PROBLEMS IN THEOLOGY

I: THE SACRAMENTS

by

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FOREWORD

This book is a selected compilation of questions and replies on problems which arise in the theology, mainly in the moral theology, of the sacraments. The matter originally appeared, over a period of fifteen years, in the Theology section of the "Notes and Queries" department of the *Irish Ecclesiastical Record*. The compilation was undertaken in response to very many requests from clerical readers. These requests were enthusiastically supported by the publishers.

Over a period of fifteen years inevitably much must be written by a theological correspondent in a monthly journal. Consequently the work of compilation was not without its difficulties. In view of the extensive amount of material to hand it was decided at an early stage that the compilation of theology should be divided into two volumes : the first, covering problems connected with the sacraments ; the second, dealing with the principles and the precepts.

In this first volume on sacramental problems the questions and replies are presented more or less in their original form but with appropriate, and in some cases even extensive, abbreviations in non-substantial aspects. Presumably this is what was desired by those who asked for the compilation. Moreover it was felt that this form of presentation would help to give an atmosphere of continued reality to the discussions. In some instances it may seem that the questions are given at undue length but, on balance, this was considered necessary in order to give a fair indication of the querists' difficulties and, in controversial matters, of the querists' arguments. Thus the questions have a value of their own.

One of the greatest difficulties in making the selected compilation was the avoidance of unnecessary repetition. Naturally some questions were repeated by correspondents, perhaps in slightly different forms, at different periods. Moral problems have the habit of recurring—though so often with slightly

altered nuances. On some points of doctrine a series of queries, running to the lines of a controversy, was submitted. Again in all fairness to the querists' viewpoint it was felt that, even in a compilation, the series should be allowed, for the most part, to run its course. The cut and thrust of controversy are nearly always interesting and stimulating. While considerable elimination has been done to reduce repetition, an element of it remains. This was, to some extent, inevitable. It was originally intended that each reply should be, broadly speaking, self-sufficient and that the reader should be spared a too frequent and a too tedious cross-reference. This approach doubtless had an appreciable advantage when the replies were originally published in separate issues of a monthly journal. The advantage is less obvious in a compilation. Yet even here the reader may be grateful that he is not involved in frequent cross-reference. And so an element of repetition may have its merits.

As has been remarked, this work owes its origin to the requests of readers. To them and to their kindly encouragement a debt of gratitude is due by the author. He is also deeply indebted to Fr. Thomas Finnegan and Fr. Henry Tonra who, during their years as students of the Dunboyne Establishment, generously helped to extract the material from the various issues of the *Irish Ecclesiastical Record* and who helped also with the proofs. A special word of thanks goes to Fr. John Corkery, Librarian, Maynooth College, who willingly undertook the arduous task of reading the complete page proofs. Finally, tribute must be paid to the publishers and their staff whose unfailing courtesy over the years, and especially in this particular endeavour, has done so much to lighten the work of the author.

This work is dedicated to the clergy and in particular to those students of Maynooth in whose memorable company the author spent many happy and stimulating years. May it be of some help to all of them.

JOHN MCCARTHY.

The feast of the Immaculate Conception, 1955.

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THE SACRAMENTS IN GENERAL

CONDITIONAL AND LAY ADMINISTRATION OF THE SACRAMENTS

(i) I am not at all clear as to the exact theological teaching on the conditional administration of the sacraments. In fact, if I may be permitted to say so, I think that this teaching is itself far from clear. I have heard it said and I have seen it stated that the sacraments should never be conferred conditionally on the presence of due *dispositions* in the recipient; in other words, that the condition *si dispositus es* should never be used. But surely one may give conditional absolution if there is doubt in regard to the dispositions of one's penitent—and how better formulate that condition than by the expression *si dispositus es*? It somehow seems to me that the theologians, in this context, expound different principles for the different sacraments. Yet there must be general principles governing conditional administration, principles which are applicable to all the sacraments. Am I right in thinking this and in thinking also that the condition need *never* be expressed?

(ii) Should a lay minister of Baptism ever confer the sacrament conditionally? Or, to push my question back farther, should priests, in instructing nurses, doctors and others on the administration of Baptism in cases of necessity, complicate their instruction by indicating the circumstances in which the sacrament would be given conditionally by a priest minister?

(iii) Can it be held as probable that a lay person in grave sin does not commit further sin by conferring Baptism while in that state? Here again may I ask for a general rule?

VICARIUS.

(i) Despite the difficulties felt and expressed by 'Vicarius,' the general theological teaching on conditional administration of the sacraments is clear and is fairly adequately discussed by most of the authors of standard text-books. We could not hope, and we shall not try, to deal here with all the hypotheses which might arise regarding the conditional administration of the individual sacraments. We shall confine our discussion to the general teaching and to a few particular points raised specifically by our correspondent.

'Vicarius' asks, in effect, whether there is any general principle which may be said to govern the conditional administration of all the sacraments. There is. Many of the theologians state it in some form or other. Prümmer, for instance, writes:[1]

Tamquam regula generalis pro licita praxi formae conditionalis solet afferi: Licet conferre sacramentum sub conditione, quoties illud absolute collatum exponeretur periculo nullitatis, absolute autem negatum privaret hominem magno bono aut in grande periculum salutis aeternae illum detruderet.

Or the principle might be stated thus: the sacraments may be conferred conditionally when it is doubtful if all the conditions necessary for validity are present, and when, at the same time, the spiritual need of the recipient is such that it demands that he be given the benefit of the doubt.[2] We presuppose in this statement that the doubt cannot be satisfactorily solved by due inquiry.[3] It is clear from the general principle that conditional administration is the means devised to avoid the irreverence inherent in conferring a sacrament invalidly, and yet to cater, as far as may be possible, for the urgent spiritual need of the subject of the sacrament. The irreverence to the sacramental rite and the danger of an invalid sacrament are avoided by making the minister's intention of administration conditional on the actual presence of the requirements for validity—the presence of which, *ex hypothesi*, is doubtful. The spiritual need of the recipient is met, as far as is possible, because, if the requisite conditions are in fact present, he receives a valid sacrament. It is worthy of note here that the Code does not give any general principle governing the conditional administration of all the sacraments. But it does give a direction regarding the repetition of the sacraments which confer a character:

Sacramenta baptismi, confirmationis, et ordinis, quae characterem imprimunt, iterari nequeunt. Si vero prudens dubium exsistat num revera vel num valide collata fuerint, sub conditione iterum conferantur.

The general principle given above follows exactly the lines of this authoritative direction of canon 732.

In stating the principle, we have said that the sacraments *may* be conferred conditionally in certain circumstances. Normally it would be unlawful to perform a sacramental rite when it is really doubtful if all the conditions necessary for

[1] *Th. Mor.*, iii, n. 24. Cappello suggests a similar rule in *De Sac.*, i, nn. 27–29.

[2] Cf. St. Alphonsus, *Th. Mor.*, l, vi, nn. 27–28.

[3] If the doubt can be removed by inquiry and there is time to do so, it would be gravely irreverent to omit this inquiry.

validity are present. When there is such doubt it would always be wrong to confer the sacraments *absolutely*. But, on the other hand, when the circumstances stated in the general principle are verified, it is always lawful to confer the sacraments conditionally, and, moreover, it will generally be of obligation to do so. The existence of an obligation is clearly indicated in the words of canon 732 just quoted—'(*sacramenta*) *sub conditione conferantur*.' The form of the verb used here implies an obligation. And there are in the Code many other canons which also suggest that there may be an obligation to confer the sacraments conditionally.[1] Though our correspondent expresses some surprise, it is, indeed, very natural that the details of conditional administration should vary with the different sacraments.[2] The various sacraments are very different in nature; each has its particular purpose; each is meant to meet a particular need in the supernatural life of the individual;[3] some are much more necessary for salvation than others. The more necessary in the particular circumstances a sacrament is for the individual, the more readily will its conditional administration be justifiable or even obligatory. Cappello writes:[4]

Si sacramentum de cuius valore dubitatur necessarium sit sive respective, aut ab eius valore alia pendeant, iteratio fieri omnino *debet*, quamdiu valor sacramenti moraliter certus non est. Id plane requirit aeterna hominum salus, bonum religionis et proximorum. . . . In hisce casibus principium communiter a theologis admissum hoc est: si *licet* iterari etiam *debet*.

Again, it follows from the nature of six of the sacraments that a *conditio de futuro* in their administration would invalidate the whole sacramental rite.[5] Matrimony is the exception to this rule. Marriage is essentially a contract and consent to this contract might validly be given, subject to a suspensive condition. This difference of detail in conditional administration does not argue any conflict in the theological principles.

[1] Cf. canons 746, 747, 748, 749, 752 in reference to the conditional administration of Baptism; canons 941, 942 in regard to Extreme Unction.

[2] The conditional administration of Holy Communion is, in the nature of things, impossible, and rarely will it be lawful to confect the Eucharist conditionally, cf. Jorio, op. cit., n. 115.

[3] Cf. St. Thomas, *S.T.*, 3, q. 65, a. 1.

[4] Op. cit., n. 27.

[5] Cf. St. Alphonsus, op. cit., n. 26. The reason why a *conditio de futuro* in the form would invalidate all the sacraments, except Matrimony, is that the matter and form would not be present together when the future condition is verified. If a *conditio de praesenti vel de praeterito* is used the sacrament will be valid or invalid according as the condition is here and now, at the time of conferring, really verified or not. In Matrimony, consent, once given, has a continuing existence and is presumed to persevere until its recall has been proved—cf. canon 1093.

It follows from what we have written that conditional administration is admissible only when there is doubt regarding the requisites for validity and not when the doubt concerns liceity merely. Many of the sacraments, while validly received, may at the time of reception prove unfruitful because the recipient lacks some of the dispositions necessary for fruitful reception. The sacraments thus received, however, may revive afterwards, *remoto obice*, and produce their due meed of grace. If, then, a sacrament is conferred conditionally on something that pertains only to liceity, the possibility of a valid but unfruitful sacrament and the possibility of reviviscence are excluded. And this should not be allowed to happen. The presence of dispositions in the recipient of the sacraments has reference normally only to liceity. Hence the general rule, referred to by our correspondent, is that sacraments should not be conferred conditionally on the presence of dispositions. Consequently, it may be said generally, the condition *si dispositus es* should not be used.

But in the sacrament of Penance, which is exceptional in this matter, certain dispositions of sorrow and amendment on the part of the penitent are required for validity and, accordingly, this sacrament may lawfully be conferred conditionally on the presence of those dispositions. Thus one of the occasions listed by the theologians in which conditional absolution may be given is 'si confessarius dubitet prudenter de poenitentis dispositione, quoties absolutio sine gravi incommodo differri nequeat.' [1] Should the condition *si dispositus es* be used in these circumstances? We think it should not, for it is a moot question whether the sacrament of Penance may not sometimes be valid but unfruitful—*sacramentum validum sed informe*. While it can be said at once that the much more commonly held view rejects the possibility of a valid yet unfruitful sacrament of Penance,[2] there are not a few writers who strongly maintain that possibility. The issue is of interest and in point here. In the admission of the disputants the issue can only hinge upon the disposition of contrition, that is upon the degree of sorrow required for validity. It could easily enough be conceived as possible that certain qualities of contrition which are necessary for fruitful reception might not be

[1] Cappello, *De Sac.*, ii., n. 98. Cf. Prümmer, op. cit., n. 332.
[2] Cf. Prümmer, op. cit., n. 353; for arguments cf. Galtier, *De Paenit.*, n. 405 et seq. It is not clear what was the mind of St. Thomas on the point—cf. *Suppl.* q. 9, a. 1. Some authors (e.g., Jorio, op. cit., n. 384) hold that St. Thomas clearly taught the possibility of valid, but unfruitful, sacrament of Penance. But if his teaching were clear there would be little room for such diversity of opinion regarding it.

necessary for validity. And so the issue can be expressed in the form of a question: does the degree of sorrow which is required and is sufficient for the validity of Penance always suffice for fruitful reception of this sacrament?

Before the Council of Trent it was held by a number of writers that putative sorrow was sufficient for validity though not for fruitful reception. This view can no longer be held: it is certain now that true, internal sorrow is required for validity. In more modern times writers like Billot[1] have held that for the validity of Penance sorrow need not be *appretiative summus*, while for fruitfulness it must be. There are other theologians[2] who claim that, in particular circumstances, sorrow which is not universal would suffice for valid, but not for fruitful reception of Penance. The circumstances they have in mind are those in which the penitent confesses one mortal sin, forgetting another of a different species, and elicits sorrow from a particular motive which covers only the sin confessed. The result of this they say, would be a valid but unfruitful sacrament, which would revive as soon as the necessary sorrow covering the forgotten sin is elicited. We might add here that there are not wanting theologians who would regard the sacrament as both valid and fruitful in the circumstances given.[3] But, as we have mentioned earlier, the much more widely held and, in our opinion, the better view,[4] is that the same qualities of sorrow are required for the validity and fruitfulness (that is, of course, the essential sacramental fruitfulness) of Penance. In this view there is no room for the reviviscence of the sacrament of Penance. Yet, by reason of the divergent opinions and the *possibility* that Penance may be valid but unfruitful and may revive, we submit that the condition *si dispositus es* should not be used in the administration of this sacrament. Of course this condition could be restricted by the intention of the minister to have reference only to those dispositions which, whatever exactly they may be, are essential to validity. Normally this restriction would not be implied in the phrase *si dispositus es*—which would, we think, be taken generally to refer more widely to all dispositions, to those required for fruitful as well as for valid reception. The use of this phrase, then, would give rise to doubt and might exclude the possibility of reviviscence—

[1] *De Paenit., Th.* xvi. Billot states his position clearly in the formulation of this thesis—Penance can revive like Baptism.
[2] Cf. Lehmkuhl, *Th. Mor.*, ii, n. 402.
[3] Cf. Vasquez, *De Paenit.*, q. 92, a. 2.
[4] The Councils (Florence, Trent) make no distinction between what is required for validity and liceity or fruitfulness.

and altogether unnecessarily, since there are other and better ways of formulating the condition. The phrase *si capax es* meets the conditional administration of Penance, as it meets most cases of conditional administration, very adequately: it has an obvious reference only to the requisites for validity in the subject.

Our correspondent raised the further question in this context, whether the condition must ever be expressed in words? We have no evidence in the first seven centuries of the Church's history to show that the condition was thus expressed. This is not to say that there was no such arrangement as conditional administration of the sacraments in that early period. There must have been: the conditions which demand conditional administration existed then as well as now. And, as we have seen, conditional administration is an obvious enough way of reconciling in particular circumstances two somewhat opposed obligations. The first verbally expressed conditional form dates from the eighth century and was used in repeating Baptism when the earlier conferring was doubtfully valid. The form ran: 'Non te rebaptizo, sed si non es baptizatus, baptizo te in nomine Patris et Filii et Spiritus Sancti.' The accepted teaching nowadays is that the condition *may* be verbally expressed in every case of conditional administration. But, apart from the few cases in which the Ritual prescribes a conditional form, it suffices that the minister of the sacraments mentally forms the condition. There is an obligation to follow the prescription of the Ritual in this matter, for it is certain that the rubrics which have reference to the administration of the sacraments are generally preceptive.[1] We take it, however, that failure verbally to express the condition when prescribed by the Ritual, would be, *per se*, only a venial sin.[2] The Ritual prescribes a conditional form for Baptism when the sacrament is being repeated—the form is 'Si non es baptizatus ego te baptizo, etc.'[3] Again, in the case of the Baptism of (human) monsters and teratoids, the Ritual mentions the conditional form 'Si tu es homo, ego te baptizo, etc.'[4] And finally, when it is doubtful if the subject of Extreme Unction is really alive, the Ritual gives the form 'Si vivis, per istam sanctam unctionem, etc.'[5] In other cases of conditional administration, the condition may be expressed by the phrase *si capax es*—if the doubt has reference to the presence in the subject of the requisites for validity.

[1] Cf. O'Kane-Fallon, *The Rubrics of the Roman Ritual*, n. 13 et seq.
[2] *Per accidens*, the expression of the condition might be necessary to avoid scandal.
[3] Tit. ii., c. 1, n. 9. [4] Tit. ii., c. 1, n. 22. [5] Tit. v., c. 1, n. 14.

(ii) Parish priests are reminded both by the Code[1] and, in the same words, by the Ritual[2] that they are bound to take care that the faithful and, in particular, midwives, doctors and surgeons should accurately learn the proper manner of administering Baptism in cases of necessity. We think that the priest, in giving the necessary instructions, should indicate, proportionately to the capacity of his audience, the circumstances likely to occur, in which Baptism is to be conferred conditionally. A knowledge of the general circumstances would rightly be regarded as part of the accurate information expected. Lay Baptism is, of course, sacramental, and there is the same reason for safeguarding it from danger of irreverence as there is when the rite is performed by a priest. Accordingly, when there is doubt whether the requisites for validity are present, lay Baptism should be given conditionally. The principal circumstances likely to arise for midwives, doctors, etc., in which conditional Baptism will be the correct procedure are when there is doubt as to whether the subject is already dead, can be reached, or possibly whether there is really a living human foetus or a lifeless mole. Intelligent people generally will easily understand the reasons for conditional administration, and we feel sure that the indication of the circumstances mentioned will not complicate matters unduly for professional people.

(iii) The view is solidly probable and is commonly held by theologians that a lay person is not guilty of further *grave* sin, if, while in the state of mortal sin he or she confers the sacrament of Baptism in cases of necessity.[3] St. Alphonsus, however, gives the opinion, which he regards as more probable, that such a lay person would be guilty of grave irreverence.[4] There is no doubt that there is some degree of irreverence in the procedure—*sancta sancte tractanda sunt*. But is the irreverence grave in the circumstances under consideration? It may be taken as probable that it is not. But, objectively, in the admission of all, there will be at least light irreverence—venial sin.[5] Accordingly, our correspondent's first question (in this section of his query), since it refers to further sin in general, that is to venial sin as well as mortal, must be answered in the negative. Whatever about the theoretic merits of the rival views, it can be held in practice, for a number of reasons, that a lay person, who while in grave sin confers Baptism in an

[1] Canon 743. [2] Tit. ii., c. 1, n. 17.
[3] Cf. Cappello, *De Sac.*, i., nn. 59–61; Prümmer, loc. cit., nn. 56–7; Jorio, op. cit., n. 23.
[4] *Th. Mor.*, 1, vi, n. 32. [5] Cf. Noldin, loc. cit.

urgent case, will rarely be subjectively guilty of mortal sin, and perhaps not even of venial sin.[1] The general relevant principle given by the theologians is that there is (certainly) a grave sin of irreverence if a consecrated minister solemnly confects a sacrament, apart from cases of necessity, while in the state of mortal sin. If any of these conditions is absent, it may be held as probable, as has been stated above, that there is not a grave sin of irreverence. So if the minister was not consecrated, that is, not one of those specially empowered and deputed by ordination to confer the sacraments, or if the sacrament is conferred privately (non-solemnly) by a consecrated minister or in such urgency that there is no time for him to elicit an act of contrition (a circumstance difficult to envisage in practice), or finally if the minister in the case of the Eucharist merely distributes Holy Communion, but does not confect the sacrament—in all these hypotheses—according to a fairly widely accepted and acceptable view, there will not be mortal sin.

VOCAL RECITATION OF THE SACRAMENTAL FORM

In a religious examination recently conducted in a secondary school in this diocese one of the questions asked was : How many sacraments could a priest administer who, as a result of an accident, had become deaf and dumb ? It was assumed that he had been granted all the faculties and privileges that the Church could give him.

Most of the examinees replied—Holy Communion only. They added that the spoken word was indispensable in the case of the other sacraments. The remainder said the deaf and dumb priest could administer all the sacraments except Holy Orders, since finger signs could take the place of the spoken word so that the form of the sacrament was not in danger. Your views on the question would be appreciated.

JACOBUS.

The vocal recitation,[2] by the minister, of the prescribed forms is necessary for the valid confection of Baptism, Confirmation, the Blessed Eucharist, Penance, Extreme Unction and Holy Orders. From this it follows that a dumb priest could not validly confect these sacraments. In Matrimony the situation is different. Marriage is a contract made by the

[1] Prümmer, loc. cit., n. 57.
[2] Cf. Cappello, *De Sac.*, i, n. 24 : 'Ad validitatem quod attinet. . . requiritur ut *vocaliter* forma pronuntietur. . . .'

mutual exchange of consent by the parties. If they are both baptized their valid marriage contract is always and necessarily a sacrament.[1] The ministers of this sacrament are the parties thereto. Their exchange of consent should normally be expressed in words, and equivalent signs may not be used if the parties are able to speak.[2] Here, however, it is clear that the consent can always validly be expressed by equivalent signs. That is to say, the vocal expression of consent by the parties is not necessary for validity. In the celebration of the sacrament of Matrimony the authorized priest acts as an official witness. It is necessary that he assist freely and that he ask and receive the consent of the parties. But he may do this effectively by the use of signs. There is, then, no absolute reason why a dumb priest[3] could not validly assist, as an official witness, at a marriage. The administration of Holy Communion is not the *confection* of a sacrament. It is the distribution of a sacrament confected at the Consecration of Mass. Accordingly, the words used in the distribution of Holy Communion are not a *sacramental form*. Their omission would not interfere with the validity of the reception of the sacrament. Of course, such omission would normally be sinful. In cases of necessity, however, a dumb priest might administer Holy Communion with particles consecrated by another minister.

MINISTRATION OF THE SACRAMENTS TO THE DYING

During a recent discussion on pastoral problems I maintained that 'a priest who, called to a case of sudden dangerous illness, administers the last sacraments to an *unconscious* Catholic is bound—and ordinarily *sub gravi*—to ensure that a priest is immediately called to attend the same person if and when consciousness is recovered. This obligation to ensure as far as is humanly possible the conscious fruitful reception of the last sacraments by a dying Catholic arises from the general theological principles concerning those sacraments and is implicitly contained in canons 468, 864 and 944. The reception of the last sacraments during unconsciousness is often of such doubtful efficacy that the priest—where he can do so—is strictly bound to secure their reception during consciousness.'

[1] Cf. canon 1012, §§ 1–2.
[2] Cf. canon 1088, § 2.
[3] We have confined our reference to a dumb priest—as this is the primary issue in the query. If a priest is also deaf an additional bar to his ministry of Penance is present and a further difficulty arises regarding his assistance at marriage

This case occurs rather frequently and yet, although its solution is of vital importance, not a single manual, so far as I can discover, has treated it.

J. A. C.

Like our correspondent we have failed to find in the text-books, or elsewhere, any specific discussion of the interesting point raised in the foregoing query. We agree with the general content of the view advanced by 'J. A. C.' that, when the last sacraments are administered to Catholics while they are unconscious, every feasible effort should be made to secure as soon as possible further spiritual ministrations for these patients when they recover consciousness—while remaining in danger of death. This implies that the minister of the last sacraments to unconscious Catholics should inform those who are looking after the dying that the priest is to be sent for if the patients recover consciousness. These conclusions follow, as close corollaries, from the laws[1] which bind all who have the care of souls to provide, in a particularly vigilant way, for the spiritual interests of the dying, to strengthen them with sacramental helps especially with Holy Viaticum and to commend their souls to God.

Our correspondent refers to the doubtful efficacy of unconscious reception of the last sacraments. It is, of course, quite certain that the recipient of the sacraments can, by his conscious dispositions, greatly increase the measure of sacramental grace and fruitfulness. Hence we find in canon 865 a prohibition against the undue postponement of the reception of Holy Viaticum and in canon 944 a reminder that all diligence and care should be used to see that those in danger of death should be anointed 'dum sui plene compotes sunt.' Yet we think that it is not quite correct to speak, without reservations, of the doubtful efficacy of the unconscious reception of the last sacraments or of the necessity to repeat these sacraments if and when the dying person recovers consciousness. It will be possible to administer only two of the last sacraments to dying Catholics who are unconscious—Penance and Extreme Unction. And, in the circumstances contemplated, Penance can be administered only conditionally because it is doubtful if the acts of the penitent, which are described as the quasi-matter[2] of this sacrament and are necessary for validity, are sufficiently

[1] Cf. canon 468; Maynooth Statutes, n. 159; cf. *Cat. Conc. Trid.*, p. II, c. vi, q. 9.
[2] *Conc. Trid.*, Sess. xiv, c. 3.

presented by an unconscious recipient. Accordingly, the absolution of an unconscious penitent is, indeed, of doubtful validity and efficacy. The requirements for the valid and fruitful reception of Extreme Unction are much less stringent. For validity, and for fruitfulness in the case of those who are in the state of grace, all that is required from a baptized recipient is an implicit habitual intention of receiving the sacrament.[1] And it may be taken as certain that all genuine Catholics, at the least, have this intention. Further, the reception of Extreme Unction will be fruitful even for those in grave sin if they have internal attrition. In other words, Extreme Unction can be validly and fruitfully received even though the recipient is here and now unable to externate in any way an intention or attrition. Hence we have the provision of canon 943 which commands the *absolute* administration of this sacrament to the unconscious who, before being deprived of the use of their senses, have requested it or probably would have requested it. If the recipient of Extreme Unction is in grave sin and has not internal attrition, the sacrament will be unfruitful but, presupposing the presence of the necessary intention, will be valid and will revive when the obstacle of lack of sorrow is removed.[2] Incidentally, all this indicates that in the case of those who are unconscious and dying, Extreme Unction is an invaluable asset and a much more sure help than Penance.

Since we may take it as certain that the anointing of unconscious dying Catholics is valid, and since this sacrament cannot be repeated in one and the same danger of death,[3] there will be no question of re-anointing the patient when he recovers consciousness. We assume that this recovery of consciousness does not imply that the former danger of death has ceased and that a new danger has supervened. But there might be question of supplying omitted unctions.[4] Suppose, for instance, that the sacrament of Extreme Unction has been conferred in the short form by a priest who was called away before the omitted unctions could be supplied. The obligation to supply these unctions is grave—and it binds probably as long as the danger of death in which the sacrament was conferred remains.[5] The obligation rests primarily upon the ordinary minister of this sacrament—that is upon the parish priest of the place where the dying person now is—even though

[1] Cf. Cappello, *De Sac.*, II, p. ii, n. 234; Kilker, *Extreme Unction*, pp. 253–4.
[2] Cf. Cappello, op. cit., n. 275.
[3] Cf. canon 940, § 2.
[4] Cf. canon 947, § 1.
[5] Cf. Kilker, op. cit., pp. 392–3.

the anointing with the short form has been given by another priest or in another place.[1]

As has been noted earlier, the absolution given to an unconscious penitent is only doubtfully valid, hence this sacrament should be repeated when the dying person recovers consciousness and can receive a certainly valid absolution. This repetition is an ordinary security measure at an important juncture of life. The repetition is particularly necessary, as a preparation for the reception of Holy Viaticum, if the patient was in mortal sin when stricken unconscious.[2] Holy Viaticum should be administered if the dying patient has recovered sufficiently to be able to receive.[3] The obligation of the faithful to receive Holy Communion in danger of death is grave and is, in the unanimous opinion of theologians, one of divine law.[4] Parallel to and commensurate with this obligation of the faithful to receive is the obligation of pastors and of other priests who have the care of souls to administer Holy Viaticum. In the circumstances we are considering here this latter obligation begins to urge when the unconscious recover sufficiently to be capable of receiving, while remaining in danger of death. It is suggested in canon law that the faithful should, if possible, be given Holy Viaticum on a number of occasions, on different days, so long as the danger of death lasts.[5]

To sum up: the faithful who have received the last sacraments while unconscious should, if they recover consciousness before death, be given the sacrament of Penance again and should also receive Holy Viaticum and the Apostolic Blessing.[6] Extreme Unction should not be repeated—but if the former administration were in the short form only, the omitted unctions should be supplied. In view of the gravity of the issues involved it must be said that there is, *per se*, a grave obligation to ensure, as far as possible, that the dying are fortified by the conscious reception of these last rites which can be of such invaluable help and merit and which, therefore, may reasonably be requested. The priest who ministers to the unconscious dying should arrange that, if the patient regains consciousness, the further spiritual ministrations should be sought—and at once, if the period of regained consciousness seems likely to be brief. It is part of the pastoral duty of priests who have the care of souls to visit their sick and dying subjects frequently and to help them, by using all the appointed spiritual means, to be

[1] Cf. Kilker, op. cit., p. 392.
[2] Cf. canon 856.
[3] Cf. canon 864, § 1.
[4] Cf. Noldin, *De Sac.*, n. 137.
[5] Cf. canon 864, § 3.
[6] Cf. canon 468, § 2.

ready to meet their Creator. Priests who have not the care of souls are bound in charity to administer the last sacraments to the dying[1] and, if the pastor or his assistants are not available this obligation includes the giving of the sacraments, mentioned above, to the dying who have recovered consciousness—even though they have already been absolved and anointed while unconscious.

ADMINISTRATION OF THE SACRAMENTS TO THE UNCONSCIOUS

I am chaplain to a hospital, managed by nuns, in a large industrial town. There are many accident cases. When called I frequently have to inquire about the religion of the patients, as a considerable number are non-Catholic. Sometimes it is impossible to establish the religion of a person who is unconscious and dying. I have always dreaded the possibility of a patient dying without being given every opportunity of salvation. For this reason, whenever it has not been possible to discover the religion of the patient I have given absolution conditionally (*si capax es*). I would be grateful to know whether this practice would meet with your approval, and also whether there is sufficient authority to *justify* or *oblige* the administration of Extreme Unction in such cases.

GEORGE.

We approve of the procedure adopted by 'George.' We think, moreover, that there is sufficient authority to justify the conditional administration of Extreme Unction in the circumstances mentioned. Most of the arguments that can be advanced in favour of giving conditional absolution may be used with equal validity to justify conditional anointing.[2] Indeed the arguments seem to have greater force in the latter case. 'George' is familiar with the general teaching that Extreme Unction is particularly valuable and necessary when the patient is unconscious—because of the doubtful validity of the absolution in these circumstances. Extreme Unction may be the sole sure means of assisting the unconscious patient who may be in extreme need.[3] The patient's religion cannot be discovered. He may well be a Catholic. Many patients are.

[1] Cf. canon 892, § 2.
[2] A few writers would allow the administration of Penance, but not of Extreme Unction, to a dying heretic. They base their argument on the use of the word *fidelis* in can. 940.
[3] Cf. Kilker, *Extreme Unction*, p. 108.

And even if the unconscious patient were certainly a heretic or schismatic, it is commonly held nowadays that he may be absolved and anointed conditionally. It is maintained by many that canon 731, § 2, does not apply to those who are *sensibus destituti*.[1]

The administration of the sacraments in the circumstances mentioned by 'George' is not likely to cause any scandal. He may, if necessary, explain the reasons for his action. The dying should receive all the help that it is possible to give them consistently with due respect to the sacraments. There is a doubt in regard to the religion of the unconscious patients—a doubt which cannot be directly removed. But it should, in view of the circumstances, be solved in their favour. There is no disrespect to the sacraments. They are safeguarded by the condition: *si capax es*. We conclude, therefore, that 'George' would be justified in administering Extreme Unction. We think, too, that a strong case can be made for an obligation to do so. It can reasonably be maintained that a priest is bound, at least in charity, to give to the dying any necessary spiritual help that he may lawfully give without disproportionate inconvenience.

[1] This interpretation of the canon corresponds with a reply given by the Holy Office in May, 1916. The question was asked: 'An schismaticis in mortis articulo sensibus destitutis absolutio et Extrema Unctio conferri possit?' The reply was: 'Sub condicione affirmative. . . .' This reply was not officially published. Cf. Kilker, op. cit., pp. 123–35.

SECTION II

THE SACRAMENT OF BAPTISM

IS THE HUMAN FOETUS A PERSON FROM THE FIRST MOMENT OF CONCEPTION?

Can it be said that the human foetus, at least in the early stages after conception, satisfies fully all the requirements in the scholastic definition of 'person'?

J. K.

According to scholastic teaching the nature of a being is its essence considered as the source or principle of its activity. When an individual nature is complete in itself, that is, when it subsists in itself and is not communicated to or does not coalesce with any other being, it is called, in scholastic terminology, a *suppositum*. *Actiones sunt suppositorum* is a familiar axiom of the schools. It means that *supposita* are the ultimate source and subject of all activity; that all actions must be predicated of or attributed to *supposita*. When the *suppositum*, the complete and incommunicable individual nature, is endowed with reason or intelligence we have what is technically described as a person. Hence the accepted scholastic definition of a person is an individual and incommunicable substance or being of a rational nature.[1] The human person is a composite unified being constituted by the substantial union of body and soul. The union results in a single nature. A complete individual nature cannot be actuated by more than one substantial form. Hence the rational soul is the one and only substantial form of the living human body in all its activities and manifestations.[2]

It is generally accepted nowadays that the human embryo, immediately on its formation by the union of the male and female elements of conception, is endowed with a rational soul.[3] This is the theory of immediate animation. If this theory be true, then it is obvious that the human embryo, from the first moment of its existence as a living entity, fulfils the scholastic definition of a 'person.' From the very beginning of its life the newly-formed being in the fertilized ovum is

[1] Cf. Maher, *Psychology*, p. 521; cf. p. 343.
[2] Cf. Definition of the Council of Vienna, Denzinger–Umberg, *Ench. Symb.*, n. 481.
[3] Cf. Beraza, *De Deo Creante*, n. 1041.

individualized and completed as a separate incommunicable rational nature or person by the infusion into it by God of its substantial form, the human soul.

We have said that this theory of immediate animation is generally accepted by present-day writers. We do not propose to repeat here all the proofs advanced in favour of the theory.[1] But we should point out that it is perfectly in accordance with scholastic teaching to hold that the rational soul is, from the very beginning, the principle of life and development of the living nucleus formed at the moment of human conception. That a new living being is formed when the ovum is fertilized is undeniable. It is equally undeniable that this new being grows and develops in virtue of a spontaneous and intrinsic principle of life and that its development is along unified, constant and teleological lines. There is no evidence of any break of continuity, change of direction or substantial diversity in the process. Such an uninterrupted and fixed course of progress and development seems to point clearly to a single, unified and unaltered principle of life right from the beginning.[2] This single principle must be the rational soul, since even those who reject the theory of immediate animation cannot and do not deny that the soul is the principle of embryonic life from a fairly early stage.

Some few modern writers[3] hold the theory of mediate animation. They say that the human embryo is not immediately animated at conception by a rational soul but only after a certain stage of development has been reached. The defenders of this theory postulate a succession of embryonic forms or souls—vegetative, sensitive, rational—in the development of the new life formed at the moment of human conception. Though we have referred to modern defenders, the theory of mediate animation is very ancient. It is found in the writings of Aristotle and was accepted by St. Thomas. But the modern exposition of the theory differs at some points from that given by St. Thomas.[4]

In the very early stages of development there is evidence only of vegetative life in the human embryo. At a somewhat later stage indications of sensation and sensitive life appear. But this is not a sufficient ground for postulating the existence of a succession of embryonic souls. In the developed human

[1] Cf. *I. E. Record*, xl (1932), pp. 449–60.
[2] Cf. Pujiula, *De Medicina Pastorali*, n. 98.
[3] Cf. Merkelbach, *Quaestiones de Embryologia*, pp. 66–7.
[4] Cf. Messenger, *Evolution and Theology*, p. 88.

being the rational soul is the single principle of all life—vegetative and sensitive as well as rational. Surely, then, the rational soul may be the principle of vegetative and sensitive life in the developing embryo?[1] There is no difficulty or contradiction here. Cardinal Mercier, who is, incidentally, a defender of the mediate animation theory, wrote:[2] 'Il est possible sans doute . . . que dès le principe la vie de l'embryon vienne d'une âme raisonnable.' If, as the mediate animationists suggest, there must be evidence of sensitive life before a sensitive soul may be attributed to the human embryo, why must we not wait until there is evidence of rational life and activity before postulating the presence of a rational soul? There is no indication of rational activity in the embryonic stage of foetal development. Nor is there such an indication at any time in the prenatal period, or indeed, for a while after. Yet the defenders of the mediate animation theory admit that the human foetus is endowed with a rational soul long before birth. This admission is, of course, correct as far as it goes, but it does not fit logically into the usual exposition of the theory of mediate animation. The fact obviously is that the absence of rational activity is no argument against the presence of the rational soul. The human embryo can be described as a person, a rational being, if it has the radical power of reason and intelligence, even though this power may be undeveloped or in abeyance. In the early stages the embryo has not the external shape or species of a human being. But, again, this is not a valid proof that the embryo is not initially endowed with a human soul. If it were a valid proof, would it not be logical to hold also that the *ostenta* referred to in canon 748[3] do not possess a rational soul?

It would follow from the theory of mediate animation that the human embryo is not a person in the scholastic sense until it has reached the stage of development at which the rational soul is infused.

Anima rationalis probabiliter infunditur tantum quando foetus radicalem omnino mutationem subit et externam acquirit speciem hominis quod fit versus finem tertii mensis : tunc utique adest ratio cur dicatur animari anima rationali.[4]

In this theory, then, the deliberate expulsion, from the mother's womb, of the human embryo, before the end of the third month

[1] 'Entia non sunt multiplicanda sine necessitate.'
[2] *Cours de Philosophie, Psychologie*, ii, p. 336.
[3] 'Monstra et ostenta semper baptizentur saltem sub conditione.'
[4] Merkelbach, op. cit., p. 67.

of pregnancy, would not be the crime of homicide. This expulsion, however, as the defenders of the mediate animation theory hasten to assure us, is intrinsically and gravely sinful.[1] It is, they say, the destruction of a living being which is *homo in potentia* and, indeed, *in potentia propinquissima*.

As we have indicated earlier, we hold strongly for the theory of immediate animation. But, of course, we cannot claim any finality for our judgment. And we should add that, whichever theory be held, the principle of the inviolability of the life of the human embryo must be preserved intact. In a public address[2] Pope Pius XII said : ' Innocent human life, in whatsoever condition it is found, is withdrawn, from the very first moment of its existence from any direct deliberate attack. This is a fundamental right of the human person which is of universal value in the Christian conception of life ; hence as valid for the life still hidden in the womb of the mother as for the life already born and developing independently of her ; as much opposed to direct abortion as to the direct killing of the child before, during and after its birth. Whatever foundation there may be for the distinction between these various phases of the development of life still unborn in profane and ecclesiastical law and in certain civil and penal consequences, all these cases involve a grave and unlawful attack upon the inviolability of human life.'

AN OBJECTION TO THE THEORY OF IMMEDIATE ANIMATION

In the *Irish Ecclesiastical Record*, Vol. xl. (1932), pp. 449–60, some weighty arguments were advanced in favour of the immediate animation theory. Nevertheless, it appears to have little biological foundation, as appears from the study of *identical* twins. Here is a quotation from a modern work entitled *Adventures with Living Things*, by Elsbeth Kroeber and Walter H. Wolff : ' Identical twins have the same genetic make-up. They are formed from a single *fertilized* ovum when, in the early stages of cleavage, two equal masses of cells separate. Each gives rise to a child. There are *other* twins which develop from two separate egg cells fertilized by two separate sperm ; they are no more alike than any two brothers or sisters.'

In the light of this teaching it appears that St. Thomas was right when he said that we began with a vegetative soul, since, in the case

[1] Cf. Merkelbach, *Quaestiones de Embryologia*, ii, p. 27.
[2] Address to ' The Family Front,' 26 November, 1951. Translation is from *Catholic Documents*, vi, p. 29.

of *identical* twins, a *fertilized* ovum must split in halves and the rational soul is indivisible.

I thank you in anticipation of a solution to this interesting problem, which has given rise to much discussion here.

J. O'D.

It is not necessary for us to go over all the arguments which are put forward in support of the theory of the immediate animation, by a rational soul, of the human embryo. Many of them, in particular those based upon the attitude of the Church—which was the point at issue—have been expertly expounded in the article referred to by our correspondent.[1] But it may be well to add here the fundamental philosophic argument for the theory. The argument is stated thus by a recent writer :[2]

Ovulum enim fecundatum in se habet totam evolutionis virtutem nec quidquam aliud exigit ad totum novi organismi corpus efformandum, nisi vitae conditiones. . . . Nam eo ipso quod ovum fecundatum est, fit propriae activitatis evoluturae perfectum principium ita ut eius activitas, quae post fecundationem et magna cum vi incipit, vere *una, intrinseca, constans* et teleologica sit, atque ovum a principio usque ad finem, id est usque ad trigesimum vel quadragesimum hominis annum sine ulla deviatione perdurat. Iam vero talis activitas, talibus notis donata, necessario principium unum, unicum requirit : nulla enim tota evolutione perdurante, nec principii mutationis necessitas, nec mutationis signum, nec tandem activitatis interruptio apparet. Atque hoc intelligi non potest sine principii unitate. Ergo principium unum ab initio adest. Ut certum autem constat ex doctrina catholica, hominis activitatis principium animam *rationalem* esse. Ergo haec *rationalis* anima ab *evolutionis* inito, id est immediate post fecundationem in germine est. Philosophus ad formandum de rebus iudicium fundamentum habet nullum praeter ea, quae in rebus deprehendit. Sed quae dixi, sunt quae embryologus videt et palpat.

In passing it should be noted, too, that the vast majority of writers to-day accept the theory of immediate animation.[3] In other words, the theory of a succession of embryonic forms or souls (vegetative, sensitive and rational) as expounded and defended by St. Thomas,[4] after Aristotle, is no longer in general favour.[5] It is interesting to observe that the comparatively few modern writers who cling to the Thomistic view of successive souls, maintain, against St. Thomas, that from the very beginning, the human embryo is endowed with some form of vegetative life.[6]

[1] Browne, *The Theological Status of the Mediate Animation Theory*.
[2] P. Pujiula, S.J., *De Medicina Pastorali*, pp. 99–100. Italics are the author's.
[3] Cf. Noldin, *De Praeceptis*, n. 342 : ' Hodie recepta doctrina est . . . '
[4] Cf. *S.T.*, 1, 118, 2.
[5] Cf. Beraza, *De Deo Creante*, nn. 1040–8.
[6] Cf. Messenger, *Evolution and Theology*, p. 88.

We are confronted here with an objection to this generally accepted doctrine of immediate animation. In effect, the objection is that the case of identical twins refutes this doctrine and forces us back to the theory of successive embryonic forms. We admit the validity of the illation that, if one must reject the possibility of immediate animation even in the single case of identical twins, the whole theory is somewhat jeopardized. But are we forced to admit the impossibility of immediate animation in the case of identical twins? We do not think so.

It is suggested in the query—and the suggestion is supported by a quotation from experts—that the study of cytology and embryology in the case of identical twins makes it incontrovertibly clear that they are formed from a single fertilized ovum which, after a brief stage of development as a living unit, splits into two separate masses, each of which develops into a human child. As we understand the objection, the argument is then that, in this embryological hypothesis, the single fertilized ovum must have been, in the pre-scission stage, animated by something like a vegetative soul, certainly not by a rational soul—because we could not conceive the breaking up into separate entities of a rational soul which is spiritual and, therefore, simple and indivisible.

There are several possible answers to this argument. Firstly, the hypothesis on which it is based might be questioned. We understand that it has not at all been conclusively proved that the conception of identical twins necessarily presupposes the scission into equal masses of a single fertilized ovum, that is of an ovum with a single nucleus. It is possible that identical twins develop from an ovum which contains two nuclei—each of which is fertilized by a distinct spermatozoon. Such ova are not unknown and, perhaps, can provide a sufficient explanation of the similarity of 'genetic make-up' observed in identical twins. In this explanation each fertilized ovular nucleus would, according to the theory of immediate animation, be informed, from the first moment of conception, by its own rational soul.[1] It may be added that the view of the embryologists quoted is based upon experience of, and experimentation with, irrational animals. It does not follow that similar processes must, or even can, take place in the procreation of the human species. Moreover, even if the hypothesis be admitted, even if identical human twins are formed by the equal scission of a single ovular nucleus which has been fecundated, we are not forced thereby

[1] There is no difficulty in holding that a rational soul is the principle of embryonic life from the first moment of conception.

to abandon the theory of immediate animation or, alternatively, to deny the doctrine of the spirituality and indivisibility of the rational soul. In the theory of immediate animation when passive conception takes place, that is, when the ovum is fecundated by the spermatozoa, a new living being comes into existence which is animated, from the beginning, by a rational soul. If, subsequently, as is alleged to happen in the case of identical twins, this fertilized ovum splits and the part split off develops into a separate child, it does not at all follow that the rational soul which informed the ovum must likewise be conceived as splitting. There is no reason why the part of the ovum which splits off, if and when it is *materia apta* for human animation, should not be informed by a new and distinct rational soul. The fact that male and female elements are necessary for the formation of new human life, the fact that, so to speak, the man and woman must contribute, as parts of themselves, these necessary elements, the ovum and the spermatozoa, does not imply any scission of the maternal and paternal rational souls. These elements contributed by the parents unite. And when this union takes place, when the ovum is fertilized by the spermatozoa, there is *materia apta* for a new human being and God infuses a rational soul into this *ovum fecundatum*. Similarly, it can be urged, there is no compelling reason why a part which breaks off from the animated ovum may not in turn, if it is *materia apta* for animation, be endowed with a distinct rational soul. The whole process of human animation is, indeed, a wonderful and mysterious part of God's Providence, but it is no more difficult to understand the infusion of a distinct rational soul into a split-off section of a fecundated ovum than it is to understand the similar animation of the original embryo. All growth of the fertilized ovum is by way of cellular division. But parts which split off—as the spermatozoa and ovum may be said, somewhat analogously, to be cast off from the parents—may or may not be *materia apta* for animation. If they are, we can easily understand that, at the due moment, God infuses into them a rational soul.[1]

ST. AUGUSTINE'S TEACHING ON THE SUFFERING OF INFANTS WHO DIED UNBAPTIZED

St. Augustine (*De pecc. mer. et remiss.* i. 16) held that infants who die unbaptized suffer the *poena sensus* of the mildest kind. I have

[1] Cf. Pujiula, op. cit., p. 101.

heard it asserted that St. Augustine later on held that they only suffer the *poena damni*. Please say if that assertion is true.

