordinariis locorum suadendum esse patronis ut loco iuris patronatus quo fruuntur, aut saltem loco iuris praesentandi, spiritualia suffragia etiam perpetua pro se suisve acceptent; et hinc patronos, praesertim ecclesiasticos, optime se gerere si hisce suasionibus obsequantur.

[2] Cf. Cardinal Dubois for the diocese of Paris, *Documentation Catholique*, 1928, XIX, p. 1355.

[3] Ferretti, commenting on the instruction in *Apollinaris*, 1933, VI, p. 66.

sing is also entitled to recognition, the answer is that the latter get some profit, though doubtless less than they would like, through the sale of copies of the music performed.

244. PIETY STALLS WITHIN A CHURCH

How is the practice of selling small religious articles from a stall set up at the end of the church during missions justified? Is it not clearly forbidden, especially if the stall is managed by some church furnishing firm?

Canon 1178: Curent omnes ad quos pertinet, ut in ecclesiis illa munditia servetur, quae domum Dei decet; ab iisdem arceantur negotiationes et nundinae, quamquam ad finem pium habitae; et generatim quidquid a sanctitate loci absonum sit.

i. A strict and logical application of canon 1178 requires such piety stalls to be excluded from the church itself, though not from the porch. Those who interpret the law in this way should also, however, exclude racks for the sale of C.T.S. pamphlets and Catholic papers or periodicals; and they should also ban the sale of votive candles at the various altars in the church. It was in fact the impression that financial gain was the motive behind the sale of votive candles in churches, as well as other reasons, that led the Cardinal Vicar of Rome in 1932 to forbid the practice locally within the city[1]. We imagine that few priests would care to ban the sale of votive candles within the church, even though they might have strong views about piety stalls managed by Catholic furnishing firms.

ii. How then is the practice justified, supposing that there is no express prohibition of the local Ordinary against it? The well-known Belgian canonist Brys gives the following solution, relying on the teaching of most manualists: "Atvero, quamvis textus videatur satis absolutus et severus, ab auctoribus tamen communiter admittitur *posse tolerari*, et quidem ex universali consuetudine, ut paucae res piae, cerei potissimum, vendantur. Merito tamen hanc tolerantiam certis limitibus circumscribunt auctores: oportet fiat (1) prope ianuam; (2) ob difficultatem reperiendi alium locum magis aptum; (3) sine strepitu aut turbatione sacrarum functionum. Tunc enim cadit ratio prohibitionis, quae est ut ab ecclesia arceantur quaecunque divina officia turbare possint."

We agree with this opinion, especially with regard to the second condition. If the stall can be accommodated in the porch, or in some place near the exit which is convenient to the faithful, custom does not tolerate its presence in the church itself. If circumstances appear

[1] *The Clergy Review*, 1951, XXXV, p. 187.

to justify a stall within the church, it is irrelevant whether it is being run at a loss or at a profit, or whether it is being managed by the parish priest's delegate or by a commercial firm.

245. SITUATION OF DOMESTIC ORATORY

Does the rule forbidding the room above an oratory to be used as a bedroom apply even to a private or domestic oratory?

Canon 1195, §1: In oratoriis domesticis ex indulto Apostolicae Sedis, nisi aliud in eodem indulto expresse caveatur, celebrari potest, postquam Ordinarius oratorium visitaverit et probaverit ad normam can. 1192, §2, unica Missa. . . .

Canon 1196, §2: . . . debent tamen esse divino tantum cultui reservata et ab omnibus domesticis usibus libera.

i. The rule of the common law, as is well known, forbids a bedroom to be situated above oratories,[1] and some commentators apply it even to the private or domestic oratory, since the same reasons of reverence exist. On the other hand, the domestic or private oratory is usually, of its nature, situated in one of the rooms of a house; it is lacking the permanence of other oratories, and one would not expect quite the same rigidity in interpreting the law which most certainly applies even to a semi-public oratory. Seeing therefore that neither the terms of canon 1196, §2, nor the terms in which the indult is usually granted, exclude a room situated beneath a bedroom, it may be held that this common law does not affect the private oratory. This is the view of some of the best authorities on the subject, such as Many[2] and Buckley.[3]

ii. The indult granting the privilege normally requires, as a condition for its use, the local Ordinary's visitation and approval. He is well within his right in refusing to sanction Mass in a private oratory situated beneath a bedroom, even though the common law may not apply, for it is agreed that it is undesirable and unbecoming for the oratory to be so situated, and the law leaves the last word with the Ordinary, who may insist on the rule for all private oratories within his jurisdiction as a condition for episcopal approval.[4]

246. FIXED PORTABLE ALTAR

What formula is to be used in consecrating an altar made of wood except for the "mensa", *which is the length of the wooden structure and permanently fixed thereto?*

[1] E.g. *S.R.C.*, n. 4213.3.
[2] *De Locis Sacris*, §87.5.
[3] *The Celebration of Mass in "Extraordinary" Places*, p. 34.
[4] Thus Berutti, *Jus Pontificium*, 1939, p. 42, quoting Many, loc. cit.

S.R.C., 21 August, 1950; *Monitor Ecclesiasticus*, 1952, p. 451: Utrum liceat formula breviore uti in consecratione altarium quae fixo modo connectuntur cum stipitibus sed quorum consecratio separatim fiat a stipitibus? *Resp.* Nihil impedit altare portatile posse componi quasi esset fixum. Altare consecratum in casu, licet materialiter fixum, est liturgice portatile seu mobile, ideoque potest quin amittat consecrationem transferri et separari a stipitibus.

The reply supports the accepted principles about fixed and portable altars. The fixed altar is consecrated with a long rite in the pontifical, and the supports of the *mensa* are consecrated with it, the idea being that the altar forms one entity with the church. The consecration of this kind of altar is lost if, for any reason, the *mensa* is separated from the supports (*stipes*). The portable altar, on the other hand, is consecrated with a simpler rite, and by indult even this is abbreviated, both forms being found in the modern editions of the Pontifical. The usual type of portable altar consists of a small stone about twelve inches square, or even less, which is placed on any convenient support when carried about by priests, such as army chaplains, who enjoy the faculty. In churches, however, one often sees an imposing structure of stone or wood, having all the appearance of a liturgical fixed altar, which on examination is found to be liturgically portable, because the stone alone is consecrated. This is evident when the small square stone is inserted into the wooden structure and can easily be removed. But even though it is permanently fixed and cannot easily be removed, an altar of this type is liturgically portable, no matter what the size of the stone or the permanence of its attachment to the rest of the structure.

247. NUMBER OF ALTAR STEPS

Where is the official direction to be found which requires the steps approaching the altar to be normally three, or if there are more than three that the number must always be uneven?

Some writers refer to *Caerem. Epp.*, I, xii, 16, which merely assumes, however, that the altar is approached by *gradus inferiores*; others quote *S.R.C.*, 2 June, 1883, n. 3576.1, which is equally indecisive in replying that a bishop may require an altar to have a predella—foot-pace, *suppedaneum*—when it is approached by two or more steps. The rule formulated in the above question is correct, but it is due entirely to custom based on ancient precedents, and no certain symbolical reasons can be adduced in its favour. Three steps, including the foot-pace, is most usual, and very likely the reason for

this number is to accommodate deacon and subdeacon at a solemn Mass without obscuring the celebrant when the ministers are standing one behind the other: the main altar of a church should always have three steps. Other altars need have only one step, a foot-pace, for the proper observance of the rubric in *Ordo Missae* directing the celebrant to ascend, *ascendens ad Altare*. Where there are more than three steps, the reason sometimes is the necessity of accommodating the structure to a crypt or sepulchre beneath; or it may be for artistic reasons and in order to make the altar more visible to the congregation in a large church. St Peter's has seven steps, Westminster Cathedral five. Roulin gives examples of altars with a whole flight of steps, fourteen or more, and he rightly deprecates this fashion because it makes the ascent during a function unnecessarily laborious. No certain written rule exists forbidding two or more steps of even number, but the tradition is against it, and the common custom should be preserved when constructing a new altar: one suffices for side altars, but the main altar should have three.

248. FORM OF ALTAR CRUCIFIX

Is there any law, or at least preference, regarding the form of the altar crucifix figure? Is it, for example, more suitable for our Lord to be represented as alive or as dead? Also what is the truth about the so-called Jansenist crucifix?

i. There are many directions about the position of the altar crucifix but we can discover no decision or recommendation about the first point raised. The history of the crucifix, and various forms of it in Christian art, may be studied in the larger reference works such as the French *Dictionnaire d'Archéologie*, III, 3045 seq., and its more modern forms in Roulin, *Nos Eglises*, pp. 525–31. One may use, accordingly, any kind of crucifix which is artistically in harmony with the rest of the altar furniture.

ii. *Revue Augustinienne*, 15 August, 1910, summarised in *l'Ami du Clergé*, 1910, p. 1021, contains a full account of the so-called Jansenist crucifix. The notion is still widely spread that a crucifix which represents our Lord with arms practically vertical, instead of extended, symbolises the Jansenist error that Christ did not die for all men. The writer shows that figures of this kind were in existence long before the rise of Jansenism, and moreover that it is untrue to say that the Jansenists favoured this existing type of figure for reasons connected with their doctrines. Other small variations, such

as the transfixing of our Lord's feet with one nail only, are due entirely to artistic preferences, and one may say the same about the vertical position of the arms. Also, no doubt, the material used might have some influence on the shape of the figure: thus, a figure to be carved on one tusk of ivory almost necessarily requires the vertical position of the arms.

[H. B. wrote: In his reply Canon Mahoney says he can discover no decision or recommendation on the point whether it is "more suitable for our Lord to be represented as alive or dead". Could it not be said that *Mediator Dei* prohibits the old type of crucifix with the figure of our Lord alive, clothed and crowned, which represents Him as reigning rather than suffering? "Itaque . . . is ex recto aberret itinere . . . qui divini Redemptoris in crucem acti effigies ita conformari iubeat, ut corpus eius acerrimos non referat, quos passus est, cruciatus" (*A.A.S.*, 1947, XXXIX, p. 546).

Canon Mahoney replied: The encyclical deprecates the antiquarianism which requires everything to be restored to its ancient form; ". . . non laudabile est omnia ad antiquitatem quovis modo reducere". Among the examples of this attitude occurs the passage quoted by H. B. Therefore, as it seems to me, the Holy Father reproves those who would wish the figure of a suffering Christ to disappear from *all* crucifixes, but he does not forbid the use of a crucifix with a vested and crowned figure, provided this type is not put forward as the only sort that is proper and fitting.]

249. THE "SIXES" CANDLESTICKS

Is the rule requiring these to be of graduated height of obligation? May they be made of wood?

Caerem. Epp., I, xii, 11. Supra vero in planitie altaris adsint candelabra sex argentea, si haberi possunt: sin minus ex aurichalco, aut cupro aurato nobilius fabricata. . . . Ipsa candelabra non sint omnino inter se aequalia, sed paulatim, quasi per gradus ab utroque altaris latere surgentia, ita ut ex eis altiora sint immediate hinc inde a lateribus crucis posita.

S.R.C., 21 July, 1855, n. 3035·7. . . . Verum in tota dioecesi Briocensi sunt omnino inter se aequalia. Quaeritur utrum hoc praescriptum Caeremonialis Episcoporum ea de re sit rigorose tenendum? et si affirmative, petitur, ut iis Candelabris inter se aequalibus in omnibus Ecclesiis seu Cappellis uti liceat, donec admodum renovanda sunt. *Resp.* Adductam causam a praescriptione Caeremonialis observanda excusare.

The text of the *Caeremoniale Episcoporum* supposes that the church possesses more than one set of sixes, silver candlesticks being used on greater feasts and metal gilt on other days; the silver ones are forbidden in the same book, II, xxii, 4, on Good Friday. The perfect observance of these directions is to be recommended, and likewise the rule that the candlesticks should be of graduated height.

The reply, n. 3035·7, is sometimes cited by the writers as stating that the rule of the *Caeremoniale* is not of obligation,[1] whereas it merely declares, very reasonably, that places which already have candlesticks of equal size may continue to use them indefinitely. Nevertheless, the writers universally teach that the graduated size is not of strict obligation, the ultimate reason being, no doubt, that custom has sanctioned a non-observance of the rule. In the Roman basilicas, and in all the illustrations we have seen of altars, as in the work of Dom Roulin, the candlesticks are equal in size. One occasionally sees the candles themselves graduated in size, or the gradines themselves graduated, but neither of these methods is, we think, to be recommended.

Similarly, the writers we have consulted allow candlesticks of wood, which is the custom in Franciscan churches.[2]

250. CREDENCE TABLE

Why is it called "credence"? And is a small table more correct than a niche in the wall, or vice versa?

Rubricae Generales, XX. In cornu Epistolae . . . ampullae vitreae vini et aquae cum pelvicula et manutergio mundo, in fenestella seu in parva mensa ad haec praeparata.

i. It is called "credence" from the Latin "credere" which, in addition to the meaning to which we are accustomed, can denote entrusting, loaning or depositing something—hence the business word "credit". The table or niche is a credence because the articles mentioned in the General Rubrics are deposited there.

ii. Some, with little justification, understand "fenestella" to mean the small wicker basket in which the cruets and accessories are carried, as is the custom in Rome and elsewhere.[3] Its actual meaning is a small window or opening in a wall, and "niche" seems about the best word for it in current use. It has the advantage of being unobtrusive, and of not disturbing the lines of the sanctuary; and

[1] E.g. Collins, *The Church Edifice and its Appointments*, p. 119.
[2] Collins, op. cit., p. 118; *Nuntius Aulae*, 1936, p. 48; *Directions for Altar Societies*, p. 25.
[3] Sadlowski, *Sacred Furnishings of Churches*, p. 116.

since the rubric gives it precedence it is, in our view, preferable to a small table.

iii. If a small table is preferred *Caeremoniale Episcoporum* gives the following description: "Restat, ut de mensa, seu abaco, quam credentiam vocant pauca subiiciamus. Ea vero in Missis tantum solemnibus praeparari solet a latere Epistolae in plano Presbyterii, si loci dispositio patiatur, atque a pariete parumper disiuncta; ita ut inter illam et parietem stare possint familiares Episcopi . . . Eius mensura regulariter erit palmorum octo in longitudine, in latitudine quatuor vel circa, in altitudine quinque, vel modicum ultra; lineoque mantili mundo super strato, usque ad terram circumcirca pendenti, contegetur".[1] For pontifical and other solemn functions the table is a necessity, and it should be in position only for the functions. It is not correct to leave the small table permanently on the sanctuary, and still less correct to place another one on the gospel side solely for the sake of appearances. Some commentators, however, think that custom justifies leaving a credence table permanently on the sanctuary, even when only Low Mass is there celebrated.[2]

251. "SEDILIA"

In a church served by one priest the sanctuary has an armchair of suitable design, obtained from a church furnisher, instead of the bench—"scamnum" *—which is usually of sufficient length to accommodate three sacred ministers. Since a solemn Mass never takes place in this church, is the armchair permitted?*

Caerem. Epp., I, xii, 22: . . . satis erit scamnum oblongum, coopertum aliqua tapete, aut panno, aptari a latere Epistolae, in quo sedeat Sacerdos celebrans cum Diacono et Subdiacono.

S.R.C., 17 September, 1822, n. 2621.6: An tolerandus sit abusus, qui nimium invaluit, adhibendi in Missis solemnibus pro Celebrante, loco scamni cooperti tapete, Sedem cameralem serico damasceno ornatam, et pro ministris similia scabella; vel potius reprobandus atque damnandus? *Resp.* Negative ad primam partem; affirmative ad secundam.

Gardellini in D.A., IV, p. 243, commenting on n. 2621: Caeremoniale (I, ix, 1) nec formam praescribit, nec ornatum, quae duo accidentalia sunt et varia esse possunt iuxta diversas Ecclesiarum consuetudines. Scamni nomen genericum est, et aeque potest

[1] I, xii, 19. *Ephemerides Liturgicae* (Ius et Praxis), 1940, p. 110, has a good commentary on this text.

[2] *The Clergy Review*, 1937, XIII, p. 147.

intelligi tam de scabello oblongo, quam de lignea pariter oblonga sede cum suo postergali; excludit vero sedes camerales. Qui tamen sit Caeremonialis sensus, num velit scamnum cum vel sine postergali, incertum est.

i. The many instructions on the shape of the ministers' bench are concerned primarily with that used by the sacred ministers, either at episcopal functions or at a solemn Mass,[1] and do not directly deal with an article designed for the celebrant alone. The bishop's chair or *cathedra* is the only one of this kind provided for in the rubrics, and restrictions on the shape, size and adornment of the seats provided for lesser ministers are made, no doubt, with a view to preventing anything resembling an episcopal throne. The seating provided for three ministers must not be three chairs, but a simple bench, without arm rests; a low back rest is permissible, and there is no reason why the article should not be built into the wall of the epistle side of the sanctuary.

ii. Adapting these rules to the accommodation of one minister in a small sanctuary, a simple stool suffices, resembling those used at the episcopal throne for assisting ministers. It may have a back rest but it seems to us that arm rests are not correct, *pace* the church furnishers. Provided, however, it is of modest design and proportions, and has no resemblance to a domestic armchair, one could regard the provision of arm rests as only a slight and negligible deviation from the rule.

252. TABERNACLE "CURTAIN"

It would further the observance of the law requiring a "conopaeum" *covering the whole tabernacle if one could assert the unlawfulness, or at least the futility, of placing a curtain on the tabernacle door. Can this view be supported?*

The *conopaeum* is a tent-like veil covering the entire tabernacle, sides, back and top, as well as the front: a curtain before the door is not a lawful substitute. This point has been discussed so often in *The Clergy Review*[2] and elsewhere that it is scarcely possible for any priest or responsible superior to be unaware of the law, which has been maintained repeatedly by the Holy See in decidedly rejecting all suggestions to the contrary.

Like any other positive law grave inconvenience excuses its observance, for example the shape and structure of the tabernacle may make it impossible: in which case, it is our view that the law

[1] E.g. N.2135.3; 3104.4; 3804.11.

[2] E.g. 1934, VIII, p. 407.

must be observed to whatever extent is feasible, and in many tabernacles this means that a curtain before the door takes the place of the liturgical *conopaeum*. In these circumstances the curtain, it seems, is obligatory: "When nothing else can be done, it would seem to be in the spirit of the legislation to hang curtains before the door of the tabernacle."[1] An added reason for requiring a curtain may be found in customary law.

One or two observations, however, are applicable to the preceding paragraph. In the first place, the curtain may be used only when complete veiling is impossible, or when the tabernacle cannot even be partially covered: thus a tabernacle which protrudes from the altar reredos may generally be covered on three sides. Secondly, the practice of certain church furnishers in selling tabernacles surmounted by an elaborate crown and adorned with pinnacles or suchlike projections should cease. Lastly, if in doubt whether a curtain is justified, it is for the Ordinary or his delegate to give a decision: we must admit that the toleration extended to the illegal curtain encourages, through ignorance maybe, the non-observance of the law when new tabernacles are erected.

253. TABERNACLE KEY

A colleague maintains that the rule forbidding the key to be left on the altar between Masses is not obligatory, unless local law so directs, since it first appeared in a Roman Instruction which is left to the local Ordinaries to apply. Is this rule an obligation, even though the local Ordinary has not expressly ordered its observance?

Canon 1269, §4: Clavis tabernaculi, in quo sanctissimum Sacramentum asservatur, diligentissime custodiri debet, onerata graviter conscientia sacerdotis qui ecclesiae vel oratorii curam habet.

S.C. Sacram., 26 May, 1938, n. 6, c.; *A.A.S.*, 1938, XXX, p. 203: Ut huic *diligentissime custodiae* canone praescriptae ab ecclesiae rectore satisfiat, ipsi districte praecipitur ut clavis tabernaculi nunquam super mensa altaris aut in claustro ostioli relinquatur, ne tempore quidem quo mane divina officia ad Sacramenti altare et Sanctissimae Communionis distributio peraguntur, praesertim si hoc altare haud in conspicuo sit.

10, d. Hae sunt canonicae normae potioresque cautelae, quas huic S. Congregationi visum est locorum Ordinariis praecipere ut vicissim parochis ceterisque SSmi Sacramenti custodibus pressius

[1] Long in *Irish Ecclesiastical Record*, November 1937, p. 546. See also *Ephemerides Liturgicae*, 1928, p. 410.

commendent executioni tradendas ad quoslibet convellendos abusus, si qui irrepserint, et, quamvis desint, ad eosdem praecavendos: aliae, quae pro temporum et locorum adiunctis magis idoneae videantur ad eundem finem aptius attingendum, eorundem Pastorum zelo sollertique industriae relinquuntur.

i. The meaning and force of Roman Instructions were discussed in *The Clergy Review*, 1941, XXI, p. 357, and a full description in English of the Instruction given in 1938 on the tabernacle and key may be seen in the issue of 1938, XV, p. 170. It is true that, in principle, these instructions are, for the most part, left to local Ordinaries to implement, and many bishops have done this, either by ordering the instruction to be observed[1] or by expressly directing that the tabernacle key is not to be left on the altar.[2] Occasionally, however, the wording of an Instruction makes it plain that some fresh rule is of obligation, even apart from episcopal directions. An important instance of this is the marriage *nihil obstat* in the Instruction *Sacrosanctum*, 29 June, 1941,[3] which is enjoined with the word "praecipit".

ii. Whilst always loth to discover fresh obligations for the clergy, it is our opinion that the rule against leaving the tabernacle key on the altar between Masses or offices is of a similar character, and must be observed even though the local Ordinary has not enjoined it.

For, in the first place, it is really contained within the word "diligentissime" in canon 1269. Would a cashier entrusted with the key of a safe be keeping it with the greatest care if he left it lying about for any unauthorised person to use? All the legislation about the strength and fixity of a tabernacle becomes nugatory unless the key is most carefully kept, since it is easy for anyone to secure a wax impression. Sacrilegious robberies are frequent, and are sometimes due precisely to someone finding the key on the altar, as in the Italian case at Murcia in 1941.[4]

Moreover, the Instruction itself introduces this rule with the word "praecipitur", and modern writers on the subject record the obligation, taking for granted that it is now part of the common law.[5]

A canonical process of inquiry must take place whenever a sacrilegious robbery has occurred. Even the most careful precautions will not infallibly prevent these things happening, but the neglect

[1] *Lancaster Statutes*, 1945, n. 117.
[2] *Nottingham Statutes*, 1946, n. 53; *Northampton Statutes*, 1947, n. 71.
[3] Cf. *The Clergy Review*, 1941, XXI, p. 198.
[4] *Il Monitore*, 1942, p. 194: *Ephemerides Liturgicae* (Ius et Praxis), 1943, p. 8.
[5] E.g. Aertnys-Damen, *Theologia Moralis* (1947), II, §172.

of precautions explicitly required by the law would no doubt mean at least a severe reprimand for the person responsible. After being informed of the incident at Murcia, when the Blessed Sacrament was stolen and an empty ciborium left, the reply of the Sacred Congregation did not attach the guilt of formal negligence to anyone, and was content with describing the practice of leaving the key on the altar as most imprudent, whilst directing the local Ordinary to warn the parish priest "gravissimis verbis" that he must carefully observe the terms of the Instruction in future.

254. CHALICE CONSECRATED BY USE

May it be held, at least as a probable opinion, that a chalice inadvertently used at Mass before its consecration, becomes consecrated by contact with the Precious Blood and therefore needs no further consecration?

S.R.C., 31 August, 1867, n. 3162.7: Reperitur apud Antonelli *De Regimine Ecclesiae Episcopalis*, I, cap. 17 haec assertio: Si Sacerdos bona fide celebraverit cum vestimentis nondum benedictis, poterunt alii Sacerdotes cum iisdem rite celebrare; quia per primam celebrationem bona fide factam, consecrata seu benedicta remanserunt. Quaeritur an hoc in praxi sequi tuto liceat? *Resp.* Negative.

The view which solved affirmatively the above doubt was held at one time by seventeenth-century casuists in sufficient number to constitute a probable opinion.[1] This view has long been abandoned and no modern writer can be quoted in its defence. Its rejection is implied, by analogy, in n. 3162.7, which denies that Mass vestments may be regarded as blessed after once being used, and therefore *a fortiori* neither may a chalice. And even without this direction it seems evident from intrinsic reasons.[2] The Church has provided a form for the consecration of a chalice, words of blessing together with an anointing with chrism, and in requiring a celebrant to use a consecrated chalice the Church refers to the rite of this specific consecration. If contact with the Body of Christ alone sufficed, we should have to hold that any object which came into physical contact with the Sacred Species, for example the pavement after an accident, was thereby consecrated, or that a church needed no consecration once Mass had been celebrated therein. There is something, perhaps, in the old and now rejected view that an article becomes in some sense holy by contact with the Body of Christ; but the purpose of consecrating a chalice with blessing and chrism is to

[1] St Alphonsus, *Theol. Moralis*, VI, §380.
[2] *Ephemerides Liturgicae*, 1929, p. 454.

depute it for use in the sacrifice of the Mass, a deputing which is by no means discernible unless the formula designed for that purpose is used.

255. BLESSING OF VESTMENTS—DELEGATION OF CURATE

May a parish priest, enjoying from canon 1304 the faculty, delegate one of his curates to bless vestments for use within the parish, e.g. for the use of a convent chapel served by the curate?

Canon 199, §1: Qui iurisdictionis potestatem habet ordinariam, potest eam alteri ex toto vel ex parte delegare, nisi aliud expresse iure caveatur.

§2: Etiam potestas iurisdictionis ab Apostolica Sede delegata subdelegari potest sive ad actum, sive etiam habitualiter, nisi electa fuerit industria personae aut subdelegatio prohibita.

Canon 210: Potestas ordinis, a legitimo Superiore ecclesiastico sive adnexa officio sive commissa personae, nequit aliis demandari, nisi id expresse fuerit iure vel indulto concessum.

Canon 1304: Benedictionem . . . impertire possunt: . . . 3. Parochus pro ecclesiis et oratoriis in territorio suae paroeciae positis, et rectores ecclesiarum pro suis ecclesiis. 4. Sacerdotes a loci Ordinarii delegati. . . . 5. Superiores religiosi, et sacerdotes eiusdem religionis ab ipsis delegati. . . .

Canon 1147, §2: Benedictio reservata quae a presbytero detur sine necessaria licentia, illicita est, sed valida, nisi in reservatione Sedes Apostolica aliud expresserit.

The Roman Ritual places the formula for blessing vestments amongst those reserved to bishops and others enjoying the faculty. Before the Code priests holding faculties from English bishops usually had this one for blessing vestments, but it was withdrawn in most dioceses after the promulgation of the Code. The question is restricted merely to the lawfulness of an unqualified priest blessing vestments, since it is happily clear from canon 1147, §2, that the act is valid.

i. Some commentators hold that the parish priest may not delegate his faculties for blessing vestments.[1] They think it is rather the use of the power of orders than of jurisdiction, and that it is ruled not by the principles of canon 199 but of canon 210, which seems to exclude delegation in this instance. For the power of delegating is expressly given in nn. 4 and 5 of canon 1304, but no

[1] Vermeersch-Creusen, *Epitome*, II, §633; *Periodica*, 1927, 29; Cicognani, *Apollinaris*, 1928, p. 65, and *Consultationes*, p. 165; Coronata, *Institutiones*, II, §885.

mention of it is found in n. 3. Some, moreover, will not even concede the use of canon 209 in this context, since in the first place it is not a question of jurisdiction, and in the second place the necessity of using canon 209 is removed by the provision of canon 1147, §2.[1]

ii. There is sufficient authority, however, for holding a more liberal view which recognises the parish priest's power either to delegate, as in canon 199, §1, or to subdelegate, as in §2 of the same canon. For, notwithstanding canon 210, this power is ultimately reduced to that of jurisdiction, as Cappello maintains.[2]

It will be remembered that the *Code Commission*, 29 October, 1919, denied to parish priests the power of delegating other priests for confessions within their territory, even though the power in question is undeniably jurisdiction and is ordinary. It was denied for much the same reasons as those upon which the commentators mentioned in (i) rely, and some would anticipate a similar reply from the *Code Commission* if the doubt concerning canon 1304, 3 ever came up for a decision. In the meantime, in our opinion, the more liberal opinion may safely be followed.

[1] Cf. Beste, *Introductio*, p. 224.
[2] *De Sacramentis*, 1945, §89.6. Cf. also in the same sense, *l'Ami du Clergé*, 1929, p. 357, and 1947, p. 682; Fanfani, *De Iure Parochorum*, §§41 and 338.1.

XXII. FUNERALS

256. BURIAL AT SEA

A deceased person has directed his body to be buried at sea. May the exequial rites be performed beforehand in a church, and may a priest accompany the body to sea in order to perform the rites normally carried out in a cemetery?

Canon 1204: Sepultura ecclesiastica consistit in cadaveris translatione ad ecclesiam, exequiis super illud in eadem celebratis, illius depositione in loco legitime deputato fidelibus defunctis condendis.

i. It is beyond dispute that it is unlawful, in the course of a funeral rite, to take the body out to sea for burial. All the canons assume that the lawful place for burial is a blessed or consecrated cemetery, or in exceptional circumstances a church or crypt.

Up to the point of departure from the church, after the exequial rite therein has been performed, everything is apparently in order, and it might be thought that the priest's assistance could always be given up to this point at least. But it is clear from canon 1204, which faithfully records the law and rubrics of the liturgy, that ecclesiastical burial consists of three things: bringing the body to the church, exequial rites therein, burial in a lawful place. In our view, if the priest knows of the proposed unlawful burial at sea, as he surely must, he may not assist at the earlier part of the rite, since it is one ceremony and to be performed as the law directs or not at all.

ii. It is a positive law which, like all such, does not bind in cases of urgent necessity. "Extraordinariis in adiunctis excusatio ab obligatione sepeliendi admittitur, velut tempore belli, luis pestiferi: tunc enim, exigente bono communi, licita esse potest crematio. Item cadavera eorum qui durante itinere maritimo moriuntur, quaeque nonnisi cum gravi incommodo ad terram asportari possunt, in fluctibus immergi licet. At praeter illos casus omnino singulares et extraordinarios urget obligatio *sepeliendi* cadavera fidelium."[1]

iii. Being a positive law, it can in principle be dispensed, and the priest may have recourse to the Ordinary. We think, however, that he would not succeed in getting permission to perform the funeral rite at sea. He might, for very grave reasons, be allowed to perform

[1] *Coll. Mechlin.*, 1937, p. 504.

the usual rites up to departure from the church; a grave reason would be, for example, the danger of the relatives having the funeral with heretical rites. For the situation is not identical with cremation which, for special reasons, is expressly prohibited; burial at sea is not expressly forbidden, but solely for the reasons given in (i), and if possible scandal is removed the Ordinary might permit the previous rites in order to avoid graver evils.

257. DISSIDENT-ORTHODOX FUNERAL

Christians of dissident Orthodox Eastern rites living in this country often have no priest of their own rite. May a Catholic priest, at the request of the relatives, perform the usual rites of our ritual, exclusive of Requiem Mass?

S. Off., 15 November, 1941 (private), Bouscaren, *Digest Supplement*, 1948, p. 102: "It goes against the inclination of a Catholic priest to leave an Orthodox brother in Christ without any ecclesiastical burial. On the other hand, to turn a deceased Orthodox person over to a Protestant minister for ecclesiastical funeral services is contrary to Catholic sentiment. What should be done in such a case? *Resp.* The Roman Ritual, Tit. VII, c. 2, concerning those who are to be refused burial, is to be observed (c. 1240). But the priest may, without any sacred vestments or sacred rites, recite prayers privately at the house where the body is laid out, accompany the funeral for the sake of civil courtesy, and also recite prayers privately at the grave in the cemetery, avoiding all occasion of scandal."

i. Answering a somewhat similar query some years ago in *The Clergy Review*, we relied on the fact that the law forbidding ecclesiastical burial to non-Catholics is less strict than the law forbidding them the sacraments, and quoted authorities who permitted the priest's assistance provided the Ordinary had given no ruling to the contrary, and provided the deceased non-Catholic's adherence to his sect was not notorious.[1] The solution is not applicable to the above case since a dissident Orthodox Christian is usually notoriously a non-Catholic.

ii. The reply of the Holy Office is a private one and is recorded by Bouscaren from *Il Monitore Ecclesiastico*, 1942, p. 114. It was given to the Apostolic Visitor for the Ukrainians in Germany, and adapts to the circumstances what some writers permit in other cases when ecclesiastical burial is forbidden, even supposing the non-Catholic status of the deceased person to be notorious, for example in the case of an unbaptised infant.[2] The important thing is to prevent

[1] *The Clergy Review*, 1940, XVIII, p. 546; 1941, XX, p. 85.
[2] *The Clergy Review*, 1943, XXIII, p. 278.

scandal being given when performing this office of charity; therefore publicity must be avoided, which is easy enough in the house where the body is lying, but less so at the graveside. We think the direction of the Holy Office is not disobeyed by reciting suitable prayers aloud at the graveside, otherwise there is no point in the priest's attendance. "Privately" in this context must be given the meaning "without previous public announcement", as in the law about saying Mass "privately" for a deceased heretic.

258. FUNERAL RITES BY A DEACON

Having a public cemetery to serve it would be a great relief if I could appoint a deacon to perform the usual rites at the grave. If this is permitted what modifications occur in the rite?