A STUDENT.

It is true, as our correspondent notes, that St. Augustine held the view that children who die without Baptism suffer some positive pain of sense in the next life. This doctrine is expressed by him not merely in *De Peccatorum Meritis et Remissione* (i. 16),[1] the source cited in the query, but also in very many other passages throughout his works.[2] St. Augustine flatly rejected, on more than one occasion,[3] the theory that there existed, between heaven and hell, an intermediate state or place where unbaptized children enjoy a natural happiness. Children who die with the guilt of original sin upon their souls cannot go to heaven. The only tenable alternative, for St. Augustine, is that they go to hell and there, in common with its other denizens, endure positive punishment. It is admitted that in the case of unbaptized children this punishment will be of the mildest possible kind (*damnatio levissima* or *mitissima*).

In the pre-Augustinian theological writings there are singularly few references which give any definite teaching on the fate of unbaptized children. There are, however, sufficient references to indicate that St. Augustine's view represented a break-away from the generally accepted position. 'It is clear from what precedes that St. Augustine was an innovator, and that he sacrificed tradition to the logic of an indefensible private system.'[4] Yet the new teaching found almost immediate favour and was repeated by the subsequent writers. It was accepted and 'canonized' by the Council of Carthage and remained unchallenged for centuries. By the twelfth century some few writers had begun to teach a milder doctrine. Unbaptized children, those theologians said, suffer the pain of loss but not any pain of sense. This milder view was popularized by Peter Lombard. St. Thomas went a step farther and taught that unbaptized children do not suffer any pain whatsoever but enjoy, in some degree, positive natural happiness.[5] This teaching set the headline for the vast majority of subsequent writers. Yet there were not wanting theologians, particularly in the post-Reformation period, who harked back to and

[1] *P.L.*, xliv, 120; cf. 140.
[2] Cf. *P.L.*, xxxiv, 416; xliv, 505, 809.
[3] Cf. *P.L.*, xlv, 1333.
[4] Cf. Toner, art. 'Lot of Those Dying in Original Sin,' *I.T.Q.*, July, 1909, p. 317.
[5] Cf. *De Malo*, v, 3; In IV. Sent. ii, 33, q. 2, a. 2.

defended the view of St. Augustine.[1] Many of these theologians, such as St. Robert Bellarmine, felt impelled to defend the Augustinian doctrine by reason of its wide, and apparently official, acceptance in earlier times. They were in a difficulty. They would gladly have seized upon any suggestion or indication that St. Augustine had changed his mind and had later adopted a milder view. They do not mention this line of escape. And their silence on the point is, in the circumstances, eloquent and sufficient proof that there is no evidence that St. Augustine had mitigated his doctrine.

Yet it has been asserted that he did so. Mazzella, for instance, writes:[2]

> Plures inter Patres Latinos asseruisse videntur parvulos sine baptismo decedentes puniendos esse poena sensus licet mitissima. Praesertim vero in hac fuit sententia S. Augustinus, qui tamen postea incertus de ea factus scripsit: 'Respondetur . . . superfluo quaeri de meritis eius qui nihil meruerit. Non enim metuendum est, ne vita esse potuerit media quaedam inter recte factum atque peccatum: et sententia iudicis media esse non possit inter praemium atque supplicium.'

This quotation from St. Augustine is to be found in his *De Libero Arbitrio*[3]—a work begun by the author while still a layman and completed by the year 395. In the passage quoted St. Augustine, like St. Gregory Nazianzen[4] in the East, does defend the existence between heaven and hell of an intermediate state for unbaptized children. But he soon[5] changed his mind on the question—and very definitely and completely. We have mentioned above that elsewhere St. Augustine categorically denied the existence of this intermediate state. One writer describes his attitude to the earlier opinion as one of detestation —'ea opinio quam veluti paradoxum detestatus est.'[6] And it has been noted that St. Augustine's doctrine rejecting the intermediate state was incorporated in the canons of the Council of Carthage.[7] The statements in which he repudiates the existence of this state and in which he clearly declares his teaching that unbaptized children suffer positive punishment

[1] Cf. *Vindiciae Augustinianae*, *P.L.*, xlvii, 653, where some Irish names are mentioned—'Idem etiam docent Ioannes Poncius Hibernus . . . quorum omnium studium vicit Florentius Conrius, archiepiscopus Thuamensis, integro pro Sancti Augustini assertione volumine evulgato, in quo fusissime ex sacris litteris e Augustino sensibiles infantium poenas demonstravit.'
[2] *De Deo Creante*, n. 1043.
[3] *P.L.*, xxxii, p. 1304.
[4] Cf. *P.G.*, xxxvi, p. 389.
[5] Even before the outbreak of the Pelagian controversy—cf. *P.L.*, xxxix, 416—Toner, art. cit., p. 316.
[6] *Vindiciae Augustinianae*, *P.L.*, xlvii, 658.
[7] Ibid., 644. This Council was held in 418 to combat the Pelagian heresy.

(though of the mildest kind) in hell are contained in works[1] all of which are later, some of them much later than *De Libero Arbitrio*. Thus Mazzella is guilty of a complete misrepresentation of the historical sequence when, in introducing a text from *De Libero Arbitrio*, he writes : 'Qui tamen *postea* incertus de ea factus scripsit . . .' St. Augustine did, indeed, change his mind on this question of the fate of unbaptized infants. But the change was from the more lenient pre-Augustinian teaching to the strict view rightly associated with his name —because, having once adopted it, he never seems afterwards to have departed from it or mitigated its harshness. Tixeront sums up the Augustinian position in the following words :[2] 'A last consequence of original sin . . . is the damnation of these children who die without Baptism.' In the *De Libero Arbitrio* St. Augustine had first surmised that there was for them an intermediate state that would be one neither of reward nor of punishment. But soon, considering that those children were not sinless, he concluded that they must share the common fate of mankind. Since there is no intermediate state between heaven and hell, and since they were excluded from heaven, they had to be consigned to the fire everlasting. . . . Moreover, it is well known that according to the Saint, unbaptized children suffered in hell a positive pain, but *omnium mitissima*. And Toner writes :[3] 'Not a few modern theologians simply ignore the difficulty or try in various ways to avoid facing it squarely and candidly. Thus some, in open defiance of history, say that St. Augustine retracted his severer teaching, appealing for proof to the text . . . from the *De Libero Arbitrio*—one of his earliest works !'

THE FATE OF UNBAPTIZED INFANTS—A RECENT VIEW

In a 1949 issue of *Nouvelle Revue Théologique* the Rev. E. Boudes has discussed from a new angle—the common solidarity of all mankind with Christ—the condition of infants who die unbaptized. The Rev. Felix Puzo, S.J., pursues the same line in an article in *Orientacion Catequistica*, a Spanish periodical on Catechetics published in Barcelona. A translated summary of the latter article appears in the April 1949 issue of *The Sower*.

The conclusions of these eminent theologians would appear to be

[1] E.g. *De Peccatorum Meritis et Remissione*, written in 412 ; *De Anima et eius origine*, written 419–20 ; *Contra Iulianum*, written in 421.
[2] *History of Dogmas* (Eng. trans.), ii, pp. 475–6. [3] Art. cit., p. 325.

the following: (i) That the teaching of the Church on the condition of infants who die unbaptized is neither definitive nor final ; (ii) That as it was human solidarity with Adam which landed us all in Original Sin and its consequences, so also human solidarity with the Second and Greater Adam—Christ in His Incarnation and redemptive Sacrifice on Calvary—at least implies that those infants who blamelessly die without Baptism should not be excluded from the Beatific Vision ; (iii) That the theological principle *Ecclesia supplet* can be applied in this case. The writers contend that as the Church supplies the act of faith which the infant presented for Baptism cannot itself make, there appears to be no valid reason why the Church cannot also supply the desire of Baptism which the dying unbaptized infant cannot itself elicit.

I should be grateful for your opinion of the foregoing conclusions.

PAROCHUS.

We have read the article by Abbé Boudes in the *Nouvelle Revue Théologique*[1] and also the summary, published in *The Sower*,[2] of the article by Father Puzo. Both articles seem to follow the same general lines. We shall confine our reply to a consideration of the first-mentioned article, of which we have the full text. In the statement of his query our correspondent has substantially indicated the thesis propounded in this article. But it may be well, by way of introduction to our discussion, to indicate a little more fully the development of the argument.

Abbé Boudes has attempted to solve the much discussed problem of the final destiny of infants who die without Baptism from the social standpoint of the common solidarity of all men with Christ, who assumed a human nature, was a Mediator for all men and wishes all to be saved. He is the Head of the Mystical Body. We must preserve the reality of this human solidarity—of all men, including unbaptized children—with Christ. We must emphasize the social aspect of Christ's Incarnation, Redemption and Headship, as we do regarding Adam and the Fall. We must accept the Pauline doctrine that the solidarity of men with Christ was equally universal with, and greater and more efficacious than, their solidarity with Adam. This points to a rejection of the doctrine of a *limbus puerorum*[3] in which there would be millions of infant souls—*éternels étrangers au Christ*—in whose regard their solidarity with Christ has achieved nothing, in contradistinction to their solidarity with Adam, which has brought them death and their

[1] *Reflexions sur la solidarité des hommes avec le Christ. A l'occasion des limbes des enfants*, T. 71 (1949), pp. 589–605.
[2] No. 175, April, 1949, pp. 68–9. [3] Cf. art. cit., p. 604.

eternal exile from the Kingdom of God. Thus the conclusion is reached that unbaptized infants can be and are saved. But how? Our author accepts—so, indeed, he must—as fundamental tenets of Christian teaching, that the salvation merited for all by Christ is not automatically applied to individual souls and that the sole means of salvation, expressly indicated as such in the New Testament, is faith in the Gospel message linked with Baptism. It is admitted in Catholic teaching that Baptism by water (*in re*) is not always necessary. Baptism *in voto* suffices for salvation in certain circumstances. Adults can elicit this *votum Baptismi* by a personal act. Children who have not attained the use of reason cannot. But may we not postulate the possibility that the Church—the social institution which is the Mystical Body of Christ and continues His salvific work—can intervene to supply for the dying infants' incapacity to elicit a personal act, by presenting a *votum Baptismi* on their behalf? That the Church can do this is inferable from the teaching that it supplies the act of faith in infant Baptism. If it can supply this act why not also, and equally, a *votum Baptismi* for dying unbaptized infants? And if the Church can supply this latter need, then it does—in witness whereof we have its anxious willingness to do everything possible to ensure the salvation of the dying. To defend this conclusion against a challenge on the ground of the inadequacy of a social act and of the necessity of an individual act, our author invokes the accepted doctrine regarding infant martyrdom. Christian tradition has taught that this martyrdom is a substitute for Baptism and that the Holy Innocents enjoy the Beatific Vision. But in their case there is no evidence of a personal act—Professor Klee's theory of a divine illumination of infants, at the moment of death, is not widely accepted.[1] We have, then, in infant martyrdom only a social salutary act. The infant martyrs are saved because by their death they confessed Christ in virtue of their sharing in the common solidarity of all humanity with Him. The 'confession' comes immediately from the intention of the persecutors, not from the infants' free acceptance of martyrdom. *Ex hypothesi* the infants are incapable of such free acceptance.

That, in brief, is the author's line of argument. Many other points are raised incidentally. But all are directed towards

[1] Cf. Beraza, *De Novissimis*, n. 1068; Le Blanc, 'Children's Limbo, Theory or Doctrine,' *American Ecclesiastical Review*, cxvii (1947), pp. 179–83; O'Connor, 'Is the Limbo of Infants an Hypothesis?' *Homiletic and Pastoral Review*, xlvii (1947), pp. 376–7; Hervé, *Th. Dog.*, iii, n. 603.

the central theme of the common solidarity of humanity with Christ and of what are conceived to be the consequences, for unbaptized infants, of that solidarity. Theologians will readily sympathize with the efforts of Abbé Boudes and others who are trying to throw light on the mystery of God's Providence regarding the ultimate destiny of unbaptized infants. The suggestions set out in the article under review have an attraction. Every theologian would be glad if the contentions that unbaptized infants are saved, that there is no *limbus puerorum*, could satisfactorily be established. There are no *tortores infantium* among the theologians of to-day—none who would condemn unbaptized infants to any pain of sense; nor, indeed, to any pain of loss, if this latter view could be fitted into the economy of Christian teaching. But there's the rub! In fairness to Abbé Boudes it should be mentioned that he puts forward his views, not as teaching which should arbitrarily be popularized but as personal reflections towards the solution of a delicate question which he regards as still an open one.[1]

But how far is the question still open? It is of faith that Baptism, *in re vel in voto*, is necessary, by necessity of means, for salvation; that those who die with the sole guilt of original sin on their souls cannot attain the Beatific Vision.[2] It is an incontrovertible fact of rational observation that many children die without Baptism *in re* and that infants, who have not the use of reason, cannot elicit a *votum Baptismi*—unless we postulate here, without a shred of evidence, a constant series of miracles whereby the infants are illumined by grace and enabled to formulate an act of love of God and implicit desire of Baptism; in which event they would no longer be infants. What, then, is the final destiny of these children? Not heaven; nor the hell of the damned which is the abode of those who die in grave unrepented personal sin. In the year 1321 Pope John XXII wrote: [3] 'Docet (Romana Ecclesia) . . . illorum . . . animas, quae in mortali peccato, vel cum solo originali discedunt, mox in infernum descendere: poenis tamen ac locis disparibus puniendas.' This is almost a verbatim quotation of the teaching of the second ecumenical Council of Lyons,[4] whose teaching was repeated in the *Decretum pro Graecis* issued by the Council of Florence.[5] There is, then, a special state and place, in the

[1] Art. cit., p. 589.
[2] Cf. Beraza, op. cit., n. 911.
[3] Denzinger–Umberg, *Ench. Symb.*, n. 493a.
[4] Ibid., n. 464.
[5] Ibid., n. 693. Cf. *Decretum pro Iacobitis*, Ibid., n. 712: 'Circa pueros vero propter periculum mortis, quod potest saepe contingere, *cum ipsis non possit alio remedio subveniri, nisi per sacramentum baptismi.*' Italics ours; cf. infra.

life to come, for those who die with the sole guilt of original sin on their souls. This place is called Limbo; Pope Pius VI refers specifically to the *limbus puerorum* and condemned the Jansenistic Synod of Pistoia because it rejected this Limbo as a Pelagian fable.

Doctrina quae velut fabulam Pelagianam explodit locum illum infernorum (quem limbi puerorum nomine fideles passim designant) in quo animae decedentium cum sola originali culpa poena damni citra poenam ignis puniantur; perinde ac si hoc ipso, quoad, qui poenam ignis removent, inducerent locum illum et statum medium expertem culpae et poenae inter regnum Dei et damnationem aeternam, qualem fabulabuntur Pelagiani: falsa, temeraria, in scholas Catholicas iniuriosa.[1]

How, then, can Abbé Boudes say:[2]

Il faut savoir faire remarquer que cette notion des limbes n'est jusqu'ici qu'une opinion du théologien?

It might be suggested that the existence of Limbo and the presence there of unbaptized infants are different questions and that one could accept the former and deny the latter. An obvious reply to this suggestion is that the Church would be little concerned to maintain the existence of a *limbus puerorum* which is empty.[3] And the arguments of Abbé Boudes do refer explicitly to the existence of Limbo. He claims that this can only be admitted as a theological conclusion, if it can be demonstrated, with absolute certainty, that some human beings die with the sole guilt of original sin on their souls. That unbaptized infants—apart from the very exceptional case of martyrdom—so die, is to us, as we have already noted, an incontrovertible conclusion from the teaching on the necessity of Baptism *in re vel in voto* and the acknowledged incapacity of infants to elicit a *votum Baptismi*. It is hard to understand what degree of certainty Abbé Boudes demands for the rational premise of the syllogism which leads to a theological conclusion. Rational certainty does not suffice. He writes:[4]

La certitude, simplement rationnelle, qu'il existe des personnes humaines décédant avec le seul péché originel, parce que la nécessité du baptême s'impose et qu'il est actuellement impossible de concevoir une suppléance pour les petits enfants qui meurent sans baptême, n'est pas, à elle seule, une certitude suffisante pour que l'existence des limbes devienne une conclusion théologique.

Apparently, the certitude which the author would demand could, in the question at issue, be supplied only by Revelation. But two revealed premises lead to more than a theological conclusion.

[1] Ibid., n. 1526.
[2] Art. cit., p. 591.
[3] Cf. O'Connor, art. cit., pp. 374–5.
[4] Art. cit., p. 592.

It is, of course, the teaching of Catholic theology that Christ died for all men, that He wishes all to be saved, that He has a headship over all, that there is a law of solidarity of the human race with Christ—a solidarity which completely transcends that which exists between Adam and his posterity. Yet, it must be remembered that this latter solidarity is based upon the constant, physical, individual factor of generation. The law of the solidarity of Christ with men, and the effects thereof, must be properly interpreted. This solidarity cannot be so construed that it eliminates the need of establishing, so to speak, individual contact with Christ in order to attain salvation. In other words, as Abbé Boudes expressly admits,[1] there is no question whatsoever of the automatic application of the redemptive merits of Christ to the individual soul. The merits and graces won by Christ are there for all, but application of them has to be made to the individual. The solidarity of men with Christ, His headship over all, mean that every individual[2] can avail of His Redemption; but these factors are not enough, of themselves, to make the individual application of the graces necessary for salvation. Christ has appointed the means whereby this application can be made—faith and Baptism. Now, the suggestion of Abbé Boudes regarding the sufficiency of a *votum baptismi ex parte Ecclesiae* seems, despite the contrary protestation, to be tantamount to an automatic application of the merits of redemption to the souls of unbaptized dying infants. The desire of the Church for the Baptism of dying infants must be considered as being always operative. There could never be a dying infant, of any age, in any part of the world, for whom the Church would not supply the *votum Baptismi*. The Church can be conceived as acting in this matter only in a global fashion, not as specially intervening to formulate, *toties quoties*, a *votum Baptismi* for each dying infant. So that, on analysis, this *votum Ecclesiae* is really no more than the earnest echoing of the wish of its Divine Founder that all men be saved.

Cette intervention de l'Eglise en faveur de l'enfant mourant sans baptême, suppléant ainsi socialement à ce qui lui manque personnellement, ne peut-être regardée comme incluse dans les prières de la messe, afin de permettre la réalisation du dessein d'amour de Dieu qui a 'merveilleusement crée la dignité de la nature humaine' et qui l'a 'reformée plus merveilleusement encore.'[3]

[1] 'Le salut, mérité à tous les hommes par le Christ, est loin de s'applique *automatiquement* a chacun d'eux.'
[2] All men are potential members of the Body of which Christ is the Head, but Baptism is necessary to actualize the potency.
[3] Boudes, art. cit., p. 602.

If this ever-present wish of the Church, expressed in the prayers of the Mass, suffices to ensure the application of the fruits of the redemption to the dying infant—then there is, in fact, automatic application of these fruits. And by what law is the effect of the *votum Ecclesiae* suspended except in the case of dying infants? Does not the Church equally desire the salvation of all? If the social intervention of the Church can be effective in the case of dying infants it should be equally so in the case of all. Every infant is incapable of demanding that Baptism *in re* be conferred or of desiring Baptism. Why should this personal incapacity not be supplied in every case by the intervention of the Church? Has not the Church the same right to intervene in the case of healthy infants as in the case of those who are dying? Christ bears the same relation of solidarity to the healthy as to the dying. So does His Mystic Body, the Church. The *votum Ecclesiae*, as restricted to the dying, emerges as a *deus ex machina*.

Moreover, the suggestions of Abbé Boudes seem to lead ultimately to a denial of the traditional doctrine on the necessity of Baptism. Of course, our author asserts this necessity and is careful to relate his theory to Baptism.

> Il reste certain que toute recherche de moyen providentiel de salut n'est théologiquement acceptable que si, de quelque façon, il est référé au baptême, seul moyen d'obtenir le salut fixé par la révélation divine et que si ce moyen, au minimum, est orienté vers lui comme 'votum baptismi.'[1]

The salvation of the dying infant is secured, he claims, by a *votum baptismi*, not, indeed, a personal *votum*, but none the less a *votum*, supplied by the social institution, the Church. But how far is this *votum Ecclesiae*—which we have seen, on analysis, to be merely part of the general desire that the means of salvation be applied to all—really a *votum baptismi* in the traditional sense? Abbé Boudes does refer his theory to Baptism—*de quelque façon*. He retains the terminology. But his reference is merely verbal, not real. The assertion that a non-personal *votum baptismi* suffices is entirely foreign to Christian tradition.[2] Our author points to the fact that the Church is held to supply the act of faith in infant Baptism. But there is no real parallel

[1] Art. cit., p. 605.

[2] Of course this is the only kind of *votum* which is conceivable in the case of infants, since they are incapable of a personal act. And so in their regard we find no reference in traditional teaching to the possibility of salvation by Baptism *in voto*. For infants there is only one means, Baptism *in re*, the sacrament of Baptism. 'Circa pueros . . . cum ipsis non possit alio remedio subveniri nisi per sacramentum baptismi.' Denzinger–Umberg, op. cit., n. 712.

between this case and the supplying of a *votum Baptismi*. In the circumstances in which the Church is said to supply the act of faith we have, concurrently, the personal application to the infant of a rite instituted by Christ to produce with sacramental, *ex opere operato*, efficacy, the formal incorporation of the recipient into the Mystical Body. And in the case of infant martyrdom, to which Abbé Boudes also refers as a supporting argument, we have the destruction, out of hatred for Christ, of the individual life. Thus, in both these cases, there is an individualization, a special personal factor, which is entirely lacking in the theory of the social *votum Baptisimi* advanced by Abbé Boudes.

The practical conclusions which would follow from the acceptance of Abbé Boudes' theory seem, of themselves, to create an almost insuperable objection to such acceptance. For if the theory be admitted, there would no longer be any real need, as far as their salvation is concerned, to worry about the Baptism of dying infants. Why trouble to baptize all aborted human foetuses, however monstrous and *quovis tempore editi*, or to baptize, in danger of death, the children of infidels, heretics and schismatics, *etiam invitis parentibus*? Why should parents, or anybody else, be burdened with the grave anxiety and obligation to have infants baptized without delay, since these infants, if they die in infancy, would be saved, Baptism or no Baptism? All those questionings, which arise naturally out of the theory advanced by Abbé Boudes, suggest a strange disharmony with existing ecclesiastical legislation[1] and constant theological teaching, which indicate grave concern and impose obligations to ensure the Baptism of all dying infants. Is not the reason behind this legislation and teaching the conviction of the Church that for infants the sole means of attaining the Beatific Vision is Baptism *in re*?

Our author's theory recalls and is closely similar to the teaching of Cajetan who held that the children of Christian parents who could not be helped by Baptism could . . . in the ordinary course of God's law, be saved *votis et precibus parentum*.[2]

It is not clear how far Abbé Boudes would accept this teaching. He pointedly maintains[3] that the view of Cajetan was not condemned at Trent. And this is true. But the reason that it was not condemned seems to be that it was not relevant to the particular discussion at which it was raised. And the view

[1] Cf. *Codex Iuris Canonici*, cans. 746–51 and 770.

[2] In 3, q. 68, a. 2.

[3] Art. cit., p. 603.

was censured and described as heretical by the theologians, and later, on the orders of Pope Pius V, it was expunged from the works of Cajetan.[1] Abbé Boudes makes the argument—which is good as far as it goes—that the *votum et preces* of the Church, which is the Mystical Body of Christ appointed to continue His work of Redemption, are much more valuable and efficacious than are the *votum et preces parentum*. Yet the principle governing both cases would seem to be the same. In neither case is there a personal *votum*, but one based upon solidarity. And there is a law of solidarity between parents and their children—the same law of solidarity that exists between Adam and his posterity. No one would deny that the phrase *Ecclesia supplet* has a perfectly valid, legitimate and accepted signification and efficacy in the sphere of jurisdiction. But the phrase is by no means universally applicable. It cannot be invoked to solve all difficulties. There are many things which the Church does not supply—matrimonial consent, for instance. It may, indeed, be said that God could, *potentia absoluta*, supply through the Church what would be regarded as a sufficient *votum* for Baptism in the case of dying infants. But then He might, just as easily, have arranged that Baptism would not be necessary at all for salvation in such cases. We must not ask ourselves what God could do or might have done—but what has He done? What conditions for salvation did He lay down? And Sacred Scripture indicates that He appointed Baptism as the sole means of salvation.

Theologians are well aware that it is difficult to reconcile God's universal salvific Will with the failure, through no fault of their own, of unbaptized infants to attain salvation. But this difficulty cannot be solved by suggestions which run counter to received doctrine. We know that God wishes all men to be saved. We know, too, that those who die with the guilt of sin on their souls cannot be saved; that Baptism, *in re vel in voto*, is the sole means appointed for the remission of original sin and that unbaptized infants, without any fault on their part, are deprived of these means. We do not know precisely how God's Providence may solve the difficulties and reconcile the contradictions in these statements. God's ways are often secret

[1] 'Patres articulum illum (Cajetani) haud proscribendum putarunt. Cuius rei causam adducebant, quoniam is ad baptismi doctrinam non spectabat, adeoque posset omitti; nec tamen per hoc ipsum silentium tolerandus declareretur; quamquam postea . . . Sotus . . . haeresim illum notaverit; et Pius V . . . id ex libris tam eximii theologi expungi iusserit.' Pallavicinus, *Hist. Conc. Trid.*, l. x. c. 8. Cf. Tanquerey, *Syn. Th. Dog.*, iii, n. 438.

and mysterious. The way in which His salvific Will operates in regard to unbaptized infants is a case in point. Abbé Boudes admits this possibility:[1]

Il est possible, d'ailleurs, que ce mystère des destinées ultimes de l'enfant non-baptisé doive toujours rester le secret de Dieu. La révélation divine, qui très clairement nous a indiqué les voies normales du salut, rigoureusement obligatoires pour quiconque les entrevoit, semble avoir voulu laisser dans l'ombre les voies secrètes par lesquelles s'exerce la miséricorde de Dieu envers tant d'âmes qui paraissent rester au dehors de l'économie salvatrice.

THE FATE OF INFANTS UNBAPTIZED BY WATER

The foregoing reply, when read with the care it deserves, appears to sum up the pros and cons with non-committal judiciality. Here and there, however, if a second 'Parochus' may say so with all respect, the author admits some arguments favouring the 'received' opinion which do not seem to carry much intrinsic probability with them; while certain arguments on the other side may possibly have more weight than he seems to accord. Let us quote some passages (occasionally abbreviated) from the article, adding such comment as must have occurred to more readers than one:

'*It is, of course, the teaching of Catholic theology that Christ died for all men, that He wishes all to be saved.*' Yes, but this would seem rather a mockery if, after all, only a tiny percentage of mankind has any real chance of salvation. Such would be the case for infants, at any rate, if the 'received opinion' were true, and many, probably most, human beings hitherto have died in infancy. Even to-day, of all the infants who die throughout the world, only (perhaps) ten per cent. are baptized. If we reckon the unnumbered centuries since Adam, the percentage of baptized infants must be infinitesimal. This consideration was unknown to the Middle Ages, which had little realization of the vast pagan world of Asia, Africa and America, and no realization of the long ages of mankind before Christ. This is fresh knowledge, which ought to have its effect on our guesses about the salvific will of God. The new knowledge seems to deprive the received opinion of most of its intrinsic probability; or, at any rate, it ought to cause theologians not to be too dogmatic in excluding from heaven the vast majority of infants created by God 'to be happy with Him for ever.'

'*The suggestion of Abbé Boudes* [that the Church may supply the *votum baptismi*] *seems to be tantamount to an automatic application of the merits of redemption to the souls of unbaptized infants . . . on analysis this* votum Ecclesiae *is really no more than the earnest echoing of the wish of the divine Founder.*' And why not, one may surely ask? What else should the Church desire? The author seems to object to the word 'automatic,' but it is his own word; one

[1] Art. cit., p. 604.

could easily think of some more seemly expression to fit the case : 'infallible' perhaps ; or 'efficacious,' or '*ex opere operato Christi sanguinis*.' The point surely is that Christ (and His Church) wills the salvation of all men, and has done all *He* can do to effect it ; consequently we may hope that His redemptive action always has its effect—acts automatically, if you like—*unless* some obstacle is placed by the human will. At least that is Abbé Boudes' hope, about something that is presumably unrevealed, and who is going to say that it is an unreasonable hope, or that it is unworthy of the God of all hope ?

'*If the social intervention of the Church can be effective in the case of dying infants, it should be equally so in the case of all. . . . Has not the Church the same right to intervene in the case of healthy infants as in the case of those who are dying ?*' There is not the same need, because infants who don't die will have a chance of Baptism by individual desire, if they should miss Baptism by water.

'*If the theory be admitted there would be no longer any real need to worry about the baptism of dying infants. . . . Why should parents or anybody else be burdened with the grave anxiety and obligation to have infants baptized without delay ?*' Nobody is asking for the theory to be 'admitted,' if by this is meant accepted as a fact. It can scarcely be more than a hopeful possibility. But if the possibility were 'admitted,' it might, perhaps, lift from some parents some worry and anxiety, and so far so good ; for must we really imagine Our Lord instituted Baptism in order to add to people's worries ? But it is a mistake to think that parents would get careless about Baptism ; on the contrary, they would argue : We don't know what happens to unbaptized children, but we have Our Lord's promise of heaven to the baptized, so we must make sure of that promise for our children.

'*The questionings arising out of the theory suggest a strange disharmony with existing ecclesiastical legislation and constant theological teaching.*' [In such matter as baptizing aborted foetuses however monstrous or undeveloped, or baptizing *in utero* or baptizing children of infidels *etiam invitis parentibus*.] Regulations and customs should arise out of doctrine, not the other way round. If canon lawyers and moral theologians have imposed such practices as these, it is because the practices have seemed to follow logically from the received theory of dogmatic theologians. If the received theory were modified, possibly some of the above practices might seem less urgent, and it would remain to be seen whether the Church's mind would make any modifications in discipline and custom.

'*Sacred Scripture indicates that He appointed Baptism as the sole means of salvation.*' Baptism *in re vel in voto, concedo*. Baptism *in re solum, nego*, as witness the ordinary baptisms of desire or of blood.

'*This difficulty cannot be solved by suggestions which run counter to received doctrine.*' To the formal teaching of the Church herself, *concedo*. To the common opinion of theologians at any given time, *subdistinguo:* If the theologians have thought of everything, *transeat vel concedo*: if there is something they happen to have overlooked or under-estimated, *nego*.

'*God's ways are often secret and mysterious; the way in which His salvific Will operated in regard to unbaptized infants is a case in point.*' Here, in this final paragraph, the author apparently concedes everything that Abbé Boudes or anybody else may ask for. It is a mystery ; we simply do not *know* what God does about unbaptized infants. But if so, then the preacher or writer or catechist should abstain from saying that we *do* know. Careful writers do so abstain. If they speak of infants being shut out of heaven, or being consigned to natural happiness, they are careful to indicate that this is a deduction or a surmise of theologians rather than the formal teaching of the Church. But the less careful writer or preacher gives out the opinion as if it were a defined doctrine. Thus the most recent, and in some ways the best, instruction-book for converts and inquirers in England, says quite baldly and dogmatically : 'Children who died without baptism enjoy a natural happiness though they do not see God.'[1] And then, of course, the author had to devote the best part of a page to trying to show that this is not unfair on God's part; the attempt is not very successful, perhaps, but he does try. That is what one misses in the reply—there seems no realization that the received view seems injurious (so to speak !) to the character of God. It makes God seem unfair, and even (forgive the blasphemy !) lacking in wisdom, since the means He takes to attain His purpose (salvation for all mankind) seem so inefficacious. Now, of course, such feelings are wildly untheological. God is God, and whatever He does is right and far beyond our question. If He likes to condemn the innocent with the guilty, who shall complain? Nevertheless, it is He who has given us our sense of justice and equity, of what is fair or not fair. As Abraham says to God, in Monsignor Knox's translation : 'That is not how the Judge of the whole earth executes justice !' And if there is a way of showing not only that justice is done by God, but also that it is seen to be done, then why should we not look hopefully to the theologians to find such a way, and to the Church to give her sanction to a fresh point of view, as in the end only she can ?

PAROCHUS II.

Our correspondent has used a somewhat tendentious title for his comments on our earlier reply. In that reply we considered a recent view put forward by Abbé Boudes in the *Nouvelle Revue Théologique*.[2] Much though we sympathized with the efforts of Abbé Boudes, we concluded that his view is unacceptable for a number of reasons—the primary

[1] *Everyman's Catholic Church*. By Rev. A. Reynolds. Paternoster Publications, Ltd. Price 4*s*.
[2] T. 71 (1949), pp. 589–605.

and vitally important one being that it did not fit in with the received doctrine of the Church on the necessity of Baptism. The Council of Trent defined that Baptism, *in re vel in voto*, is necessary for salvation : ' Quae quidem translatio (a peccato ad statum gratiae) post Evangelium promulgatum, sine lavacro regenerationis aut eius voto fieri non potest.'[1] The constant tradition of the Church, indeed the ordinary and universal *magisterium*, has interpreted the *votum* referred to by Trent as *a votum personale*, the *votum* contained, at least implicitly, in an act of perfect charity.[2]

It is not possible to go over all the ground again. Nor is it necessary. We shall confine ourselves to a few comments on the criticisms of ' Parochus II.' He criticizes us generally for omitting consideration of some points and for an inadequate discussion of others. As a general reply to this we may remind our readers that we were answering a query, not writing an article. We took up, point by point, the issues raised in the query. ' Parochus II ' thinks we should have made an effort to explain how God's justice and character are vindicated in the accepted theory that infants who die unbaptized cannot go to heaven. In fact, he thinks that we did not realize that the received view ' seems injurious so to speak, to the character of God ' and ' makes God seem unfair.' He is quite right in this. We did not realize that, and we do not. We did and do realize, and we stated in our reply, that God's ways are often, as they are in the matter under discussion, secret and mysterious. We cannot read the mind of God. But we know that He is infinitely just and merciful. We know that there is, there must be, some good explanation, which we cannot fathom, of His manner of dealing with unbaptized infants. We do not know the number of the elect—even proportionately. That, too, is God's secret which He has not deigned to reveal—' Deus cui soli cognitus est numerus electorum in superna felicitate locandus.'[3]

Christ died for all men. He provided the means whereby all men can be saved. He did not personally bring the fruits of Redemption to all. His own earthly mission was confined to the land of Palestine. He might have gone further afield. He did not. He left the continuation of His salvific work to others. His salvation comes to men through secondary causes. He

[1] Sess. vi, cap. 4. Denzinger–Bannwart, *Ench. Symb.*, n. 796.
[2] Cf. St. John xiv, 22, 23 ; St. Luke x, 27, 28.
[3] Postcommunion prayer ' pro pluribus defunctis ' from Roman Missal. Cf. St. Thomas, *Summa Theol.*, 1, 2, 3, 7.

might have chosen other much more effective ways. He did not. There is an inevitable limitation and gradualness in the operation of secondary causes in the work of salvation. But this was the way selected by God, by God who wishes that all men be saved.

' Parochus II ' refers to our rejection of the *automatic* application of the merits of Redemption to the souls of men. He is surprised at our objection to the word ' automatic '—he apparently would accept it. He says the word is ours. It is not. It was the Abbé Boudes who used it and he, as strenuously as we, sets his face against the automatic application mentioned. We quoted his very words :[1] ' Le salut mérité à tous les hommes par le Christ, est loin de s'appliquer automatiquement à chacun d'eux.' Apart from this wrong attribution of the word ' automatic ' to us, ' Parochus II ' completely misses our point in the context. Of course the Church desires, as Christ desires, the salvation of all. Our point was that this desire—and the *votum Baptismi ex parte Ecclesiae* suggested by Abbé Boudes is no more than the expression of this desire—cannot suffice, of itself, for the salvation of infants. For if it does, there is, in fact, the automatic application of salvation rejected by Abbé Boudes and the whole of Catholic theology. Moreover, if this general desire of the Church that all be saved be sufficient for salvation we could not and we cannot see why its effectiveness should be confined, held up, so to speak, except in relation to unbaptized infants who are dying. This desire of the Church, if she is faithful to the mind of her Master, is universally and constantly in operation. It embraces every human being from the first moment of its existence. If it is effective to secure salvation at all, it should be effective for all. Or does ' Parochus II ' suggest that the Church has not such a desire or inhibits its efficacy in relation to children who have a chance of Baptism by water ? An affirmative reply is, indeed, the implication of one of his statements.

We invoked the anxiety and legislation of the Church demanding the early baptism of every living being born of woman as evidence of the belief of the Church that Baptism by water is (apart from the very exceptional case of child-martyrdom) the only means of salvation for infants who are incapable of eliciting a personal desire for the sacrament. ' Parochus II ' equivalently says that this is a useless argument. But is an argument from the *praxis Ecclesiae* useless ? Catholic practice is surely evidence

[1] Art. cit., p. 590.

of Catholic faith. May we not say of the *praxis Ecclesiae*, as we say of the *lex supplicandi, legem statuit credendi*?

The quotation by 'Parochus II' of the sentence 'Sacred Scripture indicates that He appointed Baptism as the sole means of salvation,' and his comments thereon, are quite unfair. We could be captious and say that Baptism *in voto* is not explicitly mentioned in Sacred Scripture.[1] The comments on our sentence suggest that we were unaware of, or, at least, that we ignored the possibility, and sufficiency for salvation, of Baptism *in voto*. Whereas, in fact, on several occasions in the course of our reply we referred explicitly to it. Indeed, half a dozen lines after the sentence quoted, we wrote that 'Baptism *in re vel in voto* is the sole means appointed for the remission of original sin.'

When we stated that the difficult question of the salvation of unbaptized infants cannot be solved by suggestions which run counter to received doctrine, we meant and mean by 'received doctrine' the traditionally accepted doctrine of the Church, not merely the common teaching of theologians of any particular period. Incidentally, we were somewhat amused by the sub-distinction made, at this point, by 'Parochus II.' Apparently he would accept, at least he would not reject, the common opinion of theologians of any given time, if they have thought of everything. But if these theologians have overlooked or underestimated anything, then their teaching may be met by a categorical denial. Few would be so rash as to claim that the theologians of any given time have thought of and accurately estimated *everything*. Is their teaching, then, of no value? Is it to be cast aside in favour of every novel suggestion which seems to solve some difficulty or mystery? 'Parochus II' cannot suggest that the theologians of all time, and not merely of any given period, have not given very considerable consideration to the problem of the ultimate fate of unbaptized infants. He is surely aware that this problem has constantly agitated their minds. But who can say if they have considered everything? Theologians must keep within the framework of the traditional teaching of the Church. They look to her for guidance and correction. 'Parochus II' has pointedly ignored the statements which we quoted regarding the teaching of the Church on the existence of a *limbus puerorum*. Does he suggest that these statements are merely the expression of the views of theologians who have overlooked or underestimated the relevant factors? If he does, let him say so clearly; if he does not, let him try to reconcile Abbé Boudes' thesis with these statements.

[1] 'Unless a man be born again of water and the Holy Ghost he cannot enter the kingdom of God.' St. John iii, 5. This is the text quoted by Trent (loc. cit.) to establish the necessity of Baptism.

THE FATE OF UNBAPTIZED CHILDREN

You ask me to say something about the quotations from Popes and Councils which you adduced on the subject of the *limbus puerorum*. One obvious thing to say is that these statements, whatever their weight may be (which I don't feel competent to discuss), are explicitly concerned with 'those who die in original sin.' We are all agreed that those who die in original sin cannot enter heaven. The present discussion is about whether infants who die without baptism, by water or blood, *do* die in original sin; or, more strictly, it is about whether this can be asserted as dogmatically as some people are beginning to assert it. We are all agreed, apparently, that God can do what He likes about it without telling *us*, but some of us seem unwilling to make allowances for this fact in the language we like to use to the faithful.

Having answered your question to the best of my ability, I would like to ask you to answer one, too. You insist, correctly, no doubt, on a distinction between what you call 'the traditionally accepted doctrine of the Church' at any particular period and 'the common teaching of theologians of any particular period.' It would help us all if you would say how we are to tell the difference between these two criteria.

PAROCHUS II.

The first paragraph of the letter published above is by way of answer to a question posed by us in the previous reply. We remarked there that, in his earlier comments, 'Parochus II,' rather pointedly, we thought, had ignored the import of statements by Popes and Councils on the fate of unbaptized infants. We asked him if he suggested that these statements were merely the views of theologians who had overlooked or underestimated the relevant factors. 'Parochus II' has not answered our question. He refuses to make any assessment of the weight or import of these papal and conciliar statements. Apparently, he considers that there is no need for him to do so because, in his view, they are really irrelevant to the question at issue. They are explicitly concerned, he points out, with the fate of those who die in original sin. And the question at issue between us is whether infants who die without baptism of water or of blood *do* die in original sin. He is, of course, perfectly correct

in this statement of the question at issue. We shall make a brief reference later to the alternative and 'more strict' statement of this question, and particularly to the innuendo that the assertion that infants *do* sometimes die in original sin is a modern doctrinal innovation. This innuendo is contained in the word 'beginning.' We admit, moreover, that the quotations given by us are, for the most part, explicitly concerned with the fate of those who die in original sin. But we do not admit that these quotations are, as a consequence, irrelevant to the question at issue. We claim that the statements quoted expressly indicate the impossibility of salvation for infants apart from the sacrament of Baptism (leaving aside the very exceptional case of infant martyrdom); that they explicitly state the doctrine of the existence of a *limbus puerorum* and that they thereby imply that infants who die without baptism of water or of blood, go there.

The fundamental contention of 'Parochus II,' and before him of Abbé Boudes,[1] is that infants who die without baptism of water or blood can be and are saved by a *votum baptismi* supplied on their behalf by the Church. A logical corollary of this contention—and a corollary apparently accepted by Abbé Boudes[2]—is a denial of the existence of a *limbus puerorum*. This denial cannot, in our view, be squared with the teaching of the Church. The existence of a *limbus puerorum* is not a mere theological theory or hypothesis but part of the doctrine of the Church. This, we repeat, is clearly stated in some of the official statements quoted in our earlier replies. Let us take one which refers *nominatim* to the *limbus puerorum* in which the souls of those who die in the sole guilt of original sin are detained. Pope Pius VI condemned the Jansenistic Synod of Pistoia because it rejected this *limbus puerorum* as a Pelagian fable. This rejection is described as a doctrine which is '*falsa, temeraria, in scholas catholicas iniuriosa.*'[3] The true and accepted teaching of the Church is, then, that there really exists a *limbus puerorum* in which are detained the souls of infants who die in original sin. We do not suggest, and we cannot for one moment accept that 'Parochus II' would subscribe to a doctrine described as *falsa, temeraria, in scholas catholicas injuriosa*. And so we must suppose—and his letter gives ground for the supposition—that he would escape from the *impasse*, into which his main contention should lead him, by saying that it is one thing to admit the existence of

[1] Cf. *Nouvelle Revue Théologique*, 71 (1949), pp. 589–605.
[2] Ibid., p. 591.
[3] Denzinger–Umberg, *Ench. Symb.*, n. 1526.

a *limbus puerorum* for infants who die in original sin but that it is another thing to state that any infant actually goes there, that infants *do* die in original sin. We mentioned this distinction in an earlier reply and we hoped that we had adequately countered the objection implied in it. Briefly, the answer to the objection is that the Church would be little concerned to maintain the existence of a *limbus puerorum* which is empty. What purpose could this *limbus puerorum* serve if, as 'Parochus II' would contend, nobody ever goes there, because no infant dies with the guilt of original sin on its soul? Why should the Church bother to maintain the existence of a place or state which does not and cannot, in the contention of 'Parochus II' serve any purpose? Granted that the Church does not state in so many words that infants do die with the guilt of original sin on their souls, neither does it similarly state that people do die in mortal sin. May we say, then, that there is a *limbus puerorum*, as there is a hell for the damned, but that no human creatures ever go to either place? It is Catholic teaching that God has provided a *limbus puerorum* as He has provided a hell for the damned. It is not credible that God should have made this provision, and that the Church should enunciate the doctrine stated, if no one were ever to enter these places. The Church maintains the existence of a *limbus puerorum*, because it believes that infants *do* die in original sin and *do* go there. In other words, this conclusion is implicit in the doctrine, expressly enunciated by the Church,[1] that there is a *limbus puerorum*.