S.R.C., 14 August, 1858, n. 3075, 2: Si . . . diaconus ex pari mandato (Vicarii Apostolici) precans pro Defuncto dicat Vesperas aut Laudes vel preces exequiarum in Rituali, debebitne eas cantare? Debebitne legere *Non intres*, cantare *Libera*, et circumiens feretrum poteritne corpus aspergere aqua benedicta et incensare, ac benedicere sepulcrum et dicere alias preces, exceptis excipiendis, iuxta Rituale; praesertim si faciat has privatim in domibus privatis? *Resp.* Deficiente Presbytero et Vicarii Apostolici concurrente licentia, Affirmative in omnibus.

Rituale Romanum, VII, iii, 19: Ritus superius descriptus servandus est pro defunctis adultis, tam Clericis quam laicis, etiam a Diacono Exequias peragente de Ordinarii loci vel parochi licentia, gravi de causa concedenda, quae in casu necessitatis legitime praesumitur.

i. The rubric of the current Ritual itself provides a reply to the above query, and it is more liberal than that given by the Holy See in 1858, since the permission of the parish priest now suffices whereas formerly that of the Ordinary was required. The rubric is repeated in VII, vii, 5, for the funeral of infants. No reference to the permission of 1858 can be traced in the Ritual in use before the 1925 edition; neither is it contained in the rubrics of our *Ordo Administrandi*. Commentators writing since 1925 who continue to teach that the Ordinary's permission is necessary have overlooked the rubric of the current Ritual with its reference to the parish priest; Wernz-Vidal, wrongly it seems, restricts the employment of a deacon to the funerals of infants.[1]

ii. The rite is exactly as in the Ritual, with all the usual blessings,

[1] *De Rebus*, §584.

the rule of this rubric being thus in line with the one to be followed,

V, ii, 10, when a deacon is administering Holy Communion. The reservation in n. 3075, *exceptis excipiendis*, must refer to the blessing of the grave, which is omitted if it is already blessed.

iii. It is for the parish priest to decide on the gravity of the cause, and in estimating it recourse may be had to the commentators on canon 845, §2, which in permitting a deacon to distribute Holy Communion uses the same phrase as the Roman Ritual uses in permitting a deacon to function at funerals.[1] A grave cause seems to exist in the circumstances of the above question; in doubt, recourse to the Ordinary is recommended, especially if the employment of a deacon is likely to be habitual.

259. USE OF HOLY WATER IN FUNERAL RITES

What is the significance of the practice, observed repeatedly in the funeral rite, and continued afterwards by the laity, of sprinkling the body with holy water?

Canon 1144: Sacramentalia sunt res aut actiones quibus Ecclesia, in aliquam Sacramentorum imitationem, uti solet ad obtinendos ex sua impetratione effectus praesertim spirituales.

i. The significance of lustral sprinkling turns on discovering what the Church intends by this action, adopted like certain other popular uses, it would appear, from existing customs in the pagan world. The intention of the Church, plainly expressed in the formula of the Roman Ritual, IX, ii, is to cleanse the person or article sprinkled, and especially to invoke the divine protection against evil unclean spirits. There is some scriptural authority in the rather obscure reference, Jude, verse 9 (where St Michael is said to have contended with the devil about the body of Moses), for applying the words of the Ritual to the bodies of the deceased. It is not, however, completely satisfactory, since the lustral action is often performed over an empty catafalque. Nor does the fact that indulgences applicable to the dead may be obtained by the use of holy water in crossing one's self[2] offer an adequate explanation, since the rite we are discussing is essentially something distinct from crossing one's self, and on this title it would be more effective to sprinkle the people attending rather than the body itself.

ii. We are on firmer ground by associating the sprinkling, even when performed by lay persons, as a pious action distinct from the

[1] Cf. *The Clergy Review*, 1934, VII, p. 69.
[2] *Enchiridion Indulgentiarum*, n. 678.

rite of interment, with the Absolution[1] which usually, though not necessarily, follows a Requiem Mass together with incensation, even when the body is not present. The notion of paying honour to the dead is certainly expressed by incensation and some writers regard the aspersion equally as a mark of honour. It seems more accurate, adhering to the words of the Ritual formula of blessing the water, to keep these two things distinct. We then find that those modern writers who have examined this point favour, amongst other reasons, the explanation, found in Durandus, Gavanti and other ancient commentators, that the sprinkling with water blessed by the Church signifies that the deceased person has died in communion with the Church, with all that follows thereby from the doctrine of the Communion of Saints.[2] For the sprinkling accompanies suffrages for the dead in the rites of interment, which must be refused in principle to those who die excommunicated; the act of sprinkling, without suffrages of any kind except mental prayer, may be separated from the rest of the rite, and is a simple and expressive way of associating ourselves with the prayers of the Church for the departed. In the rite of Absolution itself, the sprinkling of the body present has also, perhaps predominantly, the notion of resisting the powers of evil, but it is evident from the accompanying prayers that the Church regards the body, by a kind of dramatic fiction, as representing the living person at the moment of death. In this connexion the formula in the Ritual, IV, iv, "Ritus absolvendi excommunicatum iam mortuum", for use when an excommunicated person has died without absolution from the censure but with signs of repentance, is of interest, for it contains no rubric directing a lustral sprinkling.

iii. As with so many other ancient practices with which we are all familiar, the sprinkling of the dead, the tomb, and even the empty catafalque with holy water, offers no difficulty until we begin to analyse its precise reason. The editor would welcome any further light which readers may be able to throw on the subject, explaining how this action, apart from the *Pater Noster* or other prayers recited at the time as suffrages, benefits the departed. Some have hazarded the view that the prayers recited when holy water is blessed with the formula in the Ritual benefit the departed who are subsequently sprinkled with this hallowed water, a view which is difficult to prove and which is liable to encourage, if not superstition, the neglect at least of actual prayers for the dead.

[1] *Dict. Archéol.*, I, col. 205. The use of lustral water is more ancient than the absolution.
[2] Thus De Herdt, *Sacrae Liturgiae Praxis*, III, §254; Hebert, *Le Bréviaire et le Rituel*, §202; *l'Ami du Clergé*, 1933, pp. 438 and 749; 1953, p. 413.

260. FUNERAL PALL

Should the pall be removed for the absolution at the conclusion of a Requiem Mass?

There is no law, so far as we can discover, requiring the use of a pall to cover the coffin during a Requiem Mass, though many directions exist about its colour.[1] If it is used it should remain, in our view, during the whole rite, of which the absolution is an integral part. None of the writers we have consulted directs its removal, which in some cases would mean an unseemly commotion and disturbance.

[1] *The Clergy Review*, 1936, XI, p. 502.

XXIII. SUNDAYS, FEASTS AND FASTS

261. OBLIGATION OF ATTENDING EVENING MASS

When permission is obtained for an evening Mass on holy days of obligation are the faithful, who formerly were excused attendance in the morning owing to their work, bound to attend in the evening, assuming this can be done without grave inconvenience?

Canon 69: Nemo cogitur uti privilegio in sui dumtaxat favorem concesso, nisi alio ex capite exsurgat obligatio.

This query raises one of the many doubts which have emerged since the promulgation of the Constitution *Christus Dominus*, and we may expect an official solution in due course. Subject to this, and to any directions given by local Ordinaries, the following points offer a solution which is as nearly correct as we can ascertain.

i. The faithful attending the evening Mass satisfy the obligation even though they could easily attend in the morning. The modern practice of celebrating in the evening, which began about twenty-five years ago with indults rarely granted and in exceptional circumstances, spread considerably during the war, and was continued after the armistice. Almost imperceptibly what began as an exceptional concession for certain classes has now become, with the Ordinary's consent, indistinguishable from the common law. In the early days of particular indults the question whether the obligation was fulfilled by attending an evening Mass was usually answered affirmatively, as in the directive given by the American military ordinariate, 30 June, 1942.[1] With all the more reason, therefore, may the same answer be given now when the practice is no longer dependent on an indult granted to particular groups. Thus a Catholic in diocese X, whose Ordinary has not sanctioned evening Mass, may elect to hear evening Mass in the neighbouring diocese Y, where it is permitted: his obligation is fulfilled even though he could without any inconvenience attend a morning celebration. The wide terms of canon 1249 justify this interpretation.[2]

ii. Granted that the obligation is fulfilled, a further question is whether the faithful are bound to attend this evening Mass: whether, for example, the Catholic just mentioned who, let us suppose, cannot

[1] Bouscaren, *Digest*, II, p. 625.
[2] Cf. *The Clergy Review*, 1941, XXI, p. 241.

go in the morning but can without inconvenience hear Mass in the evening, is bound to do so in order to obey the precept of Mass on holy days. An answer cannot be given with the same assurance as the reply to the question in (i), but our view is that there is an obligation, at least since 16 January, 1953, when the new rules came into force. They introduce modifications in the common law of canon 821 on the time of day when Mass may be celebrated, and in this respect the documents are of a similar character to *Spiritus Sancti*, 1 January, 1947, which authorised parish priests to confirm: what used to be an exceptional privilege granted to few has become the common law for all. There can be no doubt whatever that a Catholic who on a holy day of obligation could hear Mass conveniently in the morning, and thereby satisfy his obligation, was bound to do so no matter what the hour and place might be. The same must be said nowadays when the law has modified the hour, subject to the Ordinary's sanction, precisely in order to make it possible for the faithful to attend.

iii. The same conclusion can be drawn even though we regard Norma VI of *Christus Dominus* as a privilege, wider indeed than any previous indult granted to individual groups, but still something short of a common law right, since it is for local Ordinaries to permit or not permit the practice. The commentators differ in explaining the incidence of obligation in using a privilege, but there is considerable agreement amongst them that if a privilege is of the character which removes an obstacle to the observance of a certain law one is bound to use it.[1]

iv. There is room, nevertheless, at the time of writing, for the view which, whilst admitting that the obligation is satisfied as explained in (i), declines to accept the solution given in (ii) because the practice is held to be a privilege, and declines also to accept the more probable interpretation given in (iii) because, granted it is a privilege, it is unreasonable to impose on privileged persons an obligation from which the unprivileged are immune.[2] A respectable case can be made out for the Catholic who declares himself unwilling to use the privilege of hearing Mass in the evening, unless and until the legislator unequivocally makes this an obligation. Indeed, the terms of the earlier indults required persons other than those mentioned to refrain from assisting at evening Mass.[3]

[1] Van Hove, *De Privilegiis*, §212; Bouquillon, *Theologia Moralis Fundamentalis*, §143; Rodrigo, *De Legibus*, §897.3.
[2] Regula 61 in VIo; Génicot-Salsmans-Gortebecke, *Theol. Moralis*, I, §§109, 344, and commentators on canon 69.
[3] *American Ecclesiastical Review*, May 1950, pp. 337, 342; *Collationes Brugenses* 1947, p. 143.

v. Our conclusion must be, pending an official solution, that the faithful should be urged as strongly as possible to observe the precept by attending evening Mass, but that the clergy should not pronounce this to be a strict obligation except only in individual cases where, as provided in the latter part of the canon, attendance is required for the avoidance of scandal.

[EDITORIAL NOTE.—At the time of writing, there has been no official answer to the question, but opinion among commentators has hardened to practical unanimity in favour of the opinion that the obligation remains and must be fulfilled at a reasonably available evening Mass, if it has not been fulfilled earlier. We know of only one writer (Fr Reed, S.J.) who admits the appeal to privilege, and he limits it to the case in which the evening Mass has been authorised, not precisely to enable fulfilment of the precept, but expressly to solemnise an extraordinary event.[1]]

262. MASS PRECEPT AND SEMI-PUBLIC ORATORY

What is the remedy for a parish priest who finds that prominent parishioners are hearing Mass on Sundays and holy days in a semi-public oratory of religious? Scandal is caused by this practice since the other parishioners imagine that the prominent ones are absent from Mass.

Canon 1249: Legi de audiendo Sacro satisfacit qui Missae adest quocunque catholico ritu celebretur, sub dio aut in quacunque ecclesia vel oratorio publico aut semi-publico et in privatis coemeteriorum aediculis de quibus in can. 1190, non vero in aliis oratoriis privatis, nisi hoc privilegium a Sede Apostolica concessum fuerit.

Canon 467, §2: Monendi sunt fideles ut frequenter, ubi commode id fieri possit, ad suas paroeciales ecclesias accedant ibique divinis officiis intersint et verbum Dei audiant.

i. The law which required attendance at a parish church for the observance of the precept disappeared long ago, and the modern tendency is to reduce to a minimum the "place" qualification. Some degree of publicity is still required, precisely for the purpose of avoiding scandal, but attendance at a place other than the parish church, if we except a private oratory, always satisfies the precept of hearing Mass, though possibly it may be unlawful for more than one reason.

ii. If scandal cannot be removed by informing the faithful that prominent parishioners hear Mass elsewhere, and that it is very wrong to suspect them of missing Mass on Sundays and holy days

[1] *The Clergy Review*, 1955, XL, p. 614.

solely because of their absence from the parish church, the absentees should be urged to obey the law of canon 467, §2. Or the owners of the semi-public oratory may be urged by the parish priest not to admit parishioners on Sundays and holy days; but the words of the canon "ubi commode id fieri possit" justify absence from the parish church, and if the semi-public oratory is closed to them the faithful who find the parish church inconvenient cannot be forbidden to go elsewhere.[1]

iii. As in many other disputed questions, the parish priest may seek a remedy for his grievance from the local Ordinary. It is certain from the canon 1249 that the Ordinary cannot declare that the faithful attending Mass in a semi-public oratory do not fulfil the precept. He can, however, be asked to direct the religious to close their oratory to visitors on Sundays and holy days. "Liquet non posse Ordinarium impedire quominus fideles in sacellis semi-publicis satisfaciant praecepto ecclesiastico: quamquam interdum iusta de causa prohibere potest ne diebus dominicis vel festis in eadem admittantur . . .[2]

263. SUNDAY MASS IN DOMESTIC CHAPEL

The owners of a large house, with a private oratory, are willing to allow Catholics from the village to attend for Sunday Mass. It appears, however, that they would not fulfil their obligation. Apart from an indult, is there any remedy?

Canon 1188, §2: (Oratorium est) *Semi-publicum*, si in commodum alicuius communitatis vel coetus fidelium eo convenientium erectum sit, neque liberum cuique sit illud adire.

Canon 1192, §1: Oratoria semi-publica erigi nequeunt sine Ordinarii licentia.

S.R.C., 23 January, 1899, n. 4007. . . . Oratoria semi-publica ea esse, quae etsi in loco quodammodo privato, vel non absolute publico, auctoritate Ordinarii erecta sunt; commodo tamen non fidelium omnium nec privatae tantum personae aut familiae, sed alicuius communitatis vel personarum coetus inserviunt. . . . Huius generis oratoria sunt . . . oratoria, in quibus ex instituto aliquis Christifidelium coetus convenire solet ad audiendam Missam.

3 August, 1901; *A.S.S.*, XXIV, p. 427; Many, *De Locis Sacris*, p. 185. Particulam decreti . . . n. 4007 . . . *similia oratoria in quibus ex instituto aliquis Christifidelium coetus convenire solet ad audiendam missam*,

[1] *The Clergy Review*, 1945, XXV, p. 88.
[2] Gènicot, *Theol. Moralis*, II, §342.

intelligi posse de quibuscunque fidelibus qui, assentiente domino loci et Ordinarii auctoritate interveniente, accedant ad praedicta oratoria pro audienda missa etiam in adimplementum praecepti festivi.

The remedy is to approach the local Ordinary requesting the private chapel, with the consent of the occupier, to be erected into a semi-public oratory for the benefit of the Catholics of the village. The people of the household, being included, will continue to satisfy their obligation by virtue of the Ordinary's act, instead of by virtue of their indult. The only serious disadvantage for the owner is, perhaps, the rule of canon 1192, §3, which assures a certain permanence to an oratory thus erected which a private oratory does not possess. There may be various reasons why the Ordinary will not concede the request, or why the owners will not agree to the change. The Ordinary may then be requested to permit Mass in the private oratory, beyond the terms of its indult, as provided for in canon 1194, "per modum actus"; it is the opinion of Bouscaren,[1] notwithstanding some arguments to the contrary, that the Mass precept is fulfilled by all of those present.

The best remedy is obviously to try to secure the erection of the oratory into a semi-public one, whereupon all present will satisfy the obligation automatically from canon 1249. The "coetus fidelium" of canon 1188, §2, is the Catholic population of the village, and though any person may fulfil the obligation by being present, the owners have the right to exclude any persons not coming within the "coetus fidelium" for whom the oratory has been erected by the Ordinary.

This interpretation, it will be found, is given by many of the commentators on canon 1188, and especially by those who advert to the decision of *S.R.C.*, 3 August, 1901. This is neither in *Decreta Authentica* nor in *Fontes*, and is given occasionally under the date 18 October, 1901.[2] It is certainly authentic and can be used for the interpretation of canon 1188. Thus Beste: "Hinc coloni et agricolae, qui ob defectum vel distantiam ecclesiae paroecialis, approbante ordinario loci, in privatum domum vel locum ad audiendam missam conveniunt, constituunt coetum fidelium."[3]

[EDITORIAL NOTE.—Further to the general question involved above, attention should be paid to the following reply of the *Code Commission*, 26 March, 1952: "An, non obstante praescripto can.

[1] *Periodica*, 1939, p. 58.
[2] Vermeersch-Creusen, *Epitome*, II, §498, 2.
[3] *Introductio*, p. 585. Cf. also Buckley, *The Celebration of Mass in "Extraordinary" Places*, p. 12; *Jus Pontificium*, 1939, p. 33; Coronata, *Institutiones*, II, §762.

1249, legi de audiendo sacro satisfaciat qui Missae adstiterit in loco de quo in can. 822, §4? *Resp.* Affirmative" (*A.S.S.*, 1952, XLIV, p. 497).]

264. SERVILE WORK ON HOLY DAYS

i. Can we hold that there is an established custom allowing servile work in England on holy days of obligation?

ii. If not, must a priest, employing a Catholic firm to do church work (repairs and decoration), make the men take a holiday on these days and pay the salaries? If a non-Catholic firm is engaged, may a priest let the men carry on as not being subject to the law?

iii. If more than two hours' work is a mortal sin, may we tell people that this is not so in cases where they would lose their employment?

Canon 5: Vigentes in praesens contra horum statuta canonum consuetudines sive universales sive particulares, si quidem ipsis canonibus expresse *reprobentur*, tanquam iuris corruptelae corrigantur, licet sint immemorabiles, neve sinantur in posterum reviviscere; aliae, quae quidem centenariae sint et immemorabiles, tolerari poterunt, si Ordinarii pro locorum ac personarum adiunctis existiment eas prudenter submoveri non posse; ceterae suppressae habeantur, nisi expresse Codex aliud caveat.

Canon 1248: Festis de praecepto diebus Missa audienda est; et abstinendum ab operibus servilibus, actibus forensibus, itemque, nisi aliud ferant legitimae consuetudines aut peculiaria indulta, publico mercatu, nundinis, aliisque publicis emptionibus et venditionibus.

Of these three queries the third is the simplest to answer. It is certain that the fear of serious loss entitles a worker to disregard the positive law, which is the reason why every Catholic worker so placed (and few are not) automatically and almost unthinkingly works as usual on a holiday of obligation.

i. The first question, upon which the second depends, is not so easy. Assuming that Catholics engaged in servile work in this country must either disregard the law or suffer serious loss, the simplest reply would be that this disregard is necessary and universal and that a lawful custom *contra legem* has existed from time immemorial. It is open to anyone to accept this view, which has at least the merit of simplicity.

We think, however, that the assumption is not always verified, and would much prefer to explain the practically universal disregard of the law on the ground that in practically every instance a

serious loss is involved; a view which leaves the law in existence, instead of extinguishing it altogether. The assumption is not verified in numbers of instances where employer and all the employed are Catholics, and where the law can be observed without any injury at all, for example in a Catholic institution employing Catholic gardeners. We think that if no serious loss is feared the law must be observed, though there is ample room for leaving people, whether employers or employed, in good faith about their obligations.

ii. In the case of a firm, whether Catholic or non-Catholic, under a contract with the priest to repair his church, there is no great difficulty: it is scarcely feasible, we suppose, for the contract to include a clause providing for no work to be done on certain days; it is the contracting firm which is the employer of the workmen, and the priest cannot be held responsible for any breach of the law.

The only remaining problem is that of the Catholic directors of a firm employing servile workers. They should observe the law if it can be done without grave loss resulting; but they will probably maintain that this is never possible, either owing to the conditions of labour, or because not all their workmen are Catholics, or because otherwise non-Catholic firms will secure an advantage at the expense of Catholic firms. Many may think that the net result of all this casuistry is equivalent to maintaining the existence of a lawful custom *contra legem*, a view which may be held until lawful authority abolishes the custom.

iii. Our questioner observes that the manuals of moral theologians he has consulted do not give him much help. This is true of his first and second queries. There is a considerable periodical literature exploring the nature of servile work and attempting a new definition, but we cannot find among the writers any discussion of the respective merits of the casuistical solution as compared with the simpler outlook that, in England at least, a lawful custom *contra legem* exists permitting everyone to do servile work on holidays of obligation. It is for the episcopate of a country, in our view, to give a recognition of this kind if they think it opportune and desirable, in rather the same way as the Belgian episcopate in 1937 declared in favour of the relative estimate of the amount permitted at the subsidiary repasts on fasting days. There are arguments for and against solving the problem of servile work on holidays in this way: on the one hand, it would simplify the situation, but on the other hand it would absolve people from even attempting to keep the law: those who did so would be imposing restrictions on themselves which are not of obligation, exactly as during the war many Catholics continued

to abstain from meat on Fridays. The casuistical solution is that of the moral theologian, the recognition of an immemorial custom that of the canonist interpreting canon 5.

265. REPEATED VIOLATIONS OF FAST AND ABSTINENCE

What is the reason for the common teaching that a person breaks the law of abstinence as often as he eats meat on one day, whereas if one has broken the fasting law on one day subsequent meals are not additional sins?

Canon 1250: Abstinentiae lex vetat carne iureque ex carne vesci. . . .

Canon 1251: Lex ieiunii praescribit ut nonnisi unica per diem comestio fiat. . . .

The explanation is sometimes given in terms of the ancient axiom "lex affirmativa obligat semper sed non pro semper; lex negativa vero semper et pro semper": the law of abstinence is negative whereas the law of fasting is positive, and the manner in which the law is expressed in the canons (vetat, praescribit) gives some support, perhaps, to this view. The explanation does not quite meet the difficulty, since the fasting law could also be expressed as a negative precept forbidding one to eat more than one full meal. A better solution is that the abstinence law is divisible in the sense that on an abstinence day it is possible to eat meat several times on distinct and separate occasions; but once having violated the law which permits only one full meal by taking two full meals, it is impossible to observe the law of fasting on that day. This is the usual explanation given by the modern manualists,[1] for the essence of fasting consists in taking only one full meal.

Even so, one might argue, on analogy with some other laws or possible laws, that the fasting law forbids a third or more full meals: one may celebrate Mass only once a day, and having broken the law by celebrating twice, a third celebration is nevertheless forbidden; a parent forbids a child to break her doll, and having broken it she is evidently forbidden to smash it up still more. These and similar arguments are discussed by Waffelaert,[2] the only modern author known to us who enters fully into the whole question. The answer to them all is that the Church could, indeed, have forbidden on fasting days meals subsequent to the one which breaks the law, but on the one hand no one has yet demonstrated with certainty that this is what the Church forbids, and on the other

[1] Noldin, *Theol. Moralis*, II, §§676, 680; Iorio, II, §292.3, 299.6.
[2] *De Temperantia*, §63.

hand the common interpretation favours the milder view given in the previous paragraph.

All the arguments for the stricter view are recorded by Billuart,[1] who thinks it has greater probability, but he is not followed by the modern Dominican theologians such as Prümmer[2] or Merkelbach.[3]

The notion of one full meal being the essence of fasting is important in some other interpretations of this law favoured increasingly by the modern writers.[4] In our present discussion this notion is vital, and if one desires the inner reason for the milder view which now prevails, probably Cajetan is its best exponent: "Quia non cadit sub praecepto Ecclesiae non multiplicare comestionem absolute, sed ut requiritur ad ieiunium. Ex quo autem negatio comestionis non potest amplius pro illo die esse conditio ieiunii, quia iam ieiunium solutum est, sequitur quod non cadit sub praecepto ieiunii. Non fit ergo exceptio in materia hac a regula praecepti negativi, sed declaratur sub qua ratione huiusmodi negatio cadit sub praecepto, scilicet ut est conditio ieiunii. Et quia prima solutio ieiunii facit hanc conditionem non posse pro illo die induere conditionem ieiunii, ideo non cadit amplius sub praecepto ieiunii. Non sic autem esse patet de negatione esus carnium, et prohibitorum, quia absolute, et non solum ut conditio ieiunii cadit sub praecepto illius temporis."[5]

266. CHRISTMAS EVE FAST

Does not the resolution S.C. Conc., 18 *November*, 1937, *appear to reject the contention that a greater quantity of nourishment may be taken at the subsidiary repasts on Christmas Eve?*

S.C. Conc., 13–18 November, 1937; *A.S.S.*, 1938, XXX, p. 160: . . . Ordinarii huic S.C. exposuerunt haud parvas adesse difficultates in observanda lege abstinentiae et ieiunii in pervigilio Nativitatis Domini, sive ob inductam praxim celebrandi proximam festivitatem inde a pervigilio etiam epulis, qualitate et quantitate, vetitis a lege, sive ob curas et labores. . . . Quapropter iidem Ordinarii petierunt ut obligatio haec cessaret a meridie pervigilii, ut statutum est pro Sabbato Sancto in canone 1252, §2. . . .

ANIMADVERSIONES: . . . Rationes vero, quae pro dispensatione afferuntur, non videntur solido niti fundamento. Et praxis in contrarium inducta potius abusus dicenda. . . .

[1] *De Temperantia*, II, v. 2; Letouzey, ed. V, p. 166.
[2] *Theol. Moralis*, II, §660.2.
[3] *Theol. Moralis*, II, §974.
[4] *The Clergy Review*, 1933, V, p. 129.
[5] Comment. in II–II, 147, 8; Editio Leonina, X, p. 166.

RESOLUTIO: An et quomodo expediat concedere dispensationem a lege abstinentiae et ieiunii in pervigilio Nativitatis Domini? *Resp.* Negative, seu non expedire, et ad mentem. Mens autem est ut Ordinarii satagant opportunis instructionibus fideles inducere ad ius commune servandum.

The resolution of 13–18 November, 1937 could be taken, perhaps, as levelled against the notion of *ieiunium gaudiosum*, since the animadversions are patient of this meaning. But we can trace no commentator who draws this conclusion; the petition was not about this practice but about dispensing or abolishing the fast altogether from midday on Christmas Eve, thus permitting not merely 16 oz. at the evening collation but as much as one pleased; the resolution itself is not concerned with it either, but simply affirms that the dispensation requested is not granted; and, finally, the writers we are accustomed to use continue, after the date of this resolution, to permit a double quantity at the evening collation on Christmas Eve, at least in those places where it is customary, e.g.: Davis, *Moral and Pastoral Theology* (ed. 1949), II, p. 431; Ferreres, *Theologia Moralis* (ed. 1950), I, §603.

267. WOMEN AGED FIFTY AND FASTING LAW

May one still follow the teaching which was common before the Code that women, from the beginning of their fiftieth year, are not bound to observe the fasting law?

Canon 1254, §2: Lege ieiunii adstringuntur omnes ab expleto vicesimo primo aetatis anno ad inceptum sexagesimum.

Code Commission, private reply of Cardinal Gasparri, 13 January, 1918; *Il Monitore*, 1929, p. 158: An verbum "omnes" can. 1254, §2, quoad legem ecclesiasticam ieiunii, applicetur eodem modo etiam mulieribus, prout applicatur viris. *Resp.* Affirmative.

i. Canon 1254, §2, is one example of very many in which the legislator expresses as a law what used to be the teaching of moralists and casuists. Women of fifty were excused because it was thought, generously and gallantly, that their physical strength at that age was in the generality of cases less vigorous than that of men. Since the Code, at any rate, a man of sixty, who may perhaps be at the peak of his health and strength, is not bound by the law of fasting. If women of fifty are to be excepted it will be for the same reason that manual labourers, travellers, and other classes are reckoned to be excused from its observance, and not because the written law does not include them. It could happen that a woman of thirty is excused

because of weak health; the question proposed is whether all women of fifty are, for the reason of age alone, to be excused.

ii. Moral theologians are still to be found, sufficiently numerous to constitute externally a probable opinion, who answer affirmatively,[1] and some go fully into all the physiological reasons justifying their view.[2] They disregard the reply of 13 January, 1918 because it was never properly promulgated, and because about ten years elapsed before its existence, even as a private reply, became known. Previous *schemata* of this canon expressly put fifty as the age for women,[3] but it was finally decided to leave the question open. The legislator was aware of the opinion which exempted women of fifty: if it was his will that they should be exempted no longer, the canon would have read "adstringuntur omnes, etiam feminae", in rather the same way as canon 2350, §1, reads "matre non excepta".

iii. Others think that women are bound by the law until sixty, and if excused it will not be because of their age alone but for reasons of physical debility which may apply equally to persons of both sexes at any age between twenty-one and sixty.[4] It may be doubted, in these days of sex equality, whether women themselves would desire or welcome concessions based on their presumed fragility as compared with men of the same age, and Prümmer neatly turns the argument against them: "Experientia constat mulieres facilius posse sustinere ieiunium quam viros."[5]

iv. Our own view is that the method of exempting whole classes of the population from the fasting laws is the wrong approach to the question, and is born of the extreme rigidity of theologians in deciding the amount of the subsidiary repasts on fasting days in terms of so many ounces as a flat rule for all. The more reasonable approach estimates the amount on a basis relative to the needs of individuals, a solution which is finding favour with the writers and which has been sanctioned by local legislation in some places.[6] If this view is correct, women are bound by the law up to the age of sixty; and at the age of fifty, as at all times between ages of twenty-one and sixty, each one will decide, on a basis relative to personal needs, the amount to be taken at the subsidiary repasts in order that the law may be observed without grave inconvenience.

[1] E.g. Ferreres, *Theol. Moralis*, I, §609, and *Casus*, I, §99.
[2] Regatillo, *Institutiones*, II, §90.
[3] Regatillo, loc. cit.
[4] *Collationes Brugenses*, 1931, p. 54; Davis, *Pastoral and Moral Theology*, II, p. 432.
[5] *Theol. Moralis*, II, §665.
[6] *Theological Studies*, 1946, p. 464; *The Jurist*, 1952, p. 44.

XXIV. DIVINE WORSHIP

268. PUBLIC PRAYERS AND DEVOTIONS

Is the express authorisation of the local Ordinary required for prayers and devotions publicly recited in churches, even though they may have been authorised for public use by some Ordinary elsewhere?

Canon 1259, §1: Orationes et pietatis exercitia ne permittantur in ecclesiis vel oratoriis sine revisione et expressa Ordinarii loci licentia, qui in casibus difficilioribus rem totam Sedi Apostolicae subiiciat.

Canon 1399.5. Ipso iure prohibentur . . . libri . . . qui novas inducunt devotiones, etiam sub praetextu quod sint privatae, si editi fuerint non servatis canonum praescriptionibus.

i. A comparison between these two canons shows that the ordinary censorship which suffices for private devotional exercises[1] is not enough to justify their use in public churches and oratories; express permission for their public use must first be obtained. This rule is fully observed in the case of collections of prayers authorised by the united hierarchy of a country, such as our *Manual of Prayers* or the *Manual of the Confraternity of Christian Doctrine*. An Ordinary, moreover, is within his right in requiring the express and personal permission of the local Ordinary, that is of himself, for all forms of prayer publicly recited within his diocesan jurisdiction, even though they have been approved for public recitation elsewhere by other local Ordinaries. This is a strict interpretation of canon 1259, §1.

ii. A more liberal interpretation is usually given by the commentators, excluding firstly from the rule those forms which have been in use for a long time, and it will be found that the sources of the canon itself refer to *new* devotions and exercises.[2] Secondly, some writers hold that the approbation of *any* local Ordinary suffices.[3] Neither of these liberal interpretations is completely certain, and it is open to any Ordinary in our view to reject them as stated at the conclusion of (i). The most recent commentator we have consulted agrees that forms permitted publicly in other

[1] This censorship is nevertheless to be strictly employed against new forms of devotion. *S. Off.*, 17 April, 1942; *The Clergy Review*, 1942, XXII, p. 475.
[2] Coronata, *Institutiones*, II, §834, c.; Brys, *Compendium*, II, §782, II; Vermeersch-Creusen, *Epitome*, II, §579.
[3] Beste, *Introductio*, p. 628.

dioceses may be used elsewhere so long as the local Ordinary does not prohibit them,[1] and we think this a useful and reasonable practice for the clergy to follow. But it must be noted that it is never permitted to use publicly any new form of prayer or devotion unless it has been authorised by an Ordinary expressly for public use.

269. PARTIALLY APPROVED LITANIES

Notwithstanding the law which permits only certain Litanies to be recited in public, it is a common practice publicly to recite those approved for confraternities or for religious Institutes. Is this in order?

Canon 1259, §2: Loci Ordinarius nequit novas litanias approbare publice recitandas. Cf. *S. Off.*, 18 April, 1860; *Fontes*, n. 958.

S.R.C., 29 August, 1882, n. 3555.2: Monitum de quo agitur (16 June, 1880—not in D.A.) respicere Litanias in liturgicis et publicis functionibus recitandas; posse vero, immo teneri Ordinarios alias seu novas Litanias examinare, et quatenus expedire iudicaverint, approbare; at nonnisi pro privata atque non liturgica recitatione.