This same conclusion, namely that children *do* die in original sin, is reached more directly, as we indicated in our previous replies, from a consideration of the teaching of the Church on the necessity for salvation for all, of Baptism *in re vel in voto*,[2] and the obvious incapacity of infants to elicit a personal *votum baptismi*—which, in the constant tradition of theology, is the only sufficient *votum*. In the case of infants, then, apart from the extraordinary and exceptional case of martyrdom, there is one means of salvation, one means for the remission of original sin—namely Baptism *in re*, the sacrament of Baptism. 'Circa pueros . . . cum ipsis non possit alio remedio subveniri, nisi per sacramentum baptismi.'[3] This is no doctrinal innovation. It

[1] Cf. Denzinger–Umberg, op. cit., nn. 464, 493, 693, in which there is reference to different forms (and places) of punishment for those who die with the sole guilt of original sin and for those who die with actual mortal sin on their souls.
[2] Cf. *Conc. Trid.*, Sess. vi, cap. 4, et Sess. vii, cap. 5, Denzinger–Umberg, op. cit., n. 796 et n. 861.
[3] *Conc. Flor., Decretum pro Iacobitis*, Denzinger–Umberg, op. cit., n. 712.

can be found in the writings of the theologians of every age. There is no question whatsoever of writers beginning to assert the doctrine now for the first time or of asserting it more dogmatically now than heretofore. It has been the constant teaching of the Church, as is evidenced in various conciliar and papal statements as well as in the practice of the Church. And, though we gather from his previous comments that 'Parochus II' sets little store on an argument based on the *praxis Ecclesiae*, we cannot refrain in this context from referring to the way in which the Church has consistently denied ecclesiastical burial to infants who die without Baptism,[1] while according this privilege to catechumens 'qui nulla sua culpa sine baptismo moriantur.'[2]

We now come to the second paragraph of our correspondent's letter. He states that we insisted upon a distinction between 'the traditionally accepted doctrine of the Church' at any particular period and 'the common teaching of theologians at any particular period.' In the interests of accuracy we must point out that this is not an exact statement of the distinction which we made. We did not qualify 'the traditionally accepted doctrine of the Church' by the words 'at any particular period.' Though 'Parochus II' leaves these words outside his inverted commas, he does suggest that we made the qualification. By the traditionally accepted doctrine of the Church we mean that teaching which is contained in the deposit of faith and which has been handed down and taught as revealed by the living, ordinary and universal ecclesiastical *magisterium*. Within the limits of this teaching as, indeed, within the limits of solemnly defined dogmas, there can be a wide field for theological discussion and opinion. The function of theology here is to show how a doctrine, proposed by the Church as revealed, is contained in the sources of revelation. Outside the sphere of defined teaching there is also a vast field for theological speculation. The Church, as a rule, will leave theologians free to discuss matters which are not defined. Theological opinion on these matters may vary from school to school or from one period to another. There may be a number of schools of more or less equal eminence and authority, each espousing its own view; or there may be moral unanimity among the theologians of a certain period on a particular point of teaching. While such moral unanimity is a strong argument for the truth of the

[1] *Codex Iuris Canonici*, can. 1230, §1.
[2] Ibid., 32. Catechumens are presumed to have had a *votum baptismi*.

teaching in question, there is, of itself, no finality about the argument. As Pope Pius XII pointed out in his encyclical *Humani generis*,[1] the deposit of faith 'has been given for authentic interpretation not to each of the faithful nor even to the theologians, but only to the teaching authority of the Church.' At the same time, the teaching of theologians, if it fulfils certain conditions, can give an indication of the doctrine of the ordinary and universal *magisterium* of the Church on a particular point.[2] The conditions which must be fulfilled are that the theologians universally and constantly teach the point in question as pertaining to the faith. Pope Pius IX described[3] as the object of divine faith not merely those truths contained in the express definitions of ecumenical councils and of the Roman Pontiffs but also

> ea . . . quae ordinario totius Ecclesiae per orbem dispersae magisterio tanquam divinitus revelata traduntur ideoque universali et constanti consensu a catholicis theologis ad fidem pertinere retinentur.

It should be stressed that it is only the morally universal and constant consensus of the theologians which gives a clear indication of the doctrine proposed by the ordinary and universal *magisterium* of the Church. Thus, the teaching of a particular school, however eminent, or the teaching, however unanimous, of the theologians of a particular period, is insufficient evidence in this context. Moreover, the morally universal and constant consensus of the theologians must have reference to a doctrine as certain and not as a mere opinion and to a doctrine which is proposed as pertaining somehow to Catholic revelation and faith. Van Noort writes :[4]

> Requiritur (*a*) consensus non alicuius scholae tantum sed moraliter universalis, i.e. omnium scholarum, et quidem consensus non unius aut paucarum generationum, sed qui constanter obtinet; (*b*) consensus in rem ut certam, nam consensus mere opinativus utut universalis non ligat. Denique requiritur (*c*) ut theologi saltem aequivalenter doceant, rem subiectam ita necessario cum revelatione cohaerere ut absque periculo fidei aut religionis in dubium revocari nequeat.

Thus, there is an obvious distinction between the traditionally accepted doctrine of the Church and the common teaching of

[1] 2 September, 1950, *A.A.S.*, xxxxii, p. 570.
[2] 'Exercitium magisterii ordinarii et universalis comprehendit actus innumeros et multum diversos. . . . Praecipua eius signa sunt, si res ubique terrarum in catechismis popularibus docetur, et magis adhuc si universaliter constanti consensu theologorum tamquam ad fidem pertinens retinetur.' Van Noort, *De Fontibus Revelationis*, n. 207.
[3] Ep. '*Tuas libenter*' ad archiepisc. Monaco–Frisingensem, Denzinger–Umberg, op. cit., n. 1863.
[4] Op. cit., n. 255.

theologians of a particular period. The former pertains to the deposit of faith. The latter may not at all so pertain; it does not give any clear indication of the doctrine of the ordinary and universal ecclesiastical *magisterium* because, among other possible defects, it lacks the note or condition of constancy.

MUST A CONVERT FORMALLY ACCEPT THE DOCTRINE OF A *LIMBUS PUERORUM*?

I have read with profound interest your cogent discussion on the 'Fate of Unbaptized Infants.' And, arising therefrom, I have a query which I should like to put to you.

Some years ago, when instructing a prospective convert to the Faith, this matter became a 'stumbling block.' My prospective convert rejected, as utterly incompatible with the Divine Goodness and Justice, the common teaching on the *Limbus Puerorum*. He was willing to accept it in the unlikely hypothesis that it became at some future date a solemnly defined article of faith. Further than this he would not go. He maintained that he was entitled to hold, and did hold, that, in ways in which it had not pleased Almighty God to reveal to us, all unbaptized infants were admitted to the Beatific Vision.

I applied to 'Authority' for guidance but was told that the 'onus' was on me. If I were satisfied that my man was *rite dispositus*, I could, and should, receive him into the Church; otherwise not. He had accepted everything else including the Infallibility of the Pope and the Church. But, in the event, I declined to receive him and he remained outside the Church. I have often wondered if I did right or whether, in similar circumstances, I would take the same course again. I have received over eight hundred converts into the Church since my ordination and I have had, on a number of occasions, to refuse reception. But this is the only case of refusal which *still* troubles me. And as there is at least the possibility of a recurrence, I should be most grateful for your opinion.

DECANUS.

The decision which our distinguished correspondent had to make was a difficult one. We sympathize with his present worry regarding the decision he made. But he can console himself by looking, with gratitude to God and with a sense of achievement, at his magnificent record of convert-making on which we congratulate him. Much might be said for his refusal to receive the prospective convert described in his query. We have said most of it already when we discussed the doctrinal status of the belief in a *limbus puerorum*. At the same time,

taking into account all the circumstances of the particular case and especially the genuine goodwill and preparedness to accept a formal definition manifested by the prospective convert, we would have decided that he was fundamentally *rite dispositus* and would have received him into the Church. No one can deny that there is a certain difficulty in reconciling the common doctrine of a *limbus puerorum* with the infinite goodness of God and the universality of His salvific Will. Our correspondent's prospective convert was very conscious of this difficulty. He concentrated on the question of God's goodness. He was unconvinced that he should accept the common doctrine of a *limbus puerorum*. This was an error of fact rather than a fundamental lack of faith. He thought, too, that there might be a way of salvation, unrevealed by God, open to unbaptized infants. At the same time he professed his willingness to accept a clear definition of the Church confirming the common doctrine which he now finds so difficult. This manifests a will fundamentally correct to heaven—an implicit faith. We would have tried to explain to this prospective convert that there are many mysteries in God's dealings with men; that we should be satisfied with the actual data of revelation which proclaim the goodness of God and the universality of His salvific Will, on the one hand, and, on the other, the necessity of Baptism for all for salvation, and that the perfect reconciliation of any apparent contradiction between these doctrines will be seen in the life to come.

THE DOCTRINE OF LIMBO

Please let me thank you for your answer to my own question and for the quotations from Van Noort. One could wish, however, that Van Noort were still clearer in explaining what he means by the '*constant*' teaching of theologians; 'more than a few generations' is still rather vague for a criterion on which so much may hang.

The impression remains that such a phrase as 'the traditionally accepted doctrine' is too ambiguous to be useful. 'Traditional' might mean either dating from the Apostles or dating only from two or three generations back; 'accepted' might mean that some belief has been received as part of the deposit, or it might mean that some belief has been taken for granted as being of faith, for want of fuller knowledge or fuller examination (as in the classic instance of geocentric astronomy in the seventeenth century).

Turning to the babies, to those countless billions who miss the sacramental Baptism which ensures heaven for a privileged minority,

it seems a pity that you should insist on settling this question by authority, rather than by theological arguments. When interpreting these official pronouncements of the less solemn kind, we must expect them to reflect the prevailing theological teaching of their period, and they need to be understood on the point at issue in the circumstances out of which they arose. Especially is this true about condemned propositions. Take for instance the Synod of Pistoia (Denzinger–Umberg, 1526) on whose condemnation you lean heavily. The Jansenists disliked the *limbus puerorum* because it seemed to them too merciful ; they wanted to stick to St. Augustine—either heaven or hell-fire for everybody, no half-and-half measures ; the Church condemned them for being too hard on babies. But if Abbé Boudes dislikes the idea of a *limbus puerorum* (I haven't read him as a matter of fact) it is for the exactly opposite reason to the Jansenists —that it isn't merciful enough. That particular condemnation was aimed at the Jansenists, certainly not at Abbé Boudes.

It is a puzzle why you lay such stress on the existence of a *limbus infantium*, which, in any case, we must suppose would strictly be a state rather than a place. It is still more puzzling to understand how you can represent it as ' part of the doctrine of the Church,' while at the same time, in a particular case, you advise a priest to receive into the Church a convert who persists in refusing to believe it (*see previous query*). Are we to enforce on the ordinary faithful a belief which we do not insist upon in the case of a convert ? It seems obvious that the idea of a *limbus infantium* (with a natural happiness contracting out of the existing supernatural order altogether, so to speak) was arrived at by medieval theologians anxious to safeguard the justice and mercy of God, and if it no longer succeeds for that purpose perhaps we should try to think of something else.

It no longer succeeds because the later generations of Catholics have developed a fuller realization of what ' salvation ' means, stressing the vision of God rather than the escape from hell-fire ; because we realize better the comparative fewness of the baptized infants ; and above all because we have penetrated deeper into the Church's teaching on the Mystical Body, with its previously unsuspected widening of the supernatural horizons of the Incarnation.

Finally, I must enter a mild protest when you state that my fundamental contention is that these infants ' *can be and are* saved by a *votum Baptismi* supplied on their behalf by the Church.' Nobody would make so bold an assertion, even though one might imagine the Church defining it some day. My ' fundamental contention ' is that we should humbly admit that there are some things we do not know and leave the infants to God.

PAROCHUS II.

It is with a certain amount of hesitation that we return to this question of the fate of unbaptized infants. Our hesitation is due to the fact that we have very little to add—except by way of comment on our correspondent's letter—to what we have written in previous replies. Yet we feel that tribute must be paid to and acknowledgement made of the tenacity of purpose so eloquently manifested by our esteemed correspondent.

If we may begin with his final sentence and paragraph : we should like humbly to echo the fundamental contention expressed therein and to admit that there are countless things we do not know, and we would, as we must in the final analysis, leave the infants to the mercy of God. ' Parochus II ' protests at our interpretation of his contention. But we still think that, on the data available to us, the interpretation was not unfair. Readers will remember that ' Parochus II ' entered this controversy, if not formally on the side of Abbé Boudes, at least to challenge our rejection of his theory and to combat the arguments advanced by us for the view, the generally accepted view, that infants who die without the Sacrament of Baptism cannot go to heaven. In his previous letters, and in his present letter also, ' Parochus II ' equivalently argues that this commonly accepted view is irreconcilable with the doctrine of the universal salvific Will of God and with the doctrines of the Incarnation and of the Mystical Body. The received view, he wrote, seems injurious to the character of God : it made God seem unfair and lacking in wisdom. It is surely implied in all this that, in the opinion of ' Parochus II,' the true theological view must admit and, indeed, provide for the possibility of the salvation of unbaptized infants. He holds, therefore, that the countless billions of infants who miss sacramental Baptism *can* be saved. And the argument cannot stop at the mere possibility. It must pass on to the fact. If these infants can be saved, then they *are* saved—otherwise God's salvific Will is still—in fact even more so—in jeopardy, as are His Wisdom and the doctrines of the Incarnation and the Mystical Body. But how are they to be saved ? ' Parochus II ' does not attempt to give his own solution of this problem. But he has repeatedly manifested considerable attachment to the view and to the arguments of Abbé Boudes that these infants can be saved by a *votum Baptismi* supplied on their behalf by the Church.[1] We may add here that it is only by a considerable stretch of the imagination that one could conceive the Church as defining some day a view which nobody would dare to assert to-day. In the doctrinal history of the Church definitions have not come about in that way. Defined doctrine is part of the deposit of Revelation.

[1] We are surprised to learn now that ' Parochus II ' has not read the Abbé's article.

We come now to the earlier paragraphs of our correspondent's letter. We shall take them in order. He laments the vagueness of Van Noort's explanation of what is meant by the constant teaching of theologians. But then 'Parochus II' quotes, and that not strictly, only one negative criterion from this explanation. Van Noort was attempting to elaborate what is meant by the morally universal consensus of theologians—a phrase used by Pope Pius IX in describing part of the object of divine faith. We have quoted the Pope's letter in an earlier reply. Our correspondent is familiar with the statement of the Vatican Council repeated in canon 1323, § 1 :

Fide divina et Catholica ea omnia credenda sunt quae verbo Dei scripto vel tradito continentur et ab Ecclesia sive sollemni iudicio sive ordinario et universali magisterio tamquam divinitus revelata credenda proponuntur.

He is also aware of the exegesis of the phrase *ordinarium et universale magisterium*. This *magisterium* is manifested in many ways—among which are listed, by all the authors, the morally universal consensus of the theologians. This universal consensus, as the qualification 'morally,' implies, does not admit of exact mathematical definition, but various phrases have been used to elaborate its content. Van Noort's effort seems as good as most. Tanquerey, for instance, writes :[1]

Quando theologi omnium scholarum unanimiter docent aliquid non solum verum esse, sed etiam fide catholica tenendum, talis consensus certum praebet argumentum. In hoc enim casu sunt vere fidei testes.

In an earlier reply we set out, as clearly as we could, in reply to a specific question put by 'Parochus II,' what we, with theologians generally, understood by 'the traditionally accepted doctrine.' We wrote : 'By the traditionally accepted doctrine of the Church we mean that teaching which is contained in the deposit of faith and which has been handed down and taught as revealed by the living, ordinary and universal ecclesiastical *magisterium*.' In the face of this explanation we find it difficult to understand the reference by 'Parochus II' to the ambiguity of the phrase. Whatever about the possibility of ambiguity in the abstract, there is little room for ambiguity in regard to the sense in which we, following this common teaching, have explained the phrase. And there is no room in the context for the alternative interpretations suggested as possible by 'Parochus II.' Thus the reference to the acceptance, in the seventeenth century, of a geocentric astronomy, however classic the instance may be, has no relevance.

Like our correspondent, we must next turn to the babies.

[1] *Syn. Th. Dog.*, i, n. 991.

In the course of several replies we have attempted to give a theological discussion on the fate of unbaptized infants. And now we are told that it is a pity that we insist on settling this question solely by an appeal to authority, as if we had given no theological discussion ; as if, too, though this is secondary, authority could not, or should not, legitimately be invoked as a theological argument. If, in any of our replies, we devoted special attention to the attitude of authority it was because this particular matter was precisely questioned by 'Parochus II.'

It is now alleged that we have misjudged the meaning of the condemnation of the Jansenistic Synod of Pistoia. It is argued against us that the Pope condemned only the Jansenistic rigorism which would relegate unbaptized infants to hell. But the fact is that the Pope condemned the Synod because it rejected as a Pelagian fable the doctrine according to which there is, in the next life, a place, which the faithful call a *limbus puerorum*, to which go the souls of those who die with the sole guilt of original sin.[1] The denial of a *limbus puerorum* was the offence condemned. It does not matter by whom it was denied, or why. A condemnation occasioned by a particular situation can have, and very frequently has, wider implications. This is a commonplace. Of course one must carefully consider what precisely is condemned and one must avoid anything that savours of an illicit generalization. In our previous replies we quoted other authoritative statements which clearly postulate the existence, in the life to come, of a special place for those who die in the sole guilt of original sin. 'Parochus II' now admits that there are such statements. They are less solemn, it is true. But, then, if they were solemn definitions our conclusions would have been too easy and 'Parochus II' would not have lifted up a single stone against us. Less solemn pronouncements are surely evidence of the ordinary and universal *magisterium* : that they may reflect the prevailing theological teaching is no argument against their authority. And, moreover, where is the proof that the pronouncement condemning the denial of a *limbus puerorum* reflected the theological teaching which prevailed only at the time of the condemnation ? The teaching reflected was in possession long before the condemnation and has remained in possession since.

We stressed the existence of a *limbus puerorum* because, as we indicated more than once already, once its existence is established, it is an easy and inescapable inference that it serves a

[1] Cf. Denzinger–Umberg, *Ench. Symb.*, n. 1526, quoted earlier.

purpose. And the only conceivable purpose, and the purpose expressly mentioned in the authoritative sources, is to house, if we may use the phrase, those who die in the sole guilt of original sin. If no infants die in original sin there is no need whatsoever for a *limbus puerorum* and the concern of the Church to maintain that there is such is inexplicable and futile. It is immaterial to our argument whether Limbo be called a place or state. We have in fact called it both. It is frequently called a place in the authoritative sources. Our correspondent refers to a reply which we gave to a particular case and in which we allowed the reception of a convert who refused to accept the doctrine of a *limbus puerorum*. That is a summary version of the reply. We gave reasons. We made qualifications. There were special circumstances. We feel confident that anyone who reads the complete text of the reply will not conclude therefrom that we have whittled down, for converts, the teaching of the Church in regard to the existence of a *limbus puerorum*. 'Parochus II,' with his vastly greater pastoral experience, realizes, better than we could, the imperative need of exercising charity, consideration, prudence and tact in the solution of particular cases.

The *idea*, as distinct from the name, of a *limbus puerorum* long antedates medieval theology. We have references in some of the Patristic writings[1] to the existence of an intermediate state, between heaven and hell, for unbaptized infants. There are passages in the earlier writings[2] of St. Augustine which show that even he then maintained the existence of this intermediate state. And there is evidence to show that St. Augustine's later view, referred to by 'Parochus II' and clung to by the Jansenists, represented a break-away from the accepted teaching. Toner writes of this :[3] 'It is clear from what precedes that St. Augustine was an innovator, and that he sacrificed tradition to the logic of an indefensible private system.'

We were somewhat puzzled and intrigued by the reference of 'Parochus II' to a natural happiness contracting out of the existing supernatural order. Is it suggested that the idea of natural happiness is impossible? Have we here a faint echo of the thesis of Lubac's *Surnaturel*[4] that a state of pure nature, and of natural happiness, was never possible for man; that God could not have created man for an end other than the Beatific Vision? St. Thomas, however, clearly teaches that unbaptized children are deprived of the Beatific Vision but that they attain a natural happiness in a natural knowledge and love. They are not joined with God in glory but they are joined with Him by a participation in natural goods. They will not grieve in any way at the loss of the Beatific Vision since they were never conditioned to attain it.

[1] Cf. St. Gregory Nazianzen, *P.G.*, 36, 389.
[2] *De Libero Arbitrio*, *P.L.*, 32, 1304.
[3] 'Lot of Those Dying in Original Sin,' *I.T.Q.*, July, 1909, p. 317; cf. Tixeront, *History of Dogmas* (Eng. trans.), p. 475.
[4] Paris, 1946.

Pueri autem numquam fuerunt proportionati ad hoc quod vitam aeternam haberent, quia nec eis debebatur ex principiis naturae cum omnem facultatem naturae excedat, nec actus proprios habere potuerunt quibus tantum bonum consequerentur; et ideo nihil omnino dolebunt de carentia visionis divinae, immo magis gaudebunt de hoc quod participabunt multum de divina bonitate in perfectionibus naturalibus.[1]

In this view the mercy and justice of God are abundantly vindicated. The supernatural destiny of the Beatific Vision is completely beyond the merits and exigencies of unaided human nature; this Vision is entirely gratuitous as are the graces and gifts whereby it is won.

'Parochus II' suggests that theologians of to-day must elaborate a theory which admits the salvation of the countless billions of unbaptized infants. This is demanded, he says, by the fact that later generations of Catholics realize more fully the meaning of salvation and the number of unbaptized children and have penetrated more deeply the doctrine of the Mystical Body which widens the supernatural horizons of the Incarnation. We shall examine these reasons one by one. We fail to see how greater emphasis on the positive aspect of salvation, if there is such greater emphasis in modern times, affects the problem of the fate of unbaptized infants. Is the implication that, in former times, unbaptized infants were regarded as having attained salvation, because they escaped hell fire? This simply is not true. According to the constant theological teaching, and according to the *sensus communis fidelium* also, unbaptized children, though, as St. Thomas points out,[2] they endure no pain of sense or of loss, did not attain salvation. It may be that there is a fuller realization to-day of the number of children who die without the sacrament of Baptism. But again we do not see how this affects our problem. If the fact that unbaptized children do not attain salvation be an argument against the universality of the Redemption, the salvific will and the mercy

[1] In IV Sent, 2, 33, 2, 2; cf. ibid., ad 5; cf. *De Malo*, 5, 3, 'Sunt quidem separati a Deo quantum ad amissionem gloriae quam ignorant, non tamen quantum ad participationem naturalium bonorum quae cognoscunt.'
[2] Loc. cit.

of God, then this argument stands whether the number of children deprived of salvation be hundreds or billions. The appeal to numbers is merely sentimental. It has always been realized that there were countless peoples, among them very many infants, whom, through no fault on their part, the fruits of Christ's universal Redemption did not reach. This limitation is inherent in the means chosen by God to bring salvation to men. Christ committed the continuation of His salvific work to human agents who would, of course, be aided and guided by the Holy Spirit. Our correspondent speaks of the deeper understanding of the doctrine of the Mystical Body and of the consequent unsuspected widening of the supernatural horizons of the Incarnation. In his encyclical letter *Mystici Corporis Christi*,[1] Pope Pius XII laid particular emphasis on the fact that the Mystical Body of Christ is the external visible Church. Therefore, members of the Mystical Body are those who belong to the visible structure of the Church. In that same encyclical letter the Holy Father issues a warning against a false mysticism which 'seeks to obliterate the inviolable frontiers between things created and their Creator.'[2] Christ, the Son of God, became man that He might suffer and die and thus win redemption for all men. The mere assumption of human nature by Christ, and His consequent headship of that nature, did not, *eo ipso*, make all men, or any men, actual members of His Mystical Body. All *viatores* are, indeed, potential members of the Mystical Body. The sacrifice of Redemption provided super-abundantly the graces whereby all may become actual members and attain salvation. In the divine dispensation of grace there is no such thing as the salvation of men *in globo*. Each individual must be linked up with Christ; each must be raised to the supernatural order. And the sole divinely appointed means whereby this individual and personal result can be achieved is Baptism *in re vel in voto*.[3] For this we have the express statements of Sacred Scripture and the solemn definitions of the Church. In these sources the possibility of a *votum Baptismi* is envisaged only in regard to adults. In the Church decrees which refer to the salvation of infants the reference to a *votum Baptismi* is omitted.

Circa pueros vero propter periculum mortis, quod potest saepe contingere, cum ipsis non possit alio remedio subveniri, nisi per sacramentum baptismi.[4]

[1] 29 June, 1943.

[2] n. 9.

[3] Abbé Boudes writes: 'Il resté certain que toute recherche de moyen providentiel de salut n'est théologiquement acceptable que si, de quelque façon, il est référé au baptême, seul moyen d'obtenir le salut fixé par la révélation.'—*Nouvelle Revue Théol.*, i. 71 (1949), p. 605.

[4] *Dec. pro Iacobitis*, Denzinger–Umbert, op. cit., n. 712.

There is nothing in Revelation, nothing in the teaching of the Church, nothing in the doctrines of the Incarnation and the Mystical Body which provides any positive argument for holding that infants who are born in the state of nature, of fallen nature, are raised to the supernatural order and conditioned for eternal life apart from the graces of sacramental Baptism.

As a postscript to this discussion it will be in place to quote a statement of Pope Pius XII in his Address to the Congress of the Italian Catholic Association of Midwives.[1] The statement runs thus: 'If what We have said up to now deals with the protection and the care of natural life, it should hold all the more in regard to the supernatural life which the newly born infant receives with Baptism. In the present economy there is no other way of communicating this life to the child who has not yet the use of reason. But, nevertheless, the state of grace at the moment of death is absolutely necessary for salvation. Without it, it is not possible to attain supernatural happiness, the beatific vision of God. An act of love can suffice for an adult to obtain sanctifying grace and supply for the absence of Baptism; for the unborn child or for the newly born this way is not open. . . . It is, therefore, easy to understand the importance of giving Baptism to the infant completely without the use of reason when it is in serious danger of facing certain death.'

REPETITION OF LAY BAPTISM

I am frankly puzzled by the fact that very many priests, seemingly as a matter of course, baptize conditionally all children who have already received lay Baptism. Sometimes it is well known that these children have been baptized by a Catholic doctor or nurse. Surely, since the ceremony of lay Baptism is, in no sense, intricate, the presumption in the circumstances mentioned will be in favour of the validity of the sacrament. Wherein, then, lies the justification of the common practice?

NEO-SACERDOS.

The sacrament of Baptism, like Confirmation or Orders, imprints a character upon the soul of the recipient and may not be given validly to one who has already received it. At the same time, as we are reminded in canon 732, § 2, if there is a prudent doubt as to whether Baptism was conferred validly

[1] 29 October, 1951. Translation from *Catholic Documents*, vi, 15

in the first instance, it should be given again *sub conditione*. It is gravely unlawful to re-baptize, even conditionally, when there is mere suspicion or tenuous doubt, that is, less than a prudent doubt, regarding the validity of the first Baptism.[1] It is obvious, then, that the practice (if it exist) of giving conditional Baptism, as a matter of course, to all who have already received the sacrament from one of the laity, cannot be justified. There must be, we repeat, prudent doubt in regard to the first Baptism. This presupposes that each individual case is examined on its merits. The legislators of the Maynooth Synod (1927) had this in mind when they decreed[2] that 'infants baptized by lay people are not to be rebaptized *sub conditione*, unless there remains, *after diligent investigation*, a prudent doubt concerning the validity of the former Baptism.' Diligent investigation is prescribed in every case. This precludes the application of any universal principle of always re-baptizing conditionally.

It may well be asked, in this context, when is there prudent doubt in regard to the validity of the first (*in casu* lay) Baptism? To answer that question a number of factors naturally must be taken into account—in particular, the capability of the person conferring the sacrament and the circumstances in which it was conferred.[3] Since Baptism is so vitally important, all will agree that lesser reasons will suffice to give rise to a prudent doubt regarding its validity and to justify its conditional repetition than would suffice in the case of the other less necessary sacraments.[4] But if it be asked, in the light of the foregoing agreed principle, whether there is always a prudent doubt in regard to the validity of lay Baptism, we would answer: certainly not. Parish priests are reminded in the general law[5] and in the Maynooth Statutes[6] of their obligation to see that the faithful, particularly nurses, doctors and surgeons should learn properly the correct method of conferring Baptism in case of necessity. When Baptism has been conferred by those who have been instructed duly in this matter there can be, rarely enough, room for prudent doubt as to the validity of the sacrament—provided, of course, the ministers acted in a responsible manner. The presumption in these cases would be certainly in favour of validity. But presumption always cedes to fact; and just as we cannot adopt and act upon the principle that there is always a prudent doubt in regard to every lay Baptism, neither, of course, can we assume that there

[1] Cf. Cappello, *De Sac.*, i, n. 172.
[2] N. 260.
[3] Cf canon 746.
[4] Cappello, loc. cit.
[5] Canon 743.
[6] N. 256.

is never a prudent doubt. There might well be such a doubt when the sacrament is given by one who is poorly instructed or mentally under average, or as the Code suggests,[1] in certain circumstances of difficult childbirth or in other difficult conditions, for example, in darkness, in very great haste, etc. Diligent investigation into the circumstances of each case that arises will often help the inquirer to form a morally certain judgment in favour of—or even against—the validity of the lay Baptism. There need be, there should be no hesitation in acting in accordance with this judgment. Sometimes, as a result of this diligent investigation, it will be really doubtful, for one or other of the reasons mentioned above, whether the lay Baptism was valid—in which case, if the doubt cannot be solved, the sacrament should be repeated conditionally. These conclusions are contained in two replies given by the Congregation of the Council. We quote from Cappello:[2]

Die 19 Dec. 1682 declaravit (Congregatio): 'infantes ab obstetricibus baptizatos, posse rebaptizari sub conditione in casibus particularibus, ubi *rationabile dubium* oritur circa validitatem Baptismi prima vice collati.' Et die 27 mart. 1863 proposito dubio: 'An infantes domi in casu necessitatis sint sub conditione rebaptizandi?' respondit: 'Negative, nisi adsit *dubium probabile* invaliditatis Baptismi.'

REPETITION OF DOUBTFUL BAPTISM

A curate who, normally, is very exact in his observance of the rubrics and who claims that he is in no sense scrupulous has serious doubts regarding the validity of a Baptism performed by him. The subject was a robust child of three years who was so noisy and restless during the ceremony that the priest was greatly distracted. While performing the anointing with chrism a doubt flashed suddenly into the priest's mind that he had not properly recited the form of Baptism. He remembered that he duly poured the water on the head of the child but could not recall at all having recited the form. He asks if he may or should repeat the Baptism.

J. M.

The general principles governing the repetition of doubtfully valid sacraments are familiar to our readers. It is unlawful, *per se* gravely unlawful, to repeat a sacrament if there is no reasonable or prudent basis for the doubt regarding its validity. On the other hand, whenever there are prudent reasons for this doubt, whether it be of law or of fact, the sacrament *may*

[1] Canon 746, § 3 et § 5.
[2] Loc. cit.

be repeated conditionally. If the sacrament, the validity of which is prudently doubtful, is necessary for the salvation of the recipient or if grave spiritual issues for others depend upon its validity—then this sacrament *should* be repeated conditionally.[1] It seems to follow as a corollary from all this that the more necessary a sacrament is for the salvation of the recipient or for the spiritual good of others, the lesser the degree of doubt which will be regarded as prudent, and which, accordingly, will allow or even may demand the repetition of this sacrament.

Quo magis autem est sacramentum necessarium, eo minor causa sufficit ut licite iteretur.[2]

The Code singles out the sacraments which confer a character and which, therefore, cannot validly be received more than once. Of them we read :[3]

Si vero prudens dubium existat num revera vel num valide collata fuerint, sub conditione iterum conferantur.

The same principle would apply, we think, when the prudent doubt has reference to the validity of absolution in the case of a dying sinner, the anointing of a sinner who is unconscious or the consecration of the Blessed Eucharist—in this last case to prevent the danger of material idolatry. It is often said that in all these cases the sacrament should be repeated conditionally unless there is moral certainty that the prior conferring was valid.

Quaedem (sacramenta) iterari debent scilicet ea quae suscipienti ad salutem sunt necessaria vel quorum defectus in grave damnum religionis vel proximi cedat . . . Et haec quidem sacramenta repetenda sunt, quamdiu eorum valor non moraliter certus est. . . .[4]

The axiom, *sacramenta propter homines*, has peculiar application here.

In the case submitted by our correspondent the doubt concerns Baptism—a sacrament the actual reception of which is necessary by necessity of means for the salvation of an infant. May the curate's doubt regarding the validity of the Baptism be described as prudent? At first sight it would seem that it may not. The reasons on which the doubt is based appear principally negative —namely, the absence of a reflex memory of having recited the form. Such negative doubt is generally to be ignored.[5]

[1] Cf. Cappello, *De Sac.* i, n. 27.
[2] Vermeersch–Creusen, *Epitome Iuris Canonici*, ii, n. 17.
[3] Canon 732, § 2.
[4] Noldin, *De Sacramentis*, n. 27. Cf. Cappello, loc. cit.
[5] Noldin, op. cit., n. 27; Jorio, *Th. Mor.*, iii, n. 13. Cf. *De defectibus*, v. 2, for a parallel.

Moreover, the curate, of whose action there is question, has been accustomed to perform accurately the rite of Baptism and, therefore, duly to associate the recitation of the form with the triple infusion of the water. This suggests a presumption in favour of the conclusion that, in the particular instance under examination, the curate also correctly recited the form and conferred a valid sacrament.

At the same time there are in the case considerations which tell against that presumption and conclusion and give a good basis for some doubt. It was not a normal case of infant baptism. The subject, being three years of age, was more developed than is customary—more restless and, perhaps, more noisy. These unusual factors may well have distracted the curate out of his normal, careful and correct procedure. He may have had so to concentrate on properly pouring the water on a restless subject that he forgot to recite the form. Add to this the fact that the thought that he had omitted the form occurred to him almost immediately after it should have been pronounced. We do not suggest that, in a matter of this kind, the time factor is completely decisive. But it is not without some probative value. And the almost immediate occurrence of the doubt does lend support to the possibility that the form was omitted. Account must also be taken of the further fact, which is also part of our data, that the curate is not scrupulous and is not normally troubled by doubts regarding the validity of sacraments conferred by him.

From the evidence submitted our conclusion then is that, in the particular case, the curate may and should repeat the Baptism conditionally. It may well be said that the arguments for the validity of the prior Baptism are much stronger than those against the validity. Even if this be granted, we would still maintain our conclusion. Due account must be taken of the fact that Baptism is such a necessary sacrament : no reasonable doubt regarding its validity should be ignored.[1] Some writers suggest that, in these circumstances, it is lawful to repeat the sacrament, but that there is no obligation to do so. Thus Noldin :[2]

Fieri tamen potest, ut sacramenta, etiam maxime necessaria, iterari quidem *possint* ob leve aliquod dubium de eorum validitate . . . sed iterari non *debeant*, quia sententia negans validitatem sacramenti non est vere probabilis.

We would challenge that suggestion. To us it seems clear that it is only lawful to repeat a sacrament if there are good grounds

[1] Cf. Jorio, loc. cit.; Prümmer, loc. cit. [2] Loc. cit.

for doubting its validity. And if there are good grounds for doubting the validity of a necessary sacrament, it should be repeated conditionally. In these circumstances there is really a prudent doubt—and when such a doubt is present the Code indicates that there is an obligation to repeat certain sacraments conditionally—'iterum *conferantur*, sub conditione.'

BAPTISM OF FOUNDLINGS

It sometimes happens that when infants are abandoned a note is left with them, often pinned to their clothing, stating that they have been baptized. When such cases are brought to the notice of the priest, what steps should he take regarding Baptism ?

JACOBUS.

It is laid down in canon 749 that foundlings are to be baptized conditionally unless it has been certainly established, by diligent investigation, that they have already been validly baptized. It is true that the evidence of one witness who is above exception suffices to prove that Baptism has been conferred.[1] But the mere leaving of an anonymous note cannot be equiparated to the evidence of an unexceptional witness and, therefore, cannot, of itself, be regarded as a certain proof of Baptism. The Code requires that diligent investigation be made. But, in the circumstances, investigation will be delicate and difficult and very often fruitless. It is only in very exceptional cases that it will be possible to have adequate proof of the Baptism of foundlings. Those who have abandoned the infants will be anxious and careful to conceal their identity and movements. The Baptism will not be registered. It is mostly unlikely that they will have brought the infants to any priest for Baptism. At most, then, only lay Baptism will have been conferred. We do not for a moment suggest that lay Baptism must always be regarded as doubtfully valid. But it will sometimes. And, in the circumstances we are considering, it can well be said that there is, in the absence of adequate evidence, doubt regarding the fact as to whether Baptism was conferred at all as well as, perhaps, doubt regarding its validity, even if it were conferred. There is good reason, then, for conferring conditional Baptism on these foundlings. It is a clearly stated principle of law that Baptism which is so necessary for salvation may, and should, be repeated conditionally whenever there is a prudent doubt as to whether

[1] Canon 779.

it was already conferred or was conferred validly.[1] It would be well that priests should inform their people regarding this obligation to have foundlings baptized conditionally in the circumstances mentioned in the query.

REPLY OF THE HOLY OFFICE REGARDING THE VALIDITY OF BAPTISM CONFERRED IN CERTAIN NON-CATHOLIC SECTS

Among recently published Roman documents will be found a reply of the Holy Office regarding the validity of Baptism conferred in certain non-Catholic sects. A question on this point had been submitted by some of the local Ordinaries of the United States of America. The question asked was :[2] 'Whether, in deciding matrimonial cases, the Baptism conferred, with the necessary matter and form, in the sects of the Disciples of Christ, Presbyterians, Congregationalists, Baptists and Methodists, is to be presumed invalid by reason of the absence in the minister of the necessary intention of doing what the Church does or what Christ instituted, or, on the other hand, is the Baptism to be presumed valid, unless the contrary be proved in a particular case ?' The reply published on 28th December, 1949, was : 'In the negative to the first part of the question, in the affirmative to the second.' In other words, the Baptism conferred in these sects, when the necessary matter and form are used, is to be presumed valid for the purposes of marriage decisions. The reply states a presumption of law which, of course, can, in particular cases, be rebutted by contrary, direct and indirect, proof. The presumption stated refers ultimately to the intention of the minister. That is to say, the law presumes that members of the sects nominated have the intention required for the valid administration of the sacrament, that is, the intention of doing, by means of the baptismal rite, what the Church does or what Christ instituted. The Council of Trent[3] defined that such an intention is necessary for validity. This necessity follows from the nature of the ministerial power exercised in the administration of the sacraments. An explicit and specific intention of performing a rite regarded by the minister as sacramental or sacred is not necessary. But the

[1] Cf. canon 732, § 2. [2] *A.A.S.*, xxxxi, (1949), p. 650.
[3] 'Si quis dixerit in ministris dum sacramenta conficiunt et conferunt, non requiri intentionem faciendi quod facit Ecclesia, anathema sit.'—Sess. vii, c. ii.

minister, in performing the rite, must, at the least, generally conform his intention to what the Church does thereby or to what Christ instituted. In 1830 the Holy Office stated :[1]

Ad valorem sacramenti necessariam non esse eam intentionem quam vocant expressam seu determinatam, sed sufficere intentionem tantum genericam, nimirum faciendi quod facit Ecclesia seu faciendi quod Christus instituit, vel quod Christiani faciunt.

It may be noted that this recent reply fits in admirably with the presumption of canon 1070, § 2, which favours the validity of the marriage in cases of doubtful Baptism. Thus it must be presumed that marriage contracted between a person baptized in the Catholic Church and one baptized in any of the sects mentioned in the reply was not invalid by reason of the impediment of disparity of cult. The Baptism of the latter must be regarded as valid—*nisi in casu particulari contrarium probetur.*

The question and reply are restricted to the sphere of matrimonial decisions. Accordingly, the presumption stated does not imply any excusation from the obligation of repeating conditionally a doubtful Baptism. As Cappello notes,[2] in commenting on canon 1070, § 2 :

Patet aliam esse regulam ut iudicetur de baptismo quoad eius *iterationem*, et aliam quoad eius *sufficientiam* in ordine ad valorem matrimonii. Quoties dubium iuris vel facti existit de baptismo *semper* iterari debet sub conditione, cum agatur de medio ad salutem necessario.

BAPTISM OF CHILDREN WHOSE PARENTS HAVE BEEN MARRIED OUTSIDE THE CATHOLIC CHURCH

At a recent clerical conference the following question was discussed : whether a child born of parents married outside the Catholic Church should be baptized in the Catholic Church ?

Some priests said that they baptize every child born of such a marriage—as a rule one of the parties is a Catholic. Other priests protested strongly against this procedure and maintained that the sacrament of Baptism must be refused. These latter say there is no hope that the children will be brought up in the Catholic Faith. They quote : 'Ideo ab iis (infantes duorum haereticorum aut schismaticorum) baptizandis abstinendum est, si nulla spes probabilis affulgeat fore ut huiusmodi infantes baptizati postea in vera fide educentur' (Instr. S. C. de P. F., 17 August, 1777). How is such a possible hope present, it is asked, when the Catholic parent has

[1] Apud Cappello, *De Sac.*, i, n. 50.

[2] *De Sac.*, v, n. 418.

contracted an invalid marriage and, one might say, denied the very existence of the Catholic Church ? It is impossible, it is concluded, to build a supernatural structure on an unnatural foundation.

SACERDOS.

Parents married, some perhaps validly, outside the Catholic Church might be divided into two main groups. The first group comprises the cases in which both parents are either infidels, heretics, schismatics or even Catholics who have lapsed into apostasy, heresy or schism. These cases have been grouped together because the same general principles apply to all when the question of baptizing the children of such unions has to be solved.[1] The conditions under which it is lawful to baptize these children are laid down in canon 750. They may be baptized, even against the wishes of their parents, when they are in such danger of death that it can prudently be estimated that they will die before reaching the use of reason. Apart from this danger of death they may be baptized, if provision is made for their Catholic upbringing, provided the parents or guardians, or at least one of them consent—or provided there are no parents, grand-parents or guardians, or if they have lost or cannot exercise their rights over the children. The reasons which underlie these requirements are firstly the anxiety of the Church to safeguard the inviolable natural right of the parents to educate their children[2] and secondly her anxiety to preserve from disrespect the sacraments committed to her care. In regard to the first reason : it may be pointed out that it is particularly cogent when the parents are infidels. When the parents are baptized, though non-Catholics, they are, indeed, *de iure*, subject to the jurisdiction of the Catholic Church, and, therefore, strictly speaking, she has always the right to baptize their children. The Church, however, does not normally enforce the right against the wishes of the parents because, in such circumstances, there would not be a reasonable hope that the

[1] Cf. canon 751.

[2] Pope Pius XI wrote : 'The Church is indeed conscious of her divine mission to all mankind, and of the obligation to practise the one true religion —an obligation which binds all men. Therefore she never tires of defending her right and of reminding parents of their duty to have all Catholic-born children baptized and brought up as Christians. On the other hand, so jealous is she of the family's inviolable natural right to educate the children, that she never consents, save under peculiar circumstances and with special precautions, to baptize the children of infidels, or provide for their education against the will of the parents, till such time as the children can choose for themselves and freely embrace the Faith.'—Encyl., *The Christian Education of Youth*, 31 December, 1929.

children would receive a Catholic education. There would rather be grave and indubitable danger of perversion and defection from the Faith. To confer the sacrament of Baptism in the face of such danger is not lawful. It would involve disrespect for the sacrament and disregard for the obligations which follow from its reception.

The above grouping does not exhaust all the possible cases of parents married outside the Church. There is a second group. One of the parents might be a Catholic, the other a non-Catholic —and some of the remarks made by our correspondent suggest that this is the type of case he has principally in mind. Again, both parents might be Catholics who, though they do not practise their religion, have not apostatized or lapsed into heresy or schism. And the questions arise : Is it always lawful to baptize the children of these ' marriages ' ; and, if the answer to that question is in the negative, under what conditions is it lawful ? There is no legislation which expressly covers these cases. Canon 751 does not contemplate them. Neither does the quotation from the Instruction of the *Congregatio de Propaganda Fide* given by our correspondent. In both these sources there is express reference only to the children of *two* heretics, *two* schismatics, or *two* Catholics who have lapsed into apostasy, heresy or schism. When the parents (one or both) are Catholics the Church has, of course, the right to baptize the children. But, at the same time, in accordance with the principles enunciated earlier, Baptism should not be conferred, even in these cases (apart from danger of death),[1] unless there is some reasonable hope that the children will be brought up as Catholics. On the other hand when there is such hope the children may, and as a rule should we think, be baptized. It will sometimes be difficult in practice to determine when, in the cases under consideration, there is a reasonable hope that the children will be brought up as Catholics. Each individual case will have to be examined on its own merits and all the relevant factors will have to be taken into account. We are not dealing here with an individual case but with the general principles. It may be laid down as a general rule that there is much greater probability of a Catholic education when at least one of the parents is a Catholic (even a bad Catholic) than when the parents are non-Catholics, baptized or unbaptized. And it can be maintained, again as a general rule, that the condition

[1] The danger of death mentioned in canon 750, i.e., ' cum in eo versatur vitae discrimine, ut prudenter praevideatur moriturus, antequam usum rationis attingat.'

regarding education is verified when the Catholic parent asks a priest to baptize the child and promises to bring it up as a Catholic.

The fact that the parents are not practising Catholics and are invalidly married does not *eo ipso* exclude the possibility or reasonable probability of their bringing up their children as Catholics, though it will naturally give rise to a certain suspicion. But we think it can often happen that parents, who are indifferent or non-practising Catholics, may seriously wish and intend to bring up their children in the true faith. There is, indeed, a contradiction and a psychological problem in that attitude. Yet we can find many parallels. How easily, for instance, do we impose as necessary a certain discipline on others yet omit to impose it upon ourselves in similar circumstances ! The fact that the parents have contracted marriage outside the Catholic Church is not tantamount to a denial of its existence. Moreover, such a conclusion might well be retorted by urging that the fact that they ask a priest to baptize their children is a profession of belief not merely in the existence but in the truth of the Catholic Church. We are not sure what precisely is meant in the context by the remark that it is impossible to build a supernatural structure on an unnatural foundation.[1] It is true, indeed, that the family union which results from an invalid marriage contract between two non-practising Catholics is not the ideal or normal *milieu* in which children of the union might receive a Catholic education. But it is not true that the education depends upon the parental union or virtue as a foundation. The Catholic upbringing of the children may, indeed, be rendered more difficult in the circumstances, but by no means impossible.

To sum up : the children of parents—of whom one at least is a Catholic—who are married outside the Church may and normally should be baptized when there is reasonable hope that they will be brought up in the true faith. We think that this hope may often be present ; that it is, as a rule, present when the Catholic party asks a priest to confer Baptism and promises to educate the child as a Catholic. And this may remain true even though the non-Catholic party protests vehemently against the conferring of the Baptism and refuses to give any promise whatsoever.[2] Yet we would not subscribe to the teaching of Prümmer in this context. He writes :[3]

[1] The remark is, of course, true in the sense that what is wrong by nature (contra ius naturae) cannot be right in the supernatural order.