6 March, 1894, n. 3820.2: Num invocationes ad normam Litaniarum, in honorem Sacrae Familiae, Mariae Perdolentis, S Ioseph aliorumque Sanctorum, in Ecclesiis vel Oratoriis publicis recitari possint? *Resp.* Negative.

20 June, 1896, n. 3916: Num prohibitio recitandi aut cantandi in Ecclesiis . . . complectatur etiam quamlibet earum recitationem, a pluribus coniunctim in Ecclesiis vel Oratoriis publicis, absque ministri Ecclesiae *qua talis* interventu factam? *Resp.* Affirmative.

11 Februarii, 1898, n. 3981.1: Num eiusmodi peculiares Litaniae ita strictim prohibeantur, ut Monialibus . . . non liceat illas privatim canere vel recitare ad instar precum oralium? *Resp.* Negative; h.e. ita strictim non sunt prohibitae, ut singulis privatim eas non liceat cantare vel recitare.

i. The restriction on Litanies in canon 1259, §2, limits the power of local Ordinaries in authorising public devotions, a point discussed in the previous answer. The Litanies approved by the Holy See unreservedly are those in the Breviary, Missal and Ritual: the Litany of the Saints in various forms, the one in *Ordo Commendationis Animae*, and the four given in Tit. XI of the Ritual. All other Litanies, approved either by the Holy See or by local Ordinaries, are not for public recitation.

The distinction between public and private, which is a well-known

[1] *Dict. Droit Canon.*, IV, col. 864.

obscurity both in liturgy (e.g. missa privata) and in canon law (e.g. impedimentum publicum), gave rise to many replies from the Sacred Congregation, of which a selection is given above; they are all strict except the answer to the first query of n. 3981, in which the word "privatim" cannot mean "alone and secretly", for no one would sing a litany alone, and it is of the nature of a litany to have responses such as "pray for us". "Public" in this connexion, therefore, means liturgical worship wherever carried out, and also non-liturgical worship or devotions held in a church or public oratory.

ii. There are confraternity manuals, authorised by local Ordinaries, containing Litanies which may not be recited publicly in the sense determined above; the rules sometimes direct the recitation of a litany of this kind at the weekly meeting, and the meeting is normally in a public oratory or church: hence the difficulty put by our correspondent, which would not exist, in our view, if the meeting took place in a house or in an oratory to which the public have no right of access.[1]

We cannot find this point fully discussed by the commentators, many of whom appear to give, as a matter of course, a strict solution which disallows a common recital of these litanies at any time and in any circumstances in a public church or oratory.[2] This is the safest course to follow: rectors of churches may adopt it and substitute a fully authorised Litany in place of the one directed in the manual.

A more liberal solution might be offered, perhaps, by arguing that the meeting, though held in a church, is technically for the members of the confraternity alone and not for the general public; that the confraternity has to use the church in default of an oratory of its own; or that there is a custom *contra legem* in these circumstances. One must also allow, in instances where a confraternity manual is authorised by local Ordinaries, that an indult may have been obtained.

iii. It may reasonably be asked why Ordinaries may in the common law authorise any kind of public prayers and devotions[3] except litanies. The reason is, no doubt, that the litany form of public worship is something specifically liturgical in origin, and devotional imitations of this liturgical form are liable, in the public estimation, to be regarded as liturgical worship, which it has long been the exclusive province of the Holy See to regulate.[4]

[1] Cf. Vermeersch-Creusen, *Epitome*, II, §660.
[2] Gougnard, *De Indulgentiis*, p. 307, n. 3; Brys, *Juris Canonici Compendium*, II, p. 116.
[3] Canon 1259, §1.
[4] Canon 1257.

270. CHAIN PRAYERS

Prayers sent with a request that copies should be forwarded to a specified number of other persons, with the same request, are objectionable from many points of view. But is there any express prohibition of the practice?

We cannot trace any express prohibition either in the common or local law. In principle the practice is forbidden if it can be brought within the term "vana observantia", since it would then be a form of superstition, which is certainly verified when the communication contains a promise of some benefit if the request is complied with, or the threat of some evil if the request is refused: the practice is then superstitious because the means suggested for obtaining benefits or avoiding evils have no reasonable justification.[1] But a simple request, without promises or threats, is not patently a superstition. It is usually something new in devotional practices and because of its novelty could properly be brought within the prohibition of the Holy Office, 26 May, 1937, and 17 April, 1942.[2] There is, moreover, always some danger that the uninstructed faithful may be moved to comply by superstitious motives, even though the request is unaccompanied by promises or threats, and the clergy will rightly protect them from the danger by discountenancing these chain prayers.

Unless some devotional practice can be brought within the above criteria of novelty, vain observance, or the danger thereof, one has to be rather careful before condemning it outright, since the Church is accustomed to permit a wide liberty to the pious faithful in following their bent. Thus, as recently as 3 August, 1903, the Holy Office gave the following reply: ". . . num pro licito habendum esset parvas imagines chartaceas B.M.V. in aqua liquefactas vel ad modum pillulae involutas, ad sanitatem impetrandam, deglutire? Re ad examen vocata. . . . Sacra haec Suprema Congregatio S. Officii . . . respondendum decrevit: Dummodo vana omnis observantia, et periculum in ipsam incidendi removeatur, licere."[3]

271. "FIVE WOUNDS" ROSARY

Many of the faithful have in their possession leaflets containing a rosary devotion prohibited by the Holy Office in 1939. Must they be told to destroy them? If so, could we have the reason for the prohibition, since the prayers

[1] Cf. moral theologians s.v. *vana observantia*, e.g. Iorio, II, §15.
[2] *The Clergy Review*, 1937, XIII, p. 315; 1942, XXII, p. 475.
[3] *Fontes*, n. 1269.

contained therein seem quite orthodox and resemble others which are encouraged?

S. Off., 12 December, 1939: An devotionis forma vulgo. . . . *Rosario delle Santissime Piaghe di Nostro Signor Gesù Cristo* inter fideles fovere liceat? *Resp.* Emi et Revmi Patres DD. Cardinales . . . etiam prae oculis habito Decreto diei 26 Maii, 1937, "De novis cultus seu devotionis formis non introducendis deque inolitis in re abusibus tollendis" respondendum decrevit: non licere.

Idem n.d. *Apollinaris*, 1940, p. 94, private: Vi decreti 1939 nihil damnatur quod in usu antiquo erat de cultu Sacris Vulneribus: sed ea tantum huius devotionis forma directe impetitur quae auspiciis M. Marthae Chambon vulgata est: . . . Quod vero attinet ad devotionem sub nomine Sororis Chambon vulgatam, ea non damnatur ut in se illicita, sed ex adiunctis iudicata est, praesertim quoad formam, non expedire ideoque non est fovenda.

i. That devotion to the Five Wounds as such is not touched by the above decree is quite certain. It is a mediaeval devotion much beloved by our forefathers in this country, as may be observed in the device used by the Pilgrimage of Grace and by Blessed Margaret Pole. There is a Mass and Feast under this title for the Friday of the third week in Lent "pro aliquibus locis"; also, popular devotions in *Enchiridion Indulgentiarum*, nn. 198–203, indulgenced for all the faithful; and the Passionist Rosary of the Five Wounds is explained in Beringer, *Les Indulgences*, n. 879. The devotion is contained within prayers in constant use such as the *Anima Christi* and *En Ego*.

ii. The form of this devotion affected by the decree is the one connected with the revelations and visions of M. Martha Chambon, a religious of the Visitation Order who died in 1907. It is also known as "The Chaplet of Mercy". The prayers are devotionally orthodox and do not come within the prohibition of canon 1399, §5; they were approved and indulgenced by many local Ordinaries. The new devotions forbidden by the decree of 26 May, 1937,[1] were described as either "ridiculous" or "useless repetitions" of those already existing. The prayers at least of the "Chaplet of Mercy" are not ridiculous, but they do offend against the familiar ecclesiastical rule operating in many directions "ne bis de eodem". This alone, however, would hardly seem to be an adequate reason for the decree, and we should see, indeed, innumerable devotions and indulgenced prayers lying in ruins if the rule were rigidly applied. What the decree directly and expressly forbids is fostering (fovere) this devotion, namely by practising it in public or by printing and

[1] *The Clergy Review*, 1937, XIII, p. 315.

circulating leaflets which contain it. It might be advisable for the existing leaflets to be destroyed, and for persons to cease repeating the prayers even in private: but the decree does not expressly enjoin this to be done. The two short prayers constituting the devotion are: "My Jesus, pardon and mercy by the merits of Thy holy wounds" and "Eternal Father, I offer Thee the wounds of Our Lord Jesus Christ for the healing of our souls' wounds".

iii. The devotion is prohibited, not because of these two prayers, but because of the adjuncts thereto, namely inconsistencies in the alleged revelation,[1] exaggerations in the attached promises, e.g. the liberation of five souls from Purgatory each time one looks at a crucifix with a pure heart; and, generally speaking, the incongruous character of all the circumstances which do, it seems, merit the description "ridiculous" and argue against the truth of the revelations, whilst nevertheless leaving intact the character of the excellent religious who is said to have received them.[2] Not all of these suspected elements are printed in all the popular leaflets; the prayers and some of the objectionable features are occasionally found in private devotions for the Stations of the Cross, and they should be removed from future editions.

272. HATLESS WOMEN IN CHURCHES

In this large, popular resort many holiday-makers laudably pay a visit to the centrally placed church during the course of their day's pleasure. On Sundays a large proportion of the congregation hears Mass before going down to the beach. As a result, the practice is growing of women being seen in church with their heads uncovered. Should the parish priest insist on what many look upon as an old-fashioned and unnecessary custom of having some form of head-covering (often a ludicrous and distracting wisp of handkerchief)?

Canon 1262: Viri in ecclesia vel extra ecclesiam, dum sacris ritibus assistunt, nudo capite sint, nisi aliud ferant probati populorum mores aut peculiaria rerum adiuncta; mulieres autem, capite cooperto et modeste vestitae, maxime cum ad mensam Dominicam accedunt.

Answering a similar question a few years ago[3] we agreed with the opinion of Gasparri and Cappello that the law of canon 1262 about head dress was binding only *sub levi* even when women received Holy Communion. With all the more reason is it to be

[1] Cf. Fr Crehan, S.J., in *The Clergy Review*, 1940, XIX, p. 418.
[2] Cf. *Apollinaris*, 1941, p. 92.
[3] *Questions and Answers*, I, qu. 134.

considered of light obligation when women are assisting at Mass without communicating, or making a visit to the church. Some may think that, in the case of a short visit, the obligation is so slight as to be non-existent: *de minimis non curat lex*. Having regard, however, to the plain directions of the canon, which is itself a reflection of the Apostolic injunction in 1 Cor. xi, 13, we are loth to say that the rule as such is not binding on the occasion of short visits. It is a question of a custom and convention, if not a law, regulating one's appearance in the house of God, and for this reason should be respected.

This does not mean that the rector of the church must enforce its observance in season and out of season. It is a positive law which ceases like any other for a proportionate reason: far better for women to make a visit hatless than to make no visit at all. It is a positive law which binds only *sub levi*: for the rector of the church to make a special point of enforcing it, whilst perhaps leaving far graver matters unreproved, would be pharisaical and against the spirit of the gospel. It is a positive law which, like any other, is subject to a customary interpretation, as the canon notes regarding male head dress: it seems to us that custom is tolerating its non-observance in given circumstances, as for example in those mentioned by our correspondent, and that the custom will eventually have the effect of abolishing the law in these circumstances. The part of the canon dealing with immodest dress has been enforced by the legislator,[1] but we do not know of anything similar about women's head dress. We think therefore, failing stricter directions from the local Ordinary, that the rector of the church should never reprove an individual for appearing hatless in church, but that he should tell the faithful in general now and then what the law is.

273. GENUFLEXIONS

Should the faithful, when taking no part in some function at the altar, genuflect to the cross at the High Altar if the Blessed Sacrament is not there reserved? Also is it necessary for the sacristan, attending to the candles during Exposition, to genuflect on both knees whenever he crosses the middle of the altar?

S.R.C., 30 August, 1892, n. 3792.11: Quum a Caeremoniali Episcoporum praescribatur ut omnes, exceptis Canonicis Ecclesiae Cathedralis, unicum genu flectant Cruci Altaris maioris, quaestio exorta est num haec genuflexio facienda sit etiam in aliis ecclesiis seu cappellis publicis, ubi in Altari maiori haud asservatur SS.

[1] 12 January 1930; *The Clergy Review*, 1938, XV, p. 545.

Eucharistiae Sacramentum? *Resp.* Affirmative; sed in actu functionis tantum.

The act of bending the knee occurs as an expression of penance, or of supplication, or as a mark of honour to superiors, but most of all as an act of adoration, and it is under this aspect that the two questions arise. In no case can anything easily be discerned in the action as of its nature penitential or supplicating or worshipful; hence one meets the extremes of St Patrick, for example, who is said to have repeated genuflexions a hundred times daily, and the sect of Agoniclites, who are said to have been opposed to genuflexions at all times.[1]

The correct practice is fixed by rubrical law during ceremonies. For private visits to altars or churches genuflexion on one knee is the rule when the Blessed Sacrament is reserved but not exposed; otherwise, to the Crucifix of the High Altar one should incline the head when passing, except during the time between its uncovering on Good Friday and None of Holy Saturday, when genuflexion is directed by *S.R.C.*, n. 3049.5.

If the Blessed Sacrament is exposed, everyone should genuflect on both knees when arriving and departing. Relying on the rule o n. 2682.49, which directs a genuflexion on both knees when arriving or departing from the altar of exposition on occasions when Mass is there celebrated, but on one knee only throughout the Mass, many rightly deduce that the sacristan must similarly genuflect on both knees when arriving and departing, but a genuflexion on one knee suffices when passing before the Blessed Sacrament in the course of his work at the altar.[2]

274. EXPOSITION—NUMBER OF WATCHERS

Is there any explicit law about the minimum number of worshippers during exposition of the Blessed Sacrament, whether during the Forty Hours or for lesser periods?

The chief official document regulating everything about exposition of the Blessed Sacrament is the Clementine Instruction. It supposes that there will be a number of people present throughout, and is concerned in n. IX with specifying the persons who should be amongst them: one or two priests, or others in sacred orders, vested in cassock and surplice, and outside the altar rails two members of the confraternity attached to the church kneeling at a

[1] *Ephemerides Liturgicae*, 1925, p. 304; *Dict. Archéol.*, VI, col. 1020.
[2] D. G. Murphy, *The Sacristan's Manual*, p. 96.

specially provided bench. The doubt put by our correspondent is not solved in this section, which simply takes for granted that there will be a number of the faithful adoring the Blessed Sacrament. We cannot trace, in explicit official directions, any decision about the minimum number to be present continuously. But, relying on what is certainly the accepted custom, we think that there must be at least two inclusive of the cleric or confraternity members required by the Clementine Instruction. If in religious orders of women devoted to perpetual adoration the presence of only one is tolerated, it must be assumed that this is permitted by their constitutions, and it may not be taken as a normal rule in all circumstances. What the common law leaves undetermined, local law may make explicit; any directions of local authority about the minimum number of persons present are binding, and local Ordinaries may make it a condition before granting permission.

275. PERPETUAL ADORATION

Is there any law, or at least a strong recommendation of the Church, that Exposition of the Blessed Sacrament shall be so arranged, e.g. the XL Hours, that it shall be in some church or other throughout the diocese at every moment of the year?

Canon 1275: Supplicatio Quadraginta Horarum in omnibus ecclesiis paroecialibus aliisque, in quibus sanctissimum Sacramentum habitualiter asservatur, statutis de consensu Ordinarii loci diebus, maiore qua fieri potest sollemnitate quotannis habeatur; et sicubi ob peculiaria rerum adiuncta nequeat sine gravi incommodo et cum reverentia tanto sacromento debita fieri, curet loci Ordinarius ut saltem per aliquot continuas horas, statis diebus, sanctissimum Sacramentum sollemniore ritu exponatur.

I *Westm.*, XVIII, 10. Utque pietas fidelis populi augeatur, videtur summopere expedire ut oratio Quadraginta horarum per totam Angliam statuatur, ita ut nullum sit temporis punctum, in quo Domino Nostro, in hoc Sacramento graviter offenso, expiatio aliqua non offeratur, precesque pro Ecclesiae pace ac animarum salute fundantur.

Information about the origins of perpetual adoration, necessary for replying to the question, may be read in an article in *The Clergy Review* by Rev. J. McKenna, 1933, VI, p. 186; in *Dict. Théol.*, I, col. 422; or in commentaries on the *Clementine Instruction*.

Its origin under Capuchin influences at Milan in 1534, and every later development in its various forms, had principally in view the

idea of reparation to the divine majesty for the sins of men: hence the three days preceding Lent (the carnival period) was the time first chosen for continuous adoration, a custom which still exists in many places. Introduced into Rome by St Philip Neri, it became highly favoured by the Holy See, and a Bull of Clement VIII in 1592 established it for the Holy City throughout the year, in one church or another. In 1731 Clement XII issued the Instruction, with which everyone is familiar, formulating the liturgical rules to be observed, and from the beginning many indulgences were attached to the devotion.

Outside Rome, perpetual adoration, whether throughout the year, or throughout some period such as Lent, is obligatory only so far as the local Ordinary has determined in his regulations for the observance of canon 1275. The law requiring at least a modified form of XL Hours falls directly on parish churches: the consent of the Ordinary is required in order that, in the measure desired by him, exposition of the Blessed Sacrament may be held successively in all churches of the diocese throughout a given period. The period might be Lent, or Advent, or even the whole year. There is no common law on the point, since obviously local conditions vary considerably, and even a limited form of "perpetual" Exposition is impossible in some places. When the devotion first began to spread outside Rome permission was not obtained except for localities where it could be maintained in various churches throughout the year, but this rule was very soon relaxed. In the middle of last century the devotion received a new impetus, and the foundation of religious Institutes of women devoted expressly to perpetual adoration has secured that, in the dioceses in which their houses exist, there is always Exposition of the Blessed Sacrament day and night throughout the year.

In addition to implementing canon 1275, the Holy See occasionally, and local Ordinaries quite often, enjoin Exposition at times of unusual crisis, and it may take the form of a chain of observances in different churches for a given period.

S.C. Conc., 14 July, 1941,[1] issued an Instruction urging that the devotion of the people should be centred on the Mass, at times of national crisis, rather than on other acts of divine worship, and there is an echo of this in the Trinity Joint Pastoral, 1948, issued by the Hierarchy of England and Wales, in which the faithful were urged to be present at Mass on the Feast of the Sacred Heart; Exposition on that day is also desired by the bishops.

In these days of popular liturgical worship, when indults are

[1] *The Clergy Review*, 1941, XXI, p. 365.

given right and left for the celebration of Mass at any hour of the day, one can hazard the view that a movement may be started, not supplanting but co-existing with perpetual Exposition, for having Mass "perpetually" at every hour of the day, from the rising of the sun to its setting, in each diocese or large city.

276. FUNCTIONS AT THE ALTAR OF EXPOSITION

What is the force of the prohibition of saying the Mass for Peace during the Forty Hours Devotion at the altar of Exposition, and of giving Holy Communion from the same altar during that Mass and before Mass on the following day? Does long custom justify this? Or does the fact that the use of another altar entails some inconvenience? Or would these two reasons combined be sufficient to justify continuance?

S.R.C., 27 July, 1927; *A.A.S.*, 1927, XIX, p. 289: An liceat Missam cum cantu vel lectam coram Ssmo Sacramento velato vel in pyxide exposito, intra vel extra tabernaculum? Et quatenus negative, utrum huiusmodi usus saltem tolerari possit? *Resp.* Sacra eadem Congregatio, audito specialis Commissionis suffragio, respondendum censuit "negative ad utrumque". Hanc nacta occasionem ipsa S.R.C. decreta n. 3448, 11 Martii, 1878, et n. 4353, 17 Aprilis, 1919, circa Missam et sacram Communionem in Altari expositionis SSmi Sacramenti, adhuc in suo robore manere declarat; eorumque observantia a Revmis locorum Ordinariis peculiari studio curanda est.

N. 4353 referred to in the above reply forbade both practices "sine necessitate vel gravi causa, vel de speciali indulto". Since the terms of the prohibition are unusually explicit, and Ordinaries are specially instructed to secure their observance, our opinion is that merely the inconvenience of using another altar does not justify a violation of the law. If the church has only one altar this seems to us a grave reason; otherwise an indult should be obtained.

A well-informed writer, after stating that there is in Rome a custom of celebrating Mass at the altar of exposition, and that the Holy See has granted indults for the purpose to many confraternities and institutes, expresses the wish that parish churches should have the indult, in order that the faithful hearing Mass should not be encouraged, as it were, to neglect the altar of exposition.[1] Whether the law of custom is verified in the above query we have no means of saying, and it is always a difficult enterprise to establish the fact, especially with regard to liturgical laws.

[1] *Ephemerides Liturgicae—Ius et Praxis*, 1942, p. 85.

277. EXPOSITION: VERNACULAR PRAYERS AND HYMNS

There is much uncertainty about the vernacular prayers and hymns permitted during a period of exposition of the Blessed Sacrament, that is to say not during the rite we call Benediction but during the Forty Hours, the Holy Hour, or any exposition ordered by the local Ordinary. Could the rules be formulated?

It is true that there is uncertainty in some particulars, and in places where the local Ordinary has solved these doubts one has only to follow his directions. Subject to this obvious reservation the rules of the common law and of the local law of our *Ritus Servandus* may be formulated, easily as regards recited prayers, less easily in the case of vernacular hymns.

i. Any prayers approved by the Holy See or by local Ordinaries[1] for public use may be recited, unless certain of them are forbidden during exposition of the Blessed Sacrament. Thus the prayers in *Enchiridion Indulgentiarum* or in the English *Manual of Prayers* come within this description, but others may also come within it though not included in either of these books. All are lawful but not always expedient, and a choice should be made suited to the occasion: some useful guidance on the subject may be read in an article entitled "Prayers Before the Blessed Sacrament Exposed" by Abbot Vonier.[2]

Prayers for the dead are in principle forbidden,[3] on analogy, no doubt, with the well-known rule forbidding funeral exequies during exposition, but there are established exceptions. The prayers after the Litany of the Saints, obligatory for the Forty Hours exposition, include one for the departed united in a formula with prayer for the living; moreover a custom of reciting prayers for the dead may be continued "quatenus revera existat".[4]

ii. By the common law those vernacular hymns may not be sung which are translations of liturgical hymns.[5]

The English bishops permit six English hymns: *Jesus My Lord, My God, My All*; *Sweet Sacrament Divine*; *Soul of My Saviour*; *O Bread of Heaven*; *Jesus the Only Thought of Thee*; *O Godhead Hid*.[6] By implication, therefore, it appears that other English hymns are forbidden, a conclusion which is quite certain for the rite known as Benediction, that is to say whilst the ministers are before the altar from *O Salutaris*

[1] Canon 1259.
[2] *The Clergy Review*, 1937, XIII, p. 1.
[3] *S.R.C.*, 12 August, 1884, n. 3616.
[4] 18 February, 1843, n. 2855; cf. *Irish Ecclesiastical Record*, 1945, LXVI, p. 302.
[5] 27 February, 1882, n. 3537. One may hold, with *Irish Ecclesiastical Record*, loc. cit., that chanting is forbidden but not the recitation of translated liturgical texts in the vernacular.
[6] *The Clergy Review*, 1947, XXVII, p. 127.

to *Tantum Ergo*. But it is not certain that this prohibition extends to other periods of exposition: in our view it does, from the wording of the episcopal communication, and notwithstanding the common law rule which forbids only those vernacular hymns which are translations of liturgical texts. An authentic interpretation of the rule would be welcome, for it is not self-evident why hymns to the Sacred Heart, for example, should be excluded.

278. PREACHING DURING EXPOSITION

Am I right in maintaining that the normal rule forbids preaching during Exposition of the Blessed Sacrament, though it is tolerated for grave reasons provided the Monstrance is covered with a veil and the sermon is about the Holy Eucharist?

S.R.C., 10 May, 1890, n. 3728.2: Num tolerari possit consuetudo exponendi SSm̃um Sacramentum, et coram eo Missam celebrandi (occasione Novemdialis) in qua fit post Evangelium praedicatio Verbi Dei et plerumque de Sanctis; et in qua populus frequens accedit ad Sacram Synaxim? *Resp.* Affirmative; apposito tamen velamine ante Sanctissimam Eucharistiam, dum habetur concio.

The directions are all aimed at preventing the attention of worshippers from being deflected from the Blessed Sacrament, and as regards Mass and Holy Communion at the altar of Exposition some later directions, which are stricter than n. 3728, must be followed.[1]

The Clementine Instruction, §32, strictly forbids preaching during the Forty Hours' Exposition, but departure from the rule is tolerated outside Rome, in fact so widely tolerated that many commentators rightly infer that, outside Rome, there is no law against it either during the Forty Hours or at other times.[2]

During the sermon a veil must be placed before the Blessed Sacrament, the common practice being to use one in the form of a small banner on a stand; but we know of no law forbidding the use of a veil of white silk covering the Monstrance. Even though the Monstrance is veiled the listeners should not turn their backs to the altar of Exposition,[3] and if this is unavoidable owing to the position of the pulpit the sermon should be delivered from near the Sanctuary rails.[4] The preacher wears a cotta but no biretta, and, as is customary outside Rome, a white stole.

[1] Nn. 4353 and 27 July, 1927; *Collationes Brugenses*, 1922, p. 325, and 1927, p. 380.
[2] Wapelhorst, *Compendium*, §200; O'Connell, *The Clementine Instruction*, p. 50.
[3] Clementine Instruction, *ibid.*
[4] Gasparri, *De Eucharistia*, §10, 45.

Both the commentators already quoted, and other besides, state that the sermon must be about the Holy Eucharist. This is a reasonable direction, and during the Forty Hours' Exposition at least it seems required from the nature of things. It must be observed, however, that n. 3728, on which they all rely, tolerates sermons on the Saints, and we know of no later direction revoking it. Since occasions may arise when a sermon on a subject other than the Holy Eucharist is called for, we think it is not forbidden by the common law.

279. BENEDICTION DURING EXPOSITION

A religious Institute has perpetual exposition of the Blessed Sacrament daily, and occasionally throughout the night; for the Forty Hours "ad instar" there is also exposition during one night. On the occasions when exposition thus continues throughout the night, is one permitted to interrupt it in order to give the Benediction which normally takes place on days when exposition does not continue throughout the night?

S.R.C., 12 January, 1878, n. 3438.4: An in Expositione in forma Quadraginta Horarum permittatur singulis diebus sero, antequam Sanctissimum Sacramentum reponatur, benedictionem populo cum eodem impetiri? *Resp.* Affirmative.

11 May, 1878, n. 3448.3: An liceat pluries in eadem Ecclesia et die impertiri benedictionem cum SSmo Sacramento, occasione piarum Congregationum vel ad devotionem; item an liceat interrumpere expositionem SSmi Sacramenti pro danda benedictione ob causas indicatas? *Resp.* Ad primam et secundam partem: iuxta prudens Ordinarii arbitrium; evitata tamen nimia frequentia, et dummodo non agatur de expositione Quadraginta Horarum.

Benediction is permitted each evening before replacing the Blessed Sacrament in the tabernacle, as explained in n. 3438, and as many Ordinaries direct in the instructions they issue for the Forty Hours *ad instar*. Cf. nn. 3513, 3713. If, however, the Forty Hours is *in forma propria*, i.e. a continuous exposition with watching throughout the night, n. 3448 directs that it is not to be interrupted for the purpose of giving Benediction.

From the above two replies the conclusion seems to us unmistakable that, in principle, Exposition of the Blessed Sacrament should not be interrupted solely for the purpose of giving Benediction. We think that this principle should be applied not only to the Forty Hours but to every occasion of exposition, including both the instances mentioned in the question; Benediction is in the nature of

a concluding function, given for example after returning from communicating the sick, or at the end of some popular devotions, though replies of *S.R.C.* may be cited permitting, as an exception and for some special reason, a departure from this rule. However, if this opinion is not accepted, it is for the Ordinary to make a decision for both the instances in question; from n. 3448 he may use his discretion except only in the case of Forty Hours *in forma propria*, when the interruption is expressly forbidden.

280. PYX BENEDICTION AFTER MASS

When simple Benediction with the Pyx follows in October immediately after Mass, is it necessary to have more than the two lighted Mass candles, and may the celebrant retain the Mass chasuble?

Decreta Authentica S.R.C., IV, p. 24; comment. in *Instr. Clem.*, VI, 9: Quod si ex causa privata fiat Expositio, aperto scilicet Tabernaculi Ostiolo . . . non aliter fieri debet quam sex saltem ardentibus cereis. . . .

S.R.C., 20 July, 1894, n. 3833.3: Usus invaluit in pluribus huius civitatis ecclesiis, in functionibus Marialibus aliisque, quae cum Missa persolvuntur, dimittere populum cum benedictione Sanctissimi Sacramenti in Pyxide adservati, adhibito velo humerali super planeta. Quaeritur an hic usus tolerari possit? *Resp.* Affirmative; et ita observandum.

The writers' interpretation of the ceremonial directions on the occasion of what canon 1274 describes as "private" exposition is not uniform in some particulars. A careful and documented description of the rite in *Ephemerides Liturgicae*, 1942, notes on page 143 that some permit only four candles; we think that it is preferable to have six. The same commentator, on page 134, rightly observes that the maniple should be removed and that a black chasuble is not permitted: after a Requiem Mass the simplest procedure is to vest at the bench in white stole, and a cope may also be used, though it is not prescribed except for public (monstrance) Benediction.

For further details cf. *The Clergy Review*, 1933, VI, p. 243; Fortescue-O'Connell, *Ceremonies of the Roman Rite Described*, p. 238; *Dictionnaire de Droit Canonique*, II, col. 387.

October devotions are not permitted during exposition except after midday, unless the Ordinary's sanction is obtained; if they are performed before midday the directions of the Holy See require them to be during Mass, as explained in *The Clergy Review*, 1941, XXI, p. 240.

281. BENEDICTION: CANDLES ON SIDE ALTARS

Is there any law which directs or implies that, during exposition of the Blessed Sacrament, candles at a side altar must be extinguished?

i. The custom of extinguishing them, for example when May devotions at the Lady Altar are followed by Benediction, is widely spread, and it was our impression that there was a law to that effect. But on examining all the sources at our disposal, we can discover no rule of the common law which expressly requires these candles to be extinguished.[1]

ii. It could be maintained, with plausibility, that the rule of extinguishing them is implied, at least, in the general terms of the *Clementine Instruction* which, in many sections, safeguards the attention of the worshippers from being distracted from the central object of their worship. It is true, indeed, that this Instruction for the Forty Hours provides a norm for shorter expositions in many points, but section 3, which directs images near the altar of exposition to be veiled, certainly does not apply to functions other than the Forty Hours, and the official commentator has much to say against the rigid observance of this rule,[2] even during the Forty Hours. Devotion to Our Lord in the Holy Eucharist does not exclude Our Lady and the Saints, and we are not only accustomed, but ordered on occasion to say prayers to them before the Blessed Sacrament exposed. It is the view of many that the origins of Benediction are closely allied to Marial devotions.[3]

iii. What the common law leaves undetermined, local law may make more precise. But we can find no express rule requiring the extinguishing of candles at other altars in the collections of local laws at our disposal; if any direction of this kind exists it must be obeyed in the locality to which it applies. The directions issued for Cardiff and Menevia in 1943 include the following, n. 100: ". . . any great quantity of candles blazing at a shrine so situated as to cause distraction, whether such a shrine is within the sanctuary rails or not, is to be extinguished". This seems to us an excellent interpretation of the common law.

Until better instructed, accordingly, it is our opinion that, provided the number of candles is not so excessive as to distract attention from the altar of exposition, there is no obligation to extinguish them during Benediction, unless local law so directs.

[1] Cf. *l'Ami du Clergé*, 1909, p. 96; 1914, p. 816.
[2] Cf. *Decreta Authentica*, IV, pp. 10, 11, 139.
[3] Cf. *The Clergy Review*, 1941, XX, p. 361.

282. EUCHARISTIC BENEDICTION A PRIESTLY BLESSING?

One often hears from the pulpit an exhortation to attend Benediction, which is explained to be far superior to any other blessing since it is Our Lord rather than the priest who is blessing the people. Is this a correct way of speaking?

Mediator Dei, 20 November, 1947; Eng. tr. C.T.S. (Canon Smith) n. 143: "What an excellent and salutary devotion! As the faithful bow their heads in veneration the priest raises up the Bread of angels towards heaven and, making the sign of the Cross with It over them, entreats the heavenly Father graciously to look upon His Son crucified for love of us, and for His sake and through Him who willed to become our Redeemer and our brother, to pour out His supernatural gifts upon those whom the Blood of the spotless Lamb has redeemed."

i. Since the rite itself had its origin in popular devotion,[1] the popular understanding of its meaning is by no means to be neglected, and it does seem that the generality of the faithful take this to be as explained in the question, a meaning which is supported by works such as *The Catholic Dictionary*: "The Congregation of Rites orders this Benediction to be given in silence; probably to show that it is not the earthly but the Eternal Priest who in this rite blesses and sanctifies His People."[2]

The usual commentators *De Benedictionibus*[3] do not explain the difference between this and other benedictions, but by not including it under priestly blessings in general, and by dealing with it under a distinct heading, it seems that they regard it as something *sui generis*.