[2] Cf. Cappello, *De Sac.*, i, n. 150. [3] *Th. Mor.*, iii, n. 127.

Parochus potest licite baptizare infantem *alterutro parente* consentiente et promittente educationem Catholicam, licet praevideat alterum parentem esse contradicturum et educatum iri prolem in haeresi. Ratio est, quia tunc adest aliqua spes educationis catholicae.

If the parish priest *foresees that the child will be brought up in heresy*, where, it may well be asked, is there any hope, not to mention a reasonable hope, that the child will get a Catholic education? The Catholic party should always be asked to promise and, if possible, to give some guarantee that the child, if baptized, will be brought up as a Catholic. At the same time the mere fact that Baptism has been requested by the Catholic parents—or by the Catholic party if only one belongs to the true Church—might, in some circumstances, give rise to a reasonable hope of a Catholic education. In Aertnys–Damen we read :[1]

Si unus coniux est catholicus, alter acatholicus, pro baptismo sufficit, ut a parte catholica proles baptizanda offeratur, etiamsi pars acatholica dein infantem velit tradere ministro acatholico ut baptizetur, modo spes adsit probabilis educationis catholicae. . . . Si ambo coniuges sunt catholici, sed catholice non vivunt, nihilominus proles eorum baptizanda est, quamdiu aliqua spes catholicae educationis effulget. Haec autem spes communiter aderit, praesertim si ipsi parentes infantem baptizari voluerint.

In our opinion it is not lawful to baptize, as a matter of course, the children of the unions under discussion here. There must be, we repeat, reasonable hope of a Catholic education. As an essential foundation for that hope we would require that, if the children are to remain under parental control, the Catholic party express a wish that they receive the Sacrament of Baptism. It is true that this wish may not, of itself, suffice in all circumstances, but without it we fail to see how a reasonable hope can be raised. It seems to us, therefore, that once again Prümmer is too lenient when he writes :[2]

Baptizari possunt infantes illorum parentum catholicorum, qui propter indifferentismum aut etiam odium in Ecclesiam detrectant baptismum. Etenim cum isti parentes nondum publice apostataverint a vera religione, adhuc aliqua spes adest fore ut infantes post adeptum usum rationis instruantur in religione catholica.

BAPTISM OF THE CHILD OF NON-CATHOLIC PARENTS

The present movement of many people from one area to another has given rise to many problems which would be rare in normal times. Two priests were recently discussing a practical case but

[1] *Th. Mor.*, ii, n. 62.

[2] Loc. cit.

could not agree about the solution. A woman had brought her child to the church for Baptism. She was not a Catholic and the child was illegitimate, but she said she wished to bring up the child as a Catholic. The god-parent, a Catholic woman, with whom the mother was staying temporarily, had not influenced her and said she (the god-parent) would do her best for the child as long as the mother remained with her.

If the priest baptized the child what guarantee could there be that it would be brought up in the faith, as most probably the mother would only remain in the neighbourhood for the duration of the war? On the other hand, was not the simple promise of the mother sufficient in this case, for, if the priest refused, the child would, in all probability, not be made a Christian at all.

The first priest argued that one should not baptize the child in the circumstances. The second said that Baptism *could* and *should* be conferred, for the sacraments were made for all alike. Which of the two was right?

EVACUEE.

The conditions under which it is lawful to baptize the infant children of infidels are laid down in canon 750. Our correspondent does not state whether the mother who is mentioned in the query is an infidel or a baptized non-Catholic. In either event the subsequent canon[1] declares that the prescriptions of canon 750 must, as a general rule, be observed when there is question of baptizing the infant children of two heretics, two schismatics, or of two Catholics who have lapsed into apostasy, heresy or schism. The prescription of the canons relevant to the present query might be stated thus :

Infans infidelium [vel haereticorum, etc., of canon 751] extra mortis periculum, dummodo catholicae eius educationi cautum sit, licite baptizatur si parentes vel tutores aut saltem unus eorum consentiat.

In the case proposed the mother is the only parent actually concerned. She wishes to have her child baptized in the Catholic Church. It will, therefore, be lawful to confer Baptism if provision is made for the Catholic education of the child.

It is not easy to determine precisely what is meant in practice by the condition *dummodo catholicae eius educationi cautum sit.* Some provision of this kind has always been insisted upon, to a greater or less degree, by the Church. And the many authoritative statements made on the question by the Holy Office, in the course of history, throw some light on the implications of the condition laid down in the Code. It is said that up to the eighteenth century the tendency was to allow Baptism

[1] Canon 751.

to be conferred on the infant child of infidels, when one of the parents consented, provided it were not certain that the child would afterwards apostatize.[1] In the subsequent period a stricter view seems to have prevailed and there was greater insistence upon the necessity for the probability of a Catholic upbringing.[2] In more recent times the indications are that the more liberal teaching has been restored to favour.

The modern theological writers who discuss the interpretation of the above-mentioned condition are, for the most part, agreed that it means 'provided there is some hope of a Catholic upbringing.' This interpretation seems reasonable and is based upon the wording of some of the Instructions and Decisions of the Holy Office to which reference has been made. Prümmer writes :[3]

Si parentes infideles ambo, aut saltem alteruter consentit in baptismum infantis, et aliqua saltem spes adest fore ut educatio christiana habeatur vel periculum perversionis futurae non sit ita proximum et certum—(infans baptizari potest et debet.)

He claims, and rightly, that this teaching is confirmed by the Roman Curia. Wouters analyses what is meant by the condition thus :[4]

Spectatis responsis auctoritatis competentis, sufficit, ut, visis omnibus, affulgeat spes notatu digna educationis catholicae.

Cappello, who in his earlier editions merely stated the condition as expressed in the Code, has added this explanatory comment in the third edition :[5]

Quamvis parentes infideles consentiant, non licet eorum filios baptizare si adsit periculum futurae perversionis *speciale*. Dum e contra licet si adsit periculum *commune* et *ordinarium* in huiusmodi adiunctis. . . . Licet baptizare infantem si *unus* parentum, altero invito, . . . infantem baptizandum offert . . . nam (illius) consensus praevalere censetur pravae aliorum voluntati, simulque talis consensus spem aliquam christianae educationis praebet.

In the year 1898 the Holy Office, in reply to a query on the matter under discussion, stated :[6]

Si *possibilis spes* affulgeat fore ut huiusmodi pueri possint suo tempore in vera religione instrui, tunc datis cautionibus (i.e. promissa educatione catholica) baptizentur.

While there is thus far fairly general agreement, there oftentimes remains the difficulty of deciding whether, in a particular

[1] Cf. Holy Office replies and instructions in the years 1600, 1637, 1672.
[2] Cf. ibid., 1764, et Instr. Cong. de Prop. Fid., 1777, et Con. Benedict. XV *Postremo Mense*.
[3] *Th. Mor.*, iii, n. 128.
[4] *Th. Mor.*, ii, n. 99.
[5] *De Sac.*, i, n. 150, 5°.
[6] Coll. Prop. Fid. n. 2007.

case, the requisite hope of a Catholic education is present. Sometimes, of course, the position will create no difficulty. It may be agreed, for instance, that the child be removed completely from parental control and placed under Catholic tutelage. But more often the position will be doubtful, even though a promise of Catholic education is given. The individual circumstances will then have to be taken fully into account in every case. The fact that the parent who seeks for Baptism is baptized will weigh in favour of conferring the sacrament. The character of this parent will be a very important factor. Is he or she earnest and trustworthy? Inquiry must be made as to the reasons why Baptism and Catholic education are desired for the child while the parent chooses to remain in infidelity or heresy—and the answers must be carefully weighed. It may possibly be discovered by such questioning that Baptism is regarded in a purely superstitious light. The Holy Office was keenly aware of, and frequently warned priests against, this possibility.[1]

In the case proposed by our correspondent the position is doubtful. Ways and means of ensuring a Catholic education might be readily suggested. But 'Evacuee' is well aware of them. And, moreover, we are not asked to make suggestions but to decide between two opposite views as to whether Baptism should be conferred or not, in the circumstances as proposed. We labour under the obvious disadvantage of being unaware of, and consequently of being unable to assess, the various individual factors which would help to a definite decision. Taking the case as presented, however, and presupposing that the mother is a fairly reliable person who seeks Baptism for her infant from a religious motive, we consider that her promise provides, in the circumstances, sufficient hope that the child will be given a Catholic education, and that, therefore, the sacrament *may* be given. On this point, then, we agree with the second priest. A further point is raised in passing : Is there an obligation to baptize the child in the circumstances? The second priest holds that there is. Baptism, he says, *should* be given. As against this contention, however, it is argued by some that the law on this question refers merely to what may be done and not to any obligation. Yet we take it that it

[1] Cf. Resp. S. O. 1867, 'Missionarii . . . in expositis circumstantiis baptizare possunt pueros a parentibus non baptizatis oblatos, dummodo in singulis casibus non praevideatur ullum adesse grave perversionis periculum, et dummodo non constet parentes ob superstitionem filios offerre baptizandos' (Coll. de P. F. n. 1302).

would be admitted by those writers that there is an obligation to baptize the children of infidels who are in *periculo mortis*—though the law on this matter,[1] too, refers only to what may lawfully be done. We think, that if the circumstances warrant the lawful conferring of Baptism, then, unless some special reason demands otherwise, it should be conferred.[2] So here again we agree with the conclusion of the second priest. But we do not agree with some of the reasons he advances. He says for instance, that 'the sacraments were made for all alike.' While there is a sense in which that general statement is true, surely it is not suggested that it means that the sacraments are to be conferred on all and sundry. In the context the statement can only be true in the hypothetical sense that the sacraments may be conferred on all *suppositis supponendis*—provided, that is, that the conditions required by Divine or Ecclesiastical law for valid and lawful administration are present. And the precise question at issue in the query is whether, in the circumstances, one such condition for the administration of infant Baptism can be said to be present. The sacraments are sacred. They must be guarded from disrespect. Pearls must not be cast before swine.[3] Another similar reason is also advanced by the second priest, to wit, that if Baptism is refused the child would, in all probability, not be made a Christian at all. The result feared may or may not follow; but even if it would certainly follow, it would be an invalid reason for baptizing the child in the circumstances. If it were valid, then Baptism might and, perhaps, should be given when requested even when there is no hope whatsoever of a Catholic education for the child. But this conclusion flatly contradicts canon 750. The one and only valid reason for conferring Baptism in the circumstances as outlined in the query is the presence of some hope that the child will be reared as a Catholic.

[1] Cf. canon 750, § 1.
[2] Cf. Prümmer, loc. cit., who says: 'Isti infantes baptizari possunt et debent.' Several of the replies of the Holy Office use the phrase 'infantes baptizentur,' which seems to imply an obligation. Merkelbach, however, writes: 'Non tamen *debent* baptizari, nisi in proximo mortis periculo.' *Th. Mor.*, iii, n. 150.
[3] Cf. Matt. vi, 7.

SECTION III

THE SACRAMENT OF CONFIRMATION

THE NATURE OF A PRIEST'S POWER TO CONFER CONFIRMATION

The recent grant of faculties to certain priests, enabling them to confer Confirmation on those in danger of death from disease, recalls an old problem. What is the nature of a priest's power to confer the sacrament of Confirmation? Is it a power of orders or of jurisdiction or of both combined? Does the recent Decree throw any light on, or suggest any answer to, this problem?

LECTOR.

The problem mentioned by 'Lector' has, indeed, for a long time agitated the minds of theologians and canonists. We find it debated in the pretridentine writers and the discussion is continued down to the present day.[1] As might be expected, the recent Decree *Spiritus Sancti Munera* does not supply any answer to this problem. The Decree was not concerned with theoretical questions. Its primary purpose was, by way of general Apostolic Indult, to grant to certain enumerated classes of priests the faculty of conferring Confirmation, as extraordinary ministers. In the introductory section of the Decree[2] there are, however, many points of interest, some of which have some remote reference to our correspondent's query. The reasons which prompted the granting of the general indult are indicated. The main reason was the necessity of providing more adequate opportunities for the reception of Confirmation. It was found that very many, especially children, and in particular during this period of post-war confusion, die without Confirmation, because a bishop, the ordinary minister of this sacrament, is not and cannot be always available to confer it. It is stressed in the Decree that, according to the defined doctrine of Trent and the express statement of the Code, a bishop alone is the ordinary minister of Confirmation:

proindeque Apostolica Sedes iugiter sedulo studuit, ut huius sacramenti collatio Episcopo, tamquam ius et officium ipsi proprium, quantum fieri potuisset, reservaretur.[3]

[1] Cf. Cappello, *De Sac.*, i, n. 204.
[2] *A.A.S.*, xxxviii (1946), p. 349, et seq.
[3] Ibid.

In certain circumstances, however, the necessity of providing adequately for the welfare of souls has compelled the Holy See to grant indults whereby certain priests were empowered to supply for the Bishop, as extraordinary ministers of Confirmation.

Ast, necessitate bonoque fidelium id flagitante, non semel Apostolica Sedes passim indulgere compulsa est, ut Episcopo, qui in certis rerum et personarum adiunctis haberi non posset, simplex sacerdos in aliqua ecclesiastica dignitate constitutus sufficeretur, tamquam minister extraordinarius huius sacramenti.[1]

The language used in these passages suggests that the power to confirm given to a priest by indult is, at the least, very closely analogous to a power of jurisdiction—which, however, presupposes the requisite power of orders,[2] namely, that of the priesthood. Thus a deacon could not be delegated to confirm.

It is clear that a priest cannot validly confer Confirmation *solely* in virtue of his sacerdotal character. Yet, the power of confirming is fundamentally a power of orders. And such a power cannot be given by indult or by delegation. Hence the problem. In the words of Van Noort :[3]

Difficulter explicatur quomodo commissio Papae, quae est actus iurisdictionis, efficere possit ut presbyter fiat minister validae Confirmationis.

The same author sets out as very probable the following solution of the problem.

Ad ministrandum sacramentum Confirmationis ex iure divino requiritur quaedam dignitas excellens in ecclesia. Episcopus ratione sui characteris hanc dignitatem habet internam et indelebilem. Presbyter ex charactere suo eam habet aliquo modo sed deficienter. . . . Porro summus pontifex qui habet plenitudinem totius iurisdictionis in ecclesia, deputatione sua presbytero praebet extrinsecum augmentum dignitatis, et ita presbyter primario ex suo charactere, deinde per modum cuiusdam supplementi etiam ex deputatione papae, habet sufficientem dignitatem ad confirmandum.[4]

We cannot see clearly how the difficulty proposed by the learned author is solved by simply substituting the grant of some undefined extrinsic dignity for the grant of jurisdiction. What is this extrinsic dignity—if it is not some form of limited jurisdiction ?

Another modern author, Cappello,[5] enumerates five theories which are advanced to explain the nature of a priest's power to confer Confirmation. He himself opts for the theory, expounded by St. Bellarmine,[6] according to which a priest's power in relation to some sacraments is absolute, perfect and independent, while in regard to Confirmation his power is inchoate, imperfect and dependent on the will of a superior.

[1] *A.A.S.*, xxxviii (1946), p. 349, et seq.
[2] Cf. Suarez in 3am partem, disp. 36, sect. 2.
[3] *De Sac.*, i, n. 263.
[4] Ibid.
[5] Loc. cit.
[6] *De Sac. Confirmationis*, cap. xii.

This inchoate power is perfected and rendered absolute by an Apostolic Indult. When this indult is granted, the priest confers Confirmation in virtue of his sacerdotal character. Here again we are at a loss to understand what precisely is meant by making perfect, absolute and independent an inchoate priestly power.[1] And once the priest's power is perfected and made independent and absolute by the Apostolic concession, would it not seem to follow that he might validly confirm everywhere—even as a Bishop may ? Yet this conclusion cannot be admitted. When it is analysed down, this process of perfecting, envisaged by Cappello, can imply little more than the grant of a limited jurisdiction.[2]

It seems to us, then, that priests who confer Confirmation act in virtue of a twofold power—a power of orders and a power of jurisdiction.[3] Primarily and fundamentally—as in the case of Penance—the conferring of Confirmation is the exercise of a power of orders—a power contained in the sacerdotal character. The actual valid exercise of this power, however, is restricted in the case of priests. When the Holy See empowers a priest to confirm, it removes, within prescribed limits, that restriction. The limited removal of the restriction can most satisfactorily be understood as a grant of jurisdiction in relation to certain defined classes of confirmands. This view fits into the much quoted statement of St. Thomas :[4]

Ad primum dicendum quod Papa in Ecclesia habet plenitudinem potestatis ex qua potest quaedam, quae sunt superiorum ordinum, committere quibusdam inferioribus ; sicut quibusdam Presbyteris concedit conferre minores ordines, quod pertinet ad potestatem Episcopalem. Et ex hac plenitudine potestatis concessit B. Gregorius Papa, quod simplices sacerdotes hoc sacramentum (Confirmationis) conferrent quamdiu scandalum tolleretur.

Cappello[5] quotes in his favour the following sentence from D'Alès :[6]

Le ministre délégué confirme en vertu du pouvoir reçu dans son ordination mais surélevé par délégation et adapté à une œuvre qui normalement le dépasse.

But this statement might also be interpreted as supporting the view which we have described as the most satisfactory. As Lépicier has it :[7]

Potestas (confirmandi) in indivisibili consistit; et proinde aut non adest et tunc suppleri nequit, aut adest, et tunc de se sufficiens est, nisi quod, si inveniatur in subiecto illam habente solum extraordinarie, de se limitata manet quoad exercitium, et si absque commissione exerceatur frustratur quoad effectum.

[1] Cf. Lépicier, *De Baptismo et Confirmatione*, p. 410.
[2] Cf. Pope Benedict XIV, *De Syn. dioec.*, 1, vii, c. 8.
[3] Cf. Zerba, *Commentarius in Decretum : 'Spiritus Sancti Munera,'* p. 70.
[4] *S.T.*, 3, 77, 11 ad 1.
[5] Loc. cit.
[6] *Baptême et Confirmation*, p. 162.
[7] Loc. cit.

POSSIBLE REVIVISCENCE OF CONFIRMATION

I remember a few years ago reading somewhere, I cannot now recall where, that if a person who was baptized invalidly afterwards received Confirmation in good faith, it would not be necessary to repeat the Confirmation after the reception of valid Baptism. In other words, the point seemed to be, as far as I can remember, that on the reception of true Baptism the sacrament of Confirmation, already received in good faith, would revive and produce all its sacramental effects. The obex of the invalid Baptism would have been removed. This is an interesting view of possible reviviscence. Certain extrinsic factors brought it back to my mind recently. But I have my doubts.

DUBIUS.

We cannot see that there is any sound theological argument in favour of the view referred to by our correspondent. It is regrettable that he is unable to give us any indication as to where he read the view. It may, perhaps, be that he has somehow misinterpreted the meaning of the writer. It is, of course, true that Confirmation is held to be one of the sacraments which can revive—*remoto obice*. St. Alphonsus wrote of Confirmation and Holy Orders :[1]

Cum haec sacramenta iterari nequeant, videtur consentaneum divinae bonitati, ne tales suscipientes relinquantur destituti gratia sacramentali, tam proficua in confirmatis ad resistendum tentationibus, et in ordinatis ad obeunda munia clericalia.

But it is clear that there can be question of the reviviscence of a sacrament only when that sacrament has been *validly* received. To suggest otherwise is completely to misunderstand the notion of sacramental reviviscence. It is equally clear that one who is not validly baptized cannot validly receive any other sacrament. *Baptismus fluminis est ianua sacramentorum*. Thus an essential prerequisite for validity in the subject of Confirmation is that he be baptized. 'Aquis baptismi non ablutus valide confirmari nequit.'[2] So that if an unbaptized person is confirmed, there is no sacrament of Confirmation : there is no basis for reviviscence. In brief, there is nothing that can revive.

The fact that the person mentioned in the query received Confirmation in good faith does not, cannot, supply for the necessary prerequisite of valid Baptism of water. The good faith will, doubtless, have obtained for the recipient very many graces *ex opere operantis*—graces which perhaps somewhat correspond to those which would be received in a valid sacrament,

[1] *Th. Mor.* 1, vi, n. 87. [2] Canon 786.

excluding, however, the strictly sacramental graces and the character. God's bountiful providence and mercy surely make due allowance for the bestowal of grace in abundant measure on those who do their best to receive the sacraments validly and lawfully even though perchance, through no fault of theirs, the sacraments are invalidly received. But to return to the case under consideration : good faith could not make the Confirmation valid and hence there is no possibility of any subsequent reviviscence of the sacrament. Accordingly in the ordinary circumstance, where it can be done without disproportionate inconvenience, Confirmation should be repeated after the valid Baptism.

There is a point of theological teaching regarding marriage which, at first sight, might seem to bear some analogy to the question we are discussing. The point may possibly have occurred to our correspondent or may, indeed, have influenced the author of the view described in the query. It is maintained by the theologians that a marriage contracted in paganism becomes, *eo ipso*, when both parties are baptized, a sacramental marriage—provided, of course, the valid consent of the parties perseveres.

Matrimonium infidelium nullo modo est sacramentum, carent enim capacitate recipiendi quam dat solus baptismus. At si uterque baptizetur, eorum matrimonium, dummodo valide contractum, statim fit sacramentum, cum nihil iam deficiat ut verificetur generale principium : inter baptizatos nequit matrimonialis contractus validus consistere, quin sit eo ipso sacramentum.[1]

But this is not an instance in which a sacrament already received somehow revives after the reception of valid Baptism. Before the Baptism, in this case, there was no sacrament, but simply a naturally valid contract. When, however, both parties are baptized, they become capable of receiving the sacrament and their naturally valid matrimonial contract which perseveres becomes automatically, in virtue of the manner of Christ's arrangement, a sacramental marriage. As is pointed out so clearly in the Code,[2] there cannot be a valid matrimonial contract between two baptized persons which is not the sacrament of marriage. It is precisely this valid contract between baptized persons that Christ has raised, in every case, to the dignity of a sacrament.[3] The matter and the form of the sacrament of marriage are present in the continuing contractual consent at the time that Baptism is received. That is not at all true of the sacrament of Confirmation in the case raised

[1] Cf. Chelodi, *Ius. Mat.*, n. 6, et canon 1012 § 2.
[2] Loc. cit. [3] Canon 1012, § 1.

by our correspondent. When valid Baptism is received, the matter and form of Confirmation have ceased to exist. They have not, so to speak, a continuing existence, as have the matter and form of marriage. Thus, despite the seeming analogy, there is a world of difference between the teaching we have mentioned regarding marriage and the view on the reviviscence of Confirmation referred to by our correspondent.

THE AGE FOR THE SACRAMENT OF CONFIRMATION

A few of us recently have had a discussion on the administration of the Sacrament of Confirmation and, in particular, on the age at which it should be administered and the practice in this country. Would you kindly say if it is now the fixed teaching of the Church that children should receive this sacrament before their first Holy Communion ? Is there a definite order of reception as between first Holy Communion and Confirmation ? Canon 788 does not seem to give any clear ruling on the point of the age for Confirmation and still less does it indicate whether or not Confirmation should precede first Holy Communion.

PETRUS.

For many centuries in both the Western and Eastern Churches the Sacrament of Confirmation was administered to infants immediately after their Baptism. This procedure still obtains in the East and in some parts of the Western Church, like Spain and South America. But since about the thirteenth century the custom of postponing the administration of Confirmation until the children had attained the use of reason was introduced in the West. The custom spread widely and, through the influence of local Synods, became almost universal. But in the pre-Code period there was no general law prescribing this postponement of Confirmation.[1] And the question was raised whether the custom which prevailed made the postponement obligatory. The writers were not agreed as to the reply to this question. The more generally accepted view was that an obligation did arise from the custom.[2] Then came the Code law which, however, did not, of itself, finally settle the question. In canon 788 it is simply stated that, though in the Latin Church the administration of Confirmation is fittingly postponed until about the age of seven, this sacrament may, nevertheless, be

[1] Cf. Lehmkuhl, *Th. Mor.*, ii, n. 101.
[2] Cf. Pope Benedict XIV, *De Syn. Dioec.*, l, vii, c. 19, n. 8.

given at an earlier age if the child is in danger of death or if, for just and grave reasons, this seems opportune to the minister. Here the postponement of Confirmation is described as fitting and at first sight, the emphasis of the canon would seem to be on the permissibility, even in the Latin Church, of administering the sacrament, in special cases, to those who have not attained their seventh year. In 1931, in reply to several petitions, the Commission for the Interpretation of the Code gave an authentic interpretation of the canon. This interpretation[1] made it clear that canon 788 did impose an obligation to postpone Confirmation—apart from the exceptional cases mentioned—until the children had reached about their seventh year. The whole situation is well summed up in the general introduction to the Decree *Spiritus Sancti Munera*. Having referred to the danger of many—especially children—dying without Confirmation the Decree continues :[2]

Hoc quidem incommodum praecavetur in Ecclesia Orientali, ubi mos est infantes, statim post receptum baptismum, confirmandi. Eadem disciplina in usu quidem erat primis Ecclesiae saeculis etiam apud Latinos, et adhuc servatur ex legitima consuetudine penes quasdam nationes ; communis tamen lex Ecclesiae Latinae, in citato canone 788 recepta, statuit ut huius sacramenti administratio differatur ad septimum circiter aetatis annum, quo, aequa praemissa catechesis instructione, pueri uberiores sacramenti sortiantur effectus.

Shortly after the authentic interpretation of canon 788, the Sacred Congregation of the Sacraments also issued a statement[3] on the age for Confirmation. The Congregation firstly recalled the interpretation given in the previous year by the Commission for the Interpretation of the Code and then considered the custom—contrary to the Code law—which exists in Spain and South America. The following question was formulated : ' Whether the custom, which is very ancient in Spain and elsewhere, of administering the sacrament of Confirmation to infants before they attain the use of reason can be retained ? ' The reply of the Congregation was : ' *Affirmative, et ad mentem.*' Thus the custom could still be followed. Where it prevailed there is no strict obligation to postpone Confirmation until the children reached their seventh year or thereabouts. But, in the statement of the Congregation it was added that the mind of the Church is that, unless there are grave and just reasons to the

[1] The Commission was asked : ' An canon 788 ita intelligendus sit ut sacramentum confirmationis in Ecclesia Latina ante septimum aetatis annum conferri non possit nisi in casibus de quibus in eodem canone ? ' And the reply given on 16 June, 1931, was ' Affirmative.'—*A.A.S.*, xxiii (1931), p. 353.
[2] *A.A.S.*, xxxviii (1946), p. 350.
[3] 30 June, *A.A.S.*, xxiv (1932), p. 271.

contrary, the administration of Confirmation should be deferred until about the seventh year and that the faithful should be carefully taught the general law of the Latin Church, regarding the administration of the sacrament after sufficient catechetical instruction.[1] Juridically speaking we may say, then, that the custom in question is not reprobated but is tolerated. Where it exists, if the faithful demand conformity with it, there are just and grave reasons for administering Confirmation to those who have not yet attained the use of reason. But it is clearly the mind of the Church that the faithful should be weaned from this custom by an explanation of the general law of the Code and of the value and necessity of catechetical instruction for aspirants to Confirmation.

The Fathers of the Congregation of Sacraments were aware that their decision might give rise to some misunderstanding regarding the law about the age for first Holy Communion. Consequently, they further declared that it was indeed opportune and more in conformity with the nature and effects of Confirmation that children should receive this sacrament before being admitted to first Holy Communion. Confirmation is the complement of Baptism and hence the natural order of reception is Baptism, Confirmation, the Blessed Eucharist. But the statement[2] of the Congregation concludes that children may be admitted to first Holy Communion once they have reached the age of discretion even though they have not received Confirmation. We might add that canons 854, § 5 and 859, § 1 indicate that children who have reached the age of discretion should be admitted to Holy Communion, even though they have not been confirmed—unless, of course, Confirmation is to be administered to them in the very near future.

In this country, as our readers are aware, children are usually admitted to first Holy Communion long before they are confirmed. The practice is to postpone Confirmation for a few years after the age of discretion has been reached. This practice does not violate the precept of canon 788 which, for normal cases, sets about seven years as the minimum rather than a maximum age for the reception of Confirmation. At the same time the practice is out of harmony with the declaration of the Congregation of Sacraments in which it was stated that

[1] Cf. canon 786.

[2] Cf. St. Thomas, *S.T.*, iii, q. 65, a. 2; q. 72, a. 2. In the Decree to the Armenians we read: 'Per Baptismum spiritualiter renascimur; per Confirmationem augemur in gratia et roboramur in Fide; renati autem et roborati nutrimur divina Eucharistiae alimonia.'—Denzinger–Bannwart, *Ench. Symb.*, n. 695.

it is opportune and more in conformity with the nature and effects of Confirmation that this sacrament should be received before first Holy Communion. Yet it can be said that the practice in Ireland has, at least, the advantage of ensuring that the recipients of Confirmation have a fuller instruction in Christian doctrine. Doubtless it was this advantage, especially in past circumstances, which gave rise to the practice.

RECENT REPLY OF THE COMMISSION FOR THE INTERPRETATION OF THE CODE

The Pontifical Commission for the Interpretation of the Code has recently[1] issued a reply on doubts concerning the implications of canon 788. Canon 788 deals with the age for the reception of Confirmation and states that, 'though in the Latin Church the administration of this sacrament is fittingly deferred until about the age of seven, it may nevertheless be conferred at an earlier age if the child is in danger of death or if, for just and grave reasons, this earlier administration seems expedient to the minister.'

The factual practice of postponement is declared to be fitting. In 1931, however, the Code Commission declared[2] that canon 788 was to be interpreted as meaning that, in the Latin Church, Confirmation should not be conferred before the age of seven—save in the exceptional circumstances mentioned at the end of the canon. The Decree *Spiritus Sancti Munera* reiterates this prohibition.[3] In 1932 the Congregation of Sacraments issued a reply[4] on the age for Confirmation in the course of which it was added that 'it was truly opportune and even more conformable to the nature and effects of the sacrament of Confirmation that children should not approach the sacred table for the first time until after the reception of the sacrament of Confirmation.'

In Ireland, however, the practice generally has been to postpone the administration of Confirmation for some little time beyond the age of seven—so that, consequently, the reception of first Holy Communion usually antedates the reception of Confirmation. The purpose of this postponement is to secure

[1] 26 March, 1952, *A.A.S.*, xxxxiv, pp. 496–7.

[2] *A.A.S.*, xxiii (1931), p. 353.

[3] *A.A.S.*, xxxviii (1946), p. 350.

[4] *A.A.S.*, xxiv (1932), p. 271—English translation in Bouscaren, *Canon Law Digest*, I, pp. 348–9.

the sufficient and adequate instruction referred to in canon 786, in the reply of the Congregation of Sacraments and again in the Decree *Spiritus Sancti Munera*. It was felt that Irish children at the age of seven are not, as a rule, capable of assimilating 'the proper catechetical instruction which helps to refine the minds of youth and strengthens them in Catholic doctrine'[1]—the instruction which is so desirable and necessary for the attainment of the fuller effects of the sacrament of Confirmation. The recent reply of the Code Commission implies[2] that local Ordinaries may not issue a mandate prohibiting the administration of Confirmation to children who have not reached the age of ten. The Code Commission would regard such a mandate as not sustainable and out of harmony with the provisions of canon 788. The direct and immediate purpose of this canon seemed to have been to give legal sanction to the long-standing practice of the Latin Church—a sanction subsequently declared to be mandatory—whereby Confirmation is not administered to children until they have reached about the age of seven, apart from exceptional circumstances in which administration is permissible at an earlier age. Thus canon 788 seemed to prescribe, for the normal case, a minimum age for Confirmation rather than a term of years within which the sacrament should be conferred or beyond which it should not be postponed. The recent reply of the Code Commission might then be described as a somewhat extensive interpretation of canon 788 inasmuch as it states that an order of the local Ordinary forbidding the administration of Confirmation to children under the age of ten may not be upheld. Canon 788 now emerges as mandatory from two standpoints. In 1931 it was declared to be mandatory as fixing about seven years as the minimum age for Confirmation for the normal case in the Latin Church. The recent reply implies that it is also mandatory as fixing about seven years—meaning at least under ten years—as the age beyond which the local Ordinary cannot order the postponement of Confirmation. In other words local Ordinaries cannot henceforth issue a mandate prescribing ten completed years as the minimum age for the reception of this sacrament. There is nothing in the reply to prevent the prescription of a minimum age provided it is under ten years. Briefly, then, in the Latin Church, the age for

[1] Reply of Congregation of Sacraments, 30 June, 1932, loc. cit.
[2] The question asked was: 'An, attento, can. 788, sustineatur mandatum Ordinarii loci vetantis quominus sacramentum Confirmationis administretur pueris qui aetatem decem annorum adepti non sint?' And the reply was: 'Negative.'

Confirmation, in the normal case, is between seven and ten years. We have noted earlier that the Congregation of Sacraments recommends that Confirmation be received before first Holy Communion. But this is not an absolute rule. And it seems to us that other factors, like the factor of adequate instruction and the capacity therefor, may fairly be taken into account. The Sacred Congregation was careful to point out that children who have reached a sufficient age of discretion for the reception of Holy Communion should be admitted to this sacrament even though they have not had the opportunity of previously receiving the sacrament of Confirmation.

THE OBLIGATION OF A PARISH PRIEST TO ADMINISTER CONFIRMATION

I have been appointed to a parish in which there is a large maternity hospital as well as a general hospital, with several wards for children. I am called at all hours to administer Confirmation. What are my obligations in this matter? Would I adequately fulfil my duty if I visited the hospitals once a week for the express purpose of confirming any children who are in danger of death at that particular time?

A second problem: I am often called upon to confirm dying infants who have been born in another parish or diocese. Even though the children are registered in the hospital as 'Roman Catholics' I am not always sure that they have been baptized. It might happen that in the case of new-born children who are rushed to hospital and registered as 'Roman Catholics' that the parents forgot to mention the fact that they had not been baptized. Should I in such cases, before administering Confirmation, phone their parish priest to find out if the child has been baptized?

PAROCHUS.

Though the sacrament of Confirmation is not necessary by necessity of means for salvation[1] it is a bountiful source of grace and virtue here below and of added glory in heaven. Hence it is unlawful to neglect the opportunity of receiving it. Parish priests should take care that the faithful receive it in due time. As the Decree *Spiritus Sancti Munera*[2] has it, in some elaboration of canon 787,

> Omni ope adnitendum est parochis ceterisque pastoribus ut christianorum nemo, data occasione, tam excellens salutiferae Redemptionis mysterium

[1] Canon 787.
[2] 14 September, 1946—*A.A.S.*, xxxviii (1946), p. 349 et seq.

negligat; quum admirabili sit adiumento ad acriter decertandum contra diaboli nequitiam, mundi et carnis illecebras; ad gratiae virtutumque omnium in terris, gloriaeque maius incrementum assequendum in coelis.

Yet, as the regulations regarding the minister of Confirmation stood in the Western Church, prior to 1946, it was inevitable that very many of the faithful, especially children, should die unconfirmed. For a long time it had been felt that some remedy should be provided for this state of things and that wider opportunities should be available for the administration of Confirmation to the dying. To quote again from *Spiritus Sancti Munera*:

Ut igitur prospiciatur etiam spirituali conditioni tot infantium, puerorumque atque adultorum fidelium qui ob gravem morbum in vitae discrimen adducantur, et certo certius mortem oppetant, quin sacro chrismate linantur, si observantia iuris communis quoad ordinarium ministrum adamussim urgeatur; necessarium visum est huic S. Congregationi remedium aliquod exquirere ac suppeditare hac gravissima de causa ut tam notabili fidelium numero offeratur occasio Confirmationis suscipiendae.

The specific remedy provided by the Sacred Congregation was the delegation of territorial parish priests, amongst others, as extraordinary ministers of Confirmation. These parish priests were empowered to confer this sacrament, within the confines of their parishes, on the faithful who are in real danger of death from grave illness which it is foreseen will prove fatal. This provision means in effect that the administration of Confirmation, when the circumstances warrant it, is part of the pastoral ministrations to the dying. A parish priest is bound to administer the sacraments to the faithful whenever they legitimately ask for them,[1] and he is to exercise particular care in helping the sick and dying in his parish.[2]

In the canons on Confirmation[3] it is stated that bishops are bound to confer this sacrament on their subjects who duly and reasonably ask for it and that priests who have an apostolic indult to confirm are under the same obligation in relation to those in whose favour the faculty of confirming was granted. In the summary of the Code discipline which was appended to the Decree *Spiritus Sancti Munera* we read:

Presbyter privilegio Apostolico donatus, obligatione tenetur sacramentum hoc illis, quorum in favorem est concessa facultas, rite et rationabiliter petentibus conferendi.

It can hardly be denied, in view of the value of the sacrament and the recent provisions of the Holy See, that Confirmation is, *per se*, legitimately and reasonably requested from a parish

[1] Canon 467, § 1. [2] Canon 468, § 1. [3] Canon 785, §§ 1–2.

priest by one or for one of the faithful who is dying in his parish.

All this points clearly to the conclusion that the obligation of the parish priest to use, when the need arises, the faculty granted by the *Spiritus Sancti Munera* is grave. All the writers are agreed that parish priests who habitually decline to confer Confirmation on the faithful dying in their parish are guilty of a grave dereliction of duty.[1] The commentators are divided on the question whether a parish priest is bound *sub gravi* to confer Confirmation on every occasion that he is asked to do so. The more common and, we think, the better view is that, *per se*, he is under a grave obligation to accede to every reasonable request for this sacrament. Of course he may be excused from the obligation in particular circumstances, by reason of the grave inconvenience involved. It is hardly necessary to point out that the obligation of conferring Confirmation on the dying, while *per se* grave, is less serious than is the obligation of administering Baptism or Penance and Extreme Unction—when these two latter sacraments may be necessary, by necessity of means, for salvation. This is another way of saying that a parish priest will be excused more easily, by a lesser degree of inconvenience, from the obligation of administering Confirmation than from the obligation of conferring more necessary sacraments. Nevertheless, since the obligation to confer Confirmation is *per se* grave, merely trivial inconvenience will not excuse from it.

To come to our correspondent's more particular question under this head: it seems to us, in the light of our earlier discussion, that a parish priest would not fulfil his duty to administer the sacrament of Confirmation to the dying by visiting, for this purpose, the hospitals in his parish once each week. In this arrangement the parish priest might never confer Confirmation in the hospital. Cases of danger of death from disease do not arise according to any fixed time sequence.[2] A parish priest might visit the hospitals on Monday morning and find that there is no patient for Confirmation. But very soon after his departure a patient or patients might fall into serious danger of death; new patients in danger of death might be admitted and by the following Monday some, even many, of them might have gone to meet their Creator unfortified by a

[1] Cf. Mahoney, *The Priest as Minister of Confirmation*, p. 59.
[2] St. Bonaventure is often quoted, in another context, for the dictum—which is not entirely irrelevant here: 'Absurdum valde videtur sacramenta regulari secundum motum astrorum.'

sacrament which could help them so much and for the administration of which, in these precise circumstances, the Church has granted special faculties to the parish priest. Yet on this following Monday there may again be no patients for Confirmation. Those in danger of death in the preceding week may have died or may have made an unexpected recovery. We realize that this difficulty is to some extent inherent in any arrangement of a fixed-time visitation of the hospitals for the purpose of administering Confirmation. We are aware also that some such arrangement has been mentioned as acceptable by commentators. But it seems to us that a week is, in any case, much too long an interval for these visits, especially when there is question of a large maternity home and a hospital where there are several wards for children—many of whom may not have received Confirmation. We repeat that a priest will be excused from answering a particular call to administer Confirmation if to do so would involve grave inconvenience for him. But it is a far cry from this to a mere weekly visit to the hospitals. Such a procedure, in our view, would be a too facile and, indeed, unrealistic way of meeting the obligation to confer the sacrament and to use the faculties granted in favour of the dying. It can hardly be said, we think, that it would be gravely inconvenient for the parish priest to do anything more in this matter than to visit the hospitals once per week. If a parish priest wishes to organize his obligations to administer Confirmation in a hospital where there are many child-patients on the basis of visits at fixed intervals, we think that these visits must be made much more frequently than once per week. We suggest that a daily visit or a daily enquiry by phone or otherwise—or the indication that he would be available daily at a certain time—would be necessary and would meet the situation. Alternatively, the parish priest might accept that requests for the administration of Confirmation should be sent to him when the particular need arises and then he can regard himself as excused from answering any individual request if to do so would, in the circumstances, involve grave inconvenience. All this may seem rather hard on parish priests, but there is no escaping the fact that the granting to them of the faculty to confer Confirmation has brought with it added and onerous obligations.

The answer to our correspondent's second problem must be based upon the manner in which people usually act. This usual manner of human action (*mores humani*) lies at the root of moral certainty. When an infant becomes so seriously ill that it

is necessary to send it to hospital Catholic parents or relatives will surely see to it that Baptism is conferred. It may be taken as morally certain that they will have done so before the child is sent away. When, then, a child is registered in a hospital as a 'Roman Catholic,' the parish priest may assume that the child has been baptized. He need not phone the *parochus proprius*. In any event there might be little point in doing that. When a new-born child is seriously ill, Baptism will very often be conferred by somebody other than the *parochus* who, as yet, may not know of the Baptism. If, in a particular case, there is good reason for doubting whether a child has been baptized or whether the sacrament as conferred was valid then, irrespective of the question of Confirmation, Baptism should be administered conditionally[1] and, in danger of death, even to the children of non-Catholic parents.[2]

EXCUSATION OF A PRIEST FROM THE OBLIGATION OF CONFERRING CONFIRMATION

I have heard it maintained at a recent discussion that the 'incommodum' involved in having to rise at night is always sufficiently grave to excuse a parish priest from the obligation of administering Confirmation. Would you agree with this? The whole question of the obligation of priests to exercise the faculties to confirm, which they have from the recent indult, is causing considerable trouble and one hears many divergent views, especially on this matter of excusing causes.

LECTOR.

The general question of the obligation of parish priests to administer Confirmation in danger of death has been dealt with in the previous question. A grave obligation rests on a parish priest to confer Confirmation on those in his parish who are dying and for whom this sacrament is reasonably asked. Disproportionately grave inconvenience will excuse from the obligation. In estimating the gravity and disproportion of the inconvenience, many factors must be taken into account. It must be remembered that the reception of Confirmation is not necessary by necessity of means for salvation;[3] that, in fact, the obligation of a subject to receive this sacrament is generally

[1] Cf. canon 732, § 2. [2] Cf. canons 750, 751. [3] Cf. canon 787.

regarded as being only light.[1] At the same time, it must not be forgotten that the primary purpose of the general indult, recently granted, empowering certain priests to confer Confirmation, was to ensure that, as far as possible, none of the faithful should be deprived of the benefit of the special graces of this sacrament. It follows that parish priests may not lightly be excused from the obligation of exercising the faculties conferred on them in favour of the dying, who need every help and grace.[2] Taking all these factors into account, it can be said that only really serious inconvenience will be disproportionate and only such, accordingly, will constitute a sufficient excusing cause.

To answer the precise question put by our correspondent: in our opinion, the fact that a priest would have to rise at night would not, of itself, constitute a disproportionately grave inconvenience and, therefore, would not excuse from the obligation to confer Confirmation. In particular circumstances, by reason of the age or state of health of the priest, by reason of the difficulty or length of the journey, inadequate means of transport or lesser proximity of the danger of death of the patient, it could easily be that to have to rise at night to confer Confirmation would involve disproportionate inconvenience and would excuse from the obligation. Our objection is to the suggestion, without qualification or consideration of any other circumstances, that to have to rise at night is so inconvenient that, of itself, it provides an adequate excusing cause.

[1] Cf. Cappello, *De Sac.*, i, n. 211. This author adds, however, and the statement is in point here: 'Inde non sequitur parentes gravi obligatione non teneri, ut filios suos, data opportuna occasione confirmandos curent.'

[2] Cf. canon 468, § 1: 'Sedula cura et effusa caritate debet parochus aegrotos in sua paroecia, maxime vero morti proximos, adiuvare, eos sollicite Sacramentis reficiendo eorumque animas Deo commendando.'

SECTION IV

THE EUCHARIST

THE MASS AS A COMMEMORATION OF THE RESURRECTION AND ASCENSION

The Council of Trent laid it down that the Mass is a 'presenting again' of the reality of the Sacrifice of Mount Calvary. Now in two of the official prayers of the Mass—*Suscipe Sancta Trinitas* and the *Unde et memores*—with this amazingly real memory seems to be coupled equally the memory of the Resurrection and Ascension.

I would be very grateful to know what discussion (if any) there has been among the theologians as to how far the Mass as a memory of the Resurrection and Ascension is on an equality with the Mass as a memory of Calvary. I suggest that there has been a tendency to separate the two, which Our Lord never did in the prophecies of the Passion. The Church of God has imitated Him in the prayers of the Missal. If my suggestion about the equality of the two aspects of the Mass is correct it would introduce a new note of triumphant joy into our catastrophic world. The danger is that comfortable people will use it to evade the certain truth that one cannot have the joy without paying a just share of the sorrow.

OBSERVER.