A few official texts support, perhaps, this meaning, by describing the blessing in terms such as "benedictionem impertitur" "in impertienda benedictione",[4] or "cum Sacramento in pyxide . . . facit signum crucis super populum nihil dicens".[5]

ii. Whilst agreeing that this blessing may be *sui generis*, and without by any means holding the view given under (i) to be necessarily incorrect, it seems to us that it belongs essentially to the category of blessings of which the priest is the minister, as canon 1274, §2, states: ". . . minister vero benedictionis Eucharisticae est solus sacerdos, nec eam impertire diaconus potest. . . ." The commentators, without expressly adverting to the point under discussion, usually write of the priest blessing the people with the sacred Host,

[1] *The Clergy Review*, 1941, XX, p. 361.
[2] Addis & Scannell, 1909, p. 84.
[3] E.g. *Dict. Droit Canon.*, II, col. 349.
[4] *Ritus Servandus*, p. 15; *Decreta Authentica*, IV, p. 114.
[5] *Rituale Romanum*, V, iv, 23 and 26.

exactly as they do of the priest blessing the people with a relic or with his hand, e.g. ". . . populum benedicere potest, sive manu, si intra ecclesiam communiones dandae fuerunt, sive cum pyxide, cum ab infirmo refecto in ecclesiam redux est."[1] The Clementine instruction, §31, reads: "Il celebrante . . . prendera . . . l'Ostensorio et darà con esso la benedizione al populo," and it would seem that the words of the Ritual "facit signum crucis super populum" mean actually no more than "benedicit populo".

Explaining a benediction or a blessing in general, and with no explicit reference to Benediction of the Blessed Sacrament, the official commentator in *Decreta Authentica*, IV, p. 360, defines it as "precatio quaedam qua aliqua sanctitas confertur, et illa proprie dicitur quae fit nomine Ecclesiae, et ex auctoritate a Deo ei concessa, quando nempe quis ratione sui muneris, quo fungitur, petit a Deo ut vel personis vel rebus bona convenientia tribuat. . . . Deo itaque operante in ministerio sacerdotali benedictio Ecclesiastica suum sortitur effectum; non quidem ex opere operato ad instar Sacramentorum, sed ex vi precum Ecclesias. . . ." Though no words are prescribed to be used when giving this Benediction, it is notable how the description of the rite in *Mediator Dei*, which stresses the priest's entreaty, is in perfect accord with the general notion of a blessing. Fr Hanssens, S.J., commenting on this text of the encyclical, writes: ". . . immo etiam in benedictione eucharistica, sicut in ceteris benedictionibus, in quibus manu, vel sacratissimae crucis reliquia, vel alia re sancta fideles benedicit, ipse sacerdos benedictionis minister est, etsi in ea danda rem sacratissimam adhibet, ipsum corpus Christi Domini."[2]

283. OCTOBER DEVOTIONS

A layman who makes it his invariable custom to follow Mass with a missal, finds himself during October in a church where during that month the rosary is recited publicly during Mass. Is he justified in ignoring the public recitation of the rosary during Mass so that he may continue with his custom of following the Mass with his missal? If reproached, could he justify his action by appealing to "Rub. Gen. Missalis", *XVI, which he understands to imply that listening to the audible parts of Mass (rather than listening to the rosary) is the ideal way of attending Mass—*"ut quae leguntur intelligant"*?*

i. In communities such as schools, where the congregation is bound to observe the arrangements made for public worship by the

[1] *Periodica*, 1929, p. 171.
[2] *Periodica*, 1948, p. 83.

superior, those present at Mass during which the October devotions take place must obey the superior and take part in the devotions by reciting the rosary and other prayers.

ii. Elsewhere, say in a parish church, any person assisting at Mass may follow his bent and use a missal instead of joining in the rosary. The individual right may also be used if, let us suppose, the parish priest wants the congregation to answer Mass with the server, following the method known as Dialogue Mass: any of the congregation may elect not to fall in with the parish priest's wishes, and to recite privately the rosary instead.

iii. In our view the October devotions are still of obligation, particularly in places where the local *Ordo* contains a reference to them. The practice, however, is falling into disuse, and will eventually cease altogether unless the appropriate ecclesiastical authority intervenes. One of the objections felt by many, including perhaps our correspondent, was that the practice may result in a duel, as it were, between the celebrant following the rubrics in reciting Mass *clara voce*, and the congregation reciting the rosary in a possibly still louder voice: this unhappy conflict should be avoided by the celebrant using a low voice, as he is authorised to do rather than disturb other celebrants in the church, or when some other function such as a sermon is in progress.

Some of our readers may be able to produce arguments showing that, even apart from custom, we are no longer bound to have these devotions during October.

284. LITURGICAL CORONATION OF LADY STATUE

A devout person wishes to present a crown for Our Lady's statue, a custom fairly common abroad. Does the parish priest require a faculty for this addition and is there an authorised ceremony of crowning?

Canon 1279, §4: Si imagines, publicae venerationi expositae, solemniter benedicantur, haec benedictio Ordinario reservatur, qui tamen potest eam cuilibet sacerdoti committere.

i. The custom of crowning statues of Our Lady, if not then originated, seems to have become stabilised in 1636 owing to a considerable legacy left for this purpose to the Chapter of St Peter's by Count Sforza Pallavicini. Hence arose some kind of understanding that permission for this distinction had to be obtained from the Chapter,[1] and a modern writer who is well-informed about such things states that for a crown of gold the petition must be

[1] Nabuco, *Pontificalis Romani Expositio*, II, p. 295.

addressed to this Chapter.[1] Examples also may be cited of coronations of famous statues being authorised by the Sovereign Pontiff.[2] But we cannot find any certain indication that the rite is reserved either to the Holy See or to the Chapter of St Peter's, and our impression is that the Roman faculty is obtained as an added solemnity or honour.

We think, however, from canon 1279, §4, that permission for a public and solemn crowning must be obtained from the local Ordinary, for the rite includes a solemn blessing of the crown which, though not a statue, is a notable addition thereto.

ii. The text of the rite to be followed when crowning the statue used to be given by the Chapter of St Peter's together with the faculty, and very likely it still is, but modern editions of the Pontifical contain a "Ritus servandus in Coronatione Imaginis B.M.V.", which was given, according to Nabuco, by the Congregation of Rites, 29 March, 1897, and the larger commentaries explain all the details.[3] The fact that it is in the Pontifical and not in the Ritual supports the opinion given above that the rite is reserved to the Ordinary, who may of course delegate any priest for the purpose, and Moretti[4] gives details of the rite then to be followed.

285. CORONATION OF LADY STATUE IN MAY

Is there any official ruling as to the lawfulness or otherwise of including in May devotions a ceremony of crowning the statue of our Lady, usually performed by a girl and her attendants?

i. The only official rules known to us concern the liturgical crowning, a rite reserved to the Ordinary, as explained in the previous answer. Not only is this rite reserved, but any ceremony whatever, if publicly performed in a church by an officiating priest, obviously excludes, in our view, the crowning of the statue by a girl.

ii. In other circumstances we can see no objection to the practice, which is only one of the many forms of popular devotion and amounts to nothing more than the adornment of the statue. Take, for example, a procession in a convent school through the garden in May in which a statue is carried by the girls: one stage of this might consist of a crowning of the statue by a girl. It seems to be perfectly in order, and far from meriting any prohibition, is rather to be encouraged.

[1] Sartori, *Jurisprudentiae Ecclesiasticae Elementa*, p. 90.
[2] E.g. *A.A.S.*, 1934, XXVI, p. 223.
[3] E.g. Moretti, *Caeremoniale*, IV, p. §3133, or Nabuco, op. cit., p. 287.
[4] Op. cit., §3207.

286. ENTHRONEMENT OF THE SACRED HEART

What is the formula, if any, which must be used for the purpose of gaining the indulgences attached to this pious practice?

S. Poenit., 1 March, 1918; *A.A.S.*, 1918, X, p. 154: I. Utrum ad lucrandas indulgentias piae praxi annexas, necessario in singulis domis, familiae SS. Cordis Iesu per sacerdotem consecrari debeant, an liceat, adunatis familiis, caeremoniam in ecclesia instituere, ubi cum maiore sollemnitate et devotione res agitur? *Resp.* Affirmative ad primam partem, negative ad secondam.

2. Quando iudicandum sit sacerdotem adesse non posse, ita ut imago SS. Cordis Iesu, prius benedicta, ab aliqua persona saeculari collocari et formula consecrationis recitari possit? *Resp.* Iudicium de hac re prudenti iudicio Ordinarii loci remittitur.

3. Utrum ad lucrandas indulgentias piae praxi annexas requiratur ut consecrationis formula, Rescripto diei 19 maii 1908 stabilita, adhibeatur. *Resp.* Affirmative.

This popular pious practice was started in Peru in 1907 by Fr Matteo Crawley Boevey, a religious of the (Picpus) Congregation of the Sacred Hearts of Jesus and Mary. It quickly spread through South America to Europe and to the whole world, and was indulgenced by Pius X and later Pontiffs.[1]

Though it appears that, before 1918, no special formula of prayer was imposed for use at this ceremony of enthronement, it is now clear from *S. Poenit.*, 1 March, 1918, that for gaining the indulgences the formula there indicated must be used. It is the prayer printed in *Enchiridion Indulgentiarum*, n. 705; in the local appendix to rituals, such as the *Roman Ritual*, Tournai, 1935, or *The Pocket Ritual*, Burns Oates, 1930; and in *The Clergy Review*, 1943, XXIII, p. 285. The prayer begins "Most Sacred Heart of Jesus" and ends "Hail, Sacred Heart of Jesus, our King and Father".

The additional prayers, found in many of the books, are fittingly recited after the representation of the Sacred Heart has been installed, but they are not necessary for gaining the indulgences.

The rite presupposes that the picture or image is first blessed, and the form given is taken from the *Roman Ritual*, Tit. IX, cap. ix, 15. There is no indulgence attached to this liturgical formula as such, but it seems to us that either this or some other formula of priestly blessing must, for gaining the indulgences, precede the

[1] Cf. *La Documentation Catholique*, 1923, p. 911.

recitation of the prayer "Most Sacred Heart of Jesus". *Enchiridion Indulgentiarum* does not, indeed, name a previous explicit ritual blessing, and speaks simply of the prayer being recited on the day of the family's consecration to the Sacred Heart; but since this consecration is identical with the enthronement, the prayer as an indulgenced formula seems to require the previous priestly blessing of the representation of the Sacred Heart.

Accordingly, in the useful collection of pious practices edited by Schrevel and Legrand[1] the conditions for the enthronement of the Sacred Heart are summarised as follows: 1. Ut inthronizatio fit *domi*. 2. Ut imago SS. Cordis benedicatur a sacerdote et ab eodem, quantum fieri potest, collocetur in loco honorifico domus. 3. Ut sacerdos recitet formulam consecrationis domus, approbatam et indulgentiis ditatam rescripto 19 Maii, 1908.

287. PAROCHIAL VESPERS

Except in large parish churches the singing of vespers correctly according to the "Ordo" is too difficult. Would it be considered gravely unliturgical to sing Vespers of Our Lady every Sunday, with all the ceremonies normally accompanying solemn vespers?

Mediator Dei, 20 November, 1947: Prisca aetate frequentiores christifideles horariis hisce precibus aderant; sed hoc pedetemptim exolevit, atque ut modo diximus, in praesens earum recitatio clero solummodo ac religiosis sodalibus officium est. Nihil igitur districto iure laicorum ordini hac in re praecipitur; verumtamen summopere optandum est, ut horarias illas preces recitando vel canendo, actu participent, quae diebus festis sub vesperum in sua cuiusque curia habeantur. Enixe vos vestrosque adhortamur, Venerabiles Fratres, ut pia haec consuetudo in usu esse ne desinat, utque, ubicumque obsolevit, iterum pro facultate effecta detur. Quod tum procul dubio salutaribus cum fructibus fiet, cum vespertinae laudes non solum digne ac decore persolventur, sed ita quoque ut variis modis christifidelium pietatem suaviter alliciant.

S.R.C., 29 December, 1884, n. 3624.12: Quaeritur utrum in ecclesiis mere parochialibus, ubi non adest obligatio Chori, Vesperae, quae ad devotionem populi diebus Dominicis et Festivis cantantur, conformes esse debeant Officio diei ut in Breviario; an desumi possint ex alio quolibet Officio ex. gr. De SSmo Sacramento, vel de Beata Maria Virgine? *Resp.* Licitum est in casu Vesperas de

[1] *Florilegium*, Bruges, 1933.

alio Officio cantare; dummodo ii qui ad Horas Canonicas tenentur, privatim recitent illas de Officio currente.

i. An earlier reply to the Sacred Congregation, 26 September, 1868, n. 3180, refused to tolerate sung votive vespers of Our Lady on Sundays and feasts in the chapel of nuns whose rule required them to recite Our Lady's office, though possibly the refusal had chiefly in mind the petitioner's proposal that the celebrant should be vested in a cope. The reply n. 3624 settles the matter in substance and most of the modern writers quote it and are either silent about the earlier one, or else deduce from it that the use of a cope and the incensation of the altar[1] are not permitted at a sung votive vespers.[2] It is clear from the rubric of the breviary at the beginning of the Little Office of Our Lady that the antiphons are not to be doubled. Sung votive vespers of Our Lady carried out with these modifications are perfectly in order.

ii. The most impressive thing, however, in sung Vespers is the incensing of the altar by the celebrant vested in cope, especially if he is accompanied by assistants in copes. It seems to us that these added solemnities are not a serious departure from the rubrics of votive vespers and could be tolerated on Sundays in parish churches. The Holy Father urges this liturgical office to be performed in such manner as to arouse the devotion of the people, and a recent private reply to the Sacred Congregation to an Italian Cecilian Association[3] not only tolerates but very warmly approves a suggestion for vespers in a simplified form, for example the Common instead of the Proper for all Offices of Saints, since this would encourage the active participation of the laity. The idea is that one can only gradually reach perfection in such matters, and by permitting a simplification the way will be smoothed towards a correct and perfect performance of the rite according to the calendar and rubrics. It is quite clear that the Cecilian Association had in mind solemn vespers with incensation of the altar, for bearing in mind n. 3624.12 there was no need to seek a directive about singing votive vespers with the modifications indicated above in (i). The rite of Sunday vespers, with the lengthy concluding psalm and several commemorations perhaps, is a rather formidable proposition, and is unlikely to attract the people towards liturgical offices. However, if a parish priest is dubious about encouraging the liturgy in an unliturgical manner, he may either have sung vespers of Our Lady as in (i) or obtain the Ordinary's sanction for performing the rite with all the usual solemnity.

[1] Cf. n. 3844.2.
[2] *L'Ami du Clergé*, 1925, p. 735.
[3] *Ephemerides Liturgicae*, 1949, p. 326.

288. STRUCTURE OF PRIME

Compared to the other Hours the structure of Prime appears to be somewhat formless. Why is this so, and in particular why in this Hour alone is there a threefold invocation "Deus in adiutorium"?

i. Up to 1946 there was general agreement in assigning the origin of Prime to a monastery in Bethlehem towards the end of the fourth century.[1] The writers relied on a statement of Cassian, an eyewitness in this monastery, that the monks after concluding the night office used to remain in repose till the hour of Terce, and to counteract this habit they were at sunrise summoned to choir where the office he calls "novella solemnitas" took place.[2] This office, it was assumed, is what was later styled Prime.

In 1946, Dom J. Froger, a monk of Solesmes, in an important and original study of the subject, maintained that Cassian's "novella solemnitas" was what came to be called Lauds, and that Prime did not appear till the sixth century in Provence.[3] This theory, if correct, will modify the accepted view not only about Prime but about the origins of the canonical hours in general.

ii. Whatever may be the truth about the time and place of its origin, Prime has a special character as an office for opening a working day, whether in monasteries or elsewhere, but its structure is predominantly monastic. There are two clear divisions: (*a*) the Choir office ending with *Deo Gratias* which follows the usual pattern of psalms, little chapter, responses (preces) and prayer; (*b*) the Chapter office from the martyrology onwards. It is this second or Chapter office which might appear to be formless, but two divisions are easily discernible: (i) the reading of the martyrology to which is attached the versicle *Pretiosa* and the prayer asking for the intercession of Our Lady and all the saints; (ii) the prayers beginning with the triple *Deus in adiutorium* invoking the divine guidance for the tasks of the day, and ending with the blessing given by the abbot or by whoever is presiding. The second portion of the Chapter office included, in monasteries, a reading from the rule of St Benedict, for which was substituted in secular churches a "lectio brevis" from the Scriptures: this reading, now taken from the little chapter appropriate to None, is the only part of Prime which has a connexion with the Office of

[1] Callewaert, *De Breviarii Romani Liturgia*, §311; *Dict. Archéol.*, XIV, col. 1776; *Ephemerides Liturgicae*, 1938, p. 115.
[2] *Institutiones*, III, cc. 4 and 6.
[3] *Les Origines de Prime*, Rome, Edizioni Liturgiche. I rely on extensive reviews of this work, not having access to the book itself.—E. J. M.

the day. The meaning of the plural form "Benedicite" in the blessing formula is obscure.[1]

iii. The *Deus in adiutorium* invocation is recommended by Cassian as an ejaculation to be used throughout the day, and especially before any work or prayer; Cassiodorus records "quidquid monachi assumpserint, sine huius versiculi *trina* iteratione non inchoent",[2] the threefold use being doubtless in honour of the Blessed Trinity. St Benedict[3] prescribes the invocation, though not threefold, at the beginning of the canonical hours, and some think that the whole Psalm lxix which opens with these words was here recited in primitive times. It would appear, therefore, that the triple invocation is of older use than the single one to which we are accustomed before the canonical hours, and that Prime preserves the more ancient use in that section which need not necessarily take place in choir.

289. "BENEDICITE" IN THE BLESSING FORMULA

Why is this word in the plural when it occurs at Prime, at the blessing of incense, and at the beginning of the Grace before meals?

i. The choral office in Prime originally concluded with the *Benedicamus Domino* after the prayer *Domine Deus omnipotens*, the remainder from the martyrology onwards being a chapter office in monastic usage concluding with *Benedicite* and its response *Deus*. Though the meaning of these two words is somewhat obscure, the usual explanation is that the presiding prelate is begging with humility a blessing from the brethren who reply *Deus*; that is to say their answer to his request is that God may give a blessing. The added formula *Dominus nos benedicat* etc. does not appear till the thirteenth century: it is actually redundant since everything it contains is implied in the response *Deus*. However, there is no difficulty in the use of the plural form in this text of Prime since it is used by the hebdomadarius addressing the choir.[4]

ii. The meaning of *Benedicite* at the beginning of the "Benedictio Mensae" is also obscure, and its origin is usually considered to be connected with the monastic salutation expressed by this word, of which there are several indications in the *Regula* of St Benedict, as in chapter xxv which assigns as a punishment "nec a quoquam benedicatur transeunte, nec cibus qui ei datur". There is no very satisfactory explanation why the plural form should always be used

[1] Cf. *The Clergy Review*, 1948, XXX, p. 331.
[2] In Ps. 69. Cf. Callewaert, op. cit., nn. 289.3, and 315.2.
[3] *Regula*, c. xviii.
[4] Callewaert, *De Breviarii Romani Liturgia*, §316.

in this salutation, and it originally appears to have been also in the singular. At the "Benedictio mensae" its use by the presiding priest offers no difficulty since he is addressing the assembled company; its use in their response may be accounted for by supposing that each member of the company is saluting the rest.[1]

iii. One is tempted, for the sake of uniformity, to give a similar interpretation of the word *Benedicite* at the blessing of incense, and to suppose that it was originally a request for a blessing from all assembled, the response thereto being *Pater Reverende* instead of *Deus*, the deacon in course of time making the response himself by attaching it to the request. But there is no authority whatever for an explanation of this kind: the prayers *Incensum istud* and *Ab illo benedicaris* appear in mediaeval missals without the preceding *Benedicite*, and frequently the more correct *Jube domne benedicere* is found instead.

The only remaining explanation is that *Benedicite*, though plural in form, is really an imperative singular. Le Brun, an old writer who deals faithfully with every word of the Mass in defending it against heretics, adopts this view: "Dicitur *Benedicite*, multitudinis numero, tametsi ad unum tantum referatur oratio, quippe quod rude vulgus hac loquendi ratione maiorem observantiam exhiberi putet." He gives a justification for this use of the plural in such terms as *Eminentia vestra*, and suggests that since people of some consequence are accustomed to refer to themselves as "We" it was natural for others to use the plural in addressing them.[2]

290. ORIGINS OF "DIES IRAE"

Popular liturgical works allege that "Dies Irae" was originally an Advent sequence, which has now become attached to Masses for the Dead. Is this a likely and a provable proposition?

i. The "Dies Irae" was universally attributed to the Franciscan Thomas of Celano (*c.* 1250) up to about 1931, and though various earlier versions of certain stanzas were discovered, it was still thought that this Franciscan was at least the author in the sense that he assembled and re-wrote the stanzas. This view is now generally abandoned since the finding at Naples by Dom M. Inguanez, the librarian of Monte Cassino, of a text differing but slightly from the one in our missals, and dating from about the end

[1] A different explanation is given in *Ephemerides Liturgicae*, 1936, p. 159, namely that the response is a request from the assembled company asking the presiding priest to bless the food.
[2] *Explicatio . . . Missae* (1759), I, p. 163.

of the twelfth century.[1] But writers, unaware perhaps of this discovery, are still found who attribute the authorship to Thomas of Celano.[2] The actual authorship of the hymn is, at the moment, unknown.

ii. The notable thing about the "Dies Irae" is that it contains no reference to the dead until the last six lines, and these are lacking in the Neapolitan text which ends "Gere curam mei finis". Of these six lines "Huic ergo parce Deus" belonged originally to the previous stanza beginning "Lacrimosa dies illa", the four lines being a compendium of the whole of the preceding verses: they were added, it appears, in the first half of the thirteenth century, when the sequence became attached to the liturgy of the dead, and their adventitious character is apparent even from the chant. The last two lines, even more strikingly diverse from what precedes, were added later.

iii. As part of the liturgy for the dead the hymn was first attached to the absolution *Libera me*, which contains the same ideas as the hymn, and the chant itself of the words "Dies illa, dies irae" in *Libera me* is practically the same as the opening notes of the hymn. The *Libera me* is thought to date from the end of the tenth century,[3] perhaps earlier.[4] The hymn became inserted in the Requiem Mass in many missals, and was finally adopted definitely in the missal of Pius V.

iv. We are accustomed to explain these exequial texts which are prayers for a favourable issue at the judgement, as being a dramatic representation, in which words are put on the lips of a person already dead and judged, as though this had not yet happened. This may well be the historical truth accounting for the sentiments finding a place in the liturgy of the dead. Another explanation is the one suggested in the question, that the "Dies Irae" and presumably the *Libera me* also were originally designed for Advent, a period not only of preparing for the commemoration of Christ's first coming, but of getting ready for His second coming at the day of judgement, and both ideas enter into the collect of the Christmas vigil. Popular modern liturgists often state that the hymn was a sequence for the 1st Sunday of Advent, before being transferred to the liturgy of the

[1] Jungmann, *Missarum Sollemnia*, I, p. 541; Crogaert, *Les Rites . . . de la Messe*, I, p. 537; *Q.L.P.*, 1931, p. 260, where the Neapolitan text is printed.
[2] S.A. in *Ephemerides Liturgicae*, 1950, p. 131, where numerous other variations of the Missal text are printed.
[3] *L'Ami du Clergé*, 1909, p. 567, summarises a writer whose conclusions were later substantiated by the Neapolitan text.
[4] Cf. *Liturgy*, January 1946, for an excellent study by Mary Ryan of the text and variations of *Libera me*.

dead.[1] This is likely to be the truth, but we have not succeeded in discovering any substantiation of it: what is wanted is a reference to some contemporary text which explicitly supports this assignation. The references to the last judgement in our present breviary Advent hymns need only a mention; they are in Vespers and Lauds.

Te deprecamur ultimae
Magnum diei Iudicem,
Armis supernae gratiae
Defende nos ab hostibus.

Ut, cum secundo fulserit,
Metuque mundum cinxerit,
Non pro reatu puniat,
Sed nos pius tunc protegat.

291. "UT QUEANT LAXIS"

The Breviary hymns for 24 June are unusually difficult to construe. Are they by one author, and were the designations of the scale in possession before the hymn or "vice versa"*?*

i. The hymn, divided between Vespers, Matins and Lauds, was composed by Paul the Deacon, a monk of Monte Cassino, also known as Warnefrid (ob. circ. 799), for use on the feast of the titular of the monastery church. In *The Clergy Review*, 1944, XXIV, p. 266, Dom Romanus Rios, whilst observing that some of the stanzas are involved, considers it to be probably the best specimen of metrical composition of the Carolingian renaissance. The English versions consulted are useless as an aid to construing, e.g. that given in Bute's breviary, but Dr Fortescue in his *Latin Hymns* (University Press, Cambridge, 1924) provides a fairly literal version of the five stanzas assigned to Vespers.

ii. Two centuries later (circ. 995–1050) another monk, Guido d'Arezzo, a musical theorist, introduced or perfected the Hexachord, a group of six consecutive notes, as a unit for sight singing. Noticing that these six ascending notes were, as a matter of fact, those employed in the ascending melody of the Vesper hymn for St John, he assigned to the degrees of the Hexachord the syllables Ut, Re, Mi, Fa, Sol, La, of the hymn.

iii. "Ut" was changed to "Doh" by Bononcini in 1673, and "Si", from the first two letters of the final words of the first stanza "Sancte Ioannes", was added later. In most systems of tonic-sol-fa "Doh" and "Ti" (for "Si") are used, but the earlier "Ut" and "Si" remain in some foreign methods of teaching. Cf. Scholes, *The Oxford Companion to Music*, p. 422; *Text Book of Gregorian Chant* by

[1] *Dictionnaire Pratique de Liturgie Romaine* (1952), p. 342; Schuster, *Liber Sacramentorum*, II, French edition, p. 134.

Suñol and Durnford, p. 2. Alec Robertson, *Sacred Music*, p. 29, reprints a South German twelfth-century MS. portrait of Guido d'Arezzo.

iv. The following extract from *Ephemerides Liturgicae*, 1951, p. 155, may be of interest, as completing the history of this subject: Guido monachus, ut pueri cantores a se instructi voces suas notis latinis, quas invenerat, canendo facilius concordare possent, syllabas initiales adhibuit prioris emistichii hymni *Ut queant laxis*. Henricus autem Boito, illustris musicus, eiusdem emistichii singularem composuit italicam paraphrasim acrosticam, Guidonis laudes resonantem (Cfr. *Ambrosius*, 25 (1950) 120–124). Utrumque, doctae curiositatis ergo, referre liceat:

UT queant laxis
*RE*sonare fibris
*MI*ra gestorum
*FA*muli tuorum
*SOL*ve polluti
*LA*bii reatum
*S*ancte *I*oannes.

*UT*il di Guido
*RE*gola superna
*MI*suratrice
*FA*cile de' suoni
*SOL*enne or tu
*LA*ude a te intuoni
*SI*llaba eterna.

292. SEPTUAGESIMA

Popular accounts of the liturgical year explain that the name given to this and the following two Sundays represents roughly speaking, or in round numbers, seventy, sixty or fifty days before Easter. Is there no more satisfactory meaning for these names?

i. The question is connected with the enumeration of forty days of the Lenten period, which is usually explained, not merely in popular accounts but by many liturgical scholars, as forty days of fasting in preparation for Easter, a number which is verified by starting from Ash Wednesday and excluding the Sundays, since these are not fasting days. The fact that the primitive duration of Lent differed in various places is not relevant to the question. Gregory the Great teaches[1] quite explicitly that there are thirty-six days of "abstinence", in preparation for Easter, beginning that is to say from the First Sunday of Lent. The addition of four extra days, beginning with Ash Wednesday, was a later and a very convenient addition to the thirty-six already in possession, and it seemed to explain quite satisfactorily the number forty which was the ancient denomination for the Lenten period. This was a mistake

[1] Cf. *Ephemerides Liturgicae*, 1925, p. 20.

in numeration which arose as early as the eighth century, and was due to giving an undue emphasis to the fasting discipline and to taking the Pasch as Easter Day.[1]

ii. Bishop Myers in his brief but extremely valuable study on *Lent and the Liturgy*[2] explains the origin of this error and shows that the primitive period of Lent began on the first Sunday,[3] *Caput Quadragesimae*, and that in perfect imitation of Our Lord's sojourn in the desert, and of other Scriptural examples, it was not merely approximately but actually forty days, concluding with Holy Thursday. For the Pasch, in the understanding of primitive writers, was the day of Our Lord's death, and from the earliest times Christians naturally prepared for the commemoration of this great event in the history of mankind; it was a period which indeed included fasting, but was predominantly one of intense spiritual activity of every kind. This primitive and correct idea of Lent is still preserved in the exhortation of Leo the Great (440–461) which occurs in the breviary lessons in the second nocturn of the First Sunday of Lent: ". . . ad universa pietatis officia illius nos diei, in quo redempti sumus, recursus invitat: ut excellens super omnia passionis Dominicae sacramentum, purificatis et corporibus et animis celebremus."

iii. The mathematical problem, though of less importance, is also unravelled by Bishop Myers, once the starting point of the enumeration is correctly fixed. The counting was, so to speak, on the decimal system, and the earliest list of Sunday gospels we have illustrates the corresponding names given to the Sundays occurring within groups of ten. Counting backwards from this point (the Roman custom we all remember from our wrestling with Calends, Nones and Ides), what we now call the Fourth Sunday in Lent is styled *Dominica ante XXma*, the Third Sunday of Lent *In Tricesima*, and the First Sunday in Lent *Quadragesima*. We have retained this Roman system for naming the Sundays from Septuagesima to Quadragesima, but for the succeeding Sundays the more modern way of counting forwards is used. The reasons for the introduction of a pre-Lent period, though not quite certain, were probably the threats of Lombard invasions, as Bishop Myers explains. Granted the necessity of extending the period of prayer and penance beyond Quadragesima, the names given to the Sundays within groups of ten continued the method of enumeration already in possession; Septuagesima just comes within the seventh decade.

[1] Callewaert, *Liturgicae Institutiones*, I, §81.
[2] Reviewed in *The Clergy Review*, 1948, XXXIX, p. 209.
[3] Cf. The Secret prayer of that day "Sacrificium quadragesimalis initii . . ."

293. AUTHENTIC TEXT OF PIUS X ON CHURCH MUSIC

The words of Pius X to the effect that "active *participation in the Holy Mysteries and in the public prayer of the Church is the primary and* indispensable *source of a true Christian spirit*" *are more quoted by popular writers than almost any others from an official source. The words* "active" *and* "indispensable" *are, however, lacking in the official Latin version. Which text is authentic?*

Pius X, *Motu Proprio*, 22 November, 1903

Italian (*A.S.S.*, XXXVI, p. 331)

. . . per attingere tale spirito dalla sua prima ed indispensabile fonte, che è partecipazione attiva ai sacrosanti misteri. . . .

Latin (ib. p. 388)

. . . ut hoc virtutis spiritu ex priore fonte fruantur, quae est participatio divinorum mysteriorum. . . .

Latin (*Decreta Authentica S.R.C.* (1912), n. 4121)

. . . ad eundem spiritum ex primo eoque necessario fonte hauriendum, hoc est ex actuosa cum sacrosanctis Mysteriis . . . communicatione.

The document appeared first in Italian, presumably as written or passed by the Pope. Later, in the same volume of the *Acta* a Latin version was printed and it was described as "versio fidelis". Nine years later a new Latin version was given amongst the Authentic Decrees of the Congregation of Rites and the same text appeared in the post-Code official collection, *Fontes*, n. 654, in Volume III, published 1925. The English version to which we are accustomed, printed in the Leeds Synods, 1911, p. 192, corresponds with the original Italian: ". . . of acquiring this spirit from its foremost and indispensable fount, which is the active participation in the most holy mysteries. . .".

Owing to its inclusion in *Decreta Authentica* and *Fontes*, there can be no possible doubt that the Latin version given in these two sources is the only faithful version of the original Italian; the Latin version which appeared in the same volume of the *Acta* is imperfect; the authentic text is the Italian in which the document first appeared amongst the official acts of the Holy See. We have not seen any explanation or withdrawal of the faulty Latin version which, because it is in Latin and contemporary with the Italian, occasionally deceives even the most wary and experienced liturgists.[1]

[1] Cf. Dom B. Capelle in *Questions Liturgiques and Paroissiales*, 1951, p. 146; 1952, p. 161.

XXV. JOINT WORSHIP OR ACTION WITH NON-CATHOLICS

294. PRAYER WITH NON-CATHOLICS

The recent papal instruction on the Oecumenical Movement permits a "Pater Noster" *to be recited together by Catholics and non-Catholics before and after a joint conference, whereas in this country at least the view has been widely held, up to the time of the papal pronouncement, that common prayer of this kind is not permitted. What is the explanation?*

S. Off., 20 December, 1949, *Instructio ad locorum Ordinarios*, "De Motione Oecumenica", ad. V: Quamquam in omnibus hisce conventibus et collationibus quaelibet in sacris communicatio est devitanda, tamen non reprobatur communis recitatio Orationis Dominicae vel precationis ab Ecclesia Catholica approbatae, qua iidem conventus aperiantur et concludantur.

The fringes of the law codified in canon 1258 have always been subject to a varied casuistical interpretation, both in the replies of the Roman Congregations and in the solutions given by theologians. Assuming that there is no scandal, no danger of perversion, and that an orthodox prayer formula is being recited in common, and putting aside all irrelevant circumstances, it will be found that conflicting opinions ultimately turn on whether *communicatio in sacris* is to be considered wrong in itself or merely prohibited by positive law.

i. Cardinal d'Annibale, a moral theologian and canonist still in great repute and often quoted in documents issued from the Roman Curia, is the best representative of the view that, with the above limitations, the practice is not wrong in itself.[1] "An liceat cum eis communicare . . . in divinis, nempe quae obeunt more et ritu plane catholico; nam in his quae redolent haeresim non licet omnino; plerique affirmant, quippe, aiunt, ab eis quasi ab excommunicatis prohibemur; alii negant, quia arcemur ab eis tanquam ab haereticis. . . . (What follows is in a footnote.) Dicam plane, in re tam salebrosa, quod sentio. Communicatio in divinis non suapte natura illicita est (alias nefas esset mixta, quae vocant, matrimonia permittere), sed quia aut *adhaesionis* damnatae sectae speciem praesefert; aut fovet *indifferentismum*, quae aetatis nostrae contagiosa lues est; uno verbo, propter ipsius catholicae religionis periculum. Ubi igitur

[1] *Theologia Moralis*, 1908, I, §110, n. 11.

huiusmodi periculum cessat, recidimus in legem ecclesiasticam, cui derogare fas est, cum longe plus incommodi quam commodi habet." This view amply and clearly explains the recently granted permission for united prayer.

ii. The more common view, in this country at least, has regarded *communicatio in sacris*, even with the above limitations and safeguards, as wrong in itself, because there is always implied in the action, it would seem, at least an external approval of heretical worship;[1] or because prayer presupposes or expresses belief, and cannot rightly be recited in common except by those professing the same faith.[2] If prayer with heretics is ever permitted, it will be on a principle of toleration, or by arguing that heretics are praying with us, not we with them, or even by relying on the axiom *de minimis non curat lex*, if the prayer is so short as to be negligible. The instructions of the Holy Office and Propaganda on the subject, some of them extremely difficult to explain on any other principle,[3] have led one to believe that, for all practical purposes, this outlook has so far been favoured by the Holy See.[4] Moreover, notwithstanding certain casuistical evasions, it is a view of the matter which vastly strengthens the law of canon 1258, and makes it easier to prevent abuses; for, as we all know, a positive ecclesiastical law is subject to a customary interpretation, to dispensations, to *epikeia*, to non-observance when there is a *grave incommodum* and so on and so forth. Accordingly in *The Clergy Review* the solutions offered so far have been based on the view that a united prayer is wrong of its nature.[5]

iii. The recent instruction of the Holy Office could be explained, indeed, by one of the considerations mentioned in (ii), but we think any of these casuistical devices unworthy of the gravity of the whole document, and that its explanation is to be sought in the view given under (i). It must follow that those amongst us who have held that a united prayer with heretics, even with the limitations and safeguards assumed throughout this note, is always of its nature wrong, have been defending a too rigorous interpretation of the law in canon 1258, an outlook due to our conditions in this country, to the traditions received from our forefathers, and to the necessity, as we conceived it, of discouraging the faithful from any religious contact whatever with non-Catholics.

iv. There remains a verbal difficulty in the reply of the Holy

[1] Prümmer, *Theol. Moralis*, I, §526; *Wouters*, I, §500.
[2] Cardinal Bourne, *Lent Pastoral*, 1924; Bishop Beck, *The Times*, 15 November, 1949; Bonnar, *The Tablet*, 1949, 194, p. 396.
[3] Cf. e.g. *The Clergy Review*, 1948, XXX, p. 200.
[4] D'Annibale, loc. cit. footnote 9; Benedict XIV, *De Synodo*, VI, v. 2.
[5] E.g. 1944, XXIV, p. 185.

Office, which by asserting, firstly, that any kind of *communicatio in sacris* must be avoided at these meetings, and, secondly, that a *Pater Noster* or a prayer approved by the Church is not forbidden, appears to teach that reciting the latter is not *communicatio in sacris*. Prayer, however, is obviously a sacred thing, and the *Pater Noster* the most sacred of all prayers, and therefore it would seem that a joint *Pater Noster*, if words have any meaning, must be *communicatio in sacris*. We cannot, at the moment, find any perfectly satisfactory solution of this verbal difficulty. The meaning may be that, the law of canon 1258 being (with the limits explained above) a positive law, the Holy Office in given circumstances permits one derogation from it whilst insisting that the law must otherwise be observed. Moreover, the prayer permitted is something incidental and accessory to the purpose of the gathering, which is not a prayer meeting but a discussion or exposition. Whatever the true explanation may be, we all welcome a decision which makes our contacts with non-Catholics much more agreeable, and settles a little difference of opinion which has existed for the last few years amongst Catholics in this country.

295. RECEPTION OF SACRAMENTS FROM NON-CATHOLIC MINISTER

Can there be a good cause, apart from danger of death, justifying reception of the sacraments from the minister of a non-Catholic sect who is known to be validly ordained and capable of ministering certain sacraments validly?

Canon 1258, §1: Haud licitum est fidelibus quovis modo active assistere seu partem habere in sacris acatholicorum.

Canon 2261, §2: Fideles, salvo praescripto §3, possunt ex qualibet iusta causa ab excommunicato Sacramenta et Sacramentalia petere, maxime si alii ministri desint, et tunc excommunicatus requisitus potest eadem ministrare neque ulla tenetur obligatione causam a requirente percontandi.

§3: Sed ab excommunicatis vitandis necnon ab aliis excommunicatis, postquam intercessit sententia condemnatioria aut declaratoria, fideles in solo mortis periculo possunt petere tum absolutionem sacramentalem ad normam can. 882, 2252, tum etiam, si alii desint ministri, cetera Sacramenta et Sacramentalia.

S. Off., 30 June–7 July, 1864; *Fontes*, n. 978.6.: In pericolo di morte, mancando un sacerdote cattolico, si può cercare l'assoluzione da un sacerdote scismatico? *Resp.* Licere, dummodo tamen et aliis fidelibus non praebeatur scandalum, nec sit alius sacerdos catholicus,

nec sit periculum ut fidelis ab haeretico pervertatur, et tandem probabiliter credatur sacerdotem haereticum administraturum hoc sacramentum secundum ritus ecclesiae.

i. Relying on canon 2261 alone, one might unthinkingly give an affirmative reply to the question submitted; for the non-Catholic minister is not normally in the condition of an excommunicated person in §3 of the canon, and it would therefore seem that any grave cause justifies receiving sacraments from his ministration. When, however, it is remembered that an excommunicated person as such does not normally cease to be a Catholic,[1] it is evident that the content of canon 2261 relates chiefly to Catholics who may be excommunicated for a variety of reasons. The question of receiving sacraments from non-Catholics, whether excommunicated or not, is ruled by canon 1258.

ii. *Communicatio in sacris*, an extremely difficult matter on the fringes of the law, offers no problem whatever when the non-Catholic rites or ceremonies or prayers are in themselves heretical in character or expression. To share in them is forbidden by natural or divine law at all times, including the hour of death, and no reason whatever can justify the action. Moreover, even though the rites are in themselves orthodox, the same natural or divine law forbids our participation if there is scandal or danger of perversion.

It used to be widely held that active participation in the orthodox rites of non-Catholics, provided no scandal or danger of perversion existed, is intrinsically wrong, but the view which best harmonises theory and practice now regards the practice as forbidden merely by the positive law, though it is a law which is based indeed on the presumption of scandal and danger of perversion.[2]

iii. The reply of the Holy Office in *Fontes*, n. 978, takes into account all the elements discussed above and decides for the lawfulness of seeking absolution in the hour of death from a schismatic, and the same applies to a heretic in principle (as stated in the reply) if we assume all the conditions verified; indeed, since the Vatican Council at least, the line between a heretic and a schismatic is extremely thin. We are discussing the matter, be it remembered, from the angle of positive law,[3] and bearing in mind the gravity of the prohibition against *communicatio in sacris*, as well as the rigidity of its interpretation in the instructions of the Holy See, it is our opinion that we may not extend the permission in *Fontes*, n. 978,

[1] *The Clergy Review*, 1939, XVII, p. 268.
[2] Cf. above, qu. 294.
[3] An earlier reply of *Propaganda*, 17 February 1761, *Fontes*, n. 4538, was in exactly the opposite sense: "Nullo casu, neque necessitatis, licere catholico confiteri peccata sua et absolutionem obtinere a sacerdote schismatico."

beyond what is absolutely necessary for salvation: absolution clearly is and also extreme unction if the person in danger of death is unconscious. Holy Eucharist may be received if consecrated by a Catholic priest, for a person who brings Holy Communion to the dying is not a "minister" except in the widest sense of the word. We think it certain, however, that the services of an heretical minister of the sacraments may never be sought to relieve a necessity short of extreme spiritual danger, for example the necessity of observing the law of annual confession.[1]

iv. It will be found, we think, on the above principles, that all the incidental problems can be solved. The German bishops forbade access in danger of death to so-called "Old Catholic" priests at the time of the Vatican Council because it was judged that danger of perversion existed.[2] Some manualists hold that there is always danger of perversion and recommend, even in the hour of death, reliance on the divine mercy and grace to make an act of perfect contrition.[3] In conclusion, a careful pondering of each sacrament will reveal whether it is necessary for salvation, and whether the law makes provision (as for baptism or marriage) without the necessity of approaching a non-Catholic.

296. PROBLEMS IN NON-CATHOLIC SCHOOLS

1. *May Catholic girl students of a non-Catholic training college attend lectures on Scripture given by a non-Catholic professor, when these lectures take the form of a discussion where everybody may put forward her views? Some Catholic students see here an excellent opportunity of expounding Catholic doctrine.*

2. *May Catholic teachers in non-Catholic schools give the official Scripture Course for non-Catholics, if they are allowed to expound but not impose the true Catholic doctrine? If so, are they obliged to explain the integral Catholic view?*

Ad i. The question is one for the Ordinary to decide, since many points of public policy converge, e.g. the presence of Catholic students in a non-Catholic training college; or the competence of these students to intervene publicly in a religious disputation; and, if they are competent, the question arises whether their intervention is necessary and likely to forward the cause of Catholic truth.

Accordingly, we cannot do more than give an opinion whether a

[1] Cf. De Smet's full treatment of the whole subject in *De Sacramentis*, §191.
[2] Lehmkuhl, *Theol. Moralis*, II, §53.
[3] Noldin, *Theol. Moralis*, III, §43, a view which we personally much prefer.

request for permissions of this kind is likely to be successful. We think it is unlikely since the practice is forbidden by canon 1325, §3: "Caveant Catholici ne disputationes vel collationes, publicas praesertim, cum acatholicis habeant, sine venia Sanctae Sedis aut, si casus urgeat, loci Ordinarii." The Ordinary may permit the practice if there is some urgent necessity, but normally a decision rests with the Holy See. In addition, as it seems to us, Catholics still *in statu pupillari* would be no match for a non-Catholic Scripture professor, even if in principle disputation is considered lawful.

Ad 2. Recourse to the Ordinary is advisable, since the presence of non-Catholic teachers might encourage some Catholics to send their children to the school against the law of canon 1374. But the necessity of this recourse is not so clear as in the previous question, for in many countries, as in the United States, Catholic teachers, in order to earn a living, have to take posts in non-Catholic schools, and teach the subjects set, amongst which may be Holy Scripture. *The Ecclesiastical Review*, July 1945, contains a good exposition of the various problems then likely to arise. The use of a non-Catholic Bible is permitted by some American authorities, but the writer is of the opinion, which we think correct, that the teacher should bring a Catholic version if the work of teaching involves reading the Bible to the children; alternatively permission might be obtained from the Ordinary for the use of a non-Catholic version.

It suffices for the teacher to expound the true doctrine, which would normally mean imposing it, since in a school the children normally accept what the teacher says. In the unlikely event of some child observing that the teacher has got the thing all wrong, it would suffice to answer that the wrong doctrine is held by Protestants and their errors have to be tolerated.

The teacher is not bound to teach the integral Catholic view, provided that what is taught is true, unless a child expressly asks; and in this case, it would often be prudent, for avoiding a charge of proselytising, to tell the child to consult a Catholic outside school hours.

As is evident, the situation is difficult and requires quite a high standard of casuistical skill in steering a safe course. One thing is absolutely certain: the teacher may never, for any reason whatever, teach error and heresy.

(Editorial Note.—The Hierarchy of England and Wales following their Low Week Meeting, 1951, issued an *Ad Clerum* covering both these points. In regard to attendance at non-Catholic religious instruction, it took the line indicated above. On the second point, it declared: "Under Section 30 of the Education Act of 1944 no

teacher can be required to give religious instruction in a county school or voluntary school. A Catholic teacher in a county school or a non-Catholic voluntary school should not undertake this work. If the circumstances are altogether unusual, the teacher should consult the Bishop of the Diocese.")

297. Assistance of non-Catholics at our functions

Is there a positive prohibition against non-Catholics taking an active part in the Corpus Christi procession?

S. Off., 20 November, 1850; Propaganda *Collectanea* n. 1840 (altera ed. n. 1053): Se sia lecito porgere torce o lumi accesi a qualsivoglia persona eterodossa che ami assistere alle nostre funzioni? *Resp.* Negative et ad mentem. La mente è che se, attese le particolari circostanze, non possono escludersi da tal cerimonia le sole persone eterodosse, se n'escludano eziandio i laici cattolici.

The laws against non-Catholics attending our rites are far less strict than those which forbid Catholics to assist at non-Catholic religious worship, and they are not always logically coherent: thus one may, for proper reasons, employ a non-Catholic organist who is certainly having an active part in the function, yet in principle, as in the above reply, active participation is not permitted. The justifying reason, apart from those actions which are of their nature forbidden, such as a non-Catholic acting as sponsor at baptism, is the necessity of avoiding the danger of scandal: this would be, particularly in these days, the danger of religious indifferentism, which might affect both Catholics and non-Catholics. Walking in the procession, without performing any office therein, such as server or canopy bearer, should in our view be regarded in the same light as rising and kneeling with the congregation. It is not, properly speaking, an active part in the rite, and is not forbidden, so far as we can discover, by any Roman decision.

298. Sending for non-Catholic minister

A decision of the Holy See forbidding nurses to send for a non-Catholic minister to assist a non-Catholic patient in danger of death is mentioned by the manualists, who all explain it away. Could we have the text of the decision?

S. Off., 15 March, 1848. D.N. Sanctitati Vestrae humiliter exponit, quod in civitate M. existat hospitium cuius ipse rector et

cappelanus est, ac in quo infirmorum curam gerunt moniales dictae M.N. Cum autem in hoc hospitio subinde recipiantur acatholicae religionis sectatores, ac iidem ministrum hereticum, a quo religionis auxilia et solatia recipiant, identidem petant, quaeritur utrum praefatis monialibus falsae religionis ministrum advocare licitum sit. Quaeritur insuper utrum eadem danda sit solutio ubi haereticus infirmus in domo privata cuiusdam catholici degit; utrum scilicet tunc catholicus ministrum haereticum advocare licite possit?

Feria IV, die 15 Martii, 1848. In congregatione generali S. Rom. et universalis Inquisitionis habita in conventu S. Mariae supra Minervam coram Emin. et Rever. S. R. E. Cardinalibus in tota republica Christiana contra haereticam pravitatem generalibus Inquisitoribus a S. Sede Apostolica specialiter deputatis, audita relatione suprascripti supplicis libelli, una cum vota DD. Consultorum: iidem Emin, et Reverend. Domini dixerunt: Iuxta exposita non licere; et addiderunt: Passive se habeant. Angelus Argenti, S. Rom. et univers. Inquisit. Secretarius.

(This is the text printed in *Mélanges théologiques*, Liège, 1848, II, p. 86, as given by Ferreres, *Casus*, I (1934), p. 102. Other versions have slight differences, as for example the date, which is given as 14 March, but all substantially agree with the above.)

Idem, 14 December, 1898. Feria IV, die 31 Jan. 1872, proposita fuit Emis Inq. gener. petitio Revmi Vicarii et Delegati Apost. Aegypti ad hoc tradita, ut instrueretur, quomodo agendum esset in hospitalibus mixtis, in quibus catholicae moniales servitium praestant, quoties aliquis schismaticus vel protestans infirmus inibi decumbens postulat assistentiam proprii ministri.

S. Ordo petitionem cum suis adiunctis matura consideratione ventilavit et opportunum duxit mittere sequens decretum: R. P. D. Vicar. Ap. se conformet decreto fer. IV, 14 Martii 1848, et opportune eidem explicetur sensus verborum *passive se habeant*. Ipse enim in epistulis datis sese difficultatibus premi dixit in interpretandis illis verbis et in iis applicandis in praxi. Et ideo praedictis Emis Patribus mens est, ut notificetur Praelato Oratori, monialibus vel aliis personis catholicis, addictis directioni vel servitio hospitalis, non licere directe obsecundare, postulationibus infirmorum acatholicorum, quod attinet ad advocandum eorum ministrum; et bonum esse, exorta occasione id iis declarare; sed addunt adhiberi posse ab iis pro advocando ministro aliquam personam, quae ad respectivam sectam eorum qui postulent pertineat. Hac agendi ratione salva manet lex, quae vetat communicationem in Sacris.

Sequenti vero Feria VI die 16 Dec. eiusdem mensis et anni (1898) in solita audentia a SSmo D. N. Leone div. provid. PP. XIII R.P.D. Adessori impertita, SSmus D.N. resolutionem EE. & RR. Patrum adprobavit.

(This is the complete text printed by Lehmkuhl, Casus, I [1913], p. 224. Other versions substantially the same, though less complete, e.g. *Dict. Théol.*, VI, col. 2239, give the date of the previous decision as 5 February, 1872. Since 1898 there has been no further direction published about the matter.)

i. These decrees are published in private collections, and are not in the *Fontes* of the Code, but there can be no doubt concerning either their authenticity or their binding force. The decision of 1848 and the explanation of 1872 are based on principles which cannot be questioned or repudiated, difficult though they may be to explain to non-Catholics, especially in countries where all religions enjoy equal favour in the eyes of the civil law and of the population. A Catholic hospital gladly extends its material benefits to all comers, whether Catholics or not; the non-Catholics, as they are bound in conscience to do, worship God according to their lights, and their ministers are not refused access. Catholics, however, as is well known to all, may not co-operate directly in the specifically religious actions of heretics: summoning an heretical minister comes within this forbidden co-operation, since it is active and not merely passive.

ii. The Holy Office in 1848, adhering to a distinction which is now in canon 1258, recommended the nuns to be passive in the matter of summoning heretical ministers. The meaning of "passive" is quite clear when it is a question of merely being present at heretical rites, without giving any active assistance, e.g. by joining in the prayers, but it is not surprising that the Sacred Congregation was asked to elucidate the meaning of "passive" in the context of the reply; and the meaning given in 1872 and again in 1898 was that the non-Catholic minister might be summoned by a non-Catholic. The word "iis" in the phrase "id iis declarare" is correctly taken by Lehmkuhl and others to mean "infirmis", and it seems to us that the same must apply to the word in the second phrase "adhiberi posse ab iis". Otherwise, if "iis" in the second phrase means "monialibus vel aliis catholicis", it would almost seem that the Holy Office was, for the moment, forgetful of the axiom "qui facit per alium facit per se". On this interpretation the force of the word "passive" is clear: the nuns or the Catholic nurses neither ask for the minister nor obstruct him—they merely look on, as a Catholic would do, say, at a Protestant wedding.

iii. The commentators, whilst being loyal to the decrees of the Holy Office, try to find a way out of further difficulties which might

arise, when there is no non-Catholic messenger available and the sick person insists on having a minister, particularly when even the appearance of refusal would cause discredit to the Catholic religion, as it certainly would in a mixed or secular State. Some writers, feeling doubtless that the limit of their power of making distinctions has been reached, teach that in such circumstances the minister may be summoned by a Catholic. Others, more correctly we think, point out that the right course is to let the minister know that a sick man wishes to see him, without specifying anything further.[1]

299. SPIRITISM

What is the teaching of the Church about spiritism and the doctrinal reason for the faithful being forbidden to take part in spiritistic séances?

Deut. xviii, 10–12: Neither let there be found among you any one . . . that seeketh the truth from the dead.

S. Off., 24 April, 1917; Denz. 2182: An liceat per *Medium*, ut vocant, vel sine *Medio*, adhibito vel non hypnotismo, locutionibus aut manifestationibus spiritisticis quibuscunque adsistere, etiam speciem honestatis vel pietatis praeseferentibus, sive interrogando animas aut spiritus, sive audiendo reponsa, sive tantum aspiciendo, etiam cum protestatione tacita vel expressa, nullam cum malignis spiritibus partem se habere velle. *Resp.* Negative in omnibus.

i. The above reply was occasioned by the increase in spiritistic practices during the First World War. Earlier directions were given by the Holy Office, 30 March, 1898 (forbidding the practice of automatic writing) and 30 July, 1856 (forbidding evoking spirits of the departed).[2]

ii. Since the doctrinal reasons for the prohibition are not given, and it is not usually the practice of the Roman Curia to give reasons, one is free to speculate about them. Some think that spiritistic phenomena can all be explained on natural grounds alone, others that they are all diabolical. A *via media* holds that spiritism is at least occasionally suspect of diabolism, and this is probably the best view to adopt, and one which fully justifies the prohibition. If even this guarded opinion seems offensive to the many excellent people who indulge in these practices, it suffices that spiritism is, for many of its adherents, a form of religion, and is for this reason alone forbidden to those who profess the Catholic religion. The reader is

[1] Génicot, *Theol. Moralis*, I, n. 201, V.

[2] *The American Ecclesiastical Review*, October 1947, p. 277, cites these two directions; they are not in *Fontes*.

referred to the fuller discussion in the articles written for *The Clergy Review* by Rev. Humphrey J. T. Johnson, 1949, XXXII, pp. 1, 156, 299, and 1950, XXXIII, p. 145.[1]

300. CIVIL RELATIONS WITH COMMUNIST GOVERNMENTS

Now that it is perfectly evident that the Communist-dominated governments of Eastern Europe, in particular at the present moment Czechoslovakia, Hungary, Yugoslavia, Rumania, are directly persecuting the Church and denying the most elementary rights and liberties to the individual, ought Catholics in other countries to urge actively that their governments refrain from all commercial agreements (alternative, break off official relations) with those governments?

i. In weighing the wrongness of any action or line of conduct, whether on the part of individuals or of States, our first concern is to see whether it is intrinsically wrong. Public relations, both commercial and diplomatic, with a government which is persecuting the Church, are clearly not wrong in themselves. Discussing a somewhat similar topic a few years ago[2] our conclusion was that it is lawful for a Christian State to enter upon a belligerent alliance with a State which is professedly anti-Christian. For the point to be examined is not the internal policy of the anti-Christian government, but the enterprise which it is proposed to undertake in alliance, namely the purpose of the war. If this purpose is unjust, an alliance even between two Catholic States is intrinsically wrong. Similarly, one must regard the immediate purpose of the commercial or diplomatic relations.

ii. The Communist government is almost certainly excommunicated, either as such or as persons attacking the rights of the Church. In earlier days excommunication carried with it the obligation on the rest of the faithful to avoid even civil relations with persons under this ecclesiastical censure. This is no longer the law except, from canon 2267, in the case of *excommunicatus vitandus*, and even then a reasonable cause justifies civil communication. One cannot, therefore, discern at the present time any positive law of the Church forbidding commercial or diplomatic alliance with a Communist government.

[1] Commenting on the above reply, Father Johnson wrote: "It may perhaps be conjectured that the decree of the Holy Office of 1917 was partly determined by a psychological consideration, viz. that many pious persons who have started as investigators have ended up by becoming mediums themselves" (*The Clergy Review*, 1951, XXXV, p. 428).

[2] *The Clergy Review*, 1941, XXI, p. 239.

iii. It is understood, however, that the treaties signed at Paris in 1947 with countries which have since become Communist and anti-Catholic, included an article safeguarding religious freedom in these countries. It is for the other parties to this agreement to secure by all means which are lawful and opportune the due observance of this article of the Treaty, and it may well be that a commercial or diplomatic rupture might secure its observance; on the other hand it might intensify the Communist and anti-Catholic activities of these governments. A decision on the sanctions to be applied for implementing a treaty must be left to the responsible government, and it will depend very largely on its political complexion. It is open to Catholic subjects, if they so desire, to urge by every lawful means the application of sanctions, exactly as they would in any other question of public policy. But, in our view, one cannot say that Catholic subjects "ought", i.e. that they have a moral obligation, to urge such sanctions. There may be other grave reasons arguing against this policy, and Catholics may, if they wish, refrain from urging it, leaving it to the responsible government to adopt whatever policy seems best in the circumstances.

XXVI. ECCLESIASTICAL CENSORSHIP

301. CENSORSHIP OF PARISH MAGAZINES

On what principle do these publications, which usually contain matter dealing with religion, appear without the "Imprimatur"*?*

Canon 1384, §2: Quae sub hoc titulo de libris praescribuntur, publicationibus diariis, periodicis et aliis editis scriptis quibuslibet applicentur, nisi aliud constet.

It is sometimes thought that periodical literature does not come within the censorship laws, and it must be admitted that the practice varies considerably, even in the case of purely theological journals. The explanation probably lies in the fact that this type of literature must be published regularly and that the delay in obtaining an *imprimatur* would be injurious, or it may be that the local Ordinary having complete confidence in the editor is satisfied that either he or a priest member of the staff is exercising due vigilance and may, by implication, be regarded as a deputed censor. It cannot, however, be maintained that periodical literature as such is exempt from the law, and canon 1392, §2, directs that republished extracts from periodicals need no fresh approbation, thus assuming that they have it already, as required from canon 1384, §2.

A further consideration applies to the parish magazine which, being restricted in circulation to the parishioners, cannot rightly come within the term "edantur" of canon 1385, §1. There is agreement amongst the commentators[1] that to come within the law a book or periodical must be "published" in the sense that it is offered to the public in general, and not merely to a selected group as, for example, to the members of a school, community, or parish.

302. NON-CATHOLIC RELIGIOUS TRANSLATIONS

There exist many good English versions of Catholic classics, such as "St Augustine's Confessions" *or* "The Devout Life" *by St Francis de Sales, which are the work of non-Catholic translators, and for this reason have no* "Imprimatur". *May the faithful use these books?*

Canon 1385, §1, 2: Nisi ecclesiastica censura praecesserit ne

[1] E.g. Beste, *Introductio*, p. 696.

edantur etiam a laicis . . . Libri . . . ac generaliter scripta in quibus aliquid sit quod religionis ac morum honestatis peculiariter intersit.

Canon 1392, §1: Approbatio textus originalis alicuius operis, neque eiusdem in aliam linguam translationibus neque aliis editionibus suffragatur; quare et translationes et novae editiones operis approbati nova approbatione communiri debent.

Canon 1399, 4: Ipso iure prohibentur. . . . Libri quorumvis acatholicorum, qui ex professo de religione tractant, nisi constet nihil in eis contra fidem catholicam continere; . . .

The translator, editors and publishers, though of course in good faith, break the law of canon 1385, for it is clear that, since a translation needs an *imprimatur*, the translated text is a book that comes within this law.

It is also clear that the translation of a Catholic book by a non-Catholic translator is a book within the meaning of canon 1399.4. But, unlike the biblical texts enumerated earlier in the same canon, the faithful are not absolutely forbidden to read them, but only if it is established that the translator has not fallen into any error in the course of his work. This assurance, which normally should be obtained by the usual *imprimatur*, may be supplied by any competent person, for example a teacher or a reviewer. There is a presumption that a non-Catholic is likely to fall into error, but it is a presumption which must yield to the truth in any given case.

Though it is obviously advisable that the faithful in general should read Catholic classics in a translation made by a Catholic writer, the only wrong one can discern in using other translations, once it is established that they are accurate, is that it encourages a breach of the law of censorship.

There is less chance of error in translation made by a competent person, but the above applies equally to original works by non-Catholics on religious subjects.

A priest is within his right in simply telling the faithful not to read them, owing to the presumption of error therein; it is then for the faithful who want to use them to get assured that the books are free from error and that the presumption is not verified.[1]

303. BROADCASTING BY SECULAR CLERGY

Does the rule of canon 1386 *apply equally to other kinds of publicity such as broadcasting?*

Canon 1386, §1: Vetantur clerici saeculares sine consensu suorum Ordinariorum, religiosi vero sine licentia sui Superioris maioris et

[1] Cf. *Ecclesiastical Review*, June 1946, p. 403.

Ordinarii loci, libros quoque, qui de rebus profanis tractent, edere, et in diariis, foliis vel libellis periodicis scribere vel eadem moderari.

Canon 19: Leges quae poenam statuunt, aut liberum iurium exercitium coarctant, aut exceptionem a lege continent, strictae subsunt interpretationi.

i. An activity of this kind may be forbidden indirectly owing to its conflict with some law other than canon 1386. It may, for example, be incompatible with the office which a cleric is required to perform, as provided for in canon 128; or it may be preaching which from canon 1328 requires a commission from ecclesiastical authority; or it may be of a political character coming within the directions of *S.C. Conc.*, 15 March, 1927, which replied affirmatively to the question: "Utrum Ordinario ius sit et officium interdicendi per praeceptum actionem politicam viris ecclesiasticis, qui in ea explicanda non se conforment instructionibus S. Sedis?"[1]; or, finally, it may be related to the forbidden occupations enumerated in canon 139.

ii. If broadcasting is held to be included in canon 1386, an opinion which we shall have to reject in (iii), it will at least be subject to the same interpretation as "edere", "scribere" and "moderari" in that canon. In many respects the law here codified is much stricter than it was before the Code,[2] the point about it being that the Ordinary's permission is something quite distinct from censorship. Commentators limit the law to matters of some moment or to an activity which is frequent if not habitual. Failing any local law to the contrary, this liberal interpretation of the words "edere", etc., may be followed.

iii. We think, however, relying on canon 19, that broadcasting is not included in this law, even though it may be thought that the same reasons which apply to the activities expressly mentioned in canon 1386 apply also to broadcasting. Certainly it must be held that, if a local censure *l.s.* were attached to a violation of this canon, it would not be incurred by broadcasting, for canon 2219, §3, expressly rejects this method of extending one case to another "quamvis par adsit ratio, imo gravior". The broadcast, it is true, will reach a far greater number of persons than a book or article, but there is, on the other hand, a permanence about the written word which is lacking in a speech.

304. "IMPRIMATUR" UNPUBLISHED

Occasionally a book appears without the "Imprimatur", *and on inquiry it is found that the work was examined and passed by the censor but permission*

[1] *A.A.S.*, 1927, XIX, p. 138. [2] Cf. *Collationes Brugenses*, 1928, pp. 37, 38.

to omit the publication of the usual formula was obtained. On what principle is this practice lawful?

Canon 1394, §1: Licentia, qua Ordinarius potestatem edendi facit, in scriptis concedatur, in principio aut in fine libri, folii vel imaginis imprimenda, expresso nomine concedentis itemque loco et tempore concessionis.

Canon 2318, §2: Auctores et editores qui sine debita licentia sacrarum Scripturarum libros vel earum adnotationes aut commentarios imprimi curant, incidunt ipso facto in excommunicationem nemini reservatam.

i. The law requires the episcopal permission to be printed on the book, and this usually takes the form of the word *Imprimatur* with the date and name of the Ordinary. The law does not require the censor's name to be printed though this is usually included in this country: doubtless it is an added safeguard for the public to know who passed the book, and it is also a further assurance of care on the censor's part. The censure of canon 2318, §2, applies only to works on Holy Scripture: neglect of the law in regard to other books can be met by penalties *ferendae sententiae*. Even with regard to books on Holy Scripture the substance of the law is preserved by obtaining the *Imprimatur*, so that the censure would not, we think, be incurred by wrongly omitting, without permission, the publication of the accustomed formula.

ii. Fr Jombart, S.J., writes as follows about the non-publication of the *Imprimatur*: "Ex can. 1394 licentia edendi est imprimenda in principio aut in fine libri. Sed non urget lex positiva cuius finis 'cessat contrarie', i.e. cuius observatio litteralis in casu quodam foret graviter nociva bono animarum."[1] Others quote this opinion with approval,[2] explaining that it is an application of the principle of *epikeia*. Better, perhaps, one could recognise in what is after all only a partial neglect of the law an application of canon 81, which permits Ordinaries to dispense general laws of the Church in special circumstances.

[1] *Periodica*, 1932, p. 190. [2] Bouscaren-Ellis, *Canon Law*, p. 713.

XXVII. JUDICIAL PROCESSES

305. DEPRIVAL OF PARISH

How is canon 1576, §1, which requires a trial and a judicial sentence by three judges, harmonised with canons 2168–2194, where a deprival can be decreed by the Ordinary after an administrative process?

Canon 192, §2: Si agatur de officio inamovibili, Ordinarius nequit clericum eodem privare, nisi mediante processu ad normam iuris.

Canon 1576, §1: Reprobata contraria consuetudine et revocato quolibet contrario privilegio: 1. Causae . . . criminales in quibus res est de privatione beneficii inamovibilis . . . tribunali collegiali trium iudicum reservantur.

Canon 1933, §1: Delicta quae cadunt sub criminali iudicio sunt delicta publica.