To answer our correspondent's interesting question we must firstly look for light at the sacrifice of Redemption of which the Mass is the memorial and the re-presentation. It is the teaching of Sacred Scripture—particularly of the Pauline Epistles[1]—that the Resurrection and subsequent glorification of Christ form, together with His Passion and Death, an integral part of the total sacrificial scheme for human redemption and sanctification.[2] In the traditional analysis of sacrifice to God it was held that some form of divine acceptance was essential to complete the act of offering of the immolated victim.[3] If this victim were not accepted, the whole sacrifice would be frustrated, stayed on its way; it would not reach its goal or achieve its purpose. So essential was this element of acceptance that it was felt that it should be somehow manifested or symbolized. The Resurrection and Ascension of Christ are firstly

[1] Cf. Hebrews, ix; Rom., iv, 24–5; x, 9; Thess., iv, 14.
[2] Cf. Prat, *Theology of St. Paul*, ii, pp. 200–13.
[3] Cf. Masure, *The Christian Sacrifice*, Book I.

the irrefutable manifestation of the acceptance and ratification by God the Father of Christ's sacrifice—which reached its final stage and consummation when the great High Priest entered the tabernacle not made by hand, not of this creation, the eternal Holy of Holies. But the Resurrection and the Ascension are more than the manifestation of divine acceptance. In his Epistle to the Romans St. Paul wrote that Christ 'was delivered up for our sins and rose again for our justification.'[1] The exegetes have commented at length on the meaning of the phrase that Christ rose again for our justification.[2] Catholic commentators are agreed that this phrase does not mean that the atonement of Calvary was incomplete or that Christ merited justification for us by rising from the dead, since the onset of death sets a term to the time of merit. Yet Catholic writers generally hold that the phrase in question does assert some sort of causal connection between Christ's Resurrection and the sanctification or justification of mankind.[3]

This causal connection is variously explained. It would seem, however, that, in every explanation, the Death and Resurrection of Christ are regarded as two closely related aspects of the one redemptive act. *Qui mortem nostram moriendo destruxit et vitam resurgendo reparavit*—as the Liturgy has it. Writers point out that the Resurrection of Christ is the exemplary cause of the true Christian life and the pledge that we too shall rise from the dead. The Resurrection is also the strongest argument for the Divinity of Christ and the great seal of the Father's approval of all the work of Redemption. There is, too, the historical fact that the Resurrection and Ascension preceded—and in God's designs were a necessary prelude to—the Pentecostal outpouring of the Spirit and the missionary faring forth of the Apostles. But over and above all this, it is clearly scriptural teaching that the divine plan for human redemption and sanctification was not merely that Christ should die for mankind but that He should rise again in triumph over death and should return in glory to the Father and should reign on the right hand as a quickening spirit[4]—the source of life and grace for the Christian soul. The faith that justifies mankind is not belief in Christ as dead but as risen, raised up from the tomb, in Christ as living, glorified and life-giving. Thus, as Prat remarks, 'the Resurrection of Jesus is no more a supernatural luxury offered to the admiration of the elect, nor a simple

[1] iv, 25. [2] Cf. Prat, op. cit., p. 209.
[3] Cf. Boylan, *St. Paul's Epistle to the Romans*, p. 73.
[4] 1 Cor. xv, 45. Cf. Boylan, op. cit., p. 74.

recompense accorded to His merits, nor merely the support of our faith and the pledge of our hope; it is an essential complement and an integral part of the Redemption itself.'[1]

The great theologians emphasize the necessary role played by the Resurrection and Ascension in the scheme of human redemption and sanctification. St. Thomas gives five reasons to demonstrate that it was necessary that Christ should rise from the dead. The Resurrection was necessary to commend divine justice, to confirm our faith in the divinity of Christ, to build up the hope of our own future resurrection, to inform the life of the faithful so that they may die to sin and live in God and finally

> ad complementum nostrae salutis, quia sicut per hoc quod mala sustinuit, humiliatus est moriendo, ut nos liberaret a malis, ita glorificatus est resurgendo, ut nos promoveret ad bona . . .[2]

Later,[3] St. Thomas poses the question whether the Resurrection of Christ is the cause of the resurrection of souls, and in the course of an affirmative reply he writes:

> Resurrectio Christi agit in virtute divinitatis quae quidem se extendit non solum ad resurrectionem corporum sed etiam ad resurrectionem animarum; a Deo enim est et quod anima vivat per gratiam et quod corpus vivat per animam, et ideo resurrectio Christi habet instrumentaliter virtutem effectivam non solum respectu resurrectionis corporum sed etiam respectu resurrectionis animarum; similiter etiam habet rationem exemplaritatis respectu resurrectionis animarum . . .

Later again,[4] St. Thomas asks: 'Utrum ascensio Christi sit causa nostrae salutis,' and states in reply:

> Respondeo dicendum quod ascensio Christi est causa nostrae salutis dupliciter, uno modo ex parte nostra, alio modo ex parte ipsius. Ex parte quidem nostra inquantum per Christi ascensionem mens nostra movetur in ipsum . . . Ex parte autem sua quantum ad ea quae ipse fecit ascendens propter nostram salutem; primo quidem viam nobis praeparavit ascendendi in coelum . . . secundo quia sicut pontifex in veteri Testamento intrabat sanctuarium ut assisteret Deo pro populo, ita et Christus intravit coelum ad interpellandum pro nobis. Ipsa enim representatio sui ex natura humana quam in coelum intulit est quaedam interpellatio pro nobis . . .; tertio ut in coelorum sede quasi Deus et Dominus constitutus exinde divina dona hominibus mitteret.

De la Taille sums up all this teaching when he writes:[5] 'Moral cause of our ransom by His Blood, Christ is the efficient cause first of our grace and then of our glory, by the divine condition in which God took Him up. In other words the atoning Victim

[1] Op. cit., p. 213. [3] Op. cit., 3, 56, 2.
[2] *S.T.*, 3, 53, 1. [4] Op. cit., 3, 57, 6.
[5] *The Mystery of Faith and Human Opinion*, p. 14.

who "maketh intercession for us" is also the vital principle by which God communicated to us the breath of life, the spiritual life.'

In the first chapter, Twenty-second Session of the Council of Trent, the Mass is described as

> sacrificium visibile quo cruentum illud semel in cruce peragendum representaretur eiusque memoria in finem usque saeculi permaneret atque illius salutaris virtus in remissionem eorum, quae a nobis quotidie committuntur, peccatorum, applicaretur . . .[1]

At this point the Fathers of the Council were concerned with the question of the institution of the Mass at the Last Supper and with the relation of the sacrifice of the Mass to that of Calvary. Hence there is explicit reference to the one bloody enactment on the Cross. But there is no denial or doubt that the Mass re-presents, commemorates and applies the fruits of the integral sacrifice of Redemption. The Mass is described in the Liturgy as *sacramentum redemtpionis.*[2] And, just as we cannot separate the Resurrection and Ascension from the scheme of Redemption, neither can we prescind from the commemoration of these mysteries in the sacrifice of the Mass. And so we have the prayers referred to by our correspondent,

> Suscipe Sancta Trinitas hanc oblationem quam tibi offerimus ob memoriam passionis resurrectionis et ascensionis Iesu Christi, Domini Nostri. . . . Unde et memores Domine, nos servi tui sed et plebs tua sancta eiusdem Christi Filii tui Domini nostri tam beatae passionis necnon ab inferis resurrectionis sed et in coelos gloriosae ascensionis. . . .

Yet, notwithstanding the obvious import of these prayers, the authors generally, as our correspondent remarks, do not seem to refer in any explicit way to the Mass as a commemoration of the Resurrection and Ascension as well as of the Passion and Death of Our Lord. Some few writers, however, do make this reference. De la Taille, for instance, writes of the Liturgy of the Mass: 'There comes first the oral commemoration of the Supper introducing the Saviour's words; then, as if to carry out the mandate with which they end, follows the remembrance or *anamnesis* of the Passion, Resurrection and Ascension. . . .'[3] Indeed, it can further be said that this author's theory of the Mass suggests, in a particular way, the conclusion that this sacrifice commemorates the Resurrection and Ascension equally with the Passion and Death of Our Lord. According to De la Taille the Mass is *oblatio hostiae immolatae*—our offering of Christ

[1] Denzinger–Bannwart, *Ench. Symb.*, 938.
[2] Secret of Mass of Four Crowned Martyrs, 8 November.
[3] Op. cit., p. 23.

who was once for all immolated on Calvary and who retains the status of a Victim though now risen and glorified and seated at the right hand of the Father. There is then no new real immolation of Christ in the Mass. Such an immolation is no longer possible. There is, of course, the mystic or sacramental immolation symbolized by the separate consecration of the bread and wine. When a priest does what Christ did at the Last Supper, when he recites the words of consecration over the bread and wine, Christ is brought down, is made present, is mystically immolated, is really offered as the eternal, risen and glorified Victim of Calvary. 'There is here the oblation of a Victim, no longer indeed to be immolated, but already and once for all immolated in the past. But this past survives, since Christ always remains the sacrificial Victim of Calvary, even in the midst of the glory that makes of Him an eternal "theothyte" . . . Christ needed not to be put into the condition of Victim: He holds that condition for ever, in virtue of His own Sacrifice, consummated in glory. All we have to do is to re-enact what Christ had done: *Hoc facite.*'[1]

The fact that the Resurrection and Ascension are commemorated in the Mass, equally with Christ's Passion and Death, has been explicitly mentioned also, in recent times, by Masure. In a typical passage this author writes:[2] '[In the Mass] we commemorate the Passion and Death of our Saviour Jesus Christ, His Resurrection from the dead and His Ascension, in the sense that by repeating the symbolic gesture of the Thursday evening we propose to enclose within it, under sensible and sacramental species, all the reality of Christ's single sacrifice, all the great cycle of return from earth to heaven unfolded between Good Friday and Easter Sunday, the Christian Mystery itself, Christ's mystery.'

IS THE DIVINITY OF OUR LORD OFFERED IN THE BLESSED EUCHARIST?

One of the prayers reported by the visionaries of Fatima offers the Divinity of Our Lord in the Blessed Eucharist to the Most Holy Trinity. Theological exception has been taken to this, and, I believe, tentatively solved by an appeal to the limitations of the visionaries. It has also been defended by an appeal to such language as 'In ligno quando mortua vita fuit.' In any case, the prayer has received so many '*Imprimaturs*,' including that of the Vicar-General of the

[1] *The Mystery of Faith and Human Opinion*, p. 16.
[2] Op. cit., p. 247.

Vatican City (so I am told) that it is hard to believe that there is any serious objection to it. Would you kindly comment on the situation?

S. R.

It may be well to set out in full the text of the prayer to which our correspondent refers. It runs thus:[1] 'Most Holy Trinity, Father, Son and Holy Spirit, I adore You profoundly and offer You the Most Precious Body, Blood, Soul and Divinity of our Lord Jesus Christ, present in all the tabernacles of the world, to repair the outrages by which He is Himself offended.' Lucy, one of the child visionaries of Fatima, stated that they were taught this prayer by an angel who appeared to them holding a chalice under a white host from which drops of blood were flowing. Thus the circumstances seem to envisage the spiritual offering of the Blessed Eucharist as a sacrifice, but the text of the prayer might also be taken simply as being an act of faith in the doctrine of the Real Presence.

According to the teaching of the Church, what is offered in the Sacrifice of the Mass is the Body and Blood—that is, the Humanity—of our Lord Jesus Christ under the species of bread and wine.

Dominus noster . . . corpus et sanguinem suum sub specibus panis et vini Deo Patri obtulit ac sub earundem rerum symbolis Apostolis . . . eorumque in sacerdotio successoribus ut offerent praecepit[2] . . .

It was this Humanity of Christ which was the instrument of the Divinity in the Sacrifice of Redemption and the work of salvation.

Humanitas Christi est divinitatis instrumentum . . . ideo ex consequenti omnes actiones et passiones Christi instrumentaliter operantur in virtute divinitatis ad salutem humanam; et secundum hoc passio Christi efficienter causat salutem humanam.[3]

The words of consecration of the bread and wine—words which signify and effect transubstantiation and make the offering of the Sacrifice of the Mass—refer only to the Body and Blood of Christ. They do not go beyond this.[4] Thus *vi sacramenti, vi verborum*, the words of consecration of the host make present

[1] Cf. Barthas and Da Fonseca, *Our Lady of Light*, p. 9.
[2] *Conc. Trid.*, Sess. xxii, cap. 1, Denzinger–Umberg, *Ench. Symb.*, n. 938.
[3] St. Thomas, *S.T.*, 3, 48, 6.
[4] St. Thomas, op. cit., 3, 81, 4 ad 2 et 3, points out that if the Eucharist has been confected at the time of the Passion, when Christ's Body and Blood were really separated, His Body alone would be made present under the consecrated species of bread and His Blood alone would be present under the consecrated species of wine. Similarly, if the Sacrament had been confected during the period when Christ's Soul was separated really from His Body the Soul of Christ would not be present under the consecrated species.

and offer the Body of Christ; likewise the words of consecration of the wine make present and offer the Blood of Christ. But, of course, *vi concomitantiae realis*, the Body and Blood and the Soul of the living Christ are all present under each of the consecrated species; and *vi unionis hypostaticae* the Divinity of Christ is also there. The Council of Trent, echoing the repeated phrases of St. Thomas,[1] states this doctrine clearly:

Semper haec fides in Ecclesia Dei fuit, statim post consecrationem verum Domini nostri corpus verumque eius sanguinem sub panis et vini specie una cum ipsius anima et divinitate exsistere; sed corpus quidem sub specie panis et sanguinem sub vini specie ex vi verborum, ipsum autem corpus sub specie vini et sanguinem sub specie panis, animamque sub utraque, vi naturalis illius conexionis et concomitantiae qua partes Christi Domini qui iam *ex mortuis resurrexit, non amplius moriturus* (Rom. vi, 9) inter se copulantur, divinitatem porro propter admirabilem illam eius cum corpore et anima hypostaticam unionem.[2]

While there is, indeed, a sense in which, in virtue of the communication of idioms, the Divinity of Christ (which He shares with the other Persons of the Blessed Trinity) may be said to be offered in the Mass—this is an unusual manner of speaking. The Divinity as such, *reduplicative*, is not formally offered to God. Hence, there seems to be a somewhat wrong implication in referring to, and in emphasizing, the Divinity of Christ in an act of offering of the Eucharistic sacrifice. In her official teaching the Church does not refer to the oblation of the Divinity of Christ in the Mass. On the other hand, when the doctrine of the Real Presence is in question, this emphasis on the presence of the Divinity of Christ is perfectly in order and this is evidenced in the doctrinal formulae of the Church.

Si quis negaverit in sanctissimae Eucharistiae sacramento contineri vere, realiter et substantialiter corpus et sanguinem una cum anima et *divinitate* Domini nostri Jesu Christi ac proinde totum Christum . . . anathema sit.[3]

It seems to us, then, that the prayer under consideration may have been intended primarily as an act of faith in the Real Presence of Christ, whole and entire, under the sacramental species. As such it would be unexceptionable. Some writers[4] have suggested that Lucy, in recalling the prayer afterwards, may have been influenced by a formula of faith in the Real Presence—a formula which she had learned by rote in preparing for her first Holy Communion. As an act of offering of the Mass the phraseology of the prayer must be described as unusual and, to us at least, appears to suggest a wrong emphasis.

[1] Cf. op. cit., 3, 76, 1 ad 1.
[2] Sess. xiii, cap. 3, Denzinger–Umberg, op. cit., n. 876.
[3] *Conc. Trid.*, Sess. xiii, canon 1; Denzinger–Umberg, op. cit., n. 883.
[4] Cf. Martindale, *Portuguese Pilgrimage*, p. 136.

CAN THE DIVINITY OF CHRIST BE OFFERED TO THE GODHEAD?

In a former reply to a query concerning the prayer given by St. Michael the Archangel to the children at Fatima, you say: 'As an act of offering of the Mass the phraseology of the prayer must be described as unusual and, to us at least, appears to suggest a wrong emphasis.' From the narration of the facts of the apparition of St. Michael (as narrated by William Thomas Walsh in *Our Lady of Fatima*, pp. 42–3) it is patent that the Archangel adored the Divinity of Jesus Christ and that the children received Holy Communion. It is also evident that Christ's Divinity is offered to the Divinity of the Godhead in reparation for our offences. There was no Mass, no consecration. There was no wrong emphasis. There was no emphasis at all on the Divinity. In view of the facts, therefore, your remark, quoted above, seems entirely gratuitous. St. Michael is not a priest and, therefore, cannot consecrate. He can, however, adore what has been consecrated and offer it to God. In addition your phrase 'act of offering of the Mass' is ambiguous or at least ambivalent. It can mean the act of consecrating or the offering of what has been consecrated.

Exception might be also taken to the use by your querist 'S. R.' of the word 'visionary' and its repetition in your reply. In this country we disregard entirely the word's etymological meaning, and both as adjective and noun it carries with it a note of disparagement. According to Webster the noun is 'one who relies or tends to rely on visions or impractical ideas . . . ; an impractical person.' The note of disparagement is even greater in the adjective. Webster says of it : 'Disposed to see visions ; given to reverie, fancy or the like . . . hence apt to accept and act on fancies as if realities.' For my part, I have too much respect for the message of Fatima to term the children 'visionaries.'

In general, your reply to the questioner is disappointing. You seem unduly fearful of stressing the Divinity of Our Saviour, Jesus Christ. This is an age in which the denial of that cardinal fact is rampant. Yet Christ is God. You know it. I know it. He is God in the Most Blessed Sacrament. He is God in the Mass. He was God on the Cross. He offered Himself, the Divinity, to His Eternal Father, the Divinity, to save men. If He were not divine, His offering would be without effect. St. Thomas Aquinas gave you the clue in a passage which you yourself quoted. It is the Divinity that acts using the humanity as an instrument. St. Michael, Angel of Peace, understanding better than we, prostrates and recites thrice his profound adoration in a beautiful modern prayer.

E. M. G.

We have somewhat curtailed our correspondent's letter. In particular we have omitted a fairly lengthy quotation from Dr. Walsh's *Our Lady of Fatima*. This quotation recounted the facts associated with the angelic apparition. The other omissions were made in the interests of relevancy. Even here we have not been ungenerous to our correspondent. We have tried, we hope we have succeeded, to keep intact the statement of his objections and grievances against our former reply.

'E. M. G.' challenges us at a number of points. Firstly he objects to our criticism of the phraseology of the prayer attributed to the Archangel Michael by Sister Lucy. We gave at some length the reasons for our criticism. Our correspondent, for the most part, ignores these reasons. It is unnecessary to go back again over the same ground, but we must make some brief comments on our correspondent's remarks. We described the phraseology of the prayer attributed to the Archangel as unusual and as suggesting a wrong emphasis. It is unusual. In the official teaching, formulae and prayers of the Church there is no parallel. We find in these no reference to the oblation of the Divinity of Christ to the Godhead. In the prayer under consideration here there is emphasis on the offering of the Divinity of Christ in reparation for sin. Christ's Divinity is expressly mentioned as part of the content of the oblation. This is a form of emphasis and it is an incorrect emphasis. A wrong emphasis is, therefore, suggested. Christ's Divinity as such is not and never was offered to the Godhead. St. Thomas writes :[1]

Ideo ipse Christus, *inquantum homo*, non solum fuit sacerdos, sed etiam hostia perfecta, simul existens hostia pro peccato, et hostia pacifica et holocaustum.

Commenting on this passage Dr. Cohalan says :[2]

Non fuit Christus sacerdos secundum divinam naturam et victima secundum humanam naturam ; sed, inquantum homo, fuit simul sacerdos et victima. Non potuit offerre sacrificium, aut offerri in hostiam, inquantum Deus sed inquantum homo. Ideo ratione humanae naturae habuit quod potuit sacerdos esse et hostia ; sed ex unione humanitatis cum divinitate habuit quod sacrificium infiniti valoris offerre potuit.

Our correspondent will find it difficult to square with the foregoing his statement that 'Christ offered Himself, the Divinity, to His Eternal Father, the Divinity, to save men.' Of course Christ is a Divine Person at every moment and in every phase of His existence. His Divinity is present in the Mass under the consecrated sacramental species, but not in virtue of the words of consecration (which constitute the formal oblation of the sacrifice of the Mass) but *vi unionis hypostaticae*. The Divinity of Christ is not and cannot be offered *formaliter, reduplicative*. The

[1] *S.T.*, 3, 22, 2.

[2] *De Incarnatione*, p. 226.

Divinity is the recipient of the oblation which must be *ad alterum*. To Christ as God no less than to the other Persons of the Blessed Trinity was due reparation and satisfaction for the sins of men. And of the reparation and satisfaction made on Calvary Christ as God was the recipient. The fulfilment by Christ of the dual function of offering and receiving the redemptive sacrifice was possible by reason of His twofold nature.

> Satisfactio Christi fuit ad alterum . . . Ut satisfactio sit ad alterum sufficit distinctio naturarum in Christo, nam vi illius distinctionis, unica Christi persona est virtualiter duplex : quatenus terminans naturam humanam, potuit satisfactionem solvere, et quatenus terminans naturam divinam, potuit satisfactionem accipere.[1]

In the light of all this, does not the formal mention of Christ's Divinity, as part of the content of the oblation, in an act of offering of the Blessed Eucharist, suggest a wrong emphasis and confusion—a consequence which is so obvious in our correspondent's statement that 'it is evident that Christ's Divinity is offered to the Divinity of the Godhead'? For, of course, he cannot mean that Christ's Divinity is distinct from that of the Godhead. Thus his statement, on analysis, emerges as self-contradictory. A recent writer[2] on Fatima has suggested that the word 'Divinity' should be omitted from the Archangel's prayer for the following reason : 'We cannot offer in reparation the Divinity of Our Lord, but only what is ours in some way. His Divinity does not belong to us : rather we belong to God. The origin of the error is obvious : what is really present in the Eucharist has been taken as the object of our offering.'[3]

In the opening paragraph of our former reply we noted that the reported circumstances of the Archangel's prayer seemed to envisage the *spiritual* offering of the Blessed Eucharist. We added that the prayer might alternatively be regarded as an act of faith in the doctrine of the Real Presence and later we remarked that, if taken in this second sense, the prayer would be unexceptionable. 'E. M. G.' sees fit to point out to us that there was no Mass, no consecration, that St. Michael was not a priest, but that he could adore and offer to God what had been consecrated. If he had read, or, having read, if he had not ignored the import of, our opening paragraph, in which we spoke of a *spiritual* offering of the Eucharist, he might have realized that the information which he vouchsafes is as unnecessary as it is

[1] Tanquerey, *Syn. Theol. Dog.*, ii, n. 1171.
[2] Rev. E. Dhanis in *Bij de verschijningen en het geheim van Fatima. Een critische bijdrage*, Bruges, 1945.
[3] Cf. *The Clergy Monthly*, xii (1949), p. 254.

gratuitous. And our phrase 'an act of offering of the Mass' would have shed the ambiguity or ambivalence with which, in defiance of the context, he has decided to clothe it. Most certainly the Archangel could adore what had been consecrated, that is the Body and Blood, Soul and Divinity of Our Lord present under the sacramental species. But there is no reference to *this* act of adoration in the prayer.

Our correspondent is aggrieved at our use of the word 'visionaries' to describe the child-witnesses of the Apparitions at Fatima. In this we were following the usage of the original querist. But not blindly. *The Oxford English Dictionary* gives as the primary recognized meaning of the noun 'visionary' : 'one who has visions, one to whom unknown or future things are revealed in visions'; and of the adjective 'able or accustomed to see visions, capable of receiving knowledge by means of visions.' Incidentally, at no point did we use the adjective 'visionary.' Hence our correspondent's reference to it and to its pronounced note of disparagement is again entirely gratuitous. If he wishes to attribute to the word 'visionary' the pejorative sense—which he says is commonly given to it in the United States—the responsibility is not ours. We are perfectly entitled to use the term in its original sense, a sense recognized as primary by the standard dictionary of the English language. The implication of our correspondent that we are guilty of any disrepect to the message of Fatima in calling the child-witnesses visionaries is thus a demonstrably false insinuation.

We trust that we are not in any sense fearful of emphasizing the Divinity of Christ, and we feel that only the most biased and unobjective of readers could have seen any suggestion of such fear in our former reply. Indeed, on re-reading that reply, we find it impossible to understand how any reader could have done so. For we pointed out more than once how perfectly in order and, we might add, how necessary, it is to emphasize the Divinity of Christ in speaking of the Real Presence. We noted how the formulae of the Church which express and define this doctrine constantly emphasize the presence of the Divinity in contradistinction to the formulae which describe the formal content of the Redemptive and Eucharistic oblation. Our reply, like the original query, was concerned only with the doctrine expressed in the Archangel's prayer and in particular with the question as to whether the Divinity of Christ is *offered* in the Blessed Eucharist. We did not expressly discuss the adoration of the Blessed Eucharist. Of course we can, we should, we must adore the Divinity of Christ present in the Blessed Sacrament.

But we cannot, even Christ Himself could not, formally offer His Divinity to the Godhead. We had no occasion to refer to the more general question of Our Lord's Divinity. But 'E. M. G.' urges his attack on this wider front. He implied that, notwithstanding our knowledge of it, we have not adequate faith in this doctrine. He thinks it necessary to write us a lecture on the point. We should have thought that, however defective our exposition, our unwavering and fullest acceptance of and willingness to proclaim the fundamental doctrine of Christianity might have been taken for granted. Christ is God. He is a Divine Person. It is this fact which gave infinite value to His sacrifice in which His Humanity was the instrument of His Divinity. It seems that our correspondent does not fully understand the meaning and implication of instrumental causality as predicated of Christ's Humanity. St. Thomas does, indeed, provide the clue in the passage we quoted, but only to those who have examined the economy of Thomistic teaching on the Redemption. To avoid repetition may we, at this point, refer our correspondent to what we have written in the first paragraph of this reply, regarding the manner in which our Redemption was wrought? And it should not be forgotten that Christ had a perfect human nature as well as a Divine nature. The monophysite and monothelite heresies are no less opposed to the true Christian teaching than are Arianism and Nestorianism. In Christ there are not merely two natures but two modes of activity, two actions. This is Catholic teaching. Our correspondent seems to be aware of only one mode of activity, one action, when he writes: 'It is the Divinity that acts using the humanity as an instrument.'

As a final point it will be of interest to recall that the apparition of the Archangel Michael, the Holy Communion of the children and the teaching to them of the prayer under discussion in this reply are disclosed in the Memoirs of Sister Lucy (the surviving visionary of Fatima) written in 1937. These events were not mentioned in the original canonical enquiry conducted over several years, between 1917 and 1930, by the ecclesiastical authorities. Having examined the findings of this enquiry the Bishop of Leiria declared in his Pastoral Letter of 1930 that the apparitions were worthy of credence and that official *cultus* could be allowed. Subsequently, Sister Lucy was asked by the bishop to write her memoirs. This she did and it is in one of these memoirs that first mention is made of the apparition of the Archangel and the associated events which took place in 1916, the year prior to the apparition of Our Lady. We mention this later disclosure of the events of 1916 not to throw any doubt on their authenticity, but to indicate a basis for the suggestion that in recalling, after a long period of years, the precise wording of the Archangel's prayer Sister Lucy's memory may have been influenced by an act of faith in the Real Presence—an act which she had learned when preparing for her first Holy Communion.

THE NECESSITY OF AN INTENTION IN CONFECTING THE EUCHARIST

Some time ago, a discussion was raised about the intention in relation to the words of consecration. I have always understood that the words of consecration when pronounced by a priest over bread or wine, sufficiently physically present to him, are efficacious out of all proportion to any intention he may have. I might put it this way: the very pronunciation of the words of consecration by a priest over due matter may effect transubstantiation—even though the priest definitely intends that there should be no consecration as, for instance, when a practical demonstration on the correct rubrical procedure is given at a Conference. Consequently, the bread and wine over which the words of consecration were pronounced by way of demonstration should not be put back into circulation—but should be placed, *ad cautelam*, in the tabernacle and consumed by a priest in a Mass in due course.

A second kindred point has been raised. Years ago I met a venerable priest who maintained that a suspended evil-living priest who attempted to consecrate bread and wine for some evil purpose would not be able to do so because, in the circumstances, his words of consecration would not be effective. My venerable friend held this position firmly and some other priests present at the time seemed to have no settled views on the subject. I began to wonder if I had the right doctrine when I held that the power of consecration is so inherently of the nature of the Catholic priesthood that God does not intervene to prevent the efficacy of the words of consecration recited over due matter by a priest, no matter what the intention or motive of this priest may be.

Your views on these points will be appreciated by many readers and by

PAROCHUS.

The consecration of the bread and wine is the confection of the sacrament of the Blessed Eucharist as well as the offering of the sacrifice of the Mass. It is Catholic teaching that for the valid confection of a sacrament the minister must, at a minimum,

have the intention of doing what the Church does. For this teaching we have the definition of the Council of Trent :[1]

Si quis dixerit, in ministris, dum sacramenta conficiunt et conferunt, non requiri intentionem saltem faciendi quod facit Ecclesia : anathema sit.

It is, moreover, the accepted teaching of our theology that this intention must be internal—an internal act of will on the part of the minister relating his action to that of the Church. Contrary, then, to what Catharinus suggested in the sixteenth century, it is not sufficient that the minister apply accurately and apparently seriously the external rite prescribed, in relation to valid matter. In the year 1690 Pope Alexander VII condemned a proposition which read :[2]

Valet baptismus collatus a ministro qui omnem ritum externum formamque baptizandi observat, intus vero in corde suo apud se resolvit : Non intendo quod facit Ecclesia.

While this proposition refers specially only to Baptism the principle contained therein applies to all the sacraments.[3]

The reason why the internal intention mentioned is necessary for the valid confection of the sacraments is that, in the dispensation of Christ, the sacramental minister, while he is an instrumental cause, is a voluntary instrument, a human person and not merely an irrational being. This voluntary agent, in order to act as the minister of Christ, must conform his act to that of Christ whose agent he is. In other words Christ is the principal minister of the sacraments. The human or secondary minister is he who, being vested with the necessary power, acts in the name of Christ. The whole sacramental economy derives its value and efficacy from the work of Christ. And each external sacramental rite, to be valid and efficacious, must be linked up with Christ by means of the intention of the human agent. If this link-up is not made the external rite is in itself spiritually valueless : it has its merely natural significance ; it is materially, but nowise more, the rite of a sacrament instituted by Christ. As Billot writes :[4]

Institutio Christi non potest efficere ut verba ista *te baptizo*, etc., ex hoc solo quod materialiter proferuntur aliqua habeant ultra id quod ex vulgari hominum impositione trahunt vel trahere possunt . . . Itaque ritus baptismi, absolutionis, consecrationis, etc., non potest significare sacramentaliter nisi aliquid sit *per quod vis institutionis Christi ad eum derivet*, ipsumque investiat.

[1] Sess. vii, 11, Denzinger–Bannwart, *Ench. Symb.*, n. 854. Cf. Conc. Flor. *Decretum pro Armenis*, ibid., n. 695.
[2] Ibid., n. 1318.
[3] In regard to the Blessed Eucharist, cf. *Missale Romanum, de defect.* vii.
[4] *De Ecclesiae Sac.*, Th. xviii.

Principium autem determinans exteriorem ritum ad substandum institutioni Christi, nullum aliud esse potest quam voluntas ministri intendentis, non quidem iocari, non materialiter recitare formulam . . . sed agere illud quod Iesus Christus in sua religione stabilivit suoque nomine facere mandavit.

It is true, as our correspondent notes, that the power of consecrating the Eucharist is an essential element of the Catholic priesthood. But this power becomes actually operative or effective only when the priest, by his voluntary intention, relates the external rite of consecration to the action of Christ or to that of the Church established by Him.

It may be well to point out here that a virtual intention of doing what the Church established by Christ does suffices for the valid confection of the sacraments. An actual intention, however desirable, is not necessary. But, on the other hand, a merely habitual intention is insufficient. And, of course, what is rather confusingly called an interpretative intention—one which the minister would have had if he knew all the circumstances—is useless. It is not necessary for validity that the minister himself believe that the rite duly performed by him is sacramental. Nor is it even necessary that he intend to do what the Catholic Church does. He may think that the Catholic Church is not the true Church established by Christ. It suffices that he follows the prescribed rite with the intention of doing thereby what the Church of Christ does by this same rite.[1]

In the light of all this the answer to our correspondent's first point is clear. A priest who, by way of demonstration, pronounces the words of consecration over bread and wine with the intention of not confecting the sacrament, definitely does not effect transubstantiation. As has been explained, the words of consecration, even when used by a priest, have power to effect this wonderful conversion only if the priest, by his voluntary intention,[2] has made himself in this act the agent of Christ. In the case described it is expressly stated that the demonstrating priest would have had no intention of consecrating ; his intention would be not to consecrate. In such circumstances then there would be no difficulty about restoring the matter used in the demonstration to the ordinary containers. At the same time we would instinctively echo our correspondent's objection to the demonstration of the entire rite of consecration by a priest using a host and wine. A priest who is accustomed

[1] Cf. Cappello, *De Sac.*, n. 50.
[2] This intention is explicitly expressed in one of the prayers in the *Praeparatio ad Missam*, 'Ego volo celebrare Missam et conficere corpus et sanguinem Domini Nostri Iesu Christ.' While an explicit intention is highly commendable, it is not necessary for validity.

to saying Mass—and not to giving a rubrical demonstration—may, by association of circumstances, prayers, gestures, etc., quite possibly forget that he is only demonstrating and, from force of habit, form the intention which suffices for a valid consecration. In any event the use of a host and wine is not necessary even for a most detailed demonstration.

In reply to the second question mentioned by our correspondent, it should firstly be pointed out that neither the true faith, nor probity of life, nor the state of grace are required in the minister for the valid confection of any sacrament. In one of the canons issued by the Council of Trent we read :[1]

Si quis dixerit ministrum in peccato mortali existentem, modo omnia essentialia quae ad sacramentum conficiendum aut conferendum pertinent servaverit, non conficere aut conferre sacramentum, anathema sit.

It is also necessary here to point to the distinction between the intention of the minister—which is required for validity—and the purpose for which he confects the sacraments. As has been repeatedly mentioned, for the valid confection of a sacrament—for valid consecration *in casu*—the minister must at least have the intention of doing what the Church does. So long as he has this intention and duly pronounces the prescribed form over valid matter the sacrament is validly confected—in the case transubstantiation is effected—irrespective of any evil purpose which the minister may have in mind. In other words, such a purpose, though unspeakably reprehensible and sacrilegious, is subsequent to and does not enter into the sacramental act and does not nullify its effect. St. Thomas makes this point. He is replying to the following argument : the intention of the minister of the sacraments must, for validity, conform to the intention of the Church—which is always a *recta intentio*. Therefore, the minister also must, for validity, have a *recta intentio*. St. Thomas writes :[2]

Respondeo dicendum quod intentio ministri potest perverti dupliciter : uno modo respectu ipsius sacramenti, puta cum aliquis non intendit sacramentum conferri sed derisorie aliquid agere et talis perversitas tollit veritatem sacramenti . . . alio modo potest perverti intentio ministri quantum ad id quod sequitur sacramentum, puta si sacerdos intendat . . . conficere corpus Christi ut eo ad veneficia utatur, et quia prius non dependet a posteriori, inde est quod talis intentionis perversitas veritatem sacramenti non tollit ; sed ipse minister ex tali intentione graviter peccat.

The discussion raised by our correspondent serves to emphasize how closely the voluntary activity of human ministers is necessary in order that the sacraments be effective means of sanctification and salvation and to indicate also how malevolent ministers cannot, in God's ordinary providence, be prevented from using these sacred institutions for evil purposes. All this is a consequence of the fact, already mentioned, that Christ chose as the ministers of His sacraments human beings endowed with free will. This is the divine economy. The gift of free will makes possible a wondrous human co-operation in a divine work ; but it must also, in the nature of things, leave the way open to human failure and abuse.

[1] Sess. vii, can. 12, Denzinger–Bannwart, op. cit., n. 855.
[2] *S.T.*, 3, 64, 10, c.

FORMULATION BY PRIEST OF INTENTION OF CONSECRATING

I should be very much obliged for a solution of the following case : Bernard, when going to say Mass, was asked by the sacristan to consecrate a ciborium already placed on the altar near the tabernacle. He assented to this, but forgot about the ciborium until after his Communion, when he observed that it was outside the corporal. Now Bernard had to give out Holy Communion to a large congregation and he used this ciborium to do so. He held that that ciborium was consecrated for the following reasons : He had the permanent intention of consecrating *all apt matter which is placed before him to be consecrated* (*De Defectibus*, vii. 1). He has no fixed particular intentions outside this. That is to say, he has never made a permanent intention to consecrate *only what is on the corporal* ; or to consecrate all the apt matter present on the altar, whether within the corporal or not, and which before the Consecration he had the intention of consecrating. He holds that the intention he has will provide for (i.e., include) the consecration of a ciborium or other such matter which was accidentally left outside the corporal but on the altar. Please say

(i) Whether Bernard was right in distributing the Hosts in the above-mentioned ciborium ;

(ii) Whether his intention is the proper one to have and sufficiently provides for ciborium, etc., left outside the corporal by accident ; and, if so, whether it is necessary that he be aware that such matter is to be consecrated ;

(iii) Whether it is advisable to make such permanent intentions as Father O'Connell suggests in *The Celebration of Mass*, vol. ii, p. 98 ; his suggestion seems to be discouraged by some as not corresponding exactly to the rubric ;

(iv) whether there have been decrees or answers to questions given by the Congregation of Sacred Rites in cases similar to the one given above which explicitly or implicitly approve Bernard's way of acting ?

ROBERTUS.

It seems very clear to us that, in the case proposed, the Hosts in the ciborium were validly consecrated. Everything required for valid consecration was present; apt matter, physically present, determinate and covered by the celebrant's intention. Some theologians,[1] following what St. Alphonsus mistakenly called the common opinion,[2] think that the presumption must be that a priest did not have the intention of consecrating matter left outside the corporal since there is a grave obligation to have the matter for consecration on the corporal: in other words, that his intention must have been restricted or recalled by this rubric. This presumption may, perhaps, help to a decision when the celebrant has formed no definite intention. But there is no necessity to resort to any presumptions in the particular case we are considering here. Bernard had the definite intention of consecrating all apt matter placed before him to be consecrated. Moreover, though this, as we shall see, may be regarded as an unnecessary refinement, Bernard knew beforehand that the ciborium had been placed on the altar for consecration at his Mass and had formally assented to this arrangement. Cappello, in reference to similar circumstances, writes:[3]

Valida est consecratio, si sacerdos, plures hostias ad altare tulerit aut adverterit ab alio deferri a se consecrandas, vel ante sacrificium monitus fuerit de consecrandis in altari iam positis, quamvis expresse earum non meminerit dum consecrabat.

(i) From what we have written it obviously follows that, in our opinion, Bernard acted lawfully in distributing the Hosts contained in the ciborium. There was no doubt about their valid consecration. It is hardly necessary to add here that it would not be lawful to distribute doubtfully consecrated hosts to the faithful.

(ii) The intention formulated by Bernard corresponds to that stated in and required by the rubrics.[4]

Quilibet Sacerdos talem semper intentionem habere deberet, scilicet consecrandi eas omnes (hostias) quas ante se ad consecrandum positas habet.

That formula, we take it, is not merely the correct but the best way for the celebrant of Mass to express his intention of consecrating. It sufficiently provides for a ciborium accidentally left outside the corporal but on the altar, for the phrase *ante se* clearly implies that the matter be on the altar. It is not necessary, we think, that the celebrant formally be aware of or

[1] Cf. Merkelbach, *Th. Mor.*, iii, n. 212; Aertnys–Damen, *Th. Mor.*, ii, n. 117.
[2] *Th. Mor.*, l. vi, n. 217.
[3] *De Sac.*, i, n. 302; cf. Prümmer, *Th. Mor.*, iii, n. 177.
[4] *De Defectibus*, vii, 1.

advert to the matter to be consecrated. The rubric we have quoted does not require such formal awareness or advertence at any stage. Then why should we? The attempts of the authors, attempts which we regard as unnecessary and unwarranted, to refine the rubric along these lines have only led to confusion and, indeed, to contradictory statements. To take one of many possible examples, Cappello writes[1] on the point at issue:

Hostiae, inscio sacerdote appositae, non consecrantur, ob defectum uti patet intentionis. Eae tamen, quae in corporali positae sunt consecrarentur, si sacerdos elicuisset intentionem consecrandi omnes hostias in corporali positas.

Let us briefly consider that statement. In the first sentence the author suggests that the intention and consequent valid consecration clearly (*uti patet*) depend upon the knowledge of the priest. From the next sentence it appears that this knowledge is not necessary when the hosts have been placed on the corporal and provided that the priest has elicited the intention of consecrating all hosts placed thereon. But, surely, if the intention to consecrate all hosts placed on the corporal is sufficient for the consecration of those placed there *inscio sacerdote* there is no adequate reason for holding that the intention to consecrate all apt matter placed on the altar for consecration does not similarly suffice to cover matter placed there *inscio sacerdote*.

(iii) Our answer to this question is contained in part in what we have written above. The intention, as stated in the rubrics, seems on every ground to be the most satisfactory and to be the best calculated to prevent inconvenience and scruple which might otherwise result from inadvertence. We consider that it is best to accept the formulation of the rubric and not to attempt to improve upon it. If the celebrant has the definite intention of consecrating all apt matter duly placed before him for consecration at his Mass he need have no scruple about a ciborium placed upon the altar for this purpose by the sacristan or by any other authorized person—even though he forgets all about it until the Communion. But if the celebrant's intention be formulated in any other way, no matter how definite, at least serious inconvenience and embarrassment may easily result. It is so easy to forget. Thus, for instance, if a priest who has the

[1] Loc. cit.; cf. Merkelbach, loc. cit., who surprisingly writes: 'Non sufficit dicere totum pendere ab intentione sacerdotis.' Prümmer, on the other hand, says: 'Solutio pendet ex *intentione sacerdotis*,' loc. cit., in echo to the majority of writers.

intention of consecrating only matter which is on the corporal forgets to place the ciborium thereon before the consecration, then the hosts in this ciborium are not validly consecrated, and very many of the faithful may have to be turned away without Holy Communion. Needless to say, the celebrant should never have the intention of leaving matter for consecration outside the corporal. Such an intention would be gravely sinful. But that is very different from having the intention of consecrating matter placed on the altar which it is intended, in due time, to place on the corporal, but which, *per accidens*, by inadvertence, may be left outside the corporal at the Consecration. It seems to us that many theologians have not fully appreciated this point of difference.[1] We might illustrate our point from another rubric. There is a grave obligation to put a small quantity of water into the chalice after taking the wine at the Offertory. To intend to omit this rubrical act is a grave sin. But, if a priest should inadvertently omit it, would it follow that his fixed intention to consecrate the wine in the chalice is thereby rendered gravely sinful? And, *apropos* of what we have written earlier, must we suppose that the priest cannot have the necessary intention to consecrate the wine since objectively there has been a grave violation of the rubrics, or that this violation has recalled or restricted his intention? If we must not make that supposition in the case of this rubric, why must we do so in regard to the rubric which demands that the matter for consecration be on the corporal?

(iv) We are not aware of any recent decrees or answers from the Congregation of Rites which deal with cases similar to that proposed here.

THE APPLICATION OF MASSES

In a religious community intentions for Masses are given to different members. One person may give eight for deceased parents, another four for a deceased sister, another for a deceased friend, and so on. Is it proper for the Superior to jumble these intentions indiscriminately together under headings like *pro diversis defunctis, pro animabus, pro defunctis*? To me this practice is disquieting and bewildering besides excluding the possibility of using the appropriate prayers when the rubrics permit a *Missa de Requie*. Noldin says:

'Qui tamen ex decem intentionibus sibi oblatis applicaret juxta unam ex decem nullam determinans, validam applicationem non faceret. Qui autem applicaret pro omnibus decem collective et valide applicaret et, si decem stipendia accepisset, obligationi suae satisfaceret: in singulis enim Missis quilibet petentium decimam partem acciperet, et decimo Sacro celebrato quilibet totum suum fructum percepisset.'

I presume the learned Jesuit had in mind ten different persons each giving one intention. Otherwise the practice he allows would mean putting the person who gave only one intention on the same level as those giving several, which would be, to say the least, unconscionable.

INQUIETUS.

Religious Superiors who transfer Mass obligations should keep a register in which they enter, in order and without delay, the Masses and the stipends they receive from various sources. They should, moreover, take every care that the Masses are celebrated as soon as possible.[1] The Superiors will normally secure the celebration of the Masses by distributing the intentions to the priest members of their communities. Each priest should, in turn, keep an account of the Mass intentions he receives and of their fulfilment.[2]

A priest of a community may simply be told to say a number of Masses in accordance with the intention of his Superior or for the donor's intention. The Superior will mark off a corresponding number of Masses in his register. His intention is that those Masses marked off shall be said and in the order decided by him. To a second priest another group of Mass intentions may be transferred—and so on. The recipients in every case offer the Masses in accordance with the intention and order determined by the Superior which is, of course, *ad mentem donantis*. And this arrangement suffices for the fulfilment of the obligation to the original donor—even though the priest who actually offers the Masses has no idea as to what their intention was.[3] For all he knows the Masses may be for the living or may be for the dead. Sometimes, as in the situation mentioned in the query, the Superior may, for the purposes of distribution, group Masses *pro defunctis* together. He may then tell one of his priests to say a number of Masses *pro defunctis*—in accordance, of course, with the order and determination as

[1] Merkelbach, loc. cit., writes: 'Sane si sacerdos explicite diceret se velle consecrare etiam extra corporale (quod esset graviter malum) sine dubio hostiae essent consecratae. . . .'

[1] Canon 844, § 1. Canon 843 would also apply to religious superiors if they are rectors of churches.

[2] Canon 844, § 2.

[3] An exception must be made if the donor of the stipend explicitly requests a particular Mass, e.g., an anniversary Mass. Normally, however, the donor is presumed to request only the application of the Mass—canon 833.

based on the register. When the priest recipient celebrates *ad mentem superioris* the Masses will be offered for the souls specified by the original donors.

The person or purpose for which Mass is applied must be determinate—either explicitly or implicitly. This determination is implicitly and, therefore, sufficiently achieved when the celebrant conforms his intention to that decided upon, on the occasion of distribution, by the Superior. The latter, let us say, asks Father X to offer twenty Masses for a number of deceased persons. It may be that, of that group of Masses, ten were given on behalf of one soul and one each for ten other souls. It is the intention of the Superior that the Masses be offered in accordance with that numerical division, and Father X has only to conform his intention thereto.