§2: Excipiuntur delicta plectenda sanctionibus poenalibus de quibus in can. 2168–2194.

Canon 2299, §1: Si clericus beneficium inamovibile obtineat, eodem in poenam privari potest solum in casibus iure expressis.

i. The canonical trial provides the surest safeguard for the rights of a parish priest who is threatened with deprival of his benefice, and if his rights were the sole issue at stake justice demands that he should not be deprived as a punishment except after a judicial trial and sentence. Canon law, however, must take account of other things besides the rights of an individual parish priest; *suprema lex salus populi* is an axiom which must apply most of all to the government of a society, the Catholic Church, which exists for the spiritual good of the faithful. Accordingly the law provides for the infliction of punishments extra-judicially, that is to say without all the formalities of a trial, or even without formalities of any kind, as in the case of suspension *ex informata conscientia* in canons 2186–2194.[1] This does not mean that the Ordinary may act in an arbitrary manner when punishing delinquent clerics; it means that he may do so, in the measure and with the procedure defined by canon law, as an administrative act and without the strict formalities of a trial, whilst observing nevertheless the essential requirements of natural

[1] For the justification of extra-judicial punishments, which are unknown in most civil codes, cf. *Ius Pontificium*, 1922, p. 37, and 1923, p. 205.

justice. The beginnings of this administrative process are in the legislation of the Council of Trent, which became gradually crystallised after three centuries in the famous decree *Maxima Cura*, 20 August, 1910,[1] now incorporated with some modifications[2] into the Code, canons 2142–2185.

ii. There is, indeed, some difference of opinion whether the processes dealt with in these canons are to be called "judicial" or merely "administrative". Their position in the Code, their rules and procedure, and the common view of the writers explaining them support the view, which we think correct, that they are not judicial but administrative acts. Hence there is no conflict between these processes and canon 1576, §1. The deprivation of canon 2177.2, for example, is an administrative decree, whereas the deprivation of canon 1576, §1, is a judicial sentence in a canonical trial. Noval expresses the point very clearly: ". . . si delictum certum esset *publicum*, neque contemplatum in canonibus 2168–2194, servandus esset processus iudicialis quia delicta publica sunt objectum iudicii (can. 1933, §1) nisi sint excepta (can. 1933, §2) . . ."[3] Accordingly, whenever some crime is in question which is not amongst those provided for in canons 2168–2194, penal deprivation of an immovable benefice must be by judicial sentence given by a collegiate tribunal of three judges. The consequences of a judicial deprivation are more serious than the deprivation occurring in the administrative processes.[4]

iii. The deprivation we have been discussing is totally different from removal or translation from one parish to another, which might be decreed by the Ordinary for reasons involving no fault whatever on the parish priest's part, for example owing to sickness or old age. The procedure is described in canons 2147–2167, and a good modern commentary adapted to English conditions exists in Dr Ronchetti's *Administrative Removal of Parish Priests*, reviewed in *The Clergy Review*, 1949, XXXI, p. 68.

306. DELAY IN MARRIAGE TRIBUNAL'S FUNCTIONING

Is there any remedy for the parties who have had their case accepted by a diocesan tribunal and after twelve months have no assurance of obtaining a decision in the near future?

Canon 1620: Iudices et tribunalia curent ut quamprimum, salva

[1] *Fontes*, n. 2074; Eng. tr. *Leeds Synods*, 1911, p. 130.
[2] The Code is less favourable to the parish priest than *Maxima Cura*, e.g. the vote of the consultors is no longer decisive but merely advisory. Cf. *Jus Pontificium*, 1935, p. 13.
[3] *De Processibus*, III, §475.
[4] Regatillo, *Institutiones*, II, §294.

iustitia, causae omnes terminentur, utque in tribunali primae instantiae ultra biennium non protrahantur, in tribunali vero secundae instantiae ultra annum.

i. Since the law suggests two years as a reasonable period for obtaining a decision from the court of first instance, the parties mentioned in the above question have no grievance. As everyone knows, it is far easier to get married than to have the contract declared null and void. The indissolubility of a valid and consummated marriage between Christians is of divine law, and therefore a most careful investigation is essential before a decision can be given declaring the contract to be invalid from the beginning. An instruction from the Vigilance Commission of the Congregation of the Sacraments, 15 August, 1949, insists on the observance of the time limits in canon 1620 "quantum saltem ab ipsis (tribunalibus) dependet", and a commentator on this document notes that excessive delays are often the fault of the parties themselves, or of their advocates, in producing too many witnesses to give evidence.[1] It must be remembered, also, that in this country the members of the tribunal undertake the arduous work in addition to their usual occupation, and the parties will be fortunate if they have a decision within the two years permitted by the canon. A parish priest or a priest friend of the parties usually acts as an informal advocate, and it would be wise for him always to warn them that they may have to wait three years for a decision, and perhaps longer if the D.V. of the tribunal of second instance appeals to the Holy See.

ii. However, to answer the question put, we cannot find any commentator who discusses the remedy of parties who may have a real and not an imaginary grievance. We suppose that, as in any other matter, the remedy lies in recourse to the Ordinary and, beyond the Ordinary, to the Congregation of the Sacraments.

307. AGGRIEVED PETITIONER'S REMEDY IN MARRIAGE CAUSES

The diocesan tribunal, after examining the facts alleged, declines to allow a case of marriage nullity to proceed. What is the remedy for the aggrieved parties?

Canon 1709, §1: Iudex vel tribunal, postquam viderit et rem esse suae competentiae et actori legitimam personam esse standi in iudicio, debet quantocius libellum aut admittere aut reiicere,

[1] *Monitor Ecclesiasticus*, 1949, p. 104; 1950, p. 52.

adiectis in hoc altero casu reiectionis causis. (Incorporated in *Provida*, art. 61.)

§3: Adversus libelli reiectionem integrum semper est parti intra tempus utile decem dierum recursum interponere ad superius tribunal: a quo, audita parte, et promotore iustitiae aut vinculi defensore, quaestio reiectionis expeditissime definienda est. (Incorporated in *Provida*, art. 66, which adds: exclusa appellatione ad normam canonis 1880, n. 7. §2. Si tribunal superius libellum admittat, causa remittenda est pro eius definitione ad tribunal *a quo*.)

i. The well-informed faithful are nowadays aware of the fact that a marriage may be declared null by a competent ecclesiastical tribunal, but they do not usually appreciate the necessity of producing adequate proof in support of the contention that a marriage is invalid, nor are they aware of the complexity of the process and the amount of time and labour to be expended by the court in completing it. Therefore the law provides for a preliminary review of the case and the evidence adduced, permitting the tribunal straightway to reject the *libellus* accusing a marriage of nullity; if this rejection is based, for example, on the inadequacy of the evidence offered, the libellus may be amended and presented again, as in §2 of canon 1709, and *Provida*, art, 62. Lest, however, the tribunal should unjustly reject a *libellus*, the aggrieved party may have recourse to a higher tribunal, which has the power to reverse the decision of the first. This tribunal of recourse is either that of another diocese or the Rota.[1]

ii. If the tribunal of recourse also rejects the *libellus*, *Provida*, art. 66, quoting canon 1880, n. 7, directs that no further "appeal" is permitted. The decision is definitive and the cause is finished so far as the *libellus* in this instance is concerned. Most of the commentators we have consulted do not indicate the petitioner's remedy against the second rejection. It appears that the only course is to start all over again with a fresh *libellus*,[2] and since its fate would be a foregone conclusion if sent again to the same tribunal, there is no reason why it should not be presented either to another competent tribunal, as in *Provida*, art. 3 and 11, or to the Holy See, as in canon 1603, §2.

308. ROGATORY COMMISSION PROCEDURE

A short time ago the diocesan tribunal handling a marriage case delegated me (a parish priest, not a synodal judge) to examine a witness in my parish who, owing to illness and the distance, could not give evidence in the place

[1] Thus Doheny, *Canonical Procedure in Matrimonial Cases*, p. 139.
[2] Kealy, *The Introductory Libellus*, p. 76.

where the tribunal assembles, and I performed this office to the best of my ability. Could you explain exactly the correct procedure on such occasions?

Canon 1770, §1: Testes sunt examin suibiiciendi in ipsa tribunalis sede.

§2: Ab hac generali regula excipiuntur. . . . 4. Qui in dioecesi quidem commorantur, sed in locis ita dissitis a tribunalis sede, ut sine gravibus impensis neque ipsi iudicem adire, neque a iudice adiri possint. Hoc in casu iudex debet propiorem aliquem sacerdotem dignum et idoneum deputare, ut cum assistentia alicuius, qui actuarii munere fungatur, examen horum testium perficiat, transmissis pariter eidem interrogationibus faciendis, datisque opportunis instructionibus.

Provida, art. 98, §1: Personae autem, de quibus in canone 1770, §2, eximuntur ab obligatione examini se subiiciendi in ipsa tribunalis sede, earumque examen perficitur ad normam citati canonis.

The term "rogatory commission" strictly applies in the circumstances of canon 1570, when one tribunal claims the aid of another in examining a witness, but for want of another term it can apply to the above procedure: moreover it might happen that the parish priest's assistance was requested in carrying out a rogatory commission accepted by his own diocesan tribunal. Briefly, as in the concluding words of canon 1770, §2, this parish priest must carry out with care and expedition all the directions of the tribunal, even though he thinks them unnecessarily detailed, and these directions will contain, explicitly or implicitly, the following points of procedure.

i. The persons taking part, in addition to the witness, are the parish priest acting as delegated instructor, and another priest acting as notary also appointed by the tribunal. A delegated or substitute *defensor vinculi* is not required,[1] though some tribunals prefer to nominate one relying on canons 1968 and 1969, as well as art. 70 of *Provida*. It is assumed that the tribunal's *defensor*, having prepared the interrogatory and presented it to the tribunal's judge, has sufficiently "intervened".

ii. The session opens with an oath to speak the truth taken by the witness cited by the tribunal; the two priests may also be directed by the tribunal to take an oath faithfully to perform their office. The notary records in writing the date of the session, the presence of the parties and the oaths they have taken; the delegated instructor takes the evidence given by the witness in answer to the questions, and the notary records the answers in writing. The replies

[1] Doheny, *Canonical Procedure, Formal*, p. 311, n. 21.

of the witness may be vague and diffuse, in which case the instructor will clarify them and a record will not be written until the witness agrees that the clarification accurately represents what he wants to say. The examiner may also put supplementary questions for the purpose of implementing those sent by the tribunal whenever he judges this to be necessary. If the examination was held in the normal way in the place where the tribunal usually assembles and before its own regular officials, canon 1968, 1, requires these questions to be handed by the *defensor* to the judge or auditor in a sealed envelope. Some tribunals might direct this to be done in the delegated process we are discussing, which would mean that the examining priest sees the questions for the first time when the session has begun. This seems to us an altogether unnecessary precaution which is not required by the common law; on the contrary, it is an advantage for the delegated examiner to know beforehand what the questions are.[1]

When the examination is concluded, the written evidence taken down by the notary is read to the witness. If he is satisfied that it represents his mind, he takes another oath affirming the evidence to be true, and that it will not be divulged. Each page of the whole proceeding, as recorded by the notary, is signed by the witness, the examining priest and the notary. When it is returned to the diocesan tribunal, a note of any expenses incurred may be added.

309. ROGATORY COMMISSION—EVIDENCE WITHOUT NOTARY

In the above reply to a question about the due carrying out by a parish priest of a rogatory commission collecting evidence in a marriage cause, the necessity of a notary was stressed. Why is it that in a similar commission collecting evidence in a case of alleged non-consummation the services of a notary may be dispensed with?

Catholica Doctrina, 7 May, 1923, n. 24, §4: Si delegatus haud possit habere sacerdotem quem sibi adsciscat in munere defensoris vinculi, id notet in actis et ipse ex officio faciat interrogationes aut alia animadvertat: itemque si desit, in regionibus parum vel nullimode excultis, qui actuarii munus expleat, facta debita adnotatione in actis, ipse iudex actum exceptae attestationis, cum debitis notis, redigat.

[1] Some commentators, however, require this precaution of the sealed envelope when a tribunal is given a rogatory commission by another. The practice of the Rota is to send them in an unsealed envelope; cf. Pinna, *Praxis Iudicialis Canonica*, p. 69.

Quo Facilius, 10 June, 1935 (pro Ecclesia Orientali), n. 24: Deficiente idoneo sacerdote qui munus defensoris obire possit, ipse moderator actorum delegatus eiusdem partes agat, facta de re mentione in actis. Semper autem requiritur actuarius, ad quod munus, in casu necessitatis, scandalo et admiratione remotis, assumi potest etiam laicus.

Since the office of delegated instructor might come the way of any parish priest, the point which has been raised by our correspondent can usefully be discussed.

i. One explanation of *Catholica Doctrina*, n. 24, §4, might be that this process is not strictly judicial but administrative. Nevertheless, even in administrative processes, the canon law most firmly maintains that the intervention of a notary is required at every stage, though there may be now and then a query whether the non-observance of the rule invalidates the act. This text is, to the best of our knowledge, the only exception to the rule of canon 1770, §2.4, which is contained indeed within the canons on judicial processes but is nevertheless a reflection of a universal rule of procedure.

ii. N. 24 of *Quo Facilius* for the Eastern Churches is interesting because it appeared some years after *Catholica Doctrina*, and, as we have had occasion to note in other legal texts issued for Eastern Churches, the Roman Curia is accustomed to take the opportunity of making any necessary changes or clarifications which are at some future time to be introduced into our own law. The section of *Quo Facilius* corresponding to that in *Catholica Doctrina* insists on the necessity of a notary, and in declaring that any suitable layman suffices it repeats the direction of *Catholica Doctrina*, n. 24, §2.

iii. The delegated parish priest will faithfully carry out the instructions received from his diocesan curia, but he will not dispense with a notary unless he is directed to do so. One can hardly imagine any district in this country unable to produce a suitable layman for the office.

310. "CONIUX INHABILIS AD ACCUSANDUM MATRIMONIUM"

A party who is the cause of marriage invalidity, for example by giving a defective consent, is not "inhabilis" in the sense of "incapax standi in iudicio" (Code Commission, 4 January, 1946). Why then is the same party deprived of the right to appeal (Code Commission, 3 May, 1945)?

Code Commission, 3 May, 1945: An coniugi inhabili ad accusandum matrimonium ad normam canonis 1971, §1. 1, competat ius

appellandi vel recurrendi adversus sententiam in favorem matrimonii latam. *Resp.* Negative, salvis extraiudicialibus recursibus.

4 January, 1946: An inhabilitas coniugis ad accusandum matrimonium, a canone 1971, §1.1, statuta, secumferat incapacitatem standi in iudicio, ita ut sententia vitio insanabilis nullitatis laboret iuxta canonem 1892.2. *Resp.* Negative.

i. Canon 1971, §1. 1, which declares "inhabilis ad accusandum matrimonium" the party who is the cause of the impediment or nullity, has been interpreted by many replies of the Roman Curia, some of which strengthen the law and others favour the guilty party. The whole series was printed in *The Clergy Review* in 1946,[1] and to the best of our knowledge none has been published since. We should like to write that these replies have "clarified" the meaning of the canon and its equivalent in arts. 37 and 38 of the instruction for diocesan tribunals, 15 August, 1936; but this would be an exaggeration if not indeed the reverse of the truth. This somewhat confused situation has arisen because, on the one hand, it is obviously right and necessary to prevent persons starting nullity proceedings when they are themselves its cause; on the other hand, assuming repentance for the past, it is often necessary for the good of souls that the legal procedure for obtaining a nullity declaration should not be absolutely barred. Hence we have at present a complicated set of rules designed for the purpose of providing a just remedy for both aspects of the matter: the person is denied the right of accusing the marriage of nullity, but the accusation may, with appropriate checks and safeguards, be brought by the Promoter of Justice.

ii. The only commentator known to us who attempts an explanation of the contradiction of the two replies printed above is Bernadini[2]: "Si enim inhabilitas non est defectus capacitatis processualis seu praesuppositi processualis, uti docet reponsio altera, coniux inhabilis videtur habere personam standi in iudicio et esse vere et proprie pars in causa; inde sequi videtur eundem posse appellare. Cum autem inhabilis ad appellandum fuerit declaratus, dicendum est primam responsionem intelligi debere tanquam ius singulare, contra tenorem iuris communis, propter speciales rationes a Legislatore probatas, positive statutum."

311. MARRIAGE NULLITY: THE GUILTY PARTY

Is a convert who contracted marriage whilst he was a non-Catholic excluded from accusing his own marriage of nullity in the following circumstances: his intention "contra bonum prolis" *was introduced in good faith, relying on the teaching of the Anglican Church, because he thought it justified owing to his partner's infirmity?*

[1] *The Clergy Review*, 1946, XXVI, p. 661.
[2] *Apollinaris*, 1947, p. 57.

Code Commission, 27 July, 1942: Utrum secundum canonem 1971, §1, 1, et responsum diei 17 Julii, 1933, ad II, inhabilis ad accusandum matrimonium habendus sit tantum coniux, qui sive impedimenti sive nullitatis matrimonii causa fuit et directa et dolosa, an etiam coniux qui impedimenti vel nullitatis matrimonii causa exstitit vel indirecta vel doli expers? *Resp.* Affirmative ad primam partem, negative ad secundam.

Canon 2200, §1: Dolus heic est deliberata voluntas violandi legem, eique opponitur ex parte intellectus defectus cognitionis et ex parte voluntatis defectus libertatis.

§2: Posita externa legis violatione, dolus in foro externo praesumitur, donec contrarium probetur.

S.R. Rota, 20 May, 1944, "coram Canestri"; *Ephemerides Iuris Canonici*, 1946, p. 173: Ex quibus omnibus patet, non otiose, sed necessarie utrumque terminum "directae et dolosae" applicatum fuisse causae impedimenti. Aliquando dari potest unum sine altero; qui v.g. excludit prolem in ignorantia invincibili proprii peccati, puta, quia tenet se ad hoc obligari ob infirmam sui valetudinem, ponit causam directam, minime vero dolosam: ac tali in casu, coniux ille jure accusandi matrimonium non privatur: ob haec, omnis causa dolosa est etiam directa, sed non viceversa.

i. The scandal caused by declarations of nullity being given in ecclesiastical courts at the instance of a party who was the cause of the nullity has rightly led to a whole series of directions restricting or denying the guilty party's right to start a nullity suit,[1] all of them being interpretations of canon 1971, §1, 1. The instructions of the *Congregation of the Sacraments* have been, on the whole, stricter than the replies of the *Code Commission* and certain Rotal decisions. From the litigant's point of view, if he is considered barred from accusing his own marriage, the only remedy is to secure its accusation by the *Promotor Iustitiae* who cannot act without the Ordinary's sanction, as set out in the instruction *Provida*, arts. 38 and 39. On the other hand, if he is not considered barred, he enjoys the right of bringing his case to a diocesan tribunal for judgement, a right which must not be denied him.[2]

ii. The reply of the *Code Commission*, 17 July, 1933, ad. II,[3]

[1] *The Clergy Review*, 1946, XXVI, p. 660.
[2] Cf. *S. Sacram.*, 15 August, 1949, ad. 2; *Monitor Ecclesiasticus*, 1949, p. 99.
[3] *The Clergy Review*, 1934, VII, p. 73, and 1946, XXVI, p. 661.

deciding that the party who is the "culpable" cause of a marriage nullity is barred from bringing a suit, led to some doubt as to the meaning of "culpability" in this connexion, a dispute which the reply, 27 July, 1942, settled by applying the terms "directa et dolosa" to elucidating the meaning of "culpability". One might discern, indeed, a little conflict perhaps between this reply and certain instructions of the Sacred Congregation, in which case the reply must prevail over the instructions.

ii. In our view, the procedure for a case of this kind, bearing in mind the rule of canon 2200, §2, is for the diocesan tribunal to give a decision on culpability, dealing with it as an incidental question according to the rules of canons 1837–1841, and *Provida*, arts. 187–195. If the decision is favourable the action will proceed as in any other case, and the Defensor may use his right to criticise the tribunal's decision; if it is not favourable the only remedy for the parties is to secure the intervention of the Promotor, by persuading the Ordinary to sanction the procedure, which will always be a difficult and hazardous enterprise, since some Ordinaries will be more exigent than others.

312. IMPEDIMENT OF CRIME AND NULLITY PROCESS

If a marriage is invalid owing to an undispensed impediment of crime in the first degree, the parties may not accuse it of invalidity since they are the cause of the impediment; neither may the "promotor iustitiae" *start proceedings since this impediment is clearly not public. How then is the process started?*

Provida, art. 35, §1, Habiles ad accusandum sunt: 1. Coniuges, nisi ipsi fuerint impedimenti causa; 2. Promotor iustitiae, in impedimentis natura sua publicis, iure proprio et absque praevia denuntiatione; praevia denuntiatione in aliis impedimentis, si iure actionem instituendi ad obtinendam declarationem nullitatis sui matrimonii denuncians careat. . . . (This article is an expansion of canon 1971.)

Canon 1037: Publicum censetur impedimentum quod probari in foro externo potest; secus est occultum.

Some commentators, both before and after the Code,[1] give a special meaning to the distinction between impediments which are public and those which are not: impediments *iuris publici* are those which principally relate to the common good, *iuris privati* those which principally concern the private good of individuals, e.g.

[1] E.g. Wernz-Vidal, *Ius Canonicum*, V, §147, ix.

impotence. It is certain that the impediment of crime, though nearly always extremely occult, is public in the sense that it has been made for the protection of the sanctity of marriage as a public institution. This being so, it comes within the province of the *Promotor Iustitiae*, subject to all the provisions of the law in such cases[1] to start the proceedings for a declaration of nullity.

The Rotal jurisprudence has more than once accepted this meaning of "public" in the present context, a meaning which goes far beyond that in canon 1037. One example, a judgement given 11 August, 1928,[2] is printed by Bouscaren, *Digest*, II, p. 543, in an English translation. Another more recent one (1934) is explained by Doheny, *Canonical Procedure* (second edition), p. 112.

313. MARRIAGE CAUSES OF NON-CATHOLICS

A non-Catholic man, invalidly married to a non-Catholic owing to an impediment of consanguinity, after obtaining a civil divorce wishes to marry a Catholic woman. May he take his case to the Ordinary for a summary declaration of nullity in order that he may marry the Catholic?

Canon 1990: Cum ex certo et authentico documento . . . constiterit de existentia impedimenti . . . consanguinitatis . . . simulque pari certitudine apparuerit dispensationem . . . datam non esse, praetermissis solemnitatibus hucusque recensitis, poterit Ordinarius, citatis partibus, matrimonii nullitatem declarare. . . .

S. Off., 18–27 January, 1928; *A.A.S.*, XX, p. 75, ad I: Utrum in causis matrimonialibus *acatholicus* sive baptizatus sive non baptizatus, *actoris* partes agere possit. *Resp.* negative . . . recurrendum . . . in singulis casibus.

Instr. *Provida*, 15 August, 1936, art. 35, §3: Itidem actoris partes agere nequeunt in causis matrimonialibus acatholici sive baptizati sive non baptizati; si quidem autem speciales occurrant rationes ad eosdem admittendos, recurrendum est in singulis casibus ad S.C.S. Officii (cfr. responsionem S.C.S.O., diei 27 Ianuarii, 1928).

S. Off., 22 March, 1939, ad I: Utrum decisio Supremae S. Congregationis S. Officii data die 18 Ianuarii, 1928 ad I, qua nempe declaratum fuit acatholicos in causis matrimonialibus actoris partes agere non posse, spectet tantum Tribunal S. Romanae Rotae, an etiam Tribunalia dioecesana. *Resp.* Negative ad primam partem, affirmative ad alteram, seu: spectare etiam Tribunalia dioecesana.

Code Commissions, 6 December, 1943, ad II: Utrum processus,

[1] Cf. the series of texts in *The Clergy Review*, 1946, XXVI, p. 660.
[2] R.D. XX, p. 405.

de quo in canone 1990, sit ordinis iudicialis, an administrativi. *Resp.* Affirmative ad primam partem, negative ad secondam.

i. If previous recourse is had to the Holy Office the non-Catholic may have his cause judged by the Ordinary's tribunal, and there is not the slightest doubt that recourse is necessary when there is to be a formal trial before a collegiate tribunal. The Ordinary may also decide to have previous recourse to the Holy Office even though the matter can be settled by the summary process of canon 1990.

ii. Before the *Code Commission* reply, 6 December, 1943, the view was widely held, and supported by private Roman replies,[1] that recourse to the Holy Office was not required for the summary process, since many held that it was administrative not judicial. After the reply, however, some commentators who formerly held this view have modified it and require recourse.[2]

iii. Recourse to Holy Office entails a certain amount of labour and delay in what would otherwise be a very simple and expeditious procedure, and if it is certain that recourse is necessary the parties will have to be patient. But we do not know of any express Roman decision affirming its necessity. Regatillo, in a book published well after 1943,[3] maintains that it is not necessary in the summary cases of canon 1990, and his opinion immediately follows a commentary on the *Code Commission* reply, 6 December, 1943: "... hoc responsum (S.O., 27 January, 1928) se refert solum ad processum ordinarium. In summario, de quo *c.* 1990–1992, competens est loci Ordinarius, etsi actor seu accusator sit acatholicus. Nam (a) Ita erat in iure praecedenti, ut apparent ex fontibus *c.* 1990; et cum hic ius antiquum referat, ex veteri iure est interpretandus (c. 6, n. 2). (b) Applicatio responsi a. 1928 ad. c. 1990 importaret restrictionem iuris Ordinariorum, quae interpretatio restrictiva a sola C.I. dari potest. Quare in responso a. 1928 S.O. non intendebat interpretationem restrictivam dare, sed definire limites propriae competentiae ad SS. Congregationes et tribunalia." Regatillo's view is shared amongst others, by Beste,[4] and we think it may be safely followed until it is authoritatively rejected.

314. PROOF OF NON-CONSUMMATION OF MARRIAGE

When may the medical evidence, which is normally a part of the canonical process proving non-consummation, be disregarded?

[1] E.g. Bouscaren, *Digest*, II, p. 552.
[2] Thus Doheny, *Canonical Procedure* (Informal), p. 152; *The Jurist*, 1944, IV, p. 625.
[3] *Interpretatio et Iurisprudentia*, C.I.C. (1949), §753.
[4] *Introductio* (1946), p. 871.

S. Off., 12 June, 1942: (1) Examen physicum coniugum, praesertim vero mulieris, utpote inutile, omittitur iuxta *Regulas servandas* . . . 7 Maii 1923 (art. 86):

(*a*) si consummatio haberi non potuit quia nec tempus nec locus nec modus adfuerunt matrimonii consummandi;

(*b*) si iam constat de mulieris defloratione.

His casibus alii duo addendi sunt, nempe:

(*c*) omitti poterit inspectio si, attenta partium et testium morali excellentia, ac serio pensatis eorum animi dispositionibus necnon ceteris adminiculis aut argumentis, Ordinarii iudicio, plenissima iam habeatur probatio de impotentia vel de inconsummatione;

(*d*) omittatur mulieris inspectio, si ex inspectione viri plene constiterit de huius incapacitate ad matrimonium consummandum.

The *Regulae servandae* referred to consist of 106 rules which accompanied the decree of the Congregation of the Sacraments *Catholica doctrina*, 7 May, 1923. This long document may be read in an English translation by Bouscaren, *Digest*, I, pp. 764–792. A translation and commentary is given by Doheny, *Canonical Procedure in Matrimonial Cases* (*Informal*), pp. 191–496. A briefer commentary on the whole process is by Naz and Lerouge, *La Dispense Super Ratum et Non Consummatum*.

The rules of *Catholica Doctrina* have been supplemented by two other documents: *S.C. Sacram.*, 27 March, 1929, rules for preventing a fraudulent substitution of some other person, *A.A.S.*, 1929, p. 362; and *S. Off.*, 12 June, 1942, quoted above, decreeing certain safeguards in these processes.

The canonical procedure for proving non-consummation is vastly more exacting than the English civil process, but it is not true that a widow attempting to prove non-consummation of her second marriage is in a weak position owing to the futility of medical examination. The proofs in her case will be the others outlined in the documents, and particularly the *testes septimae manus*, witnesses to the worth and credibility of the petitioner.

315. MARRIAGE CAUSES—SUMMARY PROCESS

Why is the vicar-general excluded from conducting these causes? And why may the official deal with the second instance but not with the first?

S.C. Sacram., 15 August, 1936, art. 228. Ordinario absente aut impedito, sententia, de qua in articulo praecedenti, datur ab officiali de mandato speciali Ordinarii.

Code Commission, 6 December, 1943: III. An nomine *Ordinarii*, de

quo in canone 1990, veniat Vicarius generalis, saltem de speciali mandato Episcopi? *Resp.* Negative. IV. Utrum sub verbis *iudex secundae instantiae*, de quibus in canonibus 1991 et 1992, veniat tantum Episcopus, an etiam Officialis? *Resp.* Negative ad primam partem, affirmative ad secundam.

The question relates to the summary process for deciding the validity of a marriage when its alleged invalidity turns on the existence of an impediment which can easily be verified by certain and authentic documents: for example, the subdiaconate received by someone who subsequently, and without a dispensation, attempted marriage. The matter is dealt with in canons 1990–1992 of the Code and in articles 226–231 of the instruction issued for diocesan tribunals by the Congregation of the Sacraments in 1936.

i. Until the decision of the *Code Commission*, given under the same date as the two above quoted, that this summary process is judicial and not administrative, many held it to be administrative, in which case it would come within the competence of the vicar-general. The decision, however, necessarily required the reply given under III: the vicar-general is not competent from his office. But it is a little difficult to understand why he should not be appointed by a special episcopal mandate, since in principle any ordinary powers enjoyed by the bishop may be delegated, from canon 199, §1, "nisi aliud expresse iure caveatur". The best explanation is that the powers of a vicar-general *qua talis* are indeed administrative and not judicial, and include everything administrative except matters which are reserved to the bishop or which require a special mandate[1]; a special mandate may be given once for all to the vicar-general on his appointment, and the Commission declares that this cannot include the summary marriage process of canons 1990–1992. The bishop may, nevertheless, if he so desires, specially appoint the vicar-general not *qua talis* but *qua clericus*,[2] just as he may, in small dioceses, unite the offices of vicar-general and official in one person.

ii. Hence the position of the official is made clear in these summary processes. There is no real contradiction, for the only person who can give a decision in a summary process of first instance is the bishop or the person specially delegated by him. It is a judicial process and once started on its way is subject to the ordinary law: in the event of the *defensor vinculi* appealing against the verdict to the tribunal of second instance, the case may be decided, like any other, by the official of the diocese to whose tribunal the appeal is

[1] Canon 368. *The Jurist*, 1942, II, p. 346.
[2] Thus Regatillo, *Ius Sacramentarium*, §1521; *Interpretatio et Iurisprudentia*, §752.

directed. Owing to the summary nature of these judicial processes it has seemed good to the legislator to withdraw the first instance even from the official who handles all other marriage causes, and to require the bishop or his special delegate to be the judge; it is for the official of the first instance merely to decide whether there is a *prima facie* case to be brought before the Ordinary, as directed in art. 226 of the 1936 instruction.

XXVIII. CRIMES AND PENALTIES

316. ABSOLUTION FROM RESERVED CENSURE

A priest has persuaded a penitent who has incurred the excommunication of canon 2319, §1, 1 (marriage in a Protestant church) to come to confession, and in the meantime he applies for and obtains from the Ordinary the faculty to absolve from this censure. The party, however, does not come, but it happens that another person under the same censure does come. May the faculty be used for the second person's absolution?

Canon 207, §1: Potestas delegata extinguitur, expleto mandato; elapso numero casuum pro quo concessa fuit; cessante causa finali delegationis. . . .

Faculties to absolve from reserved censures are sometimes granted for a given number of cases, irrespective of the identity of the penitents in whose favour they may be used. More usually, however, especially in this country, the confessor either has habitual faculties to absolve all cases of a given kind, or he has none at all, and must apply in each case, though employing whenever permissible the procedure of canon 2254.

If the faculty had been granted for the external forum, the name of the individual to be absolved would be mentioned, and it is clear enough that the rescript could not be used for some other person. The same must be said for the internal forum, even though the faculty is granted for the absolution of a person with a fictitious name, e.g. Titius. Moreover, in theory at least, the superior would have to take account of the circumstances in delegating the power to absolve, and the circumstances would not necessarily be the same for both penitents in the above case.

It seems to us that the principle of canon 207 must be applied, and that the clause "cessante causa finali" forbids using the faculty except for the identical person for whom it was obtained. Thus Beste, *Introductio*, p. 221: "Cessante causa finali, eo quod negotium iam finem cepit, v.g. composita controversia, aut impossibile evasit, v.g. morte partis cui opus erat dispensatione". For "morte" read "absentia" and it applies exactly to the above question. Farrugia is the only commentator we can discover who solves the doubt in this sense: "Facultas absolvendi a reservatis concessa ab Episcopo ad absolvendum determinatum penitentem, nequit a confessario

adhiberi in gratiam alterius poenitentis, si prior poenitens non redeat ad confessarium."[1]

317. CENSURE "AB HOMINE"

An Ordinary publicly declared that A.B., a lapsed Catholic who is a notorious communist, has incurred the excommunication attached. Does this declaration make the censure "ab homine", i.e. cause it to be reserved to that Ordinary?

Canon 2217, §1, 3: Poena dicitur *a iure*, si poena determinata in ipsa lege statuatur, sive latae sententiae sit sive ferendae; *ab homine* si feratur per modum praecepti peculiaris vel per sententiam iudicialem condemnatoriam, etsi in iure statuta; quare poena ferendae sententiae, legi addita, ante sententiam condemnatoriam est *a iure tantum*, postea *a iure* simul et *ab homine*, sed consideratur tanquam *ab homine*.

Canon 2245, §2: Censura *ab homine* est reservata ei qui censuram inflixit aut sententiam tulit. . . .

§4: Censura latae sententiae non est reservata, nisi in lege vel praecepto id expresse dicatur; et in dubio sive iuris sive facti reservatio non urget.

i. As Dr McReavy clearly demonstrated,[2] the decree of the Holy Office, 1 July, 1949,[3] is not a new piece of legislation but merely applies to professed communists (materialistic and anti-Christian) the *l.s.* penalty of excommunication contained in canon 2314. Similarly the conditions for its absolution set out in the Jubilee documents[4] are not something new but merely a reminder of the abjuration required by canon 2314, §2, before absolution.

ii. The notion of a reservation "*ab homine*" has caused many difficulties, since in the first place the Code legislation is somewhat different to what preceded it, and this has not been perceived by some commentators; and in the second place the Code terminology itself is not transparently clear. The declaration that a named person has incurred a censure *l.s.* may be given judicially in the course of an ecclesiastical trial, or administratively without the formalities of a trial, but in neither case does the censure thereby become "*ab homine*" and its absolution reserved to the authority making the declaration. This happens only when a condemnatory sentence of censure *f.s.* is inflicted judicially (therefore *sententiam* in canon 2245, §2, means *sententiam iudicialem condemnatoriam* as in

[1] *De Casuum Conscientiae Reservatione*, p. 51.
[2] *The Clergy Review*, 1949, XXXII, p. 389.
[3] Ibid., p. 208.
[4] E.g. *A.A.S.*, 1949, XLI, p. 520; *The Clergy Review*, loc. cit. p. 420, ad 5.

canon 2217, §1, 3) or administratively without the formalities of a trial (therefore *feratur* of canon 2217, §1, 3 is the equivalent of *censuram inflixit* of canon 2245, §2). Stricter interpretations are found in certain writers, but we think this the clearest and the simplest to adopt, and the *dubium iuris* is covered by the concluding words of canon 2245, §4.[1] Though it is not within the terms of the above question, note that a censure *l.s.* added to enforce a particular precept is equally not "ab homine" according to Roberti and Michiels, who are now generally followed.[2]

iii. The effect of the Ordinary's declaration in this case is not to make the censure "ab homine" and therefore reserved to that Ordinary, but to make it *publici iuris*. It may be absolved *servatis servandis* by any Ordinary in the external forum with the procedure of canon 2314, §2; or it may be absolved by a confessor delegated by the Holy See with powers to absolve even public cases reserved *speciali modo*; or it may be absolved by any confessor with the procedure of canon 2254. If absolved not by a local Ordinary in the external forum but by a confessor, the penitent must undertake to submit himself to the external authority which will deal with the case as provided for in canon 2251, and until the requirements of the external forum have been satisfied he must, for the purpose of avoiding scandal, act externally as though still under the censure.

318. IGNORANCE OF RESERVATION OF CENSURE

Ignorance of the existence of a censure excuses one from incurring it, with some exceptions. Does the same rule apply to the reservation *of a censure, at least in the sacramental forum, so that a person who knows of the censure but is ignorant of its reservation is under no obligation to approach the reserving authority for absolution?*

Canon 2245, §4: Censura latae sententiae non est reservata, nisi in lege vel praecepto id expresse dicatur; et in dubio sive iuris sive facti reservatio non urget.

The Code provides for a confessor's ignorance of the reservation of a censure in canon 2247, §3, but does not expressly decide the question of a penitent's ignorance. The question is controverted, and we agree with the view that ignorance merely of the reservation of the censure does not affect the penitent's obligation to have recourse to the reserving authority.[3] There is no basis in the law for

[1] Cf. Heylen, *De Censuris*, pp. 17–19; Brys, *Compendium*, II, §968.
[2] Cf. *l'Ami du Clergé*, 1947, p. 727.
[3] Thus Cappello, *De Censuris*, §72; Heylen, *De Censuris*, p. 31, 4; Noldin, *De Censuris*, §24.

the opposite view, since the reservation is rather a limitation of the confessor's powers than a matter directly affecting the penitent.

Nevertheless, the view which excuses from reservation a penitent who is ignorant of it is held by some canonists, and it is an opinion which is at least extrinsically probable and may be followed in practice unless the reserving authority expressly declares to the contrary.[1] The reason for this view is that, very likely, the reservation is itself part of the penalty incurred and is therefore subject to the same rules as ignorance of the censure.

There is always the procedure of canon 2254 for a confessor who prefers not to take this liberal view. If he takes it, as Farrugia notes, he should warn the penitent that the censure is reserved, so that future lapses will have to go to a superior tribunal.

319. FEAR EXCUSING FROM CENSURE

When the law declares that grave fear excuses from incurring a censure does this include fear arising from intrinsic causes, or is it to be restricted, as in the marriage impediment, to fear inflicted extrinsically by a free agent? For example, an unmarried pregnant woman fearing the loss of her good name might commit abortion: does she incur the censure of excommunication?

Canon 2229, §3.3: Metus gravis, si delictum vergat in contemptum fidei aut ecclesiasticae auctoritatis vel in publicum animarum damnum, a poenis latae sententiae nullatenus eximit.

Code Commission, 30 December, 1937: An metus gravis a poenis latae sententiae eximat si delictum, quamvis intrinsece malum et graviter culpabile, non vergat in contemptum fidei aut ecclesiasticae auctoritatis vel in publicum animarum damnum ad normam canonis 2229, §3.? *Resp.* Affirmative.

Canon 2350, §1: Procurantes abortum, matre non excepta, incurrunt, effectu secuto, in excommunicationem latae sententiae Ordinario reservatum. . . .

Fear is always something subjective in the person suffering it: the distinction between "intrinsic" and "extrinsic", however, is a convenient method of differentiating between fear which arises from the nature of things, e.g. fear of disease or of dishonour, and that which is caused by an external free agent. The distinction has no relation to the well-established difference between sins which are wrong intrinsically and those which are not. Moreover, it is not in dispute that grave fear never permits a person to do something

[1] Cf. Farrugia, *De Casuum Conscientiae Reservatione*, p. 80; Pellé, *Le Droit Pénal*, p. 92; Davis, *Moral and Pastoral Theology*, III, p. 447.

intrinsically and gravely wrong, though it will often excuse from the observance of positive laws: hence it is not in dispute that abortion is usually gravely sinful, even when committed through grave fear, and the problem to be solved concerns only the ecclesiastical penalty.

i. The text of the law about fear excusing from censures does not state whether the fear is intrinsic or extrinsic, whereas in other laws, as for example in the definition of the marriage impediment of fear, it is clearly stated: "ob vim vel metum gravem ab extrinseco et iniuste incussum".[1] Neither do the generality of commentators expressly decide the point at issue, though their doctrine supposes that by fear they mean both kinds. Thus Brys: ". . . propter can. 2229, §3.3, ubi hoc directe asseritur, si mater ex gravi metu sibi abortum procuret (qui casus non infrequens est), quamvis a gravi peccato haud excusetur, censuram non contrahit".[2]

ii. Amongst those who take the stricter view, Michiels—one of the classical commentators—holds that the juridical notion of fear is always restricted to that which is extrinsic, and undoubtedly many canons support this interpretation by using the word "incussus" when describing fear, as in canon 103, §2. Coronata also adopts this view. The commentators on *Code Commission*, 30 December, 1937, do not advert to the point, with the exception of Regatillo: "Metus, qui a poenis l.s. excusat, est *ab extrinseco*, iniustus; non *ab intrinseco*. Sic mater sibi procurans abortum ob metum infamiae, excommunicationem contrahit."[3]

iii. The only writer known to us who examines the difficulty fully and expressly is Beijersbergen, S.J.[4] He defends the opinion that, as regards the application of the penal law, the notion of fear includes that which is intrinsic, though outside the penal law it is restricted to fear caused by a human agent *ab extrinseco*. Amongst the many excellent reasons adduced for this liberal interpretation are, for example, the principle of canon 2205, §2, which allies grave fear to necessity and grave inconvenience; or the well-known requirement of contumacy for incurring censures; and, still more, the familiar rule of canon 2219, §1, "In poenis benignior est interpretatio facienda." They are reasons which, in practice at any rate, weigh with all the canonists writing on the subject, even though they do not expressly deal with the difficulty we are examining.[5] Fr Beijersbergen's interpretation is adopted by some later writers,

[1] Canon 1087, §1.
[2] *Collationes Brugenses*, 1934, p. 45; *Dict. Droit Canon.*, III, col. 183.
[3] *Interpretatio et Iurisprudentia*, §769.
[4] *Periodica*, 1941, p. 274.
[5] E.g. *Apollinaris*, 1932, p. 253; *Periodica*, 1938, p. 163.

e.g. Bouscaren-Ellis: ". . . it is at least solidly probable that grave fear is a complete excuse even though not external. . . ."[1]; Heylen: "Stante controversia, censura in praxi urgeri nequit"[2]; Cloran: ". . . grave fear excuses from the penalty, even though the crime is intrinsically wrong and gravely culpable, and even though the fear is merely internal and not unjustly inflicted by an external agent".[3]

We think this solution of the doubt may safely be followed until it is officially decided in an opposite sense; accordingly the pregnant woman who commits abortion through fear of losing her good name does not incur the censure of excommunication.

320. ABSOLUTION FROM CENSURE—"INIUNCTIS DE IURE INIUNGENDIS"

What precisely is contained within the phrase "iniunctis de iure iniungendis", *in respect to the priest absolving in the confessional from a censure?*

Canon 2242, §3: Contumaciam desiisse dicendum est, cum reum vere delicti commissi poenituerit et simul ipse congruam satisfactionem pro damnis et scandalo dederit aut serio promiserit; iudicare autem utrum poenitentia vera sit, satisfactio congrua aut eiusdem promissio seria, necne, illius est a quo censurae absolutio petitur.

Canon 2248, §2: Absolutio denegari nequit cum primum delinquens a contumacia recesserit ad normam can. 2242, §3.

i. When absolution is given with the obligation of recourse to a superior, under pain of reincurring the censure, as in canon 2254, the superior's mandate will make more explicit the content of the phrase. If given without obligation of recourse by a confessor who has the faculty, as many will have during a Holy Year for certain cases, or by a confessor who is acting within the terms of canon 2254, §3, the content of the phrase is usually analysed, following canon 2242, §3, under three headings:

(*a*) *A serious promise of making restitution.* This is required from the nature of things for crimes involving injustice to others, as for example usurping the goods of the Church,[4] exactly as it is required in absolving a sin of theft not punished by censure.

(*b*) *A serious promise to repair scandal given to others.* Again, this is no more than a natural obligation, applying equally to any grave

[1] *Canon Law* (1946), p. 796.
[2] *De Censuris*, p. 30.
[3] *Previews and Practical Cases*, p. 104.
[4] Canon 2346.

scandal. Thus the head of a nursing home who has taught and encouraged subordinates to cause abortion (Canon 2350, §1) must undertake to do what is possible to make them understand the gravity of this crime.

(*c*) *The imposition of a salutary and fitting penance.* This is something in addition to the sacramental penance imposed when absolving from the sin to which the censure is attached, and will vary both according to the number and gravity of the crimes committed, and according to the capabilities of the penitent. There are no explicit instructions about it, and authors differ considerably in their suggestions: the daily recitation of the rosary for three months may be reckoned objectively and absolutely to be a grave and prolonged penance, and therefore adequate for grave crimes.[1]

It will be found that other more explicit determinations of the content of the phrase, as indicated for example in the Jubilee *Monita* of the Sacred Penitentiary,[2] can either be reduced to one or other of the above three headings, or are to be considered as measures imposed for avoiding the occasion of sin.

321. ABSOLUTION OF SIN RESERVED "PROPTER CENSURAM"

A penitent has certainly incurred the reserved excommunication attached, say, to the sin of abortion, and the confessor knows that this is so. If, nevertheless, the confessor absolves unlawfully from the sin alone, is the absolution valid?

Canon 2246, §3: Reservatio censurae impedientis receptionem Sacramentorum importat reservationem peccati cui censura adnexa est; verum si quis a censura excusatur vel ab eadem fuit absolutus, reservatio peccati penitus cessat.

Canon 2250, §2: Si vero agatur de censura quae impedit Sacramentorum receptionem, censuratus nequit absolvi a peccatis, nisi prius a censura absolutus fuerit.

Canon 2260, §1: Nec potest excommunicatus Sacramenta recipere. . . .

i. In nearly every doubtful point connected with reservations it is necessary to eliminate a number of issues which are not strictly relevant and which only serve to obscure the question under discussion. It is certain, firstly, that excommunication as such does not,

[1] Cf. Moriarty, *The Extraordinary Absolution from Censures*, p. 246.
[2] 17 September 1949; *The Clergy Review*, 1949, XXXII, p. 420.

other things being equal, make the reception of sacraments in general invalid: thus, confirmation or holy order may validly be received by the excommunicated; our question relates to the limitation of a confessor's powers over one particular case which happens to be reserved not *ratione peccati*—in which case there is no doubt that the attempted absolution would be invalid—but *ratione censurae*. Moreover, secondly, if a penitent is aware of his excommunication and remains contumacious, the absolution of his sin will be invalid owing to his being indisposed for a valid absolution. It must also be admitted, thirdly, that in given circumstances when a penitent is in good faith about the effects of excommunication, the absolution of the sin to which the censure is attached could be effected indirectly if some other sin is presented at the same time for direct absolution.[1] Lastly, the law itself in canon 2247, §3, indulgently asserts the validity of absolution given in ignorance of the excommunication, provided the censure is not *ab homine* or reserved to the Holy See *specialissimo modo*.

ii. On the point, as limited above, the commentators are not in agreement, and many do not discuss the matter at all. Amongst those who do, Gougnard is the most satisfactory,[2] he himself inclining to the view that the absolution both of the censure and of the sin is invalid.

On the other hand, widely used manualists such as Noldin[3] maintain that absolution of the sin, in the case we are discussing, is valid, since it is beyond the power of the canon law on censures to declare a person *incapable* of sacramental absolution, and in the case under discussion the jurisdiction of the confessor is limited directly only in regard to the censure. This view is defended by Dr Bride[4] and although he does not take account of the word "nequit" in canon 2250, §2, one may hold that it refers to the lawfulness and not to the validity of absolution, in rather the same way as "nec potest" of canon 2260, §1[5]; we may also observe that when the canons wish to declare the invalidity of an action this meaning is usually explicitly asserted, as it is in canon 884, "de absolutione complicis".

Our conclusion must be that there is, at the moment, a *dubium iuris* on the point under discussion, to be resolved on the familiar principle of canon 209, and a liberal view is all the more permissible since the law on reservations, from canon 2246, §2, must be strictly interpreted.

[1] Cappello, *De Censuris*, §107.
[2] *Collect. Mechlinien.*, 1936, p. 154. *Ilationes*, II (1936), p. 146.
[3] *De Censuris*, §40.
[4] *Dict. Droit Canon.*, III, 219.
[5] Heylen, *De Censuris*, p. 49.

322. ABSOLUTION FROM HERESY IN DANGER OF DEATH

On what canonical principle is one required to have recourse to the Ordinary after receiving a convert in danger of death? It would appear from canon 2252 that this is not necessary.

Canon 2252: Qui in periculo mortis constituti, a sacerdote, specialis facultatis experte, receperunt absolutionem ab aliqua censura ab homine vel a censura specialissimo modo Sedi Apostolicae reservata, tenentur, postquam convaluerint, obligatione recurrendi, sub poena reincidentiae. . . .

Canon 2314, §2: Si tamen delictum apostasiae, haeresis vel schismatis ad forum externum Ordinarii loci quovis modo deductum fuerit, etiam per voluntariam confessionem, idem Ordinarius . . . resipiscentem, praevia abiuratione iuridice peracta aliisque servatis de iure servandis, sua auctoritate ordinaria in foro exteriore absolvere potest. . . .

Cardinal Vaughan, *Montinum*, 8 May, 1902 (*Westminster Synod*, 1902, p. 21): . . . quum praeterea expediat ut Episcopi, summi in suis Dioecesibus Pastores, qui iuxta evangelicam institutionem oves suas agnoscere debent, illas praesertim oves agnoscant quae a pascuis alienis in unicum Jesu Christi ovile reducantur; idcirco ab Episcopis unanimis, in recenti suo annuo Provinciae Westmonasteriensis Conventu, decisum est ut convertendorum Ecclesiae reconciliationem unusquisque Episcopus in propria sua Dioecesi sibi reservaret. . . . Quod ad eos attinet pro quibus, in articulo mortis constitutis, tempus huius facultatis obtinendae defecerit, Nos de reconciliatione eorum facta, in scriptis sine mora, et singulis in casibus, certiores fieri debebimus.

i. The reception of a convert is something essentially pertaining to the external forum, and the censure attached to heresy is assumed, from canon 2200, §2, to have been incurred. From this censure a priest reconciling a convert in danger of death absolves, relying on the well understood principle that all reservations then cease. There is reason in the above question since this censure is neither *ab homine* nor reserved *specialissimo modo* to the Holy See, and therefore no recourse is necessary when the danger of death has ceased, as stated in canon 2252. Regarding the question uniquely from the point of view of absolving the person from censure it is correctly deduced that recourse is unnecessary. The resolution of the bishops in 1902, still in force, is not at variance with the common law rule, for they do not require recourse under pain of the censure being re-incurred, but merely direct that they are to be informed of reconciliations

made in danger of death. The native right of the episcopate for the external forum in everything pertaining to heresy "sua auctoritate ordinaria" is fully sustained in canon 2314, §2, and the direction requiring notice about reconciliation can be brought within the familiar phrase "servatis de iure servandis" of the same canon.

ii. It is noticeable, moreover, that the episcopal decision of 1902 does not even mention absolution from censure when requiring to be informed of conversions in danger of death, since various views are possible on the question whether all prospective converts are actually under the censure attached to heresy.[1] The point is not strictly relevant to the question we are discussing, and it can be avoided by supposing that the person in danger of death is unbaptised and therefore incapable of incurring a censure. In the common law we cannot discern any regulation requiring the local Ordinary to be informed of conversion whether in danger of death or not, except in canon 744 which directs absolute baptism to be brought to the Ordinary's notice whenever this can be done conveniently; this law is for the purpose of having a greater solemnity at baptisms of this kind, and does not apply to the question we are discussing, since baptism has already been administered. The 1902 regulation of the bishops expressly includes converts from infidelity in its opening phrase, and the use of the word "reconciliatio" in requiring to be informed of conversions in danger of death must be held to apply also to converts from infidelity, although the word is technically, perhaps, inapplicable. It is a local law which is of obligation only within the territory of the bishops who enacted it, and its justification is found in the dogmatic principle that bishops have *iure divino* the care of all souls within the dioceses committed to them, a principle reflected in such canons as 334, 335, 451.[2] In the circumstances prevailing in countries where the Church is in a minority, and where conversions and the care of converts has a special importance, the bishops use their right as chief pastors of the flock in requiring to be informed about all conversions to the Church, including cases where absolution from censure is not implicated.

iii. There must be very few priests who can remember the situation as it existed before 1902. As was to be expected, the new regulation was not universally welcomed by the clergy,[3] although there does not appear to have been any particular criticism of the rule about informing the Ordinary of converts received in danger

[1] Cf. *The Clergy Review*, 1933, V, p. 319.
[2] Cf. *The Clergy Review*, 1946, XXVI, p. 550.
[3] *Pastoralia*, 1902, p. 208.

of death. It was promulgated by individual bishops in their dioceses, and is often repeated in modern collections of diocesan laws, as in *Northampton Statutes* (1947), n. 50.

323. RECONCILIATION OF CONVERT—VARIATIONS IN A PRAYER

In the Form for the Reconciliation of a Convert, §4, *which text of the prayer* "Deus cui proprium" *should be used: that printed in the* "Ordo Administrandi", *with the clause* "quem excommunicationis sententia constringit", *and short conclusion, or that prescribed in the instruction of the Holy Office*, 20 *July*, 1859, *which the* "Ordo Administrandi" *professes to follow, but which gives* "catena" *here in place of* "sententia", *and the long conclusion?*

It is, we think, certain that, at the reception of a convert, priests in this country should recite the prayer as it stands in the *Ordo Administrandi*, Tit. iii, cap. iv, n. 4. The last edition of this book, 1915, though at present out of print, is the *editio typica*, to which all extracts should conform. The current, 1947, C.T.S. edition conforms exactly.

i. *Catena* or *sententia*. Previous editions of the *Ordo Administrandi*, 1891, 1831, 1812, and earlier undated ones, read *sententia*. The instruction of the Holy Office, which the *Ordo Administrandi* refers to under the date 20 June, 1859, appears in *Fontes*, n. 953, as dated 20 July, 1859. This may be merely a mistake of the editor, or the document may have been sent originally to the English bishops in June, and in a slightly different form to the bishop of Philadelphia in July. The *Rituale Romanum*, Tit. IV, cap. iii, reads *sententia*, and also the American supplement to the Desclée edition, 1935.

Pontificale Romanum, however, *Ordo Excommunicandi et Absolvendi*, reads *catena* both in current and earlier editions. The same reading is given in the supplement to the Desclée, 1947, edition of the *Rituale Romanum*, and in certain widely used American publications such as *The Priest's New Ritual*, 1940, and *The Layman's Ritual*, 1944. In the Gregorian Sacramentary the prayer, of which the one we are discussing is a slightly extended form, also reads *catena*. Probably, therefore, the prayer in *Fontes*, n. 953, was drawn from the Pontifical, but the editors of our *Ordo Administrandi* printed *sententia* instead of *catena* because they desired to continue the form already existing in the Ritual.

ii. *Long or short conclusion*. Most editions of this prayer known to us have the short conclusion. The principle formulated by the rubri-

cians is that the long conclusion is to be used at Mass for Collect, Secret and Postcommunion, and for the prayer at the conclusion of the canonical hours. On all other occasions the short form is to be used unless the long form is ordered. Unhappily this "nisi" occurs continually in all rubrics, and only occasionally can the reason for an exception be discerned. Thus the prayer *Deus qui nobis* in Rituale Romanum, Tit. v, cap. ii, n. 7 (Ordo Administrandi Communionem) has the long form, whereas the same prayer in Tit. v, cap, iv, n. 24 (De Communione Infirmorum) has the short form; the reason for this, it is thought, must be due to the fact that in earlier ages the faithful, unless they were sick, did not communicate outside Mass, and the Ritual preserves this connexion in the long conclusion. But we can suggest no reason why *Fontes*, n. 953, has the long conclusion.

324. EXCLUSION OF DECEASED NON-CATHOLICS FROM PUBLIC SUFFRAGES

Is there some intrinsic reason why prayers and Masses should not be offered publicly for deceased non-Catholics? If it is purely a matter of positive law, heretics dying in good faith should escape, it seems, the rule of canon 2262.

Canon 809: Integrum est Missam applicare pro quibusvis tum vivis, tum etiam defunctis purgatorio igne admissa expiantibus, salvo praescripto can. 2262, §2, 2.

Canon 2262, §1: Excommunicatus non fit participes indulgentiarum, suffragiorum, publicarum Ecclesiae precum.

§2: Non prohibentur tamen: 1. Fideles privatim pro eo orare; 2. Sacerdotes Missam privatim ac remoto scandalo pro eo applicare; sed, si sit vitandus, pro eius conversione tantum.

i. One could, perhaps, discern intrinsic reasons behind the law, since heretics die outside the visible body of the Church, whether they are in good faith or not. But, unlike the practice of praying publicly *with* heretics which many used to think, with some reason, to be intrinsically wrong,[1] the prohibition against publicly praying *for* them seems always to have been regarded by the Holy See and by theologians and canonists as a positive law only, and it has been interpreted in a progressively liberal direction. One exception, in the prayers of the liturgy of Good Friday, is of great antiquity, though on this occasion the prayer is for the living. It is clear,

[1] Cf. *The Clergy Review*, 1950, XXXIII, p. 398.

however, from a comparison of canon 809 (*quibusvis*) with canon 2262, that the latter includes deceased heretics, the only exception being the *vitandus*.

ii. Before the Code the common teaching was that Mass could not be offered for a deceased heretic even privately, following a negative reply of the Holy Office, 7 April, 1875, to the question: "An liceat etiam in casu, quo huiusmodi applicatio Missae tantum sacerdoti, et illi qui dat eleemosynam nota esset"[1]; it was customary on such occasions to offer the Mass for all the faithful departed. The qualification *privatim* is capable of wide interpretation on the part of those who wish to interpret the law as generously as possible. In our view it means "without any public announcement"[2] and the same applies to any prayers said by the faithful, but we are well aware that more liberal views are current.[3] It is for the local Ordinary to give directions on the subject and to correct abuses that may occur.

iii. There remains the point raised by our correspondent that the majority of people nowadays who die outside the Church are not under the censure of canon 2314 since they are in good faith. But canon 2262 denies public prayers and Mass only to the excommunicated, and therefore it would seem that even manifest and notorious heretics are not necessarily included in the prohibitions of this canon.

If it were a question of administering sacraments to heretics in good faith, who are assumed to escape the censure, we have the explicit direction of canon 731, §2, forbidding it, but we have nothing similar in the matter of praying publicly for them after their decease. The significance of canon 731, §2, is seen in the fact that the reception of a sacrament is, amongst other things, a sign of external communion, and therefore must in the nature of things be denied to heretics even though it has been proved, let us suppose, in the external forum that they have certainly not incurred the censure of canon 2314.

Does it not follow, therefore, that public prayers, and even public Masses, can be offered for manifest heretics dying in good faith, since there exists no prohibition equivalent to the prohibition of canon 731, §2? We think this conclusion must logically follow provided it has been proved in the external forum that they have escaped the censure. Unless this proof is forthcoming, or pending

[1] *Fontes*, n. 1041.
[2] Vermeersch, *Periodica*, 1931, p. 84, an excellent commentary on the whole subject.
[3] Cf. *Middlesbrough Statutes*, n. 190, and announcements in the Press on the occasion of the death of George VI.

some decision of the Church on their condition,[1] we must in the external forum and for all public purposes regard them as censured, relying on canon 2200, §2: "Posita externa legis violatione, dolus in foro externo praesumitur, donec contrarium probetur." A similar reason explains why converts are absolved from censure, even though they are generally in good faith and could be regarded in the internal forum as not excommunicated; theoretically at least it is open to a convert to prove to the satisfaction of the local Ordinary that he is not censured, in which case the absolution even with the word "forsan" will be unnecessary.[2]

[EDITORIAL NOTE.—The canonical position of non-Catholic Christians was more thoroughly discussed in a joint article (*The Clergy Review*, 1952, XXXVII, p. 449) by Dom Theodore Richardson, O.S.B., and the author. Dom Theodore contended that "there appear to be no grounds for attributing to non-Catholics in general, born and bred outside the Church, even the lowest degree of pertinacity, and until pertinacity is proved, not only are they not canonically formal heretics, but they are not even, speaking with the canonical rigour required in penal matters, material heretics, in the sense that the *corpus delicti*, the material element of the delict of heresy, is not present. Not only, therefore, do they not *de facto*, in the internal forum, incur excommunication, but they cannot be presumed in the external forum, in virtue of canon 2200 or any other canon, to have done so." Moreover, he argued, owing to the presence of the word "pertinaciter", *any* diminution of imputability excuses from the penalty *latae sententiae* (can. 2229, §2), and no special investigation can be required to establish diminished imputability in the average case.

Canon Mahoney, in his reply, took the line that the act of heresy consists in "the denial of a doctrine which *one knows* to be taught by the Catholic Church as being revealed by God." To incur the guilt in the forum of conscience, the denial must be coupled with the knowledge that the Catholic Church is the mouthpiece of God in the matter concerned; but in the external forum it is requisite and sufficient that one persist in the denial of a doctrine, after knowing that the Catholic Church teaches it as of faith. This, he claimed, is more in harmony with other dispositions of the Code, both in theory and in practice, than the interpretation offered

[1] Umberg, S.J., in *Periodica*, 1948, 102, concluding an article on the subject of administering sacraments conditionally to heretics dying unconscious, forecasts a decision of this kind "haec questio solutionem expectat per auctoritatem S. Sedis".
[2] Cf. *The Clergy Review*, 1933, V, p. 319.

by Father Richardson. The discussion was continued in subsequent correspondence (op. cit., pp. 635, 700). Both held to their positions.]

325. THE "PERTINACITY" OF HERETICS

Assuming, though not necessarily conceding, your explanation of the word "pertinaciter" in the definition of heresy, does it not follow that before applying to non-Catholics the rule of canon 2200, §2, their pertinacity, guiltless though it may be, must first be established in the external forum before they can be treated as censured?

i. Those readers who have not followed the discussion of the subject in *The Clergy Review*,[1] between Father Theodore Richardson, O.S.B., and the writer, may be reminded that the definition of a heretic is "Post receptum baptismum si quis, nomen retinens christianum, pertinaciter aliquam ex veritatibus fide divina et catholica credenda denegat aut de ea dubitat, haereticus est".[2] The person coming within this definition incurs, from canon 2314, §1, the censure of excommunication; guilt or culpability in varying degrees is necessary before anyone can be censured, but this guilt is presumed in the external forum from canon 2200, §2. We have defended the view that guilt or culpability, or in other words good or bad faith, does not enter into the definition of heresy, because the word "pertinaciter" does not necessarily convey this notion: it is merely a convenient and brief way of stating that a person knows some doctrine to be taught by the Catholic Church and nevertheless withholds his assent. The discussion so far has been on a question of law, the meaning of "pertinaciter"; the question now raised by "X" is one of fact not of law, and in what follows the phrase "teaching of the Church" must be understood in the sense of some doctrine taught by the Catholic Apostolic Roman Church as revealed by God.

ii. The question of fact is important since a baptised Christian who denies some revealed truth, whilst not knowing that the Church teaches it, is in error indeed but is not a heretic. The answer, therefore, to the question put by "X" must be in the affirmative, both from the meaning of the word "pertinaciter" as already explained, and from the interpretation commonly accepted by canonists that even affected ignorance of the teaching of the Church suffices as an excuse from heresy. Thus, an unlettered Catholic who denies the Assumption through ignorance of its definition is not a heretic.

[1] *The Clergy Review*, 1952, XXXVII, pp. 449, 635, 700.
[2] Canon 1325, §2.

And doubtless there are many non-Catholic Christians in remote parts of Scandinavia, or in parts of the mission fields evangelised exclusively by heretical sects, who have never heard of the existence of the Catholic Church, let alone of her teaching.

iii. How is this question of fact to be established? Occasionally, when a fact may sometimes be uncertain, ecclesiastical authority issues a statement affirming that certain groups of persons have, in fact, committed a delict, as the Holy See recently affirmed in regard to those implicated in attacks upon the Church in Central Europe. Laws, however, must regard what usually happens and the common estimation of men, and when a fact is manifest it would be absurd to expect some authority to affirm what is already well known. The professed and practising members of heretical sects must, by reason of that adscription, be regarded in the external forum as heretics: for a person is presumed to accept the teaching of the sect to which he belongs. Baptised Christians who belong to no sect at all know sufficiently, in this country at least, of the existence of the Catholic Church: they knowingly dissent from her teaching on one or more points of doctrine and are therefore heretics. On the occasion, for example, of the definition of the Assumption, the newspapers gave the event every publicity, leaders of sects commented upon it adversely, and it gave rise to much public correspondence. But it occurred to no one in authority, during this discussion, to offer the information that the doctrine was taught by the Catholic Church, for the fact was manifest, and baptised Christians who denied this truth were manifestly heretics. What is true of a newly defined doctrine is true of others defined long ago. People who know of the Catholic Church and who nevertheless, for reasons that seem to them good, elect to follow another rule of faith, are "pertinacious". To resume briefly in the words of Suarez: ". . . voluntas non se subiiciendi Ecclesiae auctoritati necessaria est et sufficit ad pertinaciam fidei contrariam".[1]

326. SPONSORSHIP AT HERETICAL BAPTISM— ANY PENALTY?

Hearing that an ill-instructed parishioner was proposing to be sponsor at a baptism of an infant relative in the Church of England, I succeeded in dissuading him from performing this office by reminding him that he would thereby incur excommunication. I had some idea at the time that this was so, but later was unable to verify it. What penalties, if any, are incurred by a Catholic being sponsor at baptism performed by a minister of a sect?

[1] Vivès, *Opera*, XII, p. 474.

S. Off., 10 May, 1770. *Collectanea Prop. Fide* (ed. 1893), n. 1845. Catholicis absolute non licere vel per se vel per alios fungi officio patrini in baptismis qui haereticorum filiis ab haereticis ministrantur.

Canon 2316. Qui quoquo modo haeresis propagationem sponte et scienter iuvat, aut qui communicat in divinis cum haereticis contra praescriptum can. 1258, suspectus de haeresi est.