Noldin writes :[1]

Non requiritur, ut ipse sacerdos personam vel finem cognoscat vel explicite determinet, sed sufficit omnino ut alius id faciat et sacerdos ad hanc intentionem ab alio explicite determinatam celebret. Ideo valent istae applicationes : ad intentionem superioris ; pro eo qui primus stipendium dedit . . .

And in Cappello, who writes even more nearly to the point at issue, we read :[2]

Sufficit ut sacerdos tot Missas applicet ad intentionem dantis, quot sunt stipendia percepta ; neque ad valorem applicationis requiritur, ut habeat intentionem applicandi singulis iuxta ordinem temporis quo stipendia dederunt. Haec regula valet non tantum in casu, quo idem sacerdos est satisfacturus omnibus obligationibus, sed etiam in casu, quo plures sacerdotes intentiones accipiunt ex arca in ecclesia ad colligendas eleemosynas Missarum posita, vel ex cumulo stipendiorum per sacristiam a diversis personis collecto.

In the query a passage is quoted from Noldin who gives firstly an example of an intention which is insufficiently determinate. He then states that a priest who has ten intentions to discharge might validly offer for the ten *collective*—each intention would get a tenth of the fruits of each Mass and, therefore, when the tenth Mass has been celebrated each intention would have got its total share. Our correspondent presumes that the suggested collective application can only be allowed when ten distinct donors each give one intention. The presumption is not correct. The Masses are offered in accordance with the number of intentions or stipends, not according to the number of donors. Thus if one donor had given five out of the ten intentions five-tenths of the fruits of each Mass (offered *collective* for the ten intentions) would belong to him. The fact that our correspondent quoted that particular passage from Noldin

[1] *Th. Mor.*, iii, n. 177 ; cf. Wouters, *Th. Mor.*, ii, n. 208.
[2] *De Sac.*, i, n. 612.

suggests to us possible reasons for his disquiet. He may mistakenly think that the situation resulting from the Superior's distribution of stipends is to be equiparated to the case of the insufficiently determinate intention referred to by Noldin. Or, he may think, again wrongly, that, when the Superior groups together twenty Masses *pro defunctis*, the intentions are necessarily so 'jumbled' that an equal share of the fruits are given to all of the deceased—though, perchance, ten of the Masses were intended by the donor for one particular soul. We hope that our explanation will have allayed our correspondent's fears. He need have no worry if he offers the Masses he receives *ad mentem Superioris*, or *pro intentione donantis*.

It cannot be denied, however, that it would be more satisfactory if the Superior, as far as may be practicable, were to inform the priest to whom he distributes Masses, of the intentions of the donors of the stipends. Then, as our correspondent implies, it would sometimes, at least, be possible to say the more appropriate Mass or prayers. In this connection we have a reply of the Congregation of the Council on 27th February, 1905, to the question :[1]

An liceat Ordinario omnibus his Missis communem generalem intentionem (ad intentionem dantium) praescribere, etsi a primariis offerentibus speciales intentiones praescriptae fuissent? Reply : Sufficere ut sacerdotes celebrent iuxta mentem Ordinarii ; qui tamen intentionem pro singulis offerentibus efformare debet iuxta regulas a probatis theologiae moralis auctoribus traditas. Melius tamen esse si patefiant sacerdotibus intentiones praescriptae.

The terms of the question and reply may be applied to local Superiors as well as to Ordinaries.

TIME AT WHICH APPLICATION OF MASS MAY BE DETERMINED

Through some upset in routine, a priest forgets to make any intention or to have made any note of a donor of a stipend for this particular Mass till he comes to the memento for the living. Would he be free just then, if he so decided, to offer the Mass for a particular donor ?

SACERDOS.

For the valid application of Mass it suffices that the priest form the necessary intention before the Consecration. Some writers who discuss this matter in detail point out that the

[1] *A.S.S.*, xxxvii, pp. 525–26.

application would be valid even if the intention were made after the consecration of the Host but before the consecration of the Chalice. Cappello writes :[1]

> Certum est sacrificium ante consecrationem calicis nondum esse absolutum ; quare certum est nostra sententia, valide applicari sacrificium ante calicis consecrationem.[2]

Thus the intention to apply the Mass for a particular donor, made by the celebrant at the memento for the living, is clearly a valid application. It is highly recommended, however, that the priest should determine beforehand, that is before he begins the Mass, the intention for which it is to be applied. We need hardly add that the intention must be at least habitual and implicit and directed to a certain person or object, explicitly or implicitly determined. But priests should not be satisfied with the minimal requirements in this matter—if, in the circumstances, they can have something more. In the application of Mass an actual explicitly formed intention for an explicitly determined person or purpose is the ideal to be aimed at.

SECONDARY INTENTIONS IN THE APPLICATION OF MASS

I should be pleased if you could reply to the following question : A celebrant makes the intention of offering Mass for the donor of a stipend. He renews this intention at the 'memento' of the Mass and then adds a number of other intentions without expressly saying that he intends the donor to suffer no loss thereby. Does the celebrant injure the donor ?

MISSIONARIUS.

The fruits of the Mass are manifold. They can be divided on the basis of the effects produced and on the basis of the persons to whom the fruits accrue. Under the first heading the writers distinguish impetratory, propitiatory and satisfactory fruits. On the second basis of division, the Mass is said to have general fruits which accrue to the universal Church, to all the faithful ; special fruits which go to those who are closely associated with the offering of the particular Mass ; personal fruits which are given to the priest who offers the Mass and, finally, ministerial

[1] *De Sac.*, i. n. 601.

[2] Gasparri regards the application as doubtfully valid if it is made only after the consecration of the Host, though before the consecration of the Chalice. Cf. *De Eucharistia*, i, n. 470.

fruits which, by the intention of the priest, are applied for the particular person or purpose for whom the Mass is offered. Accordingly when we speak of the application of Mass we mean the act of will or intention whereby the celebrating priest decides that the ministerial fruits be devoted for a particular person or purpose. The general and special fruits are independent of, and cannot be disposed of by, the intention of the priest. Neither can the personal fruits—at least in their entirety.[1]

Our correspondent's question is, therefore, concerned with the destination and distribution of the ministerial fruits *ex intentione sacerdotis*. If these fruits are of infinite extent no injury would be done to the donor of a stipend no matter how many other intentions were added. But the generally accepted teaching[2] is that, *in actu secundo*, the value of the Mass is finite in extent, particularly in relation to the satisfactory ministerial fruits. Consequently, it would not be lawful or just, in applying Mass, to add one or more secondary intentions equally with the primary intention which is that of the donor of the stipend. But it would be lawful to add such secondary intentions on condition that they do not in any way lessen the ministerial fruits which should accrue to the donor of the stipend. The writers recommend that the priest should expressly form this condition whenever he adds such secondary intentions in his application of Mass.[3] But it seems to us that if the priest's prevailing intention is that the secondary intentions shall not interfere with the primary intention, there is no ground for worry, even though this condition has not been expressly made.

A priest may, of course, specially remember persons and purposes—other than those intended by the donor of the stipend—at the 'mementoes' of the Mass. Such remembrance is not the same as applying the Mass for these persons or purposes. The remembrance is rather a form of impetration which derives special value from its association with the Mass—the impetratory fruit of which is said to be inexhaustible.[4] There is no need, then, to make these remembrances conditionally—as is clear from the manner of their expression in the prayers of the Mass.

[1] Cf. Noldin, *De Sac.*, n. 173.

[2] Cf. Cappello, *De Sac.*, I, n. 592.

[3] Ibid., n. 596.

[4] Cf. Davis, *Moral and Pastoral Theology*, iii, p. 92.

THE OBLIGATION OF A PROVINCIAL LAW REQUIRING THE APPLICATION OF MASS

It is laid down in the decrees of the Tuam Provincial Council that priests who assist at a Solemn Requiem Mass and receive for this assistance a stipend of one pound are, as soon as possible, to apply a private Mass for the deceased. Would you please say what is the precise nature of the obligation imposed by this decree ?

INQUIRER.

It may be well, at the outset, to quote in full the relevant decree. It runs thus :[1]

Cum stipendium quod sacerdotibus Missae sollemni pro defuncto assistentibus datur unam libram attingit, omnes, excepto Missam sollemnem celebrante, Missam privatam pro eodem defuncto quamprimum applicent.

In our view, this decree imposes on the assistant priest, excepting the celebrant of the Solemn Mass, a grave obligation of obedience to ecclesiastical law to apply a private Mass for the deceased. That a strict obligation is imposed is clear from the wording of the law, from the form of the verb used ' applicent ' ; that the obligation is grave follows from the fact that grave matter, the application of a Mass, is in question and from the fact that the Fathers of the Council intended to impose a grave obligation in grave matter.[2] The obligation arises directly from the duty of obedience to ecclesiastical authority. The decree, in our view, does not impose an obligation in strict justice. Hence a priest may fulfil the obligation of the decree by applying his second Mass for the deceased, on a day on which he binates, even though he has already discharged an obligation in strict justice by the application of his first Mass. In this context an obligation in strict justice to apply the private Masses could conceivably arise for the assisting priests if the donor of the stipends expressly contracted for the application of these further Masses and if the stipends were accepted on this contractual understanding. But this situation will rarely arise. And, in any case, we are concerned here only with the obligation which arises from the decree of the Provincial Council. It may not be out of place, however, to mention the more fundamental question as to whether bishops have authority to impose upon their priests the obligation of *applying* Mass. Though this question was the subject of some controversy in the past, there is no good argument

[1] *Conc. Prov. Tuamensis* (1933), n. 117.
[2] Cf. ibid., n. 5, § 3 : ' Decreta in quibus adhibentur verba . . . in modo imperativo . . . pro ratione materiae obligationem in conscientia imponunt.'

for the view that the bishops have not the necessary authority.[1] The modern authors do not regard this view as probable. They set it down as certain teaching that the bishops can bind their priests not merely to celebrate Mass but also to apply Mass for a particular intention. But it is added that this obligation of applying Mass should be imposed only rarely. Noldin, for instance, writes :[2]

Posse praelatos saeculares i.e. summum Pontificem et episcopum sacerdotibus sibi subditis per se non solum missae *celebrationem* sed etiam *applicationem* praecipere certum est ; attamen raro hac potestate utuntur superiores qui non sunt religiosi quia sacerdotes subeunt damnum temporale[3] eo quod stipendio missarum privantur.

ACCEPTANCE OF STIPEND FOR SECOND MASS BY A PARISH PRIEST WHO BINATES

I am told that a parish priest who is bound for two Masses on all Sundays and Holidays and offers one *pro populo* may take a stipend for the other Mass if he pays a certain amount to some source. Is this correct ? If it is could you say what is the amount and to whom is it to be paid ?

May a bishop grant this permission to a parish priest ?

PAROCHUS.

Our readers are familiar with the general obligation stated in 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. . . .

The *Missa pro populo* is due in justice. We are unaware of the existence of any institution or organization a subscription to which would entitle a parish priest, or any priest, to offer his second Mass for a stipend on a day on which he has already applied his first Mass *ex titulo iustitiae*. Obviously, then, we cannot give ' Parochus ' the information he requests regarding the amount of the subscription or its destination. In fact, we are fairly confident that ' Parochus ' has been misinformed, that no institution or society exists which grants to its subscribers the privilege he mentions. The reason for our confidence is

[1] Cf. Dr. Kinane, *I. E. Record*, xix (1922), pp. 308–11.
[2] *De Sac.*, n. 198.
[3] This reason has little force in regard to the decree under consideration, inasmuch as it is presupposed that the priests receive a substantial offering for assisting at the solemn Mass.

that the existence of such an institution would imply a state of things which would be entirely foreign to the constant practice of the Church on this question of stipends and bination. 'According to a very ancient practice of the Church it has always been forbidden that priests celebrating more than one Mass on the same day should receive stipends for them, except on Christmas Day. Cf. *Decr. Gratiani* D. 1, c. 53 *de cons.*; Const. Bened. XIV, 26 August, 1738, *Quod expensis*, and 30 May, 1753, *Apostolicum Ministerium*, Encycl. Leo XIII, 18 April, 1897, *Transoceanum* and Bened. XV, 10 August, 1915, *Incruentum*. All this the Code has confirmed in canons 806, § 1, and 824, § 2. Therefore, without a special apostolic indult, it is wrong to allow anything to a pastor who celebrates a second Mass . . .'[1]

The Holy See has, in recent years, granted indults giving power to Ordinaries to permit, in certain circumstances, trination on Sundays and Holy Days and bination on days that are not of obligation. In every grant, however, the express proviso has been made that a stipend could be accepted for only one of the Masses.[2] There have also been rare cases in which the Ordinary has been granted the faculty of allowing priests to take a stipend for a second Mass (the first having been applied *ex titulo iustitiae*) provided the amount of the stipend be sent to the bishop for the upkeep of the seminary. For instance, a letter in 1922 from the Cardinal Prefect of Propaganda to the bishop of Trichinopoly contains the following paragraph:[3] 'The Sacred Congregation, by this letter, grants you the faculty of allowing your priests to accept another stipend for the second Mass in case of bination, provided they send the money to the bishop for the seminary or for the diocese.' We do not know of any indult by which priests could be permitted to retain the second stipend for themselves.[4] It is held, however, that a priest who is a member of some society for whose members, when they die, he is bound to offer Mass, can discharge this obligation by a second Mass. Perhaps this is what 'Parochus' has in mind. But this obligation is not one of justice.

The answer to our correspondent's final question is contained in what we have already written. It is clear that a bishop, unless he has a special indult empowering him to do so, cannot grant permission to a parish priest to take a stipend for his

[1] Decree of Congregation of Council, *A.A.S.*, xxx (1937), 101–2.
[2] Cf. Bouscaren, *Canon Law Digest*, ii, pp. 189–90.
[3] Bouscaren, op. cit., pp. 446–7.
[4] Cappello says, 'Rarissime id permittitur ratione paupertatis celebrantis,' *De Sac.*, i, n. 735.

second Mass when he has applied the first *pro populo*. From a number of resolutions issued in 1937 by the Sacred Congregation of the Council we gather that the Holy See would not generally grant such an indult. The Fathers of the Congregation considered the following question:[1] 'Whether it is expedient to grant an apostolic indult allowing that something be given to a pastor who celebrates a second Mass in his church, especially if payment comes from the income of legacies?' The reply by the Fathers and approved by the Holy Father was 'In the negative, that is, it is not expedient.' Bishops are sometimes given an indult empowering them to dispense parish priests from the obligation of the *Missa pro populo* on retrenched holy days. But this indult concerns an entirely different point from that raised by 'Parochus.'

MASS OBLIGATIONS FOR DECEASED MEMBERS OF SOCIETIES; TIME OF CELEBRATING

In the diocese to which I am attached, provision is made for the sick and aged members of the secular clergy by a charitable fund from which their needs are met. All priest members contribute, as a condition of admission, the sum of £10. Lay people can become benefactors by a similar contribution. The following is a quotation from the rules of the Fund:

'Each member shall be subject to the following obligations: (*a*) To say one Mass in each month for all members and benefactors living and dead; (*b*) to say one Mass for a brother member at his death when notified to do so by the secretary; (*c*) to say one Mass for a benefactor, clerical or lay, whenever notified to do so by the secretary.'

(i) It may be noted that the number of Masses to which a beneficiary is entitled is limited and fixed, so that only a section of members receives on any one occasion the notification referred to in (*b*) and (*c*) above. The Holy See has given permission to members to satisfy their obligation by offering one of their Masses for the Fund in case of bination, even if the other Mass was in discharge of an obligation in justice.

As these Mass obligations are neither 'manual' nor 'foundation,' some have wondered whether there is any time limit covering their celebration. Actually the Rules demand an annual account to be furnished of Masses offered during the year just elapsed. Could one, then, retain his obligations throughout the year and have them fulfilled just in time, as it were, for the day of reckoning?

[1] Bouscaren, op. cit., p. 206.

(ii) A priest-member not adverting to the phrase 'one Mass in each month' offered twelve in succession in advance, i.e. all in January. It is suggested that he can scarcely consider his obligations fulfilled, as new members were probably admitted during the subsequent months, and presumably acquired rights to a share in the monthly Masses from the moment of admission. Your views on both points would be appreciated.

DECANUS.

We are grateful to 'Decanus' for the full and lucid presentation of his query. In the course of his letter he informs us that 'the Holy See has given permission to members to satisfy their obligation by offering one of their Masses for the Fund in case of bination, even if the other Mass was in discharge of an obligation in justice.' This is a very interesting item of information. Not that the permission granted is without precedent. Far from it. But the grant of permission raises the interesting question of the precise nature of the Mass obligations assumed by members of the Fund. This question, though seemingly theoretic and incidental here, is really fundamental and has strict relevance to the two specific points on which we are asked for our views. It may be well, therefore, to recall firstly the salient features of the fundamental question.

The prescription of canon 824, § 2, will be familiar to our readers.

Quoties 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.

Briefly, this law is interpreted by the commentators generally as prohibiting a priest from discharging obligations in justice by both his Masses on a day on which he binates—apart from the exception mentioned, and apart, we may add, from a dispensation. Apropos of this usual interpretation, it seems to us to imply a too facile identification of a *titulus iustitiae* and what can be called intelligibly, if not elegantly, a *titulus eleemosynae*. For it is very clear that a priest may be bound in justice to apply a Mass for which he has not received, either directly or indirectly, a stipend. But we shall leave this point for the moment and return to the usually accepted interpretation of canon 824, § 2. In the light of this interpretation it may be asked whether the grant of permission by the Holy See (to which reference is made in the query) implies that the obligation of priests regarding Masses for their fellow-members and benefactors is not an obligation in justice—at least not in commutative justice. Or, alternatively, if it must be conceded that the obligation in question is in strict justice, does the permission simply mean that the Holy See granted a dispensation from the provision of canon 824, § 2? The provision is, of course, a matter of merely ecclesiastical law, and, accordingly, there is not the slightest doubt regarding the competence of the Holy See to dispense from it. We have, in fact, not a few instances of such dispensations, and in cases in which not merely the discharge of two obligations in justice was at issue but even the application of two stipend Masses.[1] Yet, for many reasons, we are reluctant to admit the dispensation alternative as an explanation of the permission granted to priest-members of the charitable Fund.

It is well-known historical fact[2] that for centuries after the sixth—when daily private Masses became customary—many priests in the Latin Church celebrated Mass several times each day. For a long period there was no ecclesiastical law restricting the number of times, and, even when restriction did come, it came gradually. We find at the beginning of the eleventh century local laws forbidding priests to say more than three Masses each day. Later, in that same century, Pope Alexander II restricted priests to two Masses and, indeed, favoured the principle of one Mass per day. By the thirteenth century, this principle had become the general law which is now contained in canon 806, § 1. In many cases, the celebration of several daily Masses was due to zeal and the highest motives on the part of the priests concerned. But in some cases, it is thought, the sole motive was the venal one of acquiring and discharging stipends. The abuses of the *Missae Siccae, Bifaciatae, Trifaciatae* were the offspring of this same motive. They were thirteenth-century attempts to evade the law restricting priests to the celebration of one Mass each day. Even when the venal motive was really absent in cases of plural celebration, its presence might be suspected and scandal would ensue. The Church was most anxious that every suspicion of venality should be excluded, and so even before priests were restricted to one Mass per day (as the normal rule) they were forbidden to discharge more than one stipend on any one day. The Congregation of the Council notes[3] the insistence with which was repeated the clause

[1] Cf. Bouscaren, *Canon Law Digest*, i, pp. 393–4; ii, pp. 204–6.
[2] Keller, *Mass Stipends*, pp. 39–57. [3] *A.S.S.*, xx, p. 36.

Firma semper manente prohibitione accipiendi stipendium pro secunda Missa. Ratio huius constantis decisionis in hoc posita est, ut quodlibet mercimonium aut avaritia a rebus sacris removeatur; ac proinde in secunda Missa satisfieri nequeunt obligationes quae ex iustitia habentur.

Thus the prohibition contained in canon 824, § 2, is very ancient.[1] It is true, as we noted earlier, that dispensations have been given allowing priests to accept stipends for each of their Masses when they binate, but the proviso has nearly always been made that the amount of the stipend be sent to the bishop for the diocesan seminary or for some other pious purpose. Cappello writes :[2]

Aliquando R. P. permittit ut stipendium etiam pro secunda Missa percipiatur, erogandum in favorem causae piae. Rarissime id permittitur ratione paupertatis celebrantis.

It seems preferable then to maintain the first alternative mentioned earlier, namely, that the permission granted by the Holy See implies that the obligation of priest-members of the Fund is not in strict justice. Which is merely to say that the permission of the Holy See is really an interpretation or application of the law in the circumstances. Yet this alternative is not without its difficulties. It is, however, the line taken in some of the replies of the Roman Congregations, as a passage cited in the preceding paragraph will have indicated. In 1878 the Congregation of the Council,[3] in reply to a French bishop, declared that priests who were members of the Congregation of St. Joseph and who were bound to apply Masses for deceased members could lawfully discharge this obligation by their second Mass when they binate. The reason given for the reply was that in the circumstances the priests do not receive, directly or indirectly, a stipend for the second Mass.

Perpendendum est quod secundam Missam applicando pro confratribus defunctis, sacerdos eleemosynam nec directe nec indirecte percipit. Non directe, quia in facto nihil recipit; non indirecte, nam ad ipsam applicandam adstringitur non iustitiae sed charitatis vinculo.

But the Congregation was not unaware of the arguments for the view that, in the circumstances under consideration, the priests did receive a stipend for their second Mass—at least indirectly, inasmuch as by applying this Mass for deceased members they escaped the obligation of making the application either personally on some other day (for which they might have a stipend),

[1] Cf. Lehmkuhl, *Th. Mor.*, ii, n. 216. [2] *De Sac.*, i, n. 735.
[3] Cf. *A.S.S.*, xi, pp. 283–4.

or through another priest to whom an offering would have to be given.[1]

The whole question was discussed again and at greater length in a reply given by the Congregation of the Council in 1887.[2] In the doubt submitted for decision, it was pointed out that priest-members of a certain association were bound to offer Masses for deceased associates and that this obligation was regarded as being one of justice, 'quae obligatio ex iustitia habetur.' Nevertheless, some priest-members discharged the obligation by their second Mass when they binated (the first having been already offered *ex titulo iustitiae*, of course). It was asked if this procedure were lawful. It seemed to violate the law forbidding the acceptance of a second stipend. 'Se liberare enim per binationem a Missa quae debetur ex iustitia, est quasi stipendium sumere pro Missa binationis.' The arguments on both sides were expounded. On the one hand it was clear that the law forbade the discharge of two obligations in strict justice or, better, forbade the acceptance of a stipend for applying the second Mass by a binating priest. And the priests, regarding whose procedure the question was submitted, did seem, at first sight at least, to be bound in justice to apply the Masses for deceased members in virtue of the innominate contract *facio ut facias*. Thus there existed reciprocal duties between the members :

Unde vera inter eos vicissitudo habetur sicut monet Episcopus . . . unde celebratio Missarum pro defunctis suae congregationis gratuita nullo pacto dici potest.

But, on the other hand, it was argued that previous decisions of the Congregation had allowed priests to apply their second Mass, when binating, in fulfilment of their obligations towards deceased members. The purpose of the law prohibiting the acceptance of a stipend for the application of his second Mass when a priest binates was to preclude the danger of unwarranted gain and scandal.

At vero ex mutua officiorum vicissitudine, in memorata congregatione vigente, haec incommoda nullo modo apparent. Imo e contrario. Opus enim caritatis erga confratres exercetur, pium itaque et sanctum, necnon in aedificationem populi, quatenus innotescat, convergens. Ad haec confratres

[1] 'Saltem indirecte videtur eleemosynam percipere, dum applicans Missam pro confratre sacerdote, satisfacit obligationi cui si per se non satisfaceret vel alio stipendium rependere deberet ut Missam illam celebraret, ad quam ipse ex obligatione tenetur dando suum nomen praedicto sodalitio vel saltem eleemosynam Missae amittere debet.'—*A.S.S.*, loc. cit.
[2] *A.S.S.*, xx, pp. 35–40.

nullam neque directam neque indirectam materialem utilitatem seu temporale lucrum ex suo opere percipere videntur.

And so an affirmative reply was given to the question asked, and it was added :

Ex quibus colliges sacerdotem, qui binat, posse secundam Missam applicare pro sodali, erga quem tenetur ex lege caritatis, potius quam ex lege iustitiae ; quia ex hac concessione integra manet Ecclesiae disciplina, quae non sinit pro secunda missa eleemosynam accipere.

Following the lines of these and other replies, the authors generally teach that priest-members of societies in which there is an obligation to say Mass for their fellow-associates may discharge this obligation by a second Mass when they binate—even though they have already applied their first Mass *ex titulo iustitiae*. For all that, a certain inconsistency is observable. Gasparri, for instance, holds that the priest-members are bound in justice to apply the Masses :

Socii viventes non ex sola fidelitate, sed ex iustitia ratione quasi contractus tenentur pro socio defuncto Missam applicare.[1]

Yet he regards[2] the obligation as being only *sub levi*. Earlier[3] he states that, in cases of bination, a priest may discharge only an obligation of charity—'quasi obligationem solius caritatis.' Yet, in this same context, recalling the replies of the Congregation of the Council, he allows priest-members of societies to fulfil their obligation towards fellow-members by their second Mass. Cappello, likewise, considers[4] that priest-members are bound in justice in virtue of an onerous promise which is a bilateral contract. And, in his opinion, the obligation is grave. But it can be fulfilled by a second Mass when the priest binates—notwithstanding the fact that it is *ex titulo iustitiae*.[5] While Cappello seems to regard the situation as somewhat exceptional, it is clear that he thinks that the discharge of *all* obligations in justice by his second Mass is not forbidden to a binating priest. In reply to the question : 'Num obligationi ex iustitia (satisfacere possit sacerdos per alteram Missam) ?' he says : 'Certa ab incertis distinguenda sunt,' and then lists certain cases in which the obligation (of justice) can be satisfied by a second Mass.[6] Vermeersch–Creusen, to quote one other authority, uses pointedly guarded language.[7]

[1] *De Eucharistia*, n. 644.
[2] Loc. cit.
[3] Op. cit., n. 402.
[4] Op. cit., n. 699.
[5] Op. cit., n. 735.
[6] The first case listed is that under discussion here. Cappello adds : 'Probabilius etiam beneficiatus, qui debet applicare pro fundatoribus diebus dominicis aliisque festis de praecepto, si aliquam paroeciam regat potest in die binationis unam Missam applicare pro populo, alteram vero pro fundatoribus.'
[7] *Epit. I. C.*, ii, n. 105.

Non licet . . . una Missa obligationi iustitiae, titulo oneroso susceptae, qualem parochus habet, satisfacere et alteram dicere pro stipendio.

In a footnote to this we read :

Consulto addimus 'titulo oneroso susceptae,' quia qui se titulo gratioso ex iustitia obligaverit, istam obligationem plus vel minus ample assumere possit.

What we have written here will have indicated that it is far from easy to define exactly the nature of the Mass obligations assumed by priest-members of societies like the charitable Fund mentioned by our correspondent. The obligation seems to be more than one of charity, more than one of fidelity or veracity based upon a gratuitous promise. There appears to be some kind of onerous and bilateral agreement. There is reciprocity. We have noted Gasparri's reference to a quasi-contract giving rise to obligations in justice, and he means strict justice. Yet, if the obligations in question are in strict justice, we are faced with an anomalous situation on the usually accepted interpretation of canon 824, § 2. Perhaps the anomaly can be avoided by an interpretation of the canon along lines hinted at earlier. We suggest that the law simply means that a priest may not discharge two stipend obligations by his Masses when he binates—whether the stipend be received *directly or indirectly*. In other words, the obligation in justice contemplated in canon 824, § 2, is solely that which arises from a stipend, directly or indirectly offered and accepted. The discharge of other obligations—even of other justice obligations—is not prohibited. In the case under consideration, of priest-members who are bound to apply Masses for deceased associates, there is no question of a stipend being offered and received either directly or indirectly. The obligations of these priests may be in justice. Some think it is easier to hold that they are. The priests may have intended to bind themselves gravely in strict justice. Even so, in our view, it can be held that the Mass obligations do not arise from the source contemplated in canon 824, § 2, and hence their discharge by a second Mass is not prohibited : is, therefore, permissible. For, if we may borrow a phrase used in one of its replies by the Congregation of the Council : 'Notum enim in jure est, quod illud censetur permissum quod non est a jure prohibitum.'[1]

Some solution such as we have suggested seems to lie behind Cappello's distinction and the guarded language of Vermeersch–Creusen. Gasparri, too, has a suggestive phrase. Having noted

[1] Cf. *A.S.S.*, xi, p. 284.

that priest-members of societies can discharge their obligation towards deceased fellow-members by applying for them the second Mass when binating, he adds :[1]

In genere nos non possumus hac applicatione (secundae Missae) satisfacere aliis obligationibus titulo lucrativo.

In the replies of the Congregation of the Council from which we have quoted, a hint of the same solution can, we think, be traced. The fundamental argument for the reply given in 1878 was that, in the case submitted, a stipend was not received, directly or indirectly, for the second Mass. In the reply of 1887, the same point is made and we have the further instructive statement :[2]

Proinde in secunda Missa satisfieri nequent obligationes quae ex iustitia habentur, prout sunt Missae ex manualibus stipendiis beneficiorum aut capellaniarum onera.

It will be noticed that the examples given of obligations in justice are those which arise from stipends, directly or indirectly received.

(i) From all this it will at least be clear that the obligations of the priest-members of the charitable Fund to apply Masses for deceased fellow-members are very different from the obligations which arise from the acceptance of a stipend. We agree with our correspondent that the Mass obligations of the priest-members are neither 'manual' nor 'foundation.' They form a class apart. In our opinion the time limit usually laid down in accordance with canon 834, § 2, and the decree *Ut debita*[3] does not apply to them. It suffices, we think, that the obligations assumed under rules (*b*) and (*c*) be discharged any time before the end of the year, before what our correspondent calls 'the day of reckoning.' We presume, of course, that there is no other rule binding the priest-members to say the Masses arising from rules (*b*) and (*c*) within any specified period. The obligations assumed under rule (*a*) should, *per se*, be discharged each month—not because they are manual Masses but because the rule prescribes this time limit. This prescription, however, imposes, at most, a light obligation, so that any reasonable cause would excuse from guilt. But the Masses should, in any event, be said within the year.

(ii) The priest who inadvertently discharged in January all his monthly Mass obligations under rule (*a*) is, in our view,

[1] Op. cit., n. 402.
[2] *A.S.S.*, xx, p. 36.
[3] We do not wish to suggest by this remark that it is quite certain that the prescriptions of the decree are obligatory under the Code discipline.

bound to nothing further in that year. It is not absolutely clear that his obligations, in the first instance, are in strict justice. Moreover, he is in no sense *ditior factus* by the procedure adopted. There was no malice in that procedure. The priest acted through inadvertence. It is true that new members may have been admitted to the Fund in the months subsequent to January, but it may well be that they were included under the priest's intention in the sense that he may have offered his Masses for all the members of the Fund in that particular year.

APPLICATION OF THE SECOND MASS IN CASES OF BINATION

After he has said his first Mass for which he had a stipend, a priest who is binating is offered a *stipendium pingue* for the second Mass which he is about to say. He accepts the stipend, offers the second Mass for the intentions of the donor and offers a further Mass, for the same intentions, during the following week. Has he more than satisfied the obligation he undertook or has he satisfied it at all ?

CONCERNED.

In accordance with the approved customs and ordinances of the Church, a priest may accept an alms or stipend for the celebration and application of Mass.[1] But the Church has always been most anxious to prevent the association of any suggestion of simony or of the appearances of sordid gain with the celebration of Mass and the traditional institution of Mass offerings. It is this anxiety which has motivated many of the ecclesiastical laws that regulate the acceptance and discharge of stipend obligations. It is laid down in the Code of Canon Law[2] that a priest who celebrates more than one Mass on a particular day may not discharge more than one obligation in justice by the application of his Masses on that one day. Consequently, if the first Mass has been applied in discharge of a stipend obligation or *pro populo* (both of which are obligations in justice) the priest may not accept a stipend for the application of a subsequent Mass on that day. The violation of this regulation is a grave sin. Nevertheless, if the priest, in violation of the law, does apply his second Mass in discharge of a stipend

[1] Canon 824, § 1.
[2] Canon 824, § 2. The three Masses which a priest may say on Christmas Day are expressly exempted from this law. An obligation in justice may be discharged by the application of each of these Masses.

obligation, this discharge is *valid* and the strict requirements of justice are fulfilled.

The difficulty mentioned by our correspondent may arise from time to time. That is to say, a priest who has already discharged an obligation in justice by the application of his first Mass may unexpectedly be offered a stipend before his second Mass which he is asked to apply for the intentions of the donor. We see no objection to the procedure described by 'Concerned' provided the priest did not intend to discharge the stipend obligation by his second Mass. There is nothing whatsoever to prevent a priest from applying his second Mass gratuitously or in charity for the intentions of the donor, leaving over for subsequent discharge the justice obligation of the stipend. The donor can have no reasonable objection to this. In fact he benefits by the procedure. Two Masses, including the second Mass specifically requested, are applied for his intentions. When the justice obligation of the stipend has been subsequently discharged, the priest has fully satisfied the onus undertaken by him. In view of the canonical prohibition already cited, it cannot be said that the priest has, in law, done any more than this. As explained earlier, to have applied his second Mass in discharge of the stipend obligation would have been a grave violation of ecclesiastical law. It is true that in the procedure described by our correspondent, the priest deprived himself of the opportunity of satisfying some other obligation in charity, piety or gratitude by the application of his second Mass when he binated. But if he elects to offer the second Mass for the intentions of the donor of the stipend, he must accept this deprivation. He may, however, adopt the alternative course of explaining to the person who offers the stipend for the second Mass that it is not possible to apply this Mass for his intentions. The donor may be quite satisfied to have the Mass applied on a subsequent day. If the priest does not wish to make this explanation, or if he is anxious to accommodate the special desire of the donor to have the Mass applied on that particular day—say by reason of the occurrence of a death or anniversary or of some urgent need—the procedure mentioned in the query provides a satisfactory solution and one which accords with the requirements of canon law.

APPLICATION OF MASS FOR NON-CATHOLIC; ACCEPTANCE OF A STIPEND FROM NON-CATHOLIC

War conditions have brought many changes over here, and these changes often give rise to new problems. Here is a minor problem—begotten, I think, by war conditions.

A non-Catholic requests a priest to say Mass for a number of his friends. Some of these friends are not even baptized. Most of them are living but a few were killed in an air raid. The non-Catholic offers a stipend. He is good-natured and well-intentioned, but very superstitious, and I feel and fear that he regards the Mass as a form of superstition. I could give you reasons for that fear, but it is a long story, and I shall spare you. May the priest accept the stipend and offer the Mass *ad mentem donantis* ?

PEREGRINUS.

The Mass is one of the principal means whereby the fruits of the redemption wrought by Christ on Calvary are brought to the souls of men. The Sacrifice of the Cross was offered for all men and the Mass is the unbloody renewal or representation of that same sacrifice. *Per se*, then, the Mass may be offered, or rather its ministerial fruits may be applied for all whom they can benefit. In the nature of things, the Mass cannot now benefit those already damned, or infants who have died without Baptism. Nor can it, in any true sense, be offered for those who are certainly in heaven, for example, for canonized saints.[1] But inasmuch as the Mass can benefit, directly or indirectly, all other men—*per se* it may be offered for them all. In ecclesiastical law we find what are wrongly called modifications of that general principle.[2] In fact, the modifications concern not the principle, but the manner in which Mass may be offered in particular circumstances.

It is stated in canon 809, that it is permissible to apply Mass for all the living and for all the souls in Purgatory—with due regard for the presciption of canon 2262, § 2, n. 2. This prescription deals with those who are excommunicated, for whom, we are told, priests may apply Mass privately, provided there is no scandal. If there is question of *excommunicati vitandi* Mass may be offered only for their conversion. By 'privately' in this context is meant, we think, that the fact that the Mass is being applied for those excommunicated is kept secret, is not published or publicly announced. 'Privately,' then,

[1] Cf. Cappello, *De Sac.*, i, n. 615; Lehmkuhl, *Th. Mor.*, ii, n. 245, holds the opposite view.
[2] Cf. Prümmer, loc. cit., who speaks of 'limitations' of the general principle.

means 'quietly,' without show or display or announcement of its application. St. Alphonsus and many other theologians seemed to think that 'privately' implied that the priest offered the Mass merely in his own name.

Sacerdos eatenus offert Missam privatim, quatenus est opus proprium suae privatae personae, non autem nomine Ecclesiae vel ut minister Christi.[1]

This view is passing strange, because the priest can only offer Mass in the name of the Church and as the minister of Christ. 'Idem nunc offerens sacerdotum ministerio, qui seipsum in cruce obtulit, sole ratione offerendi diversa'—as the Council of Trent[2] has it. The Mass is and always must be an act of public worship—no matter what are the circumstances in which it is celebrated; but its application may be private in the sense explained. When this privacy is observed, generally speaking, there will not be any scandal.

The group of friends for whom the non-Catholic wishes to have Mass offered may be made up of Catholics, heretics, schismatics and infidels. Prescinding, for the moment, from the suspicion of superstition, there would be, needless to say, no difficulty about accepting a stipend from a non-Catholic for the application of Mass for Catholics, living or dead. Heretics and schismatics are excommunicated,[3] but Mass may be offered for them privately provided there is no scandal. It may be assumed that none of those for whom the non-Catholic in the case wishes to have Mass applied are *excommunicati vitandi*. Consequently, as can be inferred from canon 2262, § 2, n. 2, the Mass may be offered not merely for their conversion but for any lawful purpose, for temporal as well as for spiritual benefits, for the living and the dead. In fact, if, before death, these heretics or schismatics gave signs of repentance they may be given ecclesiastical burial and Mass might be offered publicly for them.[4] What we have said in regard to the offering of Mass for heretics and schismatics is also true, for the most part, of applying Mass for infidels. Strictly speaking, infidels, being unbaptized, are not subject to the laws of the Church[5] and are unaffected by her penalties. They are not excommunicated and, therefore, the prescription of canon 2262, § 2, n. 2, does not apply formally to their case. But it is held,[6] and rightly we think, on the analogy of the case of heretics and schismatics, that Mass may be applied for infidels only privately and provided there is no scandal. This, too, was the pre-Code

[1] St. Alphonsus, *Th. Mor.*, l, vi, n. 308.
[2] Cf. Trent, Sess. xxii, cc. 1 et 2.
[3] Canon 2314, 1, n. 1
[4] Cf. canon 1240, § 1.
[5] Canon 12.
[6] Cf. Cappello, op. cit., n. 618.

teaching based upon the replies of the Roman Congregations. Mass may be offered for any lawful intention of the infidels and not merely for their conversion; it may be offered for infidels, living or dead. Theologians are not clear as to how the fruits of the Mass can be applied to infidels who have died. Some think the application may be only indirect and conditional. Lehmkuhl, however, writes:[1]

Etsi dubium sit, sintne *non-baptizati* in purgatorio existentes capaces *satisfactionis ex opere operato*, tamen certum est eos *alia via*, mediante Missa, satisfactionum participes effici posse sive directe sive indirecte. Capaces nimirum utique sunt communicatione *satisfactionum personalium* quas iustus pro altero iusto offerre potest, quia ad id nihil est, quod videatur requiri, nisi commune vinculum caritatis et gratiae: quare Missa ut opus eximie bonum personale sive sacerdotis celebrantis sive fidelium assistentium iis prodesse potest.

Theologians raise another question in this connection. It is whether a *Missa de requie*, in which the deceased's name is inserted in the appropriate prayer, might be said for an infidel or for a heretic or schismatic who, before death, did not give some signs of repentance? It is held by some[2] that, in these circumstances, to insert the name in the liturgical prayer is publicly to associate the deceased with the sacrificial act—and is a violation of the Canon Law which allows only the *private* celebration of Mass. While, in our opinion, the foregoing view is based upon an incorrect interpretation of the meaning of 'private' in the prescription of canon 2262, we agree that, in practice, it is better not to insert the deceased's name in the prayers of the Mass, as this procedure might possibly be equivalent to the publication of the fact that the Mass is being applied for a non-Catholic and might thus give scandal. In the words of Cappello:[3]

In praxi consultius erit ut haec Missa cum speciali oratione pro tali defuncto semper omittatur.

The conditions of private application and the avoidance of scandal can easily be verified in the circumstances of the case we are considering. Very often these are the only conditions of which there will be question. In which case it can be said, then, that, if the priest takes the necessary precautions, it would be lawful for him normally, or as a rule, to apply the Mass privately for the friends of the non-Catholic donor—whether

[1] Op. cit., n. 243.
[2] Lehmkuhl, loc. cit., writes: 'Specialem Missam de Req. potissimum cum speciali oratione pro hoc defuncto (qui absque unione externa cum Ecclesia obiit) fieri mihi non probatur siquidem haec nunquam non publica actio est.' Cf. Marc, *Instit. Alp.* n. 1601.
[3] Loc. cit.

they are heretics, schismatics or infidels, whether they are living or dead. And since the presumption is that none of these friends is an *excommunicatus vitandus*, the Mass might be offered for any lawful intention, for temporal as well as for spiritual favours. We have written above that normally, or as a rule, the priest may apply the Mass for the intentions requested[1]—provided the two conditions mentioned are verified. Sometimes, however—particularly when the donor of the stipend is a non-Catholic—a further difficulty may arise for consideration. In the particular case before us this difficulty does arise by reason of the mental attitude of the donor. The priest suspects, and apparently for good reasons, that the non-Catholic who requests the celebration regards the Mass as a superstitious rite. In 1865 the Congregation of the Holy Office was asked the following question :[2]

Utrum liceat sacerdotibus Missam celebrare pro Turcorum aliorumque infidelium intentione et ab iis eleemosynam pro Missae applicatione accipere ?

The reply given was :

Affirmative, dummodo non adsit scandalum ac nihil in Missa specialiter addatur ; et quoad intentionem, constet nil mali aut erroris aut superstitionis infidelibus eleemosynas offerentibus subesse.

It is clear that if the donor thinks that the Mass or the giving of a stipend for Mass is a form of superstition it would not be lawful for the priest to accept the stipend and offer the Mass *ad mentem donantis*. In the particular circumstances which we are considering here, since the non-Catholic has good intentions, a few judicious words of explanation on the part of the priest may clear away the atmosphere of superstition. The priest should attempt some such brief explanation of the Mass as a sacrificial act of worship and of the meaning of stipends for Masses. If the explanation is successful in removing the element of superstition, the priest may accept the stipend, and apply the Mass privately for the donor's intentions.

MASS OBLIGATIONS UNDER A WILL—THE NUMBER, THE AMOUNT OF THE STIPEND

A priest in Ireland is bequeathed £100 for Masses by a resident in England. Owing to insufficiency of assets all the legacies of the will are reduced by twenty-five per cent. Is the priest justified in accepting £75 as a discharge of the legacy? The will does not mention

[1] Cf. St. Alphonsus, op. cit., n. 309; Gasparri, loc. cit.
[2] *Collectanea*, i. n. 1274.

the number of Masses to be said nor the honorarium for this particular bequest—though for other bequests contained in it five shillings is stated as the honorarium. From this fact, as well as from the association of the deceased and his relatives with this parish, the priest beneficiary believes he can lawfully assume that five shillings is also the honorarium in the case of his bequest.

Mostly what the writer seeks information about is : does the civil law give preference to charitable bequests so that they should be paid to the detriment of other bequests under a will? He is aware that when the number of Masses is stipulated, it can be reduced only by the Holy See ; also, as stated by Cappello (i. n. 718), when the honorarium is mentioned and the sum bequeathed becomes diminished, *sine culpa* on the part of the legatee, and before being paid over to him, that the extent of the obligation is determined by the number of honoraria. Is then the obligation in this case discharged by offering the number of Masses corresponding to the honoraria of the reduced legacy ? The question seems beyond doubt if the civil law does not place charitable bequests in a privileged position.

READER.

Before briefly discussing a number of points raised in our correspondent's letter, we would say in reply to his principal question that, in the circumstances given, the priest is bound to offer three hundred Masses in accordance with the intentions of the deceased. In other words he is only bound to the extent of the legacy of £75 which he actually received, and he may legitimately presume that the testator intended the honorarium to be five shillings for each Mass.

In regard to the first point : the civil law does not grant any privilege to pious bequests, in the sense that they may be paid prior to the other bequests ; or that pious bequests may be paid in full and the other bequests reduced when the estate cannot meet all the legacies devised. In fact—it is of interest to note—it was only in recent times that the validity of a bequest for Masses for the dead was recognized by the English courts.[1] Until the year 1919 such Mass bequests were held to be covered by the law which voided legacies for superstitious uses.[2] But in that year a judgment given, on appeal, by a majority in the House of Lords, completely reversed previous decisions and declared that bequests for Masses for the dead were valid in law. The reason given for this judgment

[1] The bequest of which there is question here is governed by English law.
[2] This law was a statute of Edward VI passed in 1547 and which was known as the Statute of Chantries or the Statute of Superstitious Uses. The statute of Edward VI did not apply in Ireland ; nor was any similar statute enacted by the Irish legislature.

was that Masses for the dead ceased to be a superstitious use when Catholicism came to be tolerated openly in England.[1] The civil law, then, will only uphold the payment of a bequest of £75 for Masses in this case. The priest cannot be held responsible and be penalized for this provision of law, or for the failure of the estate to meet fully the amounts bequeathed. Canon 829 imposes no obligation on a priest in regard to stipends which have not been already received by him.[2] In the case under consideration the priest receives only £75. The acceptance of this sum does not imply the reduction of Mass obligations in the sense in which such reduction is reserved to the Holy See by canon 1517, § 2.