Canon 2315. Suspectus de haeresi, qui monitus causam suspicionis non removeat, actibus legitimis prohibeatur . . .; quod si intra sex menses a contracta poena completos suspectus de haeresi sese non emendaverit, habeatur tanquam haereticus, haereticorum poenis obnoxius.

i. Any priest could be excused for not having at his fingers' ends the very complex laws about censures: in this case the priest was relying, perhaps, on his recollection of canon 2319 which contains an excommunication *l.s.* incurred by parents who get their children baptised by a non-Catholic minister; or else the priest reached the conclusion too readily that the proposed act of sponsorship was itself the crime of heresy. The most that can be said is that the Catholic sponsor at a baptism administered by a heretical minister is favouring the propagation of heresy and is actively communicating with heretics in a purely religious rite: the result is that he is under suspicion of heresy by performing this function, and is liable to the procedure of canon 2315, a procedure which if canonically observed may mean that, as a penalty, he will be deprived of the right to perform certain actions enumerated in canon 2256.2, a penalty *ferendae sententiae*; and further, after a period of six months under this penalty, he will be regarded as a heretic unless he repents.

ii. Apart from all ecclesiastical penalties or the threat thereof, sponsorship at heretical baptism is gravely wrong: firstly, because it recognises the claims of heretics, and secondly because it is usually a deception and acting a lie since the heretical minister will assume that the sponsor is of the same religious persuasion as himself. In cases of this kind, where relatives are concerned, there may be good reasons for tolerating a Catholic's presence at the rites but he must be passive and take no active part, as laid down in canon 1258, §2.

327. PROOF OF ABSOLUTION FROM CENSURE

A man who has incurred the censure of canon 2319, §1, on being refused the sacraments by the parish priest of the place where the man's condition is publicly known, alleges that he has repented, has been absolved from the censure in the confessional, and has rectified his marriage elsewhere by revalidation. The parish priest verified the revalidation but maintains that the man must be absolved from the censure in the external forum before being permitted to receive the sacraments in the parish where his delinquency is known. Is this correct?

Canon 2319, §1: Subsunt excommunicationi latae sententiae Ordinario reservatae catholici: Qui matrimonium ineunt coram ministro acatholico contra praescriptum can. 1063, §1.

Canon 2251: Si absolutio censurae detur in foro externo, utrumque forum afficit; si in interno, absolutus, remoto scandalo, potest uti talem se habere etiam in actibus fori externi; sed, nisi concessio absolutionis probetur aut saltem legitime praesumatur in foro externo, censura potest a Superioribus fori externi, quibus reus parere debet, urgeri, donec absolutio in eodem foro habita fuerit.

Canon 2260, §1: Nec potest excommunicatus Sacramenta recipere, imo post sententiam declaratoriam aut condemnatoriam nec Sacramentalia. . . .

i. The parish priest rightly refuses the sacraments to this man, owing to his condition as a public sinner, so long as the danger of scandal exists, and he rightly does so quite apart from all the intricacies of the law on censures. The man may not have incurred the censure for various reasons, or he may not have committed grave sin owing to ignorance; nevertheless it is a cause of scandal to the faithful in a parish if one of its members, who is publicly known to be unworthy, receives the sacraments publicly. The parish priest is competent to decide that the sacraments must be refused, and to indicate how the scandal should be repaired; if the man is aggrieved his remedy is in recourse to the Ordinary.[1]

ii. Assuming that, in addition, the censure has been incurred by this man,[2] he is for that reason to be excluded from the sacraments until he has been absolved from the censure.

The Church indulgently declares in canon 2251 that absolution in the internal forum may suffice, which means that it has a conditioned efficacy, the condition being that the appropriate superior of the external forum is content with it. This point is admirably explained by Father Bertrams, S.J., as follows: "Altera ex parte Superior legitimus fori externi rationem habere absolutionis in foro interno concessae non tenetur; immo, etiamsi legitime probatus concessio absolutionis in foro interno, Superior legitimus fori externi

[1] Cf. *The Clergy Review*, 1944, XXIV, p. 425.
[2] The *corpus delicti* is discussed *ibid.* XXIII, 1943, p. 131, and very fully in *l'Ami du Clergé*, 1951, p. 23.

potest quidem, sed non tenetur, illam ratam habere etiam in foro externo."[1]

If the priest in this case thinks fit to insist on absolution in the external forum, it must come not from him, obviously, but from the Ordinary to whom it is reserved in canon 2319. He is within his right in putting the matter before the Ordinary together with his reasons for requiring the man to be absolved in the external forum as well. Very likely the Ordinary's decision will be that he is content with the absolution obtained in the internal forum, and that the man's word on this point may be accepted seeing that he has revalidated his marriage. We have heard, however, that in some places the local Ordinary requires an external forum absolution in these cases.

Relying on canon 2251 the parish priest may accept the alleged absolution given in the internal forum, unless he has some directions of his Ordinary to the contrary, and this indulgent attitude is the right course to take.

iii. The removal of scandal, required in the nature of things even if the person is not censured, is expressly mentioned in canon 2251. Unless the Ordinary has determined what form this is to take, the parish priest may require the man to sign a written witnessed statement expressing repentance and affirming the rectification of his marriage, a statement which may be shown to other parishioners if necessary: usually, however, unless there are some specially aggravating circumstances, the fact that a delinquent has gone to confession in a church open to the public suffices for the reparation of scandal caused.

328. ABSOLUTION FROM THE CENSURE OF CANON 2363

In absolving from censure in the internal forum with the procedure of canon 2254, *the penitent's serious promise to make reparation for any serious damage suffices in principle. Is canon* 2363, *requiring actual reparation* before *absolution, an exception?*

Canon 2254, §1: In casibus urgentioribus, si nempe censurae latae sententiae exterius servari nequeant sine periculo gravis scandali vel infamiae, aut si durum sit poenitenti in statu gravis peccati permanere per tempus necessarium ut Superior competens provideat, tunc quilibet confessarius in foro sacramentali ab eisdem,

[1] *Periodica*, 1951, p. 328. This is the best exposition we have seen of this key canon 2251, and contains a long citation from the *Thesaurus Casuum Conscientiae* of Gregory Sayers, O.S.B., an English canonist of Monte Cassino, ob. 1602.

quoquo modo reservatis, absolvere potest, iniuncto onere recurrendi, sub poena reincidentiae, intra mensem saltem per epistolam et per confessarium, si id fieri possit sine gravi incommodo, reticito nomine, ad S. Poenitentiariam vel ad Episcopum aliumve Superiorem praeditum facultate et standi eius mandatis.

§3: Quod si in casu aliquo extraordinario hic recursus sit moraliter impossibilis, tunc ipsemet confessarius, excepto casu quo agatur de absolutione censurae de qua in can. 2367, potest absolutionem concedere sine onere de quo supra, iniunctis tamen de iure iniungendis, et imposita congrua poenitentia et satisfactione pro censura, ita ut poenitens, nisi intra congruum tempus a confessario praefiniendum poenitentiam egerit ac satisfactionem dederit, recidat in censuram.

Canon 2363: Si quis per seipsum vel per alios confessarium de sollicitationis crimine apud Superiores falso denuntiaverit, ipso facto incurrit in excommunicationem speciali modo Sedi Apostolicae reservatam, a qua nequit ullo in casu absolvi, nisi falsam denuntiationem formaliter retractaverit, et damna, si qua inde secuta sint, pro viribus reparaverit, imposita insuper gravi ac diuturna poenitentia, firmo paescripto can. 894 (Unicum peccatum ratione sui reservatum).

Pius XI, *Servatoris Jesu*, 25 December, 1924, viii: *A.A.S.*, 1925, XVII, p. 616: Qui falsam sollicitationis denuntiationem admiserit, is ne absolvatur, nisi aut eam formaliter retractaverit, aut saltem ad eam quamprimum retractandam atque ad sarcienda calumniae damna serio paratum se praebeat.

i. The conflict between canon 2363 and the procedure of canon 2254 is less evident in §1, since recourse must be had to the Holy See within a month under pain of re-incurring the censure, and the conditions imposed when the superior's mandate is received will meet the difficulty by relieving the confessor of his obligations. It is more serious in §3 of canon 2254, since no recourse is then imposed; equally in canon 2252, when absolution is given from the censure in danger of death without the obligation of recourse; in both cases the confessor must decide whether he may absolve from this censure merely with a serious promise of reparation.

ii. Some of the commentators take the severe view, relying on the wording of canon 2363, which denies absolution in any case whatever unless the calumniator has retracted and made reparation: "iniunctis de iure iniungendis" of canon 2254, §3, means not merely a promise but the actual performance of the obligation. Thus Vermeersch-Creusen: "Si excipias casum quo reus faciendae retractationis physice, v.g. morbo gravi impeditur, verba canonis ita

sunt explicita ut absolutionem non permittant etiam post seriam retractationis promissionem".[1] Different interpretations are possible of the method in which this formal retractation is to be effected. The minimum is a signed and witnessed letter retracting the calumny, obtained with the penitent's permission outside the confessional, a fairly simple procedure which is always to be recommended.

iii. It is not certain, however, that this severer view is the only possible interpretation of the wording of canon 2363. That a serious promise suffices is the view of De Smet[2] and of others who accept his ruling.[3] We agree with this view provided, as De Smet recommends, the absolving confessor explains to the penitent that the censure will be re-incurred within a fixed time unless the retractation is made: it is not clear, perhaps, that this re-incidence will happen in the nature of things, and the confessor should always make it an explicit condition of his use of the faculty in canon 2254, §3, as he is certainly entitled to do.

The reasons which support De Smet's solution of this difficulty are, firstly, the general sufficiency of a penitent's dispositions for absolution in the internal forum when a promise is seriously made. Secondly, the wording of the canons in question: "nequit ullo in casu absolvi" must admit an exception at least in the hour of death; the only difference between §1 and §3 of canon 2254 is in absolving from the censure of canon 2367 which is expressly mentioned, whereas canon 2363 is not. Thirdly, the instructions of the Holy See, 25 December, 1924, given in view of the faculties for the 1925 Jubilee, clearly declare that a serious promise suffices. It is true that in later Jubilees, including that of 1950, this particular faculty is not so expressed,[4] the Holy See being content to describe the absolution of the reserved sin of canon 894 in the words used for the reserved censure in canon 2363. We think this difference of terminology has no particular significance, for unhappily there has never been any consistency in the faculties and *Monita* issued at the time of Jubilees, which always vary in a few particulars. The redactor of 1925 saw fit to call attention to the more liberal interpretation of these canons, whereas the redactor of 1950 thought it unnecessary to do so.

329. MEANING OF "SUPERIORES" IN CANON 2363

Canons 2363 and 904 deal with the crime of false denunciation, which is the one sin reserved to the Holy See in the Code and is also punished by a reserved censure. In canon 894 the denunciation is described as "apud iudices ecclesiasticos", whereas in canon 2363 the censure is incurred by denunciation "apud superiores". Does "superior" here mean "iudex ecclesiasticus"? And what is the practical effect of this double reservation?

[1] *Epitome*, III, §565.2. [2] *De Absolutione Complicis et Sollicitatione*, §132.
[3] Cf. Moriarty, *The Extraordinary Absolution from Censures*, p. 268.
[4] *A.A.S.*, 1949, XLI, p. 515, viii; 1950, XLII, p. 902, xi; *The Clergy Review*, 1951, XXXV, p. 198.

Canon 894: Unicum peccatum ratione sui reservatum Sanctae Sedi est falsa delatio, qua sacerdos innocens accusatur de crimine sollicitationis apud iudices ecclesiasticos.

Canon 2363: Si quis per seipsum vel per alios confessarium de sollicitationis crimine apud Superiores falso denuntiverit. . .

i. It is evident that, false denunciation of a confessor being a calumny of the gravest kind, the penitent who is guilty of this sin is not properly disposed for absolution unless the obligation of making due reparation is accepted. It is almost impossible to imagine any circumstances in which this obligation of the natural law can rightly be evaded by a penitent seeking absolution. Therefore, quite apart from all the technical doubts and difficulties which always arise whenever a question of reservation comes up for discussion, the situation is sufficiently clear, and the obligations of the calumniator are sufficiently defined from the nature of the offence committed. To emphasise its gravity, the canon law attaches thereto a censure which is reserved *speciali modo* to the Holy See, and also reserves the absolution of the sin to the Holy See. But the obligations to be accepted by a repentant calumniator would exist even though the sin were not reserved or censured in any way.

ii. Apart from one or two manualists who write of "superiors" in explaining canon 2363 without adverting to the difficulty presented by the term, we find that all the commentators give "superiors" the meaning contained in canon 904: to incur the censure the false denunciation must be made judicially to a superior who is competent to inflict punishment on the priest who is falsely accused, that is to say to the Holy Office or to the local Ordinary. A false accusation made to a vicar-general, to a local religious superior or parish priest, or an accusation made anonymously even to the Holy Office, is a grave sin calling for restitution, as explained above, but no censure is incurred and the sin is not reserved.[1] In defining the mode of denunciation which suffices for incurring the censure, some think that a signed letter suffices.[2] We prefer the more common opinion requiring the accusation to be in judicial form before the bishop or

[1] Cf. in addition to the usual manuals *Apollinaris*, 1931, p. 583; Cloran, *Previews and Practical Cases*, p. 278.
[2] De Smet, *De Absolutione Complicis et Sollicitatione*, §123.

his delegate with the intervention of a notary,[1] but it suffices for a person effectively to bring this about through another's agency.

iii. The reservation of the sin, now codified in canon 894, dates from the time of Benedict XIV, as contained in *Sacramentum Poenitentiae*, 1 June, 1741, §3, printed as Documentum V at the end of the Code. The censure, however, of canon 2363 appeared for the first time in the Code, its insertion no doubt being due to the modern facility of obtaining absolution from reserved sins in the circumstances of canon 900; all are agreed that this papal reservation is not excepted. The only practical effect of this double reservation is that a person who escapes the censure for any of the reasons which excuse one from incurring it is nevertheless obliged to get absolved from the sin either by a privileged confessor or in the circumstances of canon 900. It is an additional safeguard and therefore the Code censure concludes with the words "firmo praescripto can. 894". But the only effective remedy is the censure which cannot usually be evaded on the score of ignorance, since the ecclesiastical judge on receiving the accusation will warn the accuser of the penalty.

330. MAJOR ORDERS: CIVIL MARRIAGE

I have no actual case in mind but would like a precise explanation of the status of a priest who, having attempted marriage in a register office, has now fully repented. Under what conditions will he be reinstated and allowed the exercise of his orders?

Canon 188.5: Ob tacitam renuntiationem ab ipso iure admissam quaelibet officia vacant ipso facto, si clericus . . . matrimonium, etiam civile tantum, ut aiunt, contraxerit.

Canon 985.3: Sunt irregulares ex delicto . . . qui matrimonium attentare aut civilem tantum actum ponere ausi sunt, vel ipsimet vinculo matrimoniali aut ordine sacro aut votis religiosis etiam simplicibus ac temporariis ligati, vel cum muliere iisdem votis adstricta aut matrimonio valida coniuncta.

Canon 2388: Clerici in sacris constituti vel regulares aut moniales post votum sollemne castitatis, itemque omnes cum aliqua ex praedictis personis matrimonium etiam civiliter tantum contrahere praesumentes, incurrunt in excommunicationem latae sententiae Sedi Apostolicae simpliciter reservatam; clerici praeterea, si moniti, tempore ab Ordinario pro adiunctorum diversitate praefinito, non resipuerint, degradentur, firmo praescripto can. 188, n. 5.

[1] Cappello, *De Censuris*, §289.

The Church, in so far as may be consistent with the avoidance of scandal, is always inclined to be indulgent towards any person who has truly repented, no matter what the offence may have been.

i. The priest may desire to enjoy the benefit explained in *Lex Sacri Coelibatus*, 18 April, 1936,[1] and in the subsequent declaration of 4 May, 1937,[2] by which the Sacred Penitentiary may grant absolution from the excommunication of canon 2388, provided the priest lives in chastity as a layman, even though he continues to dwell with his partner under the same roof. This is a merciful provision since there will often be valid reasons which prevent him from abandoning the civil union. Absolution from the censure under these conditions may not be given by a confessor with the procedure of canon 2254, but only in danger of death and with the obligation of recourse to the Sacred Penitentiary when the danger has ceased. This procedure of *Lex Sacri Coelibatus* is a good example of absolution in the internal non-sacramental forum, as regulated by canons 1047 and 2251.

ii. If the priest penitent, far from seeking this benefit, has ceased to live with his partner for any reason, his only desire being to return to his priestly life and duties, he has ceased to be contumacious and is therefore entitled at once to absolution from the censure of canon 2388. This absolution may be given by any confessor with the procedure and conditions of canon 2254, and the absolved priest may then receive the sacraments like any other Catholic. The priest so absolved is reinstated in the sense that he is no longer excommunicated and, with due safeguards against scandal, may receive the sacraments, but the irregularity remains and absolution of the censure has effect only in the internal forum of conscience. There may be many difficulties in the use of the faculty given by this canon, especially regarding the safeguards which must be employed against the danger of scandal, but they are not insuperable and we think it certain that the absolute reservation of the censure to the Sacred Penitentiary applies only to the case explained in (i) where the priest desires to live under the same roof with his partner.[3]

iii. His reinstatement in the exercise of his priestly orders is entirely a matter for the authorities of the external forum. He has lost whatever ecclesiastical office he possessed from canon 188.5, and his Ordinary may have inflicted various penalties which will need remission. The chief obstacle, however, to his employment as a

[1] *The Clergy Review*, 1936, XII, p. 158.
[2] Op. cit., 1937, XIII, p. 270. The fullest commentator on the whole subject is Rossi, *Decretum "Lex Sacri Coelibatus"*, Turin, 1938.
[3] Moriarty, *The Extraordinary Absolution from Censures*, pp. 279–90; *Periodica*, 1936, p. 201, and 1937, p. 506; *Collationes Brugenses*, 1936, p. 337; *Apollinaris*, 1936, p. 588.

priest is the irregularity of canon 985.3, which is reserved to the Holy See. One or two writers tell us what the practice of the Roman Curia is in cases of this kind.[1] Dispensation from the irregularity and absolution from the censure in the external forum is given by the Holy Office, which is accustomed to proceed as follows: the censure is at once removed but the irregularity remains until the priest's repentance has been put to the test for a determined period under his Ordinary's supervision, whereupon he may be permitted to say Mass a certain number of times with all due safeguards against scandal, and eventually may be fully reinstated in the exercise of his priesthood, usually by becoming attached to a distant diocese where his history is not known. The essential requirement, however, of the Holy Office before dispensing from the irregularity is the assurance that the priest is freed from all entanglements arising from his civil union, such as the existence of children requiring parental care, or the continuance of the civil bond. These difficulties may not exist in some cases, and may not be insuperable in others, but the commentators are agreed that dispensation from this irregularity is not easy to obtain. If it is definitely refused, the simplest course is for the priest to seek reduction to the lay state.

[1] Sartori, *Jurisprudentiae Ecclesiasticae Elementa*, p. 93; *Periodica*, 1937, p. 505.

XXIX. SUNDRY MORAL QUESTIONS

331. SUICIDE: SECRET SERVICE AGENTS

Is it possible to justify on Catholic ethical principles the practice during war of secret service agents who, lest torture should make them reveal important secrets, swallowed poison when captured?

II Machabees xiv, 41: Now as the multitude sought to rush into his house, and to break open the door, and to set fire to it, when he was ready to be taken, he (Razias) struck himself with his sword: choosing to die nobly rather than to fall into the hands of the wicked, and to suffer abuses unbecoming his noble birth.

Summa Theol., II–II, 64, 5, ad 5: Sed quod aliquis sibi ipsi inferat mortem ut vitet mala poenalia, habet quidem quamdam speciem fortitudinis, propter quod quidam seipsos interfecerunt aestimantes se fortiter agere, de quorum numero Razias fuit: non tamen est vera fortitudo, sed magis quaedam mollities animi non valentis mala poenalia sustinere, ut patet. . . .

The question is one in which the common opinion is almost insuperably at variance with the logical application of Catholic ethical principles, as the present writer found more than once during the war when answering queries on the subject at meetings of Catholic members of the services: one sensed that their acceptance of the answer was purely notional, like the acceptance of some theorem of Euclid which apparently has no practical application. Moreover it is always unattractive for the clergy, who may not take part in wars, to tell fighting men what their moral obligations are.

i. The principle as usually formulated affirms that it is intrinsically and of its nature a grave sin to kill one's self directly on one's own authority, the word "directly" being introduced to allow for cases when death occurs indirectly as the second effect of a lawful action, which is clearly not applicable to this case; and the term "on one's own authority" included in order to cover a few instances of suicide committed by divine inspiration, as that of St Apollonia, commemorated in the Office of 9 February, which incidentally is the day on which this note is being written. An alleged extraordinary divine inspiration has all the qualities of a *Deus ex machina*, except that it can only be invoked when there are reasons for supposing that it happened, as the fact that St Apollonia is canonised, or that Holy

Scripture records such events with apparent approval. Though it is clearly open to God to delegate His prerogative to someone else, it has never been maintained that secret service agents kill themselves by an immediate divine inspiration, but only that they do so on the authority of the State; and if it could be proved that the State possesses the right not only of putting malefactors to death for the common good of society, but also of killing innocent persons, the elimination of secret service agents could quite reasonably be added to mercy killing, sterilisation, therapeutic abortion, and the mass murder of hostages, Jews, or any other classes who happen to be unwanted or inconvenient. There is no need for us to prove that the State lacks these rights, and accordingly lacks the right to authorise suicide.

ii. If it cannot be justified in principle, still less can it be done by the casuistical method of arguing from one case to another. Thus, it may be held as probably lawful that the State may order a malefactor justly condemned to death to kill himself, or that anyone may expose himself to certain death to avoid a more painful one, or that as a protest against injustice a prisoner may go on hunger-strike. In all these instances there is no exact parity with the one we are considering, and even the most enthusiastic defender of the hunger-strike will not admit that the prisoner may poison or shoot himself as a protest against injustice. For the most part they are applications of the double effect principle, which supposes that the immediate action is good or indifferent and that the second or evil effect is not directly intended. In fact, the only justifiable course for the secret service agent when threatened with capture is to resist his opponents, even though there is not the slightest prospect of escaping death at their hands; or to attempt escape by any action which is not certainly and of its nature direct self-destruction.

iii. Though unable to justify this type of suicide, either in principle or by casuistical methods of argument, we think that persons so placed are deserving of an intelligent sympathy, which may take the form, firstly, of deciding that the circumstances are usually such as to excuse from grave sin, and therefore from the ecclesiastical penalties attached to suicide by canon 1240, §1, 3; one could even say, in many instances, that there is no formal sin at all owing to an invincibly erroneous conscience. It will follow, secondly, that it is best for a priest to leave these people in good faith if it is possible to do so without causing scandal; there is no need, especially during a war, to preach the doctrine of (i) and (ii) in season and out of season, but if one is pressed for a decision the answer must be that the action is direct suicide and forbidden by the natural law.

iv. Our correspondent asks for the opinions of theologians on the subject, and whether there exists at least an extrinsic probability justifying this type of suicide. Perhaps the commendable reticence mentioned in the previous paragraph accounts for the lack of modern theological opinion in the journals. We know of only one modern writer who deals with the point, in *l'Ami du Clergé*, 1947, p. 189, quoted with approval in *Theological Studies*, 1948, p. 89, whose conclusions are as we have stated above. The older theologians unburden themselves on II Machabees xiv, 41, and an excellent summary of their approaches is in *Collationes Brugenses*, 1900, p. 403: they either conclude that Razias committed grave sin, or that he acted under God's inspiration, or that he had an invincibly erroneous conscience and committed only material sin. Anyone bent on finding some plausible argument or authority justifying the action might consult the seventeenth-century casuists: Sylvius is quoted as justifying Razias in the recent Leonine edition of the *Summa Theologica*, but no reference is given. Those we have consulted, including the English Benedictine Gregory Sayers, O.S.B., in *Clavis Regia*, VII, ix, 10, give the doctrine as above in (i) and (ii). A recent article in *Dictionnaire de Théologie Catholique* XIV, col. 2739, treats many new aspects of the subject of suicide not found in the manuals, but does not include this case except by implication in giving the usual solution about Razias. We shall be glad to know of any serious contribution to the question by modern writers, but we think, until better informed, that no justification of the practice is logically possible, except on premisses about the State's powers which must be rejected. Thus De Lugo, Disp. x, 1, n. 3, Vivés VI, p. 38, rejects the view which regards suicide as essentially a crime against the State, because this would mean that the State could authorise suicide.

332. EUTHANASIA—PAPAL PRONOUNCEMENTS

Are there any recent pronouncements of the Holy See on the subject of mercy-killing?

S. Off., 2 December, 1940: Quaesitum est ab hac Sacra Congregatione: Num licitum sit, ex mandato auctoritatis publicae, directe occidere eos qui, quamvis nullum crimen morte dignum commiserint, tamen ob defectus psychicos vel physicos nationi prodesse iam non valent, eamque potius gravare eiusque vigori ac robori obstare censentur? In generali consessu . . . respondendum mandarunt: Negative, cum sit iuri naturali ac divino positivo contrarium.

Mystici Corporis, 29 June, 1943: Ut enim iure meritoque Apostolus

admonet: "Multo magis quae videntur membra corporis infirmiora esse, necessariora sunt; et quae putamus ignobiliora membra esse Corporis, his honorem abundantiorem circumdamus." (1 Cor. xii, 22.) Quam quidem gravissimam sententiam Nos in praesens, pro altissimi conscientia officii, quo obstringimur, iterandam reputamus, dum magno cum maerore cernimus corpore deformes, amentes patriisque morbis infectos, utpote molestum societatis onus, vita interdum privari; idque a quibusdam efferri quasi novum humanae progressionis inventum, communique utilitati maxime consentaneum. At quisnam cordatus non videat hoc non tantum naturali divinaeque legi, in omnium animis inscriptae, sed altioris etiam humanitatis sensibus acerrime adversari? Horum igitur sanguis, qui sunt Redemptori nostro idcirco cariores, quod maiore sunt miseratione digni, "clamat ad Deum de terra".

A radio message, given by the Holy Father, 25 May, 1948, to an Italian Congress of medical men, was printed in *l'Osservatore Romano*, 23 May, 1948, and in *Documentation Catholique*, 1948, p. 775. It contains the following passage, which we have translated: "There are other cases which may arise, the solution of which cannot be described as more difficult, since one's duty is abundantly clear; they are, nevertheless, more distressing because of the tragic consequences which may follow the performance of this duty. They are the cases where the moral law imposes a veto. If you alone were concerned you would not find it difficult to reject pleas based on unrestrained feelings of pity, and reason would prevail over emotion. But how often are you confronted not with common and disgraceful demands born of self-interest, or of inexcusable passion, but with the perfectly intelligible anguish born of conjugal love or family affection. The principle nevertheless is inviolable. . . . It is never lawful to terminate human life, and only the hope of safeguarding some higher good, or of preserving or prolonging this same human life, will justify exposing it to danger."

None of the above statements deals solely and exclusively with euthanasia, or mercy-killing. Its wrongness is deduced from a general principle, and requires no elucidation, but only the warning that we must be guided by reason, not by emotion.

333. PAPAL TEACHING ON LEUCOTOMY

Has there yet appeared any papal direction on the lawfulness of leucotomy?

Iis qui interfuerunt Conventui primo internationali de Histopathologia Systematis nervorum, Romae habito 13 *September*, 1952. *A.A.S.*, 1952, XLIV, p. 779:

En outre, dans la mise en œuvre de son droit à disposer de lui-même, de ses facultés et de ses organes, l'individu doit observer la hiérarchie des ordres de valeurs—et à l'intérieur d'un même ordre de valeurs, la hiérarchie des biens particuliers, pour autant que les règles de la morale l'exigent. Ainsi par exemple, l'homme ne peut entreprendre sur soi ou permettre des actes médicaux—physiques ou somatiques—, qui sans doute suppriment de lourdes tares ou infirmités physiques ou psychiques, mais entraînent en même temps une abolition permanente ou une diminution considérable et durable de la liberté, c'est à dire de la personnalité humaine dans sa fonction typique et caractéristique. On dégrade ainsi l'homme au niveau d'un être purement sensitif aux réflexes acquis, ou d'un automate vivant. Un pareil renversement des valeurs, la loi morale ne le supporte pas; aussi fixe-t-elle ici les limites et les frontières de "l'intérêt médical du patient".

For the details of this operation on the frontal lobes of the brain the reader is referred to the excellent account of the subject by Rev. J. Diamond, S.J., in *The Clergy Review*, 1951, XXXVI, p. 231. Subject to stringent conditions and safeguards the opinion there given favoured the lawfulness of the operation, a view which is now commonly held by Catholic moralists.[1]

It must be admitted, we think, that the papal words taken out of their context are capable of being read in a sense unfavourable to the lawfulness of the operation. But the Holy Father does not specifically name this operation, and taking into account the teaching of moralists which has so far been accepted in theological circles something much more explicit is required before we even suspect that their teaching has been rejected by the Holy See. The only writer known to us who has commented on the papal address is Father G. Kelly, S.J., who contributes an excellent summary on current problems to the American journal *Theological Studies*.[2] We agree with his view that the papal words, if they refer to leucotomy, must apply to cases where less radical procedures are available and effective; if some proportionate benefit is expected (and it is only on this supposition that moralists permit the operation) the rest of the papal address leads us to conclude that the operation is permissible.

An English translation of the whole address is given in *Catholic Documents*, X, February 1953, pp. 12–20, where the date is given as 14 September, instead of 13 September, 1952.

[1] E.g. *Theological Studies*, 1949, p. 88; *American Ecclesiastical Review*, 1948, p. 197; *Irish Ecclesiastical Record*, May 1949, p. 433; Kelly, S.J., *Medico-Moral Problems*, I, p. 43.

[2] *Theological Studies*, 1953, p. 44.

334 RESTITUTION FOR GRAVE DAMAGE

A thief deprives the owner of a ring, worth in the thief's estimation £10. After disposing of it for £10 the thief learns that its real value is £50. Is the amount of restitution £10 or £50?

i. An adequate solution of all doubts about restitution requires one to bear in mind a great number of principles, so that it is rarely possible to deal with such problems within the limits permitted in answering questions in this journal. In the above case there is no dispute about the obligation of restoring at least £10, since the thief is bound to do so on the basis of being an unjust possessor of £10. If he is bound to do more than this it will be on the basis of unjust damnification, a duty which arises in conscience only if the act is committed with "theological" culpability, and this limits restitution to the extent of the damage voluntarily intended. The qualification "theological" is used in this context to distinguish the culpability from that which is "juridical": there is no dispute that in the external forum of law, since it is not possible to take into account the individual conscience, the thief could be forced to pay the full amount of the injury, £50, and the theologians are agreed that after judicial sentence he is bound in conscience, as well as in civil law, to restore this amount to the person unjustly damaged.

ii. The point raised in the above question can best be considered by slightly altering the circumstances. The thief, let us suppose, voluntarily elects to cause damage which he has no reason at all for supposing is above £10; and let us suppose, secondly, in order to avoid a lot of vexatious problems about the subsequent unjust possessors, that he throws this ring into the sea. The solidly probable solution about his obligations of strict justice in conscience is that he is bound only to the extent of the damage that he foresaw and consented to at the time of the injury, namely £10. Thus, all the current manualists who discuss the point, e.g. Iorio, *Theol. Moralis*, II, §648; Ferreres, I, §783, 10. Also O'Donnell, *Moral Questions*, p. 146. They rely on the teaching of the classical writers and suppose that, in conscience, the unjust damnificator was invincibly ignorant of causing damage in excess of £10.

335. MENTAL RESTRICTION UNDER OATH

May a priest witness when giving evidence under oath use mental restrictions exactly as he is permitted to do, with all the necessary conditions and safeguards, when not under oath?

i. The doctrine about the lawfulness of using a mental restriction is born of the traditional Augustinian definition of lying—*locutio contra mentem*—since occasions arise when a person is gravely bound not to reveal to a questioner the knowledge he possesses, as might happen if a priest were questioned about matters pertaining to the seal of confession: his reply denying all knowledge of the matter is uttered with a mental reservation: "I do not know, i.e. apart from knowledge obtained in the confessional." It is a "broad" mental reservation since any intelligent listener, knowing that a priest may never reveal a confessional secret, is able to deduce that the priest's reply to all questions is necessarily limited to knowledge obtained outside the confessional. A "strict" mental reservation is not permissible because it is made in such circumstances that no one could possibly guess its presence: it differs in no way from lying.

ii. The "broad" mental reservation not being a lie, it is not perjury to use it when under oath to speak the truth. This is the common teaching,[1] though some require a graver cause than what might suffice when using it without an oath.[2] The doctrine does not come within the condemned propositions of Innocent XI[3] which refer to the "strict" mental reservation. Prümmer concludes: "Iurare autem cum restrictione late mentali non licet nisi ex gravi causa; in eo sc. casu, quo nullum aliud praesto est medium, se ipsum aut alios tuendi contra iniustam aggressionem, iniustum modum interrogandi aut aliud grave malum. Sic confessarius, qui inique cogitur ad testimonium iuratum ferendum de rebus, quas sub sigillo confessionali cognovit, potest, immo et debet iurare cum restrictione mentali."[4] What an oath does is to add an obligation of religion to the obligation of telling the truth, thus leaving intact the whole doctrine about lying as such. A lie may be only a venial sin against the virtue of veracity, but when confirmed by an oath it is a grave sin against the virtue of religion.

[1] E.g. Iorio, *Theol. Moralis*, II, §76.
[2] Marc-Gestermann, I, §608, ii. [3] Denz., 1176, 1177.
[4] II, §444. Cf. *Irish Ecclesiastical Record*, 1943, LXII, p. 336.

1. CODE INDEX

II. SUBJECT INDEX

(*References are to Questions*)