Our correspondent mentions the teaching of Cappello; but, in the reference given, that author is dealing with the reduction of revenue for which *foundation* Masses are to be applied. We cannot trace in Cappello's work any similar distinction in regard to manual Masses, but, we think, it might well be made in that context also.

Regarding the second point, the amount of the stipend: as our readers are aware when a donor gives a sum of money for Masses, but does not specify the number, the honorarium for these Masses is that determined by the law or custom of the place in which the donor was living—unless it may be presumed legitimately that a larger honorarium was intended.[3] In the case given by our correspondent there are many indications from which it may duly be concluded that the testator intended to give a stipend of five shillings for each Mass—though the legal or customary stipend in his place of residence may have been smaller.

BEQUESTS FOR THE CELEBRATION OF MASSES IN A CHURCH IN IRELAND

A priest on the English mission occasionally receives Mass offerings from priests in Ireland. In some instances the person for whom these Masses are offered has stipulated in his will that they are to be said in a public church in Ireland. However, I have been assured that these words are a mere legal formality and that, consequently, there is no real obligation to have the Masses said in Ireland. I should be grateful for your views on the matter.

V. O. R.

[1] Cf. Davis, *Moral and Pastoral Theology*, i, p. 144; ii, pp. 372–3.
[2] The canon refers only to *eleemosynae iam perceptae*. [3] Canon 830.

In the last century the question as to whether bequests for Masses were valid and charitable was raised frequently before the civil courts in Ireland and in England.[1] A judgment by Lord Manners in 1823 upheld the validity, under the law in Ireland, of a bequest for Masses. And this judgment was consistently accepted in subsequent cases. But the further point remained: were bequests for Masses charitable and, consequently, exempt from legacy duty and not voided by the rule against perpetuities? In 1875 Chief Baron Palles held that bequests for Masses were not charitable within the meaning of the law, on the grounds that the celebration of the Masses did not confer a public benefit.[2] Baron Palles, however, suggested in his argument that if the will had prescribed that these Masses be celebrated in public in a specified church in Ireland the bequest would be valid. Subsequently, in 1906, in the case *O'Hanlon* v. *Logue*, this decision of 1875 was disaffirmed and it was declared that a bequest for the celebration of Masses in Ireland was a valid charitable bequest—irrespective of the manner of their celebration.[3]

We mention all this to indicate the historical reason why the phrase 'to be celebrated in a public church in Ireland' (or some such phrase) is so often found added to a will clause providing for a bequest for Masses. As we have seen, for a period this phrase was held to be necessary in order to have the bequest recognized as charitable at law. The phrase was inserted then not, as a rule, to express the will of the testator in regard to the place or mode of celebration of the Masses but simply to safeguard the bequest. Even though this safeguard is no longer necessary the custom of inserting the phrase has remained to some extent.

When, then, the phrase is added merely as a legal safeguard—and this is nearly always the case—the fulfilment of the condition implied is not necessary for the due discharge of the Mass obligations. If, however, the condition that the Masses be celebrated in a church in Ireland were laid down by the testator as expressing his own wish in the matter, then, of course, the condition would have to be fulfilled by the priest who accepts the bequest.

[1] Cf. Walsh, *Archbishop Walsh*, pp. 440–52.
[2] Walsh, op. cit., pp. 442–3.
[3] Ibid., p. 445.

TRANSFER OF MASS STIPENDS

A reply was given in the *I. E. Record* (December, 1938) concerning the fulfilment of Mass obligations the stipends of which had perished without any fault on the part of the priest recipient. It was stated in the reply that if the priest wishes to have those Masses said by another priest he must transfer the whole of the original stipends. At a theological conference recently, objections were raised against this solution. It was maintained that it would suffice to have the Masses said at a smaller stipend, because the canons do not adequately cover the case in question. It appears to me that the answer in the *I. E. Record* is correct, because (*a*) the canons do cover the case, and (*b*) the canons must be interpreted according to the Decree *Ut debita* —one part of which reads : ' Si ex eleemosynae dispersione . . . aut ex aliqua qualibet etiam fortuita causa in irritum res cesserit, committens de suo supplere debet,' and elsewhere in the decree it is clear that he must supply *ex integro*. In the reply given it was merely stated that the stipends must be transferred in full. Will you kindly answer the objection raised ?

SHANG.

The case discussed in the *I. E. Record* (December, 1938) was that of a priest who transferred a number of Mass stipends to ' a gentleman in clerical garb ' who was armed with the usual letter of sanction from his ' bishop ' and also from the local Ordinary. It transpired afterwards that this gentleman was not a priest at all. The correspondent asked what his obligations were in regard to the stipends. Was he still bound to have the Masses said, and, if he were and wished to transfer the obligations, was he bound to transfer the full amount of the original stipends ? An affirmative reply was given to both parts of the question. It is the reply to the second part which concerns us here.

It is perfectly clear from the canons of the Code that the obligations assumed by the acceptance of Mass offerings do not cease even though the offerings should have perished without any fault on the part of the recipient.[1] It is equally clear that, in transferring manual stipends, the whole amount of each stipend must, as a rule, be given to the transferee. Two exceptions to the general rule are mentioned in the canon. The donor may expressly permit the retention of part of the stipend, or it may be certain that the amount in excess of the diocesan stipend was given for personal reasons.[2] In those cases a smaller stipend than that received may be transferred. Apart from the exceptions, theologians maintain that to retain part of a

[1] Canon 829.

[2] Canon 840, § 1.

manual stipend is a violation of commutative justice involving the obligation of restitution to the transferee of the amount deducted. Their argument is that the only valid title to the stipend is derived solely from the obligation of celebrating the Mass, and they conclude that only the celebrant has this title.[1] The argument is used in the Decree *Ut debita*,[2] and in a reply of the Congregation de Propaganda Fide to doubts raised in regard to the decree.[3]

In canon 840 no exception is made in favour of the case contemplated in canon 829. *Ubi lex non distinguit nec nos distinguere debemus*. The same remarks may be made in regard to the provisions of the Decree *Ut debita*—in the light of which, according to canon 6, we must interpret the corresponding canons of the Code. In the decree (par. 6) we read :

. . . Adeo ut si ex eleemosynae dispersione, ex morte sacerdotis aut ex alia qualibet fortuita causa in irritum res cesserit, committens de suo supplere debeat et Missis satisfacere teneatur.

Later (par. 9) we have :

Decernitur . . . eleemosynam numquam separari posse a Missae celebratione sed celebranti ex integro et in specie sua esse tradendam.

Such is, as we see it, the case for the answer given in the *I. E. Record* (December, 1938).

At the same time, it is our personal opinion that a strong case can be made for the more lenient view which would allow a priest to transfer a smaller stipend for manual Masses when the original offerings have perished without any fault on his part. It is said that when, apart from the recognized exceptions, a priest retains part of the manual stipends for Mass obligations transferred he is unjustly *ditior factus*. This seems to be the teaching of the natural law. In other words, it is maintained that canon 840, § 1, only makes precise a provision of the natural law. But not all will admit that this provision of the natural law is certain. When we combine canon 840, § 1, with the case envisaged in canon 829, does the resultant obligation arise from natural law ? If the original offerings have perished without fault and the priest transfer a smaller stipend for the Masses he is not unjustly *ditior factus*, he is not *ditior factus* at all. Nor is he the unjust, true and efficacious cause of loss to the transferee. It is said, of course, that *res perit domino*. But it may be replied that if the title to the stipend is derived solely

[1] Cf. Cappello, *De Sac.*, i, n. 701.
[2] May, 1904, *A.A.S.*, xxxvi, p. 674.
[3] February, 1905, *A.A.S.*, xxxviii, p. 17.

from the celebration of the Mass, the recipient is not the real owner until he has discharged the obligation. Cappello, treating of canon 829, says[1] that the obligation remains 'quia res perit domino, manente equidem obligatione ex contractu suscepta.'

Now, if the recipient has become the owner of the stipend there seems to be no reason from natural law why, in the circumstances of canon 829, he cannot enter a new contract and transfer the obligations for a lesser stipend. If, on the other hand, he is not the owner—but rather someone like a *mandatarius* —there is no obligation from natural law obliging him to make good the loss of what has perished without fault on his part. Gasparri, among others, has an interesting statement on this point. He says:[2]

> Obligatio celebrandi et applicandi Missas non urget si, absque culpa illius qui onere gravatur, bona aut bonorum reditus deficiunt. . . . Haec, servatis servandis, etiam Missis manualibus applicanda esse putamus; nempe si, absque ullius culpa, pecunia ex toto vel ex parte periit, e.g., furto sublato, etiam obligatio celebrandi Missas ex toto vel ex parte cessavit. Quod si culpa non abfuit, onus Missarum seu fundatarum seu manualium nec cessat nec minuitur.

This statement was published in 1897, and, while the view expressed can no longer be maintained in face of the provisions of the *Ut debita* and canon 829, it is surely a clear indication that the natural law was not regarded as imposing any obligation in the case in question, especially as later,[3] on a cognate matter, Gasparri invokes an argument from the natural law for the essential connection between the stipend and the celebration of the Mass—because this is the *mens fidelis dantis*.

The positive law which deals with the question of stipends, and in particular with the question at issue here, seems to have a twofold purpose. The teaching contained in canon 840, § 1, is ancient. We can trace it back to the *Ut debita*, to decrees of Benedict XIV, Innocent XII, to the proposition condemned by Alexander VII, to the decree of Urban VIII.[4] The purpose of this successive legislation was to exclude from the practice of giving and accepting Mass stipends *quamlibet speciem negotiationis et mercaturae*.[5] The prescription expressed in canon 829 is of late origin. We find it for the first time in the Decree *Ut debita* (1904). None of the writers prior to this seems aware of any similar prescription of positive law nor do they refer to the obligation implied. This is passing strange if the obligation

[1] Op. cit., n. 679.
[2] *De Eucharistia*, n. 588.
[3] Ibid., n. 599.
[4] Cf. Lacroix, *Th. Mor.*, 1, 6, p. 2, n. 63, et seq.
[5] Cf. canon 827.

is of natural law. The presence of canon 829 is, in a sense, unexpected. Canon 828 has declared the obligation of celebrating and of applying Mass for each stipend—however small —which has been accepted. Should not this general rule, rooted in the natural law, cover the matter of canon 829? It should—unless on general principles the situation envisaged by canon 829 would be regarded as an exception. This we believe to be true, and therefore the provisions of canon 829 were necessary. For the purpose of these canons was to ensure that all Mass obligations contracted by the acceptance of offerings should in *every case* be discharged. Canon 829 does not contain the technical word 'stipend,' but the most general term *eleemosynae*. And the canon merely states that the obligations remain even when the offering has perished without any fault. The same is true of the relevant passage of the Decree *Ut debita*.

The twofold purpose of the law is adequately fulfilled even if a lesser stipend is transferred in the case covered by canon 829. There is no *species negotiationis vel mercaturae*. All of the Mass obligations are discharged. The purpose of canon 829 is not punitive. Punishment presupposes guilt. Yet canon 829 is a *lex odiosa* even when given a liberal interpretation. It is doubly so when it is strictly interpreted and linked up with canon 840, § 1. *Odiosa sunt restringenda*. A restrictive interpretation fully secures the purpose of the law, and seems more in accordance with the principles of equity and with the canonical and theological teaching on kindred matters. It is clear, for instance, that, if the Masses are quasi-manual, *nisi obstet mens fundatoris*, one may retain part of a large stipend, transferring only the amount of the diocesan stipend where the Mass is said, if the large stipend takes the place of part of the revenue of the benefice.[1] This latter, unless the contrary is clear, may always be presumed. In order to make good the loss of manual stipends which have perished without fault a priest might well have to call upon the *dos beneficii*. Again, it is interesting to note that, if the sum set aside for the foundation Mass offerings perish without fault on the part of those concerned, the Mass obligations cease.[2] Finally, the writers admit exceptions to canon 840, § 1, which are not contained in the law itself.[3]

We have searched the writings of very many theologians and canonists for a discussion of the question raised by our correspondent. Our search has been for the most part a vain one.

[1] Canon 840, § 2. [2] Cappello, op. cit., n. 718. [3] Cf. ibid., n. 703.

Apart from the writer in the *I. E. Record* (December, 1938) not one of them, to our knowledge, formally correlates canons 829 and 840, § 1. This omission is surprising and disappointing. On the one hand it may be said that the writers do not state that there is an obligation to transfer the full manual stipend when the recipient has, through no fault of his own, lost the original offerings. But, on the other hand, it may perhaps be said that it was not necessary for them to make such a statement. In the *Ut debita*, indeed, we find it stated that the priest, whose stipends have perished, *de suo suppiere debet*; but there is no direct statement that in this case he must transfer the original stipend in full. Again, it may be that Cappello, in a passage which we have quoted earlier, implies that there is an obligation of transferring the full stipends—even when they have perished without fault. But he does not say this—and we have discussed his argument. Wouters alone, of the many writers we have consulted, touches the precise point at issue. He quotes canon 829 and continues:[1] 'Potest tamen qui eleemosynam v.g. amisit, curare ut alius pro minore stipendio Missam celebret.'

Pending an authentic decision, or a fuller examination and discussion of the problem, we consider, for the reasons outlined in this reply, that the view expressed by Wouters is acceptable.

TRANSFER OF MASS STIPENDS TO PSEUDO-CLERIC

Since the reply to the above query appeared in the *I. E. Record* (December, 1938), opinions have been elicited from the following: Father Michiels, Father Damen, *L'Ami du Clergé*, Father Cappello, S.J., Father Berutti, O.P., Canon Mahoney. The last three, men of standing in the theological world, set the victims of the pseudo-cleric free absolutely—hence the question of transfer does not arise. I enclose the full replies of Fathers Cappello, Damen and Berutti.

With regard to the word *sacerdotibus* of canon 838—so much stressed by the *I. E. Record* (December, 1938)—Father Berutti says: 'Fraudulentus enim ille deceptor merito *haberi poterat uti sacerdos* quum Ordinariorum testimoniis commendaretur' (Italics are Berutti's).

Father Damen's view corresponds with that given by you in an earlier reply. Father Michiels, on the other hand, binds the victims to the Masses and, in the case of transfer, to the full stipend (as the *I. E. Record*, December, 1938). The case was discussed in *L'Ami*

[1] *Th. Mor.*, ii, n. 224.

du Clergé (11 May, 1939, p. 304) on more or less the same lines as in the *I. E. Record* (December, 1938), with the same conclusion.

To sum up: Surely the opinion of an authority like Father Cappello is sufficient for the case, and more than sufficient when supported (independently) by Father Berutti, O.P.

GABRIEL.

We congratulate 'Gabriel' on the efforts he has made to elicit the opinions of theologians on this interesting case. We thank him for his courtesy in sending us the replies received from the authorities, Continental and others, whom he has consulted.

In the previous reply we have given our view on this question. We think that a priest who, in the circumstances mentioned, transferred stipends to the pseudo-cleric is still bound to the Masses, but that he may, if he wishes to transfer them, give a lesser stipend than that originally received. In the course of our reply we gave the arguments for the view advocated. There is no necessity to repeat these arguments at length here. We mentioned also in our previous reply that an extensive search of the writings of the theologians and canonists for a discussion of the case in point had been, for the most part, vain. We have, therefore, read the various replies sent by 'Gabriel' with very great interest. But we have found nothing in them that impels us to alter in any degree the view we have previously advocated. Father Damen supports this view. And we think, though 'Gabriel' thinks otherwise, that Father Michiels' reply might also be interpreted as supporting us. Father Wouters we have already cited in our favour.

We have made it clear in our earlier reply that we consider that there is no obligation from the natural law to discharge Mass obligations the stipends of which have perished without fault. But positive ecclesiastical law says not merely that all Masses must be discharged for which a stipend, no matter how small, had been given and accepted, but that the obligation remains even though the stipend has perished without fault.[1] Now, we think that canon 829 does apply to the case we are discussing, to the case, that is, in which the stipends are transferred, *bona fide*, to a pseudo-cleric. It is maintained by some that it does not. They say that, in this case, the stipends have not *perished*; that they have been *transferred* to another. But surely this is an undue restriction of the meaning of the word perished (*perierint*) in the context. If a Mass stipend

[1] Canons 828–9.

of £1 is stolen from a priest it really has not perished. It has passed into the hands of the thief, who may conceivably have four Masses said for it! But it has 'perished' as far as the priest from whom it is stolen is concerned, and he is still bound to the Mass. Similarly, when the stipend is transferred *bona fide* to a pseudo-cleric the stipend may be said to have 'perished' inasmuch as it is diverted from its purpose. It is, as it were, gone astray, separated from the conjoint obligation of its Mass. The fact that the transference has been made without fault does not alter the situation. This, indeed, is the situation provided for in canon 829. To sum up: The natural law seems to say that every individual stipend must have its corresponding Mass. Positive law adds that every individual stipend must have its corresponding Mass even though the stipend has perished without fault. It seems clear to us then—we wonder would 'Gabriel' deny it—that the Masses transferred to the pseudo-cleric must be supplied by somebody. The giving and acceptance of a stipend begets an obligation on the part of the recipient—an obligation which remains (*obligatio non cessat*) until it is discharged by the recipient or duly accepted by another priest.

The point raised by Father Berutti, and others, regarding the word *sacerdotibus* in canon 838 is interesting, but not convincing. The law says *priests*—not merely those who may rightly be regarded as priests. That they be priests is primary in the law.[1] The letters of commendation of their Ordinary come last in the canon as an alternative superadded condition. Transfer must be made to *priests* who fulfil certain conditions. The transferees are either priests or they are not. Letters of commendation from the Ordinary cannot make them priests. Now it seems to us to follow from the relevant canons that the responsibility for the due and proper transfer of stipends rests on the persons transferring. They should, therefore, see to it that all the conditions of the canons and other instructions are strictly verified. But a discussion of these points is not necessary here.[2]

[1] Canon 838 reads: 'Qui habent Missarum numerum de quibus sibi liceat libere disponere, possunt eas tribuere sacerdotibus sibi acceptis, dummodo probe sibi constet eos esse omni exceptione maiores vel testimonio proprii Ordinarii commendatos.'

[2] We desire, however, in passing, to direct the attention of our readers to a decree issued in January, 1930, by the Congregation for the Oriental Church. The decree forbids priests of the Oriental rite to collect stipends in 'Latin' dioceses without the express permission of the Congregation. When permission is given for collection in a specified area the Ordinaries of that area will be individually notified. Cf. *A.A.S.*, xii, 1930, pp. 108–10. Cf. Jorio, *Th. Mor.*, iii, n. 264.

We have maintained that the victims of the pseudo-cleric may, in transferring the Mass obligations, give a lesser stipend than that originally received. Some of the theologians referred to by 'Gabriel' will not agree with this view. But it seems to us a very reasonable and equitable interpretation or application of the law to the particular point at issue. For in our view there is no trafficking in Mass stipends. The person transferring the diminished stipend is not enriched by the total arrangement, nor is he the unjust, true and efficacious cause of loss to the transferee.

Apropos of 'Gabriel's' summing up in the form of a question: We were somewhat surprised to find Father Cappello favouring the view that the victims of the fraudulent priest are free from all obligation in regard to the Masses transferred. He has, of course, added the saving clause that recourse ought to be made to the Holy See for condonation. The reason for our surprise was that in his published treatise on the Eucharist, while not formally discussing the point, he seemed, as we remarked in the previous reply, to favour the view that the obligation remained. In answer to 'Gabriel's' question it may be recalled that the opinion of one or two theologians is of the same value as the arguments on which it is based. We hope we shall not be taken as reflecting upon the authorities quoted by 'Gabriel,' nor as advocating the principle that a problem of this kind can be solved by counting heads, but writers generally require for the external probability of an opinion that five or six weighty theologians consider it probable.

Father Michiels recalls that there were several cases of fraud, like that under discussion, in Belgium in recent years, and that Rome decided that those defrauded were still bound to the Masses. He does not quote any reply as saying that in case of transfer, the full amount of the original stipend must be given, nor does he himself formally express this opinion. We had hoped to obtain documentary evidence in regard to these decisions. They have not been published in the *Acta*.

THE TRANSFERENCE OF MASS STIPENDS

(i) When a donor gives Mass stipends to a particular priest he intends and wishes that the Masses shall be applied by this priest. How then can the practice, which is not infrequent, of transferring at least some of these stipends be justified?

(ii) When Mass obligations are transferred and the stipends sent by cheque could the cashing of the cheque—a fact which will duly

come to the knowledge of the transferor—be regarded as sufficient evidence that the stipends were received and the obligations undertaken ?

PAROCHUS.

(i) Contrary to the suggestion implied in our correspondent's opening sentence, the general presumption of law is that the donor of a stipend asks only for the application of the Mass. 'Praesumitur oblatorem petiisse solam Missae applicationem.'[1] Consequently, in the normal case there will be nothing reprehensible in the transfer of Mass obligations, even though the stipends have been given to a particular priest. If, however, a donor expressly stipulates for the celebration and application of the Mass by the priest to whom the stipend is given and by whom it is accepted—this condition should be observed. This Mass obligation should not be transferred. To do so without a just excusing cause would be at least venially sinful. It would be gravely sinful if the circumstances were such that the non-fulfilment of his wishes could be calculated to cause serious disappointment to the donor. Yet, despite the sin committed by the transfer, the Mass obligation would, as a general rule, be validly discharged by the substitute celebrant—who, it must be presumed, will be a priest in good standing.[2] The one exception to this general rule would be if the donor of the stipend had prescribed personal application of the Mass by the particular priest-recipient as a *conditio sine qua non* of the fulfilment of the obligation. In this exceptional case the application of the Mass by the substitute celebrant would not discharge the obligation—and the original priest-recipient of the stipend would be bound to apply personally another Mass or, alternatively, to return the stipend to the donor.

(ii) It is laid down in canon 839 that when Mass obligations are transferred for discharge to another priest, the transferor remains bound by the obligations until he has received notification from the transferee that he has accepted them and has received the stipends. Incidentally, this law is less strict than the pre-Code regulations according to which the transferor remained bound by the Mass obligations until he got notice that they had been discharged.[3] The situation contemplated by the law, and by our correspondent, is, of course, that in which stipends are transferred, by post or by some other form of delivery, to an absent priest. If they are handed personally

[1] Canon 833. [2] Cf. canon 838.
[3] Cf. Decretum, *Ut debita*, S. Cong. Con., 11 May, 1904.

by one priest to another the acceptance of the stipends and the obligations will be obvious. It seems to us that when stipends are transferred other than in this personal way the law[1] (as well as ordinary courtesy) implies, that receipt of the stipends and acceptance of the corresponding obligations should be intimated by the recipient to the transferor without delay. If this is not done the transferor is in a very invidious position. He remains bound by the Mass obligations because he cannot be sure that the stipends have safely reached their destination. There are the hazards of the post or perhaps of other forms of delivery. And even if the stipends have reached their destination the transferor cannot always be sure that the Mass obligations have been accepted. The law requires that he have evidence of this acceptance as well as of receipt of the stipends. In fact, evidence of the latter point is of secondary importance. Moreover, to consider our correspondent's specific question, the fact that the transferor's cheque has been cashed is not necessarily a proof that the transferee received it. Cheques can be cashed by others than the payee. Signatures can be forged. Nor is information that the cheque has been cashed an intimation from the recipient that the obligations have been accepted. The law contemplates some direct form of intimation.[2] Then again the transferor would normally have to wait, at least some little time, for the information that his cheque had been cashed, and during this time he would, in any view, be bound by the Mass obligations which he has transferred. All things considered, then, we should regard knowledge of the fact that his cheque for transferred Mass stipends had been cashed as, from many points of view, unsatisfactory evidence in this context that the Mass obligations had been accepted—or even that the stipends had been received. Such evidence does not fulfil the prescriptions of law which, as has been noted, require some direct intimation from the transferee to the transferor. Though a written acknowledgment is not, *per se*, necessary,[3] the normal and most satisfactory method of fulfilling the requirements of the law (and of courtesy) would be by way of a letter written promptly to the transferor in which the transferee would expressly state that he had received the stipends and had accepted the Mass obligations.

[1] Canon 839 reads : 'Qui Missas a fidelibus receptas aut quoquo modo suae fidei commissas aliis celebrandas tradiderint, obligatione tenentur usque dum acceptatae ab eisdem obligationis et recepti stipendii testimonium obtinuerint.'
[2] Note the words *ab eisdem* in canon 839.
[3] Cf. Noldin, *De Sac.*, n. 191.

THE DIOCESAN STIPEND; BEQUEST FOR MASSES

(i) A priest raises the stipend without the permission of the Ordinary. What is his obligation ?

(ii) An announcement was also made in the parish by 'Sacerdos' that the diocesan stipend was now five shillings—although it actually was only two shillings and sixpence. The diocesan regulation was not known or was not adverted to. What is to be done ? Is another announcement to be made ?

(iii) A bequest of ten pounds is made for Masses, the honorarium being five shillings for each Mass. The estate is unable to satisfy the bequests, and instead of ten pounds the priest to whom the bequest was made gets only six pounds. Is he to say forty Masses or twenty-four ?

SACERDOS.

(i) Canon 831 declares that it is the right of the local Ordinary to fix the amount of the manual stipend for Masses in the diocese and that a priest may not demand a larger stipend. In substance this provision of law goes back to a decree of the Congregation of the Council in 1698.[1] The raising of the stipend by 'Sacerdos' on his own authority is unlawful. He equivalently demands more than the diocesan stipend. Theologians are agreed that such a demand is a violation of strict justice and that, therefore, the priest who successfully makes it is bound to make restitution of the excess to the donors of the stipends.[2] The obligation of restitution is grave or light according as the excess above the diocesan stipend is grave or light matter relative to the donors. Apart from this possibly grave violation of justice and the corresponding obligation of restitution, a priest might be guilty of grave sin. For the law violated is grave *ex genere suo*. Repeated violations would, many theologians say, certainly be grave. 'Sacerdos' was apparently guilty of repeated violations. Some[3] theologians say also that violation of this canon is simony—at least of the ecclesiastical law.[4] Others,[5] however, deny that there is simony.

'Sacerdos' has certainly been guilty of injustice to those donors from whom he has demanded, or whom he has morally forced to give the increased stipend. Of course, he has not been unjust to those who were unaffected by his unwarranted raising of the diocesan standard inasmuch as they had given

[1] Cf. Keller, *Mass Stipends*, p. 104.
[2] Cf. Cappello, *De Sac.* i, n. 673.
[3] Merkelbach, *Th. Mor.*, iii, n. 375.
[4] Cf. canon 727, § 2.
[5] Keller, loc. cit.; Prümmer, op. cit., n. 270.

and would give the larger offering in any case. He is bound to make restitution to the extent that he has been guilty of injustice. The obligation is grave if the amount of the excess involved has been grave. Restitution must be made to those donors from whom the excessive stipend has been unjustly taken. It may be, however, that 'Sacerdos' cannot remember the donors whom he has wronged or that it is no longer possible to make restitution to them or to their heirs. If this is so, then 'Sacerdos' may make restitution by donating a sum equivalent to the amounts of the unjust excess to the poor of the place in question.

(ii) The faithful have a right not to be deceived or wrongly informed in regard to the amount of the diocesan stipend for Masses. The announcement made by 'Sacerdos' deceives the parishioners. It is, moreover, equivalent to a demand for the larger stipend. The faithful who wish to have Masses said in the parish are at least morally compelled to pay it. We have mentioned above that this demand and compulsion are a violation of strict justice. In the circumstances we are considering, there is injustice to the extent of half a crown for every Mass requested. This may easily be a serious matter for poorer people. It certainly is if they wish to have a few Masses said for their intentions. Hence, in the first place, there would be an obligation of restitution which is grave *pro ratione materiae*.

Moreover, since the announcement made by 'Sacerdos' is responsible for the deception of the faithful and the consequent injustice, he is bound to take the necessary steps to remove the false and injustice-causing impression. If a new contrary announcement were the only available means of correcting the impression then, we think, it should be made. But as a new announcement of this kind might, in view of the previous announcement, involve scandal and self-condemnation it would be more acceptable to correct the wrong impression in some less public way if this is possible. And it will be nearly always possible. We need not outline ways and means. But whenever, for instance, Mass offerings are given by donors who obviously wish to give no more than the diocesan stipend the correct amount of that stipend could and should be made known.

The ignorance or non-advertence referred to in the query must here be presumed culpable.

(iii) In the circumstances mentioned by our correspondent the priest is bound by Mass obligations only to the extent of the bequest which he actually receives at the stipend mentioned. That is to say he is bound to say twenty-four Masses for the six pounds

received at the final settlement of the deceased's estate. The priest cannot be held responsible and penalized for the failure of the estate to come up to the expectations of the deceased.

REDUCTION OF MASS OBLIGATIONS OF PIOUS BEQUEST

Years ago an old woman died leaving her little place to an adopted daughter, whom she had reared. She left a Deposit Receipt of £25 for Masses. The place consisted of three or four acres, some fowl and a few calves. The neighbour who drew up the will urged that £25 was too much for Masses, but she insisted. Later the daughter came to the priest and told him that there had been practically no cash left after funeral and administrative expenses were paid for. She asked the priest to accept £5 instead of claiming £25. Looking at the case the priest did not see how he could take anything at all without crippling the girl, and he thought the old woman could hardly have contemplated that. So he just told the girl to try to make up for the Masses by praying hard all her life for the old woman, signed a discharge for the £25 and took nothing at all.

Six months later the girl got married and sold out. She got £170 for the place. The priest had no scruples until it was sold. Now he became uneasy, but, having signed away his legal claim, he did not venture to ask more than the £5 originally offered. He was given this sum. Had he got the £25 at first he would have said the Masses at a stipend of five shillings—as this was the invariable offering in the district. To eke things out he got forty Masses said for the £5.

He desires to know how he stands. Is he bound to expend £20 of his own? Or might he get another sixty Masses said at half a crown, completing the hundred? Or is he, perhaps, not to be disquieted?

CONFESSOR.

There is, we think, no doubt whatsoever that the priest in question is bound to secure the discharge of the Mass obligations in accordance with the pious bequest of the deceased woman. In remitting fully, as he did at first, and in reducing, as he did later, these Mass obligations, he acted entirely *ultra vires*. He assumed the right which is reserved to the Holy See.[1] The reduction he made was null and void. We accept the suggestion that the priest was not subjectively guilty of any grave negligence in the matter (nor is he, in any sense, *ditior factus*), but his position is very closely analogous to that contemplated in canon 829. It will be recalled that this canon declares that the priest's

[1] Cf. canon 1517, § 1.

obligation of discharging Mass intentions does not cease even though, through no fault of his, the corresponding stipends have perished.

What exactly is the priest bound to do in the case we are considering? Presumably it is not now possible to recover the sum outstanding from the beneficiary under the will. Again, we accept here the statement that the priest might legitimately have presumed that the intention of the testatrix[1] was to give, as was customary, a stipend of five shillings for the Masses—in other words that she bequeathed a legacy for one hundred Masses. Forty of these Masses have been said. And, in our opinion, the priest sufficiently discharges his obligation if he has the remaining sixty Masses said for the intentions of the testatrix. He is not bound to give a stipend of five shillings. He may have the Masses said for any reasonable stipend. This transference, in the circumstances of the case, is not, we hold, governed by canon 840, § 1—though, indeed, prescinding from the total obligation, it might well be asked how far the priest was entitled to transfer the five pounds received for Masses at a stipend of half a crown? Of course, a petition for condonation of the obligations might be made to the Sacred Penitentiary for the internal forum, or to the Congregation of the Council for the external forum.

OBLIGATION WHEN CHAIN OF GREGORIAN MASSES IS BROKEN

A chain of Gregorian Masses is being said. There is no idea whatsoever who the donor is. On the twenty-first morning the chain—through an accident—is definitely broken. What *must* one do?

ANXIOUS.

In the circumstances mentioned by 'Anxious,' where the break in the chain is presumably inculpable, the priest responsible is only strictly bound to offer the remaining ten Masses. It is, however, recommended that he should also gain a plenary indulgence for the soul for whom the Masses are being said. While the opinion we have expressed is not accepted by all theologians,[2] it is held by the majority,[3] is based on solid reasons and is safe in practice.

[1] Canon 830.
[2] Cf. Merkelbach. *Th. Mor.*, iii, n. 378.
[3] Cf. Cappello, *De Sac.*, i, n. 769; Prümmer, *Th. Mor.*, iii, n. 269; Aertnys–Damen, *Th. Mor.*, ii, n. 210.

CHAIN OF GREGORIAN MASSES

Referring to the query in which 'Anxious,' having stated that a chain of Gregorian Masses was being celebrated, and that on the twenty-first morning the chain—through an accident—was definitely broken, the donor also being unknown, asks what must one do ? Surely the answer is : begin the series of thirty consecutive Gregorian Masses again and continue them until the thirty Masses have been celebrated. If the donor were known it might be legitimate to approach him either to refund the honorarium or to arrange for a release from the obligation on certain terms, but, as he is not known this solution is not possible. The essential condition of the Gregorian Masses is that they must be offered up continuously morning after morning without any break (except in Holy Week), and the Trental (as it is called) ceases to have its merit if it is not said consecutively and continuously morning after morning for thirty days, although it is not essential that all the Masses should be celebrated by the same priest. It is true that the Church has never formally approved of the practice of the thirty Gregorian Masses, but the Sacred Congregation of Indulgences declared that the 'confidence of the faithful that the offering of thirty Masses called Gregorian Masses possesses a special efficacy for the deliverance of souls in purgatory, is pious and reasonable, and the custom of celebrating these Masses is approved by the Church.' The essential condition of this devotion is the unbroken continuity on thirty consecutive days of these Masses offered up for the repose of the soul of one person, and, if this essential condition be not complied with, the devotion is not fulfilled.

SACERDOS.

In the reply to the query to which 'Sacerdos' refers, we stated that, in the circumstances given, when the break in the chain of Gregorian Masses was, as we presumed, inculpable, the priest concerned was only strictly bound to offer the remaining ten Masses for the deceased person. We are still of that opinion. We did not deny that some theologians favoured stricter views. There are principally two such views. The first, the more strict, is that the priest in the case is bound always, and in justice, to begin the series of Gregorian Masses over again.[1] The second, a less strict view than that just mentioned, is that a distinction must be made between the case in which the priest receives only the ordinary diocesan stipend fixed for manual Masses for the application of the Gregorian series and the case in which he receives a larger stipend.[2] In the former case the solution given corresponds, in effect, to the opinion we have held above. It

[1] Cf. Merkelbach, *Th. Mor.*, iii, n. 378, 4°.
[2] Cf. Jorio, *Th. Mor.*, iii, n. 285 ; Ferreres, *Th. Mor.*, ii, n. 484.

is said that there is no obligation in justice to repeat the series. There is an obligation in fidelity, but it cannot be urged when it involves grave inconvenience. In the latter case, when a larger stipend is given, it is contended that there is an obligation in justice to commence the series anew.

In disagreeing with our opinion, then, 'Sacerdos' does not stand alone. He is in goodly company. In his letter the reasons usually advanced in favour of the most strict opinion are outlined. But from some of his remarks we have got the impression that our correspondent holds uniquely strict views on the matter under consideration. When the chain of Gregorian Masses is broken he appears to see only one legitimate solution : the series must be commenced again and continued uninterruptedly until the thirty Masses are discharged. No mention is made of the possibility of obtaining condonation from the Holy See. Yet we feel sure that our correspondent would agree that such condonation might lawfully be sought and might lawfully be granted. We noticed, too, that 'Sacerdos' does not seem certain of the liceity of approaching the donor (when he is known) to ask for a release from the obligation or to refund the honorarium. He writes, charily it appeared to us : 'If the donor were known it *might*[1] *be legitimate* to approach him either to refund the honorarium or to arrange for a release from the obligation on certain terms. . . .'

We accept unreservedly, of course, the declaration of the Congregation of Indulgences[2] quoted by our correspondent.

Incidentally, we wondered what he had in mind when he wrote that the practice of the Gregorian Masses had never been formally approved of by the Church—especially as, in the next sentence, he gives the approbation. What he meant, presumably, was that there has been no formal approbation of the popular belief that the Gregorian Masses have a very special efficacy in obtaining the release of a soul from Purgatory. We agree that an essential element of what we might call the 'Gregorian' aspect of the Masses is that there be continuity of the series for thirty successive days. Normally, then, unless this condition is observed, the obligation of the Gregorian Masses is not fulfilled. But, let us face the issue squarely. From what source does this obligation of saying the Masses on thirty successive days arise ? If it be from ecclesiastical law—such a law would not bind in the face of grave extrinsic inconvenience and, as a general rule, it would surely be gravely

[1] Italics ours.
[2] 11 March, 1884.

inconvenient in the circumstances of the query for a priest to recommence a series of thirty Masses—for, let it be recalled, we are considering the case in which the series is inculpably broken after twenty Masses have been duly celebrated. But it will be retorted that the obligation arises not from ecclesiastical law but from the natural law. And we agree ; though we hasten to add that this statement must be further elucidated. For the obligation cannot be based upon the nature of things, or upon the natural law, in any absolute sense. If it were, the break during the last three days of Holy Week would interrupt the series—since that break is entirely a matter of ecclesiastical law. It is the official teaching that the series of Gregorian Masses may legitimately be interrupted on the three days in question. And, in our opinion, this remains true even though the priest celebrates Mass on Holy Thursday and on Holy Saturday.[1] In other words, he would not be bound to include these Masses in a Gregorian series which he is discharging at that time ; he might offer them for other intentions and resume the interrupted series on Easter Sunday. Since this interruption, based entirely on ecclesiastical law, has been declared legitimate, it follows, we repeat, that the obligation of unbroken continuity is not absolute, in any true sense, by virtue of the natural law. And if it is not, we see no valid reason, again in the nature of things, why the interruption mentioned should be the only possible legitimate interruption. And we see many reasons for allowing an interruption which is inculpable when to recommence the series would entail serious inconvenience. In passing it can be said that there is nothing in the historical origin of the practice to justify the interruption during Holy Week any more than the interruption which we suggest is justifiable.

If it be contended, as it sometimes is, that the donor's requirements are that thirty Masses be applied for a particular soul on thirty consecutive days and that nothing shall excuse from this latter condition—it can be replied that such an absolute requirement is unreasonable. It is, we maintain, unreasonable not to make allowance for cases in which possibly very serious inconvenience to the priest may arise without provision or fault on his part. It is unreasonable for the donor to demand that the series, howsoever or whensoever broken, should in every case be recommenced anew. Let it be held, with 'Sacerdos,' that the priest, in the case we are considering, is bound to begin

[1] Cf. Jorio, loc. cit. In these circumstances the interruption cannot be said to be necessary.

the series of thirty Masses again. He does so, but on the twenty-ninth day he becomes seriously ill and cannot find a substitute for the last Mass of the series. Once more he must recommence the series. And he does, but, having discharged twenty Masses, he meets with a serious accident and is unconscious for twenty-four hours. The series is again broken. And so on, indefinitely perhaps. The circumstances mentioned might well be verified. The priest might never, and through no fault of his own, succeed in discharging the obligation of the Gregorian Masses. Surely a requirement that leads logically to this intolerable situation is not reasonable.[1] Has any man the right to impose such an absolute obligation on another, an obligation which derives from a human source, but will, *per se*, admit of no excusation, no *epikeia*, no mitigation in any circumstances ? Surely not. Even the positive divine law admits of excusation when its observance in particular circumstances involves a disproportionate inconvenience.[2] Or is it suggested that the unbroken continuity of the Gregorian Masses is of more sacred obligation than is the divine law ? We hope we shall not be misunderstood when we summarize our position thus : the difference between thirty Masses said in an unbroken Gregorian series and thirty Masses of a broken series does not seem to be so great, so vitally important, that the priest, though he has been in no wise to blame for the break, is strictly bound, at the cost of serious inconvenience, to keep recommencing the series until unbroken continuity for thirty days is attained. Even when the series is broken thirty Masses of incalculable value are offered for the departed soul. It is scarcely necessary for us to add that if, in particular circumstances, the series could be recommenced without grave inconvenience, for example, if only a few Masses had been said, or if the priest had no other obligations to discharge, then there would be an obligation to repeat the whole series, as also there would be if the interruption were culpable.

BREAK IN NOVENA OF MASSES

If a priest breaks a novena of Masses which he has undertaken, *ex stipendio*, to apply—is he bound to begin the novena over again?

P. J. C.

[1] Cf. Prümmer, *Th. Mor.*, iii, n. 269.
[2] Cf. Prümmer, op. cit., i, n. 236.

We assume that the case envisaged by our correspondent is one in which the donor of the stipend expressly asks a priest to apply a novena of Masses—that is, a series of Masses, one on each of nine consecutive days. In such a case the circumstances mentioned form part of the contractual arrangement and there is, *per se*, an obligation in strict justice on the part of the priest to observe them. In canon 833 we read :

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

And in canon 834, § 1:

Missae pro quibus celebrandis tempus ab oblatore expresse praescriptum est, eo omnino tempore sunt celebrandae.

If, then, a priest culpably (i.e. *sciens et volens et nullo gravi impedimento detentus*) interrupts the continuity of the novena, he is certainly bound to begin the series again. If, however, the interruption is inculpable, if it is due to inadvertence or to some very urgent necessity, it seems to us that the priest would fully satisfy his obligations by applying the remaining number of the nine Masses. Some writers would, we think, suggest that if the priest had received for the novena of Masses a larger stipend than that customarily given for other Masses, he should, even in the case of inculpable interruption, begin the series over again. But even here, in our view, there is no obligation to repeat the series. It is assumed that such repetition would involve a serious inconvenience.

We have not seen any discussion of the precise point raised by our correspondent. The authors do discuss the somewhat analogous question of an interruption in the series of Gregorian Masses. Cappello, having indicated the different views on this matter, adopts as certain the opinion that, if the interruption of the series is inculpable, there is no obligation to begin it over again.[1]

It seems to us that there is, at least from one aspect, an *a fortiori* argument in favour of our conclusion given above regarding the inculpable break in a novena of Masses. For while traditionally a special privilege has been attributed to the series of the thirty Gregorian Masses no particular privilege is attached to a novena of Masses. On the other hand, there may be, admittedly, a less serious *incommodum* in re-starting a novena of Masses than in re-starting the Gregorian series. It may be well to add here that in the discharge of the obligation

[1] *De Sac.* i, n. 769 ; cf. *supra*.

of the Gregorian Masses or of a novena it is not necessary that the Masses in the series be applied by one and the same priest. The essential thing is that one Mass be applied by some priest on each of thirty consecutive days in the case of the Gregorian Masses, on each of nine consecutive days in the case of the novena. Consequently, a priest who is personally impeded on a particular day may discharge the obligation and keep the series intact by means of a substitute. And if a substitute is reasonably available he should be asked to supply.

THE OBLIGATION PERSONALLY TO APPLY THE *MISSA PRO POPULO*

It sometimes happens that a nuptial Mass has to be offered on a day on which the *Missa pro populo* is prescribed. According to Noldin (*De Sac.*, n. 184) a nuptial or funeral Mass does not excuse the parish priest from discharging *personally* his obligation to his people. This point has caused much controversy. Many people here are most anxious to have the nuptial Mass applied for themselves and by the parish priest, especially if he is officiating at the wedding. In a parish where there is only the parish priest this would presumably be permissible. But what is the position where there are one or more curates ? The parish priest could possibly ask one of them to apply the *Missa pro populo* on the prescribed day, but is this permissible, or must he defer it, say for a day or two, in order to discharge the *personal* duty on which Noldin, quoting a Roman Congregation, seems to lay such stress ?

PUZZLED.

The obligation of a parish priest to apply the *Missa pro populo* is personal, local and real and is attached to certain days prescribed by law. Our correspondent's query raises two questions in relation to this obligation—particularly in regard to the personal aspect of the obligation. Firstly, does the fact that the parish priest is specially requested to apply a nuptial Mass or funeral Mass on a Sunday or Holyday excuse him from personally applying the *Missa pro populo* on that day ? Secondly, if the answer to the first question is in the affirmative, should the parish priest get a curate to apply the *Missa pro populo* on the prescribed day or should he rather apply it himself later on the first possible day ?

In regard to the first question : the law recognizes the fact that a bishop or parish priest may be legitimately impeded in

discharging personally the obligation of the *Missa pro populo*.[1] And in canon 466, § 5, it is expressly mentioned that legitimate absence from the parish excuses the parish priest from personal application of the Mass.[2] In the case of such absence the parish priest is given a choice regarding the manner of discharging the obligation. He may personally apply the Mass in the place where he is or he may have it applied by the priest who is taking his place in the parish. In canon 419, § 2, we have a second case in which the parish priest may be excused from the personal application of the *Missa pro populo*.

Si quis eodem die urgeatur onere utriusque Missae et pro populo et conventuali, hanc ipse celebret applicetque per se, illam per alium vel per se die sequenti.

Here the obligation of personal application of the conventual Mass is given priority. The general law does not expressly mention any other causes which would be regarded as legitimately impeding the parish priest in the personal discharge of the obligation of applying the *Missa pro populo*. As Noldin notes,[3] the Congregation of the Council has declared that a contrary custom, the necessity of applying a funeral or nuptial Mass or a foundation Mass attached to a particular date, are not sufficiently grave causes to excuse the parish priest from the personal application of the *Missa pro populo* prescribed for that day. But it is stated in canon 466, § 3, that the local Ordinary can, for a just cause, permit a parish priest to apply the *Missa pro populo* on a day other than that prescribed by the law. And it seems to us that the local Ordinary may give a general ruling on this matter. That is to say he may state that, in certain circumstances or to meet certain contingencies which constitute a serious inconvenience, the parish priest may postpone the discharge of the obligation of the *Missa pro populo*. A statement of this kind has been written into some local laws. Though this query comes from abroad we may refer to the Decrees of the Provincial Council of Tuam in which we read :[4]

Parochus tenetur missam pro populo applicare diebus in iure statutis. Quod si in illis diebus missam exsequialem vel nuptialem celebrare teneatur missam pro populo postridie celebret.

Quoting from the Statutes of the Fourth Council of Malines, n. 150, Creusen writes :[5]

[1] Canon 339, § 4; canon 466, § 1.
[2] Legitime absens parochus potest Missam pro populo applicare vel ipse per se in loco in quo degit vel per sacerdotem qui eius vices gerat in paroecia.
[3] Loc. cit. in query. [4] N. 32.
[5] *Epitome Iuris Can.*, i, n. 553

Legitimae causae celebrandi per alium sunt ex. g. . . . exsequiae aut aliud solemne officium quae differi non possunt et ab ipso parocho celebranda.

Even if no such statement appears in the local law or in an instruction from the local Ordinary we think that if a parish priest is faced in a particular case with the problem of being especially requested to apply a nuptial or funeral Mass on a day appointed for the *Missa pro populo* he may presume permission to apply the nuptial or funeral Mass on that day. The declaration of the Congregation of the Council may be taken as meaning that the causes listed are not, of themselves, sufficient to excuse regularly from the personal application of the *Missa pro populo*. The declaration, we would hold, does not exclude excusation or presumed permission, on the basis of the causes, in particular and urgent cases.

We would, therefore, answer in the affirmative the first question raised by our correspondent's query. The second question then arises. What is the parish priest to do in regard to the application of the *Missa pro populo* ? If possible he should have this Mass applied in the parish on the appointed day by another priest.[1] If this is not possible, for instance if there is no curate or assistant priest, then the parish priest should personally apply the Mass for his people at the earliest opportunity. This alternative procedure and order are referred to in canon 339, § 4 :

Episcopus Missam pro populo diebus supra indicatis per se ipse applicare debet; si ab eius celebratione legitime impediatur, statis diebus applicet per alium; si neque id praestare possit, quamprimum vel per se ipse vel per alium applicet alia die.

Though this canon refers primarily to the episcopal obligation of the *Missa pro populo* it is applicable also, in virtue of canon 466, § 1, to the obligation of the parish priest. It is clearly stated that the first and preferable alternative is that when the parish priest is legitimately impeded in applying the *Missa pro populo* this Mass should be applied by another priest on the appointed day. The second alternative of having the Mass applied on a day other than that prescribed by law is only proposed if the first is impossible. An obvious reason for the preference of the first alternative is that it ensures the fulfilment of the place and time circumstances of the obligation. These circumstances are expressly prescribed by the law.[2] The observance of the first alternative will also ensure, as a rule,

[1] Cf. Bouscaren and Ellis, *Canon Law*, p. 214.
[2] Cf. canons 339, § 1, 466, §§ 1, 4.

that a goodly number of the faithful for whom the Mass is applied will be present at the Mass. This circumstance is not mentioned in the general law. But there are obvious reasons why it should, if possible, be observed, and it has been mentioned in local laws. To quote again from the Fourth Council of Malines :[1] ' Missa pro populo celebretur hora fixa et fideles ut ei intersint, invitentur.'

THE OBLIGATIONS OF THE INTERIM ADMINISTRATOR OF A PARISH

In a diocese where the senior curate is ordinarily appointed to act as *vicarius oeconomus*, a parish priest died on Saturday and it was decided that there was no obligation to offer the Mass *pro populo* on the following day as the Ordinary had not taken steps to make the appointment of the administrator. Was this correct ? What about the obligation of applying this Mass when, in the case of parishes with only one priest, the *parochus vicinior* takes charge of the vacant parish ?

PUZZLED.

Since the local Ordinary had not yet intervened to appoint a *vicarius oeconomus* to the vacant parish, the case submitted by ' Puzzled ' is governed by the law set out in canon 472, 2°—the relevant section of which is :

> Ante oeconomi constitutionem, paroeciae regimen nisi aliter provisum fuerit, assumat interim vicarius cooperator ; si plures vicarii sint, primus ; si omnes aequales, munere antiquior ; si vicarii desint, parochus vicinior.

The Code mentions specifically only one obligation which rests upon this priest who assumes the interim administration of the parish : he must immediately inform the local Ordinary that the parish is vacant.[2] The phrase ' paroeciae regimen assumat interim ' which describes his general function is rather vague and the commentators are not very helpful in an attempt to define its precise implications. Many of them do no more than repeat the text of the law.[3] There is some slight discussion as to the nature of the power possessed by the interim administrator. It is more generally held that the power is not ordinary

[1] N. 149 ; cf. Brys, *Iuris Can. Comp.*, i, n. 562.
[2] Canon 472, 3°.
[3] Cf. Vermeersch–Creusen, *Epitome Iuris Can.*, i, n. 562 ; Regatillo, *Institutiones Iuris Can.*, i, n. 627 ; Brys, *Iuris Can. Comp.*, i, n. 577.

but is delegated by law. The references to the obligations of this administrator (other than to his obligation to inform the local Ordinary of the vacancy) are rare. Coronata writes :[1]

> Potestas talis rectoris non videtur ordinaria, sed a jure delegata, quanta autem sit non determinatur a Codice. Videtur delegata ad universalitatem causarum : datur enim ad consulendum bono fidelium. Codex dicit solummodo : paroeciae regimen assumat interim ; at regimen importat potestatis paroecialis exercitium ; at iura utilia, si iura stolae excipias, non videtur habere nec item tamen obligationes vicarii oeconomi aut parochi habere videtur nisi quantum id necessario includatur in cura animarum ex iure divino, praesertim circa sacramentorum administrationem.

All this is rather indefinite. But in Bouscaren–Ellis it is categorically stated that this interim administrator ' has the same powers and duties as a regular administrator until the latter arrives and takes possession.'[2] This would mean that the interim administrator has ordinary power and that he is bound to apply the *missa pro populo*—for this power and this obligation are certainly vested in the *vicarius oeconomus*. We agree with this view given in Bouscaren–Ellis. The application of the *missa pro populo* is described as being a personal, local and temporal obligation ; but it is, above everything else, a *real* obligation—' onus reale quatenus adhaeret ipsi paroeciae.'[3] It may not be possible for the person primarily responsible to apply the Mass or it may not be possible to apply it on the day or in the place appointed by law, but the obligation to apply it remains intact. It seems to us that the faithful of a parish have a right, based fundamentally on divine law but immediately on canon law, to have Mass applied for them on a fixed number of occasions in the year in return for their support of their pastor. When a parish becomes vacant there is no intermission of this support and, consequently, the right of the faithful to have Mass applied for them, in accordance with law, remains and the obligation should be discharged by the priest who has assumed, even *ad interim*, the *regimen paroeciae*. We feel that the statement of Coronata, quoted above, can be used to support this conclusion. Our author noted, however negatively, that the interim administrator has the obligations of a *vicarius oeconomus* or *parochus* insofar as these obligations necessarily pertain, by divine law, to the care of souls. It is accepted that the obligation of pastors to apply the *missa pro populo* derives, hypothetically, from divine law. Writing of this obligation Cappello says :[4]

[1] *Institutiones Iuris Can.*, i, n. 489.
[2] *Canon Law*, p. 220.
[3] Cappello, *De Sac.*, i, n. 650.
[4] Ibid., n. 639.

Episcopis obligatio incumbit ex iure divino absoluto; aliis, contra, ex iure divino hypothetico, nempe posito facto Ecclesiae curam animarum committentis. . . . Proinde cum hi nonnisi dependenter ab ecclesiastica institutione teneantur lege divina ad offerendum sacrificium post officium pastorale susceptum quatenus curam animarum, cui adnexa est iure divino Missa pro populo, habent ex lege ecclesiastica, recte dicuntur adstringi iure divino hypothetico.

Here it is noted that the obligation of the *missa pro populo* pertains by divine law to the care of souls. Coronata should therefore accept, as a conclusion from his general statement, that the obligation of the *missa pro populo* rests upon the interim administrator.

In our view, then, the priest who, in accordance with canon 472, 2°, takes charge of a vacant parish, pending the appointment by the local Ordinary of a *vicarius oeconomus*, is bound to apply the *missa pro populo* if a day on which this obligation urges occur during his *regimen paroeciae*. He has, however, the right to receive from the parochial revenues a stipend for the application of this Mass. If there are no curates and the interim administration of the parish is assumed by a *parochus vicinior* he also is bound, if an appointed day occur, to apply Mass for the faithful of the vacant parish. But, of course, he can fulfil the obligation towards his own people and towards the faithful of the vacant parish by the application of one and the same Mass.[1]

Inasmuch as this query was sent to us from England we have discussed it in the light of the general law. But it is of interest and importance to note that the conclusion we have reached is set down as a law in the Decrees of the Maynooth Synod.[2]

FREEDOM IN REGARD TO THE CELEBRATION OF DAILY MASS

It is evident that the Church takes great care to safeguard the liberty of her members in the matter of daily or frequent Communion. I should like to know how far does this freedom extend to her priests in the matter of daily or frequent Mass.

For the sake of greater clarity I will distinguish the following cases: firstly, there is the case of the religious priest whose Constitutions prescribe daily Mass, e.g. 'Singulis diebus sodales orationi mentali *vacabunt*, sacrum presbyteri *facient*, ceteri eidem *aderunt*, ad S. Synaxim quam saepissime, immo quotidie, accendentes *sicut vehementer optandum est*,' making, as it would seem, freedom clear in the case of frequent or daily Communion without doing so in the case of frequent or daily Mass. It appears that the 'sicut vehementer optandum est' qualifies only 'ad S. Synaxim quam saepissime, immo quotidie accendentes.'

Accordingly, let us suppose, a religious Superior tells his subjects to say daily Mass, prescribing time and place even though it be only a private Mass. Is the Superior entitled to do so? It may happen that in a small community, where daily celebration is taken for granted, added difficulties arise. If the priest abstains from celebrating there will inevitably be surprise, even though, perhaps, there should not be. He may not have facilities for going to confession; there may not be time; confessors may not be available or even if they are it may cause serious inconvenience to go, e.g. if he has gone the previous day, and it may be impossible to go privately.

Again, there is the case of the chaplain who is obliged to say Mass daily for a religious community and of the parish priest or curate who may be bound to say Mass daily in their churches. In these cases how far does freedom to abstain from celebrating extend?

ANXIOUS.

The Church has, indeed, taken special care to ensure that the faithful should be left perfectly free in the matter of frequent or daily reception of Holy Communion. Readers may remember that some years ago the Sacred Congregation of the Sacraments issued a reserved Instruction[1] on this subject. The Congregation referred to the obvious value in the spiritual life of frequent reception of the Blessed Sacrament; but it pointed also to the danger of sacrilegious abuse associated with situations in which there might be, or might seem to be, any form of pressure or compulsion to receive. Particular mention was made of seminaries, religious communities and of organized groups or sodalities on the occasion of a general Communion. The danger of any form of undue regimentation was emphasized. The burden of the message of the Sacred Congregation, in this context, was that all are invited to the Holy Table, but none is bound to approach. It should be made perfectly clear to all that while daily Communion is an excellent salutary practice which is to be promoted, it is not obligatory. No one should dare to receive unless he or she has the necessary dispositions—namely, the state of grace and a right intention. Regarding the state of grace, the main principle of canon 856 was recalled that no-one who has committed a mortal sin, no matter how contrite he

[1] Cf. canon 466, § 2.

[2] N. 157.

[1] 8 December, 1938. For full text of Instruction cf. Bouscaren, *Canon Law Digest*, ii, pp. 208–15.

considers himself to be, shall receive Holy Communion until he has first made sacramental confession of the sin. An obvious corollary of this is that frequent confession should be promoted together with frequent Communion. In seminaries and in religious communities there should be ample opportunity for frequent confession; sufficient confessors should be appointed and, with due regard for the needs of discipline, the fullest freedom of approach to these confessors should be allowed. The Congregation quoted canon 518, § 1, which, since 'Anxious' writes from a clerical institute, it will be in order to emphasize here. The canon runs thus:

In singulis religionis clericalis domibus deputantur plures pro sodalium numero confessarii legitime approbati cum potestate, si agatur de religione exempta, absolvendi etiam a casibus in religione reservatis.

There is an obvious analogy between the daily reception of Holy Communion and the daily celebration of Mass. But we are not aware of any provision of law or of any instruction which professedly deals with the dangers of abuse in the daily celebration of Mass. It is rightly assumed that priests shall and will hold themselves worthy of their high vocation and, if they do have the misfortune to fall into grievous sin, that they will quickly seek reconciliation and, in particular, will observe the prescriptions of canon 807:

Sacerdos sibi conscius peccati mortalis, quamtumvis se contritum existimet, sine praemissa sacramentali confessione Missam celebrare ne audeat; quod si deficiente copia confessarii et urgente necessitate elicito tamen perfectae contritionis actu, celebraverit, quamprimum confiteatur.

It is assumed also that circumstances which might easily exercise considerable influence or pressure on seminarists, lay religious and others on the occasion of an organized general Communion, should not and will not unduly disturb the more mature mind of a priest.

It seems perfectly clear that bishops and religious Superiors are well within their rights in appointing, in normal circumstances, the daily celebration of Mass for their subject priests. It should be noted, however, that the provisions of religious Constitutions do not bind, *per se*, under pain of sin,[1] and we take it that, apart from a formal precept of the Superior, there is no question of any strict obligation to say a private Mass. As far as the Constitutions are concerned then, the religious priest may omit the celebration of a private Mass and no questions should be asked. It would be well, we think, that religious

[1] Cf. Schäfer, *De Religiosis*, n. 1093.

Superiors should avoid, as far as possible, any regimentation in regard to the details of private celebration. But, if the provisions of law regarding confessors are observed, rarely will a priest in a religious community have to omit Mass on the grounds under consideration here. It should normally be possible for the priests, if they take time by the forelock, to go privately to confession. But even if this is not possible in particular circumstances priests should not be unduly sensitive about going publicly even if they have been to confession a short time before. The latter portion of canon 807 provides for the exceptional circumstances in which it will be lawful to celebrate without prior confession. Of course these circumstances will rarely be verified when there is question of the celebration of a private Mass. In a small religious community there may be some added difficulties. Failure to celebrate even a private Mass will be more easily noticed and may be more likely to cause *admiratio*. Moreover, it may be harder to find a confessor. In our view the fact that failure to celebrate may cause surprise is not, in itself, a sufficient cause for allowing a priest, *sibi conscius peccati mortalis*, to say Mass without having first gone to confession. And it seems to us also that, by the due exercise of foresight it will generally be possible, even in a small community, to get confession.

The general principle behind all this is that priests, religious or secular, who are or may be bound, by reason of their office or in obedience to Superiors, to celebrate daily Mass, have the concurrent obligation of holding themselves prepared, in accordance with the law, for the proper discharge of that daily duty. Thus, if they lapse seriously they are bound to recover grace in sacramental confession. They are bound to take all reasonable means of securing confession. If there is no *copia confessarii* and there is question of urgent necessity (for instance to say a Mass of obligation which cannot otherwise be supplied) then, in accordance with canon 807, they may celebrate having first elicited an act of perfect contrition. But there is, in these circumstances, the further obligation of going to confession *quamprimum*—that is, according to the generally accepted interpretation, within three days. When there is question of a merely private Mass, the omission of which would not cause serious suspicion or scandal, a priest who has gravely lapsed should not celebrate—any statement of the Constitutions or general arrangement of the Superior notwithstanding—until he has first made sacramental confession of his sin.

THE RIGHT OF A RELIGIOUS SUPERIOR TO PRESCRIBE DAILY CELEBRATION OF MASS

I was much interested in your reply to the question of 'Anxious' regarding the obligation to celebrate Mass daily. Now a further point in that connection would be this: Suppose a priest-member of a community omitted saying Mass not merely on one or two mornings at a time but continued to do so for a protracted period, e.g. a week or even a fortnight, would he be bound to give an explanation to his Superior? And if he did not, would the Superior be free or even bound to ask for an explanation?

MORE-ANXIOUS.

By the general law[1] of the Church all priests, secular and religious, *ratione ipsius sacerdotii*, are bound to celebrate Mass *pluries*, that is three or four times, in the year. According to the commonly accepted view this obligation is grave and many point to the divine law as its source.[2] The ecclesiastical law further adds that bishops and religious superiors should take care that all priests celebrate Mass on all Sundays and Holydays of obligation. In the Constitutions of religious Institutes, priest-members are earnestly recommended to say Mass daily. But this constitutional provision does not bind, *per se*, under pain of sin.[3] Moreover, it is clear that a religious Superior may, with due regard for any exceptions allowed by the Constitutions, prescribe the daily celebration of Mass by his subject priests. But again this prescription does not bind, *per se*, under pain of sin. The religious Superior may, however, go further and, in virtue of the vow of obedience taken in the religious Institute, he may give a subject priest a formal precept, within the limits of the Constitutions, binding him *sub gravi*[4] to celebrate Mass every day and to apply the Mass according to the Superior's intention. In 1914 the Congregation of Religious formulated the following *dubium*:[5]

An Superiores religiosi praecipere possint subditis suis etiam in virtute sanctae oboedientiae, ut ipsi celebrant secundum intentionem a Constitutionibus praescriptam vel ab ipsis Superioribus statutam, salvis exceptionibus a Constitutionibus vel e legitima consuetudine sancitis?

The reply, approved and confirmed by Pope Pius X, was: *Affirmative.*

[1] Canon 805.
[2] Cf. St. Thomas, *S.T.*, 3, 82, 10.
[3] Cf. Creusen, *Religious Men and Women in the Code*, n. 271.
[4] Cf. Berutti, *Institutiones Iuris Can.*, iii, n. 108.
[5] *A.A.S.*, vi (1914), p. 231. Cf. Schäfer, *De Religiosis*, n. 1088.

There are, therefore, many aspects under which we may consider the position of a priest-member of a religious community *vis-à-vis* the celebration of daily Mass. The omission of such celebration would be sinful *per se* only in the somewhat exceptional hypothesis that the priest is bound by a formal precept to celebrate. The Superior may demand an explanation even for a single violation of this precept. But, in our view, it would be better to ignore an isolated violation. Omission of daily Mass may be, *per accidens*, sinful, for instance, if a public Mass is omitted without an excusing cause; and here the common good would demand that the Superior require an explanation. Or the omission of Mass might cause scandal. In our previous reply we made the point that the religious Superior should not raise any question about the omission of a private Mass. As the context indicated, we had in mind an occasional omission which might be due to a specific reason that should rarely be verified and never for long. If a priest in a religious Community—apart from ill health or other obviously good reason—frequently omits Mass, or continues to omit it over a protracted period, there will easily be scandal. And, in these circumstances, the Superior not only may but should ask for an explanation of the omissions. Even apart from circumstances in which scandal might arise, the omission of Mass on a number of days during the week or on more than two successive days is something into which the Superior is entitled to enquire—provided always there is, as there should be,[1] a *copia confessarii* for the members of the community. This enquiry is not at all equivalent to any inducement to make a manifestation of conscience and hence the enquiry does not violate canon 530.[2] When Masses are omitted there is a question of a public observable fact—even in the case of private Masses. The omissions have reference to a matter of general order and discipline and may also involve loss to the community, inasmuch as stipend obligations are not discharged. Hence the Superior has the right to demand an explanation.[3] As we have indicated, there are cases in which he should exercise this right. But it is not possible to lay down hard and fast rules for the many other cases. Much will depend upon the particular circumstances. The Superior should carefully consider them and in the light of this consideration and of his experience decide whether, when and how he should proceed. The spiritual welfare of the priest

[1] Canon 518, § 1.
[2] Cf. Schäfer, op. cit., nn. 682–690.
[3] Creusen, op. cit., n. 128.

must be kept in mind and his genuine conscientious difficulties must be treated with respect and sympathy. At the same time the needs of discipline and the good of the community may not be forgotten. The Superior must try to make a fair and balanced assessment of the factors on both sides in this delicate matter. In making and in implementing his decision he will use prudence and tact and will be mindful of the demands of charity. We may add, in view of our correspondent's specific query on the point, that in our view, the priest guilty of the omissions would not be bound spontaneously to proffer an explanation, unless perchance this obligation is included in a formal precept of daily celebration given to him by the Superior.

MASS WITHOUT A SERVER

Canon Law lays down that a grave necessity is required before Mass may be said without a server. The *American Ecclesiastical Review* (April, 1928) had a discussion on the matter and a writer there gave it as his opinon that a priest, in a case of transient necessity, may say Mass without a server to satisfy his own devotion. All things considered, he says, it would be a grave inconvenience for a priest to forgo his Mass under the circumstances. A practical case would be that of a priest who has to catch an early train and no server can be had conveniently.

Would you agree with this lenient view ?

ENQUIRER.

A brief reference to the history[1] of the law on the point raised by our correspondent will help us to a solution and will, we hope, be of interest to our readers. The Sacrifice of the Mass is an act of public worship. Historically the earliest manner of celebration would correspond generally to that which we have to-day in solemn sung Masses. That is to say the celebrant was assisted by several ministers and the congregation played its part in answering the responses. Later, when the practice of what we now call Low Mass had been established, it was arranged, for many reasons, that one or a few should minister to the celebrant at Mass and make the responses in the name of the faithful. Thus the server from the beginning acted in a representative capacity. St. Thomas,[2] replying to an objection

[1] Cf. Bona : *Rerum Liturgicarum* 1, 1. c. 13–14 ; *Dict. d'Archéologie Chrétienne*, t. xi, c. 772.
[2] *S.T.*, 3, 83, 5 ad. 12.

that it was unfitting to say Mass in the presence of only one server—*et maxime minori*—in view of the plural number in the versicles, writes :

> In missis privatis sufficit unum habere ministrum, qui gerit personam totius populi catholici, ex cuius persona sacerdoti pluraliter respondet.

It appears that in medieval times permission to say Mass without a server (Solitary Mass) was granted to the priests of some monastic institutions.[1] This permission was widely availed of, on private authority, by other priests. The practice was condemned by several medieval councils.

The first general law requiring the presence of a server at the celebration of Mass is contained in the Decretals of Gregory IX[2] (1234) in which we read : 'Non solus sacerdos Missarum solemnia vel alia divina officia potest sine ministri suffragio celebrare.' Among the defects listed in the Rubrics of the Missal[3] we find : 'Si non adsit Clericus, vel alius deserviens in Missa.' And the Code of Canon[4] Law lays down the following prohibition :

> Sacerdos Missam ne celebret sine ministro qui eidem inserviat et respondeat. 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.

It is the unanimous opinion of moral theologians that the law binds *sub gravi*. St. Alphonsus[5] proposes the doubt : 'quale peccatum sit celebrare sine ministro ?' The reply is : 'Certum est apud omnes esse mortale.' It is, however, a well-known principle that grave extrinsic inconvenience will generally excuse from positive law. The theologians accordingly list a number of cases in which they consider that such an excusing cause is present in regard to the law under discussion here. It is interesting to note a tendency to add to the list in the course of years. Benedict XIV[6] mentions only one excusing cause, viz : the necessity of consecrating Viaticum for the dying. St. Alphonsus[7] adds to this the necessity of providing a Mass of obligation for the faithful or, possibly, for the priest himself. The same author quotes as probable the view that a priest having begun Mass—*maxime si sit facta oblatio*—may continue if the server departs and does not return. These are the classic examples. They are to be found in all the text-books. Some

[1] Cf. Gasparri, *De Eucharistia*, i, n. 645.
[2] Cap. 6, *De filiis presbyterorum*.
[3] *De defectibus*, x, n. 1.
[4] Canon 813, § 1, 2.
[5] *Th. Mor.*, 1. 6, n. 391.
[6] *De Sacrosaneto Missae Sacrificio*, 1, 3, c. 7, n. 3.
[7] Loc. cit.

recent authors give many more. Thus, for instance, Father Davis writes :[1] ' Mass could be celebrated without a server for consecrating Viaticum, for the paschal Communion of the faithful, for celebrating on a holy day of obligation, that the priest himself, and still more, that the faithful might hear Mass, for the special graces of the Eucharist if the priest feels that he needs special grace for the virtues of faith or chastity, for a stipend if the priest is very poor, for giving Holy Communion to the faithful. . . .'

The writer in the *American Ecclesiastical Review*,[2] to whom reference has been made by our correspondent, states that the classic examples are cases of extreme necessity. To these must be added cases of ordinary necessity, such as the avoidance of scandal; the fact that ' an engagement has been taken to say Mass for the sick, the dead, for a marriage or other particular necessity, and the interested persons are waiting; when Gregorian Masses are being said.' And finally, the same writer maintains that, apart from cases of extreme or ordinary necessity when no one is present to serve or attend Mass, the priest may lawfully celebrate alone to satisfy his own devotion. It is, of course, always presupposed that the absence of a server is not due to culpable neglect on the part of the priest.

We are not sure that we follow the meaning of the writer's argument. He distinguishes real necessity from extreme and ordinary. He describes the desire of the priest to satisfy his personal devotion as a case of real necessity. Subsequently, however, necessity and private devotion are placed in contraposition. He writes :[3] ' Necessity and private devotion are to be conceived as transient reasons in exceptional conditions.' We do not understand the precise significance of ' transient ' in the context where the reference seems to be to what the author calls ' real necessity.' The classic instance where Viaticum must be consecrated for the dying is no less a case of transient necessity. Nor do we understand the addition of the words ' in exceptional conditions.' If they have any meaning they must modify the general statement, and it would naturally be concluded that, apart from these exceptional conditions, necessity and private devotion would be insufficient reasons for celebrating without a server; in other words, that private devotion of itself does not excuse from the law—a conclusion

[1] *Moral and Pastoral Theology*, iii, pp. 115–6. Mass may, of course, be celebrated without a server in virtue of a papal indult—but that case is outside the scope of our discussion here.

[2] Vol. lxxviii (1928), pp. 409–11.

[3] p. 411.

that contradicts what the writer has already stated. He argues from the fact that the Mass, which he is accustomed to say every day, is the central point of the priest's daily life. He argues, too, from the immense value of the Mass to divine worship, to the Church militant and suffering, and from the mind of ecclesiastical superiors which favours daily celebration. But it is surely to be hoped that these factors do not constitute exceptional conditions. They are normal intrinsic considerations. The framers of the law were perfectly aware of each and all of them. Yet they prohibited *sub gravi* the celebration of solitary Masses. The prohibition of canon 813 is explicit. No exception is made. The concession made in the second paragraph of the canon only serves to emphasize the gravity of the general prohibition. We repeat that grave extrinsic inconvenience or necessity will, as a general rule, excuse from positive ecclesiastical law. But, as we have indicated, we do not think that private devotion alone can normally be listed under that heading.

We cannot, therefore, agree with the view put forward by the writer in the *American Ecclesiastical Review*. We have carefully considered the arguments advanced in the issue mentioned as well as those in earlier issues. We did not find them convincing —and not, we may confess, for lack of any wishful thinking that may be conceded to a moralist. An examination of the law itself, as expressed in canon 813, § 1, 2, in the light of its history, the fact that the Mass is an act of public worship, the representative capacity of the server, the general principles which govern excusation from law have all led us to the conclusion that the satisfying of private devotion alone does not justify a priest in celebrating a solitary Mass. The opinion expressed by the writer in the *American Ecclesiastical Review* finds scant support in the theological text-books—where the enumeration is very often confined to what we have called the classic instances of necessity.

Since the above reply was written the Congregation of Sacraments issued an Instruction[1] on asking the faculty of celebrating Mass without a server. In the course of this Instruction it is pointed out that ' the law requiring a server at Mass admits very few exceptions and authors agree in limiting them to the following cases (*a*) if Holy Viaticum has to be given to a sick person and there is no server at hand; (*b*) to enable the faithful to satisfy the precept of hearing Mass; (*c*) in time of pestilence when it is not easy to find some one to serve and the priest would otherwise be obliged to abstain from celebrating for a notable

[1] 1 October, 1949. *A.A.S.*, xxxxi (1949), p. 493.

period; (*d*) if the server leaves the altar during Mass, even outside the time of the consecration and offertory, in which case the reverence due to the Holy Sacrifice requires that it be continued even in his absence. Outside of these cases allowed by the unanimous consent of authors, this law is modified only by Apostolic Indult which is given especially in pagan lands.' Later in the Instruction it is noted that the Holy Father ordered that the clause 'dummodo aliquis fidelis Sacro assistat' be inserted in Indults.

DOES TAKING THE ABLUTION IN WINE ON ALL SOULS' DAY DEBAR FURTHER MASSES?

On 2nd November, I inadvertently took the ablutions, *vino adhibito*, at the second of the three Masses I intended to celebrate *sine intermissione*. Was I entitled to celebrate the third Mass? The new legislation on the eucharistic fast (*Christus Dominus*, etc.), though it declares that a priest may say a second or third Mass after he has, through inadvertence, taken the ablutions in wine and water, seems to restrict this faculty when there is question of celebrating two or three Masses *sine intermissione* on 2nd November and on Christmas Day. Your views would be gratefully appreciated.

PERPLEXED.

In the Apostolic Constitution on the discipline to be observed concerning the eucharistic fast the Holy Father decreed that 'those who say Mass twice or three times [on the one day] may consume the ablutions—but, in this case, the ablutions should be made with water only and not with wine.'[1] This permission was elaborated in the Instruction issued by the Holy Office[2] on the occasion of the publication of the Apostolic Constitution. In this Instruction we read:

'(7) All priests who are to celebrate Mass two or three times may consume, in the earlier Masses, the two ablutions prescribed by the rubrics of the Missal; but they may use only water [for the ablutions] which, of course, according to the new principle, does not break the fast.

'But one who, on Christmas Day or on the Commemoration of All Souls, celebrates three Masses, one immediately after the other, is bound to observe the rubrics in regard to the ablutions.

[1] *Christus Dominus*, 6 January, 1953 (*A.A.S.*, xxxxv (1953), pp. 15–24).
[2] 6 January, 1953 (*A.A.S.*, xxxxv (1953), pp. 47–51).

'(8) But if a priest who has to celebrate Mass twice or three times should, through inadvertence, take wine also in the ablution, he is not forbidden to celebrate the second or third Mass.'

These are the regulations which must be applied to our correspondent's query. If a priest who is celebrating his three Masses, *sine intermissione*, on Christmas Day or on All Souls' Day, consumes the ablutions in water only at the first or second Mass he does not violate the eucharistic fast and, under this head, therefore, he would be under no obligation to desist from celebrating the remaining Mass or Masses. But he has violated the rubrics. The violation of the rubrics in regard to the ablution is not *in se* a grave sin. It would be grave if done through contempt. Rarely, if ever, will there be such contempt. But the ablutions might be taken through inadvertence on Christmas Day or All Souls' Day when a priest may frequently enough be celebrating his Masses without a break. The priest is not under any obligation to omit the further Masses because he has violated the rubrics by taking the ablutions in water.

The case described by our correspondent involves a further point. He is celebrating his three Masses *sine intermissione*. He inadvertently takes the ablutions in wine at his second Mass. He has clearly violated both the rubrics and the eucharistic fast. But, as we have already indicated, the inadvertent violation of the rubrics does not, of itself, debar him from saying his third Mass. But does the violation of the eucharistic fast so debar him? Or may he, in this case, take advantage of the rule, laid down in the Instruction of the Holy Office, which allows a priest to celebrate the further Mass or Masses even though he has inadvertently consumed the ablutions made with wine? Our correspondent seems to suggest that this permission does not apply to Christmas Day or All Souls' Day when the three Masses are said without a break. But there is no good ground for this suggestion. The regulation which prescribes the observance of the rubrics in the unbroken celebration of the three Masses on the days mentioned is a sub-section, setting down an exception to the general rule that a priest who binates or trinates may take the ablutions, in water only, at the earlier Masses. The further provision (which, like the exception just mentioned, is not given in the Apostolic Constitution) allowing a priest to say a second or third Mass after he has inadvertently taken the ablution in wine at a prior Mass is a separate rule (n. 8) and can be applied to the case of uninterrupted celebration of the three Masses on Christmas Day or All Souls' Day. In

other words, the fact that the Masses are celebrated without a break does not constitute any obstacle. But a difficulty arises under another head. The rule under consideration applied to the case of a priest 'qui bis vel ter celebrare debet.' And the difficulty is to decide what is the precise force of the word *debet*. Does it demand that there be some form of necessity or obligation to celebrate the further Masses? Many of the commentators on the new legislation regarding the eucharistic fast do not give any discussion of this point. Some of them simply underline the word *debet* or its equivalent in some other language—*doit*,[1] '*has to*.'[2] If the word does imply some necessity or obligation to celebrate (say by reason of an announced Mass) then the rule permitting the priest to continue could not be applied on Christmas Day or All Souls' Day if the priest is celebrating his second or third Mass merely *devotionis causa*. And this could very easily be true of the Masses on 2nd November. In our view, however, the word *debet* need not be taken as implying that there must be some necessity or obligation to celebrate the further Masses. If the Holy Office wished to imply such necessity or obligation it surely would not have used this neutral word —a word which can express, as it does elsewhere in the Instruction,[3] a simple future. We are of opinion, then, that our correspondent could lawfully have celebrated his third Mass, even *merae devotionis causa*, on All Souls' Day. As we have noted, many of the commentators do not discuss the precise point at issue here. But Father Ford writes:[4] 'Suppose one is saying a second or third Mass on Christmas or All Souls' Day, and inadvertently takes wine in the ablutions at one of the prior Masses. May he say the following Masses? Apparently not, because the concession is made only for one who is under some sort of necessity to proceed. But this Latin construction with *debet* can also express a simple future, as in the Instruction, n. 20; hence the more lenient view is not improbable.' And Father Reed, having discussed the suggestion that some necessity or obligation is implied in the term *debet*, has this to say:[5] 'As a matter of fact, however, the word *debet* does not always imply obligation. It is sometimes used of futurity of destination. . . . Hence, since the Instruction does not call any particular attention

[1] Cf. Bergh, *Nouvelle Revue Théologique*, lxxv (1953), p. 197.
[2] Conway, *The New Law on the Eucharistic Fast*, p. 57.
[3] N. 20: 'Ordinarii et sacerdotes qui datis a Sancta Sede facultatibus perfrui debent. . . .'
[4] *The New Eucharistic Legislation*, p. 91.
[5] 'Modified Discipline of the Eucharistic Fast' in *Theological Studies*, xiv (1953), p. 217.

to this need, and the term admits the interpretation, it seems legitimate to understand the text simply in the sense of "is going to."'

MAY A PRIEST RECEIVE HOLY COMMUNION BEFORE CELEBRATING MASS?

A priest distributes Holy Communion outside Mass in a church or oratory in which he is not going to say Mass on that day. A few consecrated particles are left over in a ciborium which the priest wishes to purify. May he, before the celebration of his Mass, consume these particles?

CAPPELLANUS.

It is hardly necessary to say that the reception of consecrated particles outside Mass does not involve any violation of the eucharistic fast, any more than does the reception of the sacred species at Mass. This fast is violated only when merely natural nourishment other than true and natural water is taken *per modum comestionis et potationis*. The *ratio* which lies behind the law of the eucharistic fast—namely the irreverence implied in receiving Holy Communion after bodily nourishment has been taken[1]—obviously does not apply to saying Mass after Holy Communion has been received. There would then be no irreverence in this case under the heading of the eucharistic fast. Yet a priest may not receive consecrated particles outside Mass and then say Mass afterwards. To do so would be a grave violation of the ecclesiastical law which prohibits the reception of Holy Communion more than once on the same day. In canon 857 we read:

> Nemini liceat sanctissimam Eucharistiam recipere qui eam eadem die iam receperit, nisi in casibus de quibus in canon 858, § 1.

As the canon indicates there are exceptions to the general principle. The Blessed Eucharist may be received again by one who has already communicated that day, if the second reception is by way of Holy Viaticum or is necessary to prevent profanation to the Blessed Sacrament. And if a priest lawfully celebrates more than one Mass on any particular day, he may, of course, and, indeed, he must, under pain of grave sin, in order to complete the sacrifice, receive the sacred species as often as he says Mass. But none of these exceptions is relevant to the case envisaged in the question posed by 'Cappellanus.' His

[1] Cf. Noldin, *De Sac.*, n. 146.

question is whether a priest, having received Holy Communion *extra Missam*, may afterwards celebrate his Mass. And, as we have noted earlier, the reply is in the negative. Cappello writes :[1]

Sacerdos qui die Nativitatis aut die 2 Novembris nullam celebrat Missam, nequit tres communiones extra-sacrificiales facere ; sacerdos qui unam vel duas celebravit Missas nequit insuper duas vel unam communionem extra-sacrificialem facere ; tandem sacerdos qui communionem extra-sacrificialem facit nullam potest celebrare Missam. Item diaconus et subdiaconus qui in Missa solemni Romani Pontificis una cum celebrante communicant, hoc ministerio fungi nequeunt si antea iam communicaverint, aut charactere Presbyterali insigniti Sacrum fecerint ; et huiusmodi ministerio functi, nequeunt postea propriam celebrare Missam.

It should be added that when it is necessary, as it sometimes will be, for a priest to consume superfluous particles consecrated for the communion of the faithful, he must do so at Mass after he has received the Precious Blood, and, of course, before he consumes the ablutions.

ADMINISTRATION OF HOLY COMMUNION IN A PRIVATE HOUSE

A man has not gone to his Easter duty for three years, nor has he gone to Mass on Sunday, nor outside his home, as he has not suitable clothes. Would a priest be justified in giving him his Easter duty in his home ? Would he be justified in giving him Holy Communion more often than for his Easter duty ? There is no prospect of getting new clothes in the near future.

PERPLEXED.

We might remark, by way of preface to our reply, that lack of suitable clothes is an excusing cause which may easily be exaggerated. We may presume, however, that, in the case submitted by our correspondent, the lack is really such as excuses, while it lasts, from attendance at Mass on days of obligation. Perhaps the most practical way to solve a concrete difficulty of the kind proposed would be to find some means, through the agency of a charitable organization in the parish, or otherwise, of providing the needy man with suitable clothes. But 'Perplexed' is perfectly aware of this, and needs no suggestions on these lines from us. He rather proposes for our consideration the theological problem to which the circumstances as stated may give rise.

[1] *De Sac.*, i, 468.

The general principle is clearly laid down in Canon Law[1] that Holy Communion may be distributed wherever Mass may lawfully be celebrated—even in a private oratory, unless the local Ordinary for a just cause prohibits such distribution in particular cases. Normally, according to canon 822, § 1, Mass is to be celebrated on a consecrated altar in a church or oratory consecrated or blessed as required by law. But in a subsequent paragraph (§ 4) of the same canon it is stated that the local Ordinary may, under certain conditions, give permission to celebrate Mass elsewhere.

Loci Ordinarius . . . licentiam celebrandi extra ecclesiam et oratorium super petram sacram et decenti loco, numquam autem in cubiculo, concedere potest iusta tantum et rationabili de causa, in aliquo extraordinario casu et per modum actus.

It is maintained that if permission cannot be sought and there is an urgent reason for celebrating (e.g. the fact that a congregation has actually gathered for Mass on a day of obligation), the priest may celebrate without permission.[2] He may do so, too, where there is a legitimate custom in his favour.[3] In this country, as our correspondent is well aware, the prevailing practice of Stations (implying the hearing of confessions and the saying of Mass in private houses) is tolerated.[4] And, in some dioceses, apart altogether from the recognized Stations, there is a custom of saying Mass in private houses without any special permission from the Ordinary.

Wherever a priest may thus lawfully say Mass, even in a private house, he may distribute Holy Communion *intra Missam* (and we think that the Ordinary may not prohibit this distribution[5]). Thus, if the priest might lawfully say Mass, during the Paschal period, in the home of the needy parishioner, or anywhere in the neighbourhood where this parishioner might come without undue embarrassment, Holy Communion could be given to him and the Paschal precept thereby fulfilled. It is unlikely, however, that in the circumstances such a solution will be readily available.

[1] Canon 869.

[2] Cf. Cappello, *De Sac.*, i, n. 752, 'ex praesumpta Ordinarii licentia, vel melius ex facultate ab ipso iure communi concessa, quatenus lex ecclesiastica non obligat quando servari nequeat sine gravi incommodo.'

[3] Cf. Gasparri, *De Eucharistia*, n. 274.

[4] Cf. *Maynooth Statutes*, n. 283.

[5] Cf. canon 846, § 1. Cappello writes : 'Ordinarius prohibere nequit quominus *intra Missam* sacra communio distribuatur, cum fideles adstantes ius habent Eucharistiam sumendi ideoque propius participandi Sacrificio Missae,' op. cit., n. 442.

The further questions may therefore arise : firstly, may Holy Communion be distributed in the 'decent place' mentioned in canon 822, § 4, even though Mass is not actually celebrated; and, secondly, how far the permission of the Ordinary is required for this distribution apart from Mass? The general reply may be given that Holy Communion may be distributed whenever Mass may lawfully be said even though it is not actually celebrated—unless the Ordinary has prohibited this for a just cause in particular cases. If the permission of the Ordinary is required for the celebration of Mass in a place then, normally, his permission is required for the distribution of Holy Communion there. The sick may, of course, be given Holy Communion in their homes—even in their bedrooms.

Some years ago three questions on the subject we are considering were submitted, by the Bishop of Mondovi in Piedmont, to the Congregation of the Sacraments. The replies, approved by the Holy Father, were published in January, 1928. The first question was :[1] 'May the faithful who live in mountain hamlets be given Holy Communion in a sacred place whenever Holy Communion is brought to the sick, or, since there is question of so sacred a matter, may this even be done in a decent and suitable place along the way, when they are unable on that day to go to church?' And the reply was : 'In the affirmative according to canon 869 in connection with canon 822, § 4, that is, provided the Ordinary of the place grants the faculty according to the provision cited, namely, for each case and by way of act.'

The two further questions asked were : '(2) May Holy Communion and the sacrament of Confession be administered to those who are in the house of the sick person? (3) Should these sacraments be administered in the above circumstances to those who are advanced in years or who are ill of some disease?' Reply to (2) and (3) : 'As regards Holy Communion provision has been made in the reply to the first question.' These replies might be summed up thus :[2] When Holy Communion is brought to the sick the permission of the Ordinary of the place is not required for the administration of this sacrament to others who are in the house of the sick person. Nor, in the same circumstances of bringing Holy Communion to the sick, is this permission required for the distribution of Holy Communion to those of the faithful, who are legitimately impeded from going

[1] *A.A.S.*, xx (1928), p. 79. We have taken the translation mainly from Bouscaren, *Canon Law Digest*, i, p. 391.
[2] Cf. Cappello, op. cit., n. 442; Davis, op. cit., iii, p. 232.

to the church on that day, provided the distribution is made in a place where Mass may be said without permission. In all other cases the permission of the Ordinary of the place is required. Cappello says[1] that reasonably presumed permission is sometimes sufficient. The Secretary of the Congregation, however, in officially published annotations, suggests that the Ordinary should delegate to his pastors, with due admonitions, the power to grant the necessary permission.[2]

Applying these rules to the case under consideration here, it is clear that, on the occasion of a sick call to some other member of the household, Holy Communion may be given, without any special permission from the local Ordinary, to the man who is legitimately excused from attending Mass—and this may be done not merely to fulfil the Paschal precept, but as often as the Blessed Sacrament is brought to the sick in the house. Moreover if, in accordance with local custom, Mass might be celebrated without special permission in the man's home—even though in fact it is not celebrated—then again no special permission is required for giving Holy Communion to the man in his home on the occasion of a sick call in the neighbourhood. Thus far our conclusions are indicated in the above-mentioned replies. But we see no compelling reason why, apart from any sick call (implying the bringing of the Blessed Sacrament to the sick), Holy Communion may not be administered in the man's home without permission provided Mass might by custom be celebrated there at the time—similarly without permission. In all these circumstances Holy Communion may be given, not merely to comply with the Paschal precept, but more frequently, as long as the cause excusing the man from attendance at Mass lasts. The Ordinary of the place, however, may for a just cause prohibit the above distribution of Holy Communion in particular cases. If the custom of the particular place does not allow the celebration of Mass in a private house, without permission, then, apart from a sick call there, the permission of the Ordinary of that place, as mentioned in canon 822, § 4, must be obtained on each occasion before Holy Communion may be lawfully administered in his home to the man in question. We have, however, noted Cappello's remark that reasonably presumed permission will on occasion suffice.

In our conclusions allowing the distribution of Holy Communion in a private house, we have always presupposed that

[1] Loc. cit., 3; cf. *A.A.S.*, loc. cit.
[2] The power is ordinary and delegation is not prohibited; cf. canon 199, § 1.

there is no irreverence and that the place of distribution is decent and suitable. Cappello concludes[1] a discussion on the place of distribution of Holy Communion with the following paragraph :

Hac materia probe considerata simulque fine legislatoris inspecto, putamus sub levi non autem sub gravi obligare, seclusa irreverentia, praescriptum circa locum communionis distribuendae.

RECEPTION OF HOLY COMMUNION OR ASSISTANCE AT MASS ON A WEEK-DAY

A teacher lives in a parish where there is only one Mass during the week. He has the option of (*a*) receiving Holy Communion, returning home for breakfast without hearing Mass and being back by nine o'clock for school, or (*b*) of hearing Mass without receiving Holy Communion and then going straight on to school.

Which is the better thing for him to do and why ?

SACERDOS.

Holy Communion and the Mass are, respectively, the sacramental and sacrificial elements of the Blessed Eucharist. The two elements are very closely associated. In the Sacrifice of the Mass the Hosts which are received in Holy Communion are consecrated. And the reception of Holy Communion, foreshadowed in the sacrificial banquets of the Old Law, is regarded as an integral, though not, of course, an essential part of the Sacrifice. The chief point of difference between Holy Communion (the sacrament) and the Mass (the sacrifice) is that the former is primarily and directly intended for the sanctification of the individual, whereas the primary and direct purpose of the latter is to render glory to God. It is, indeed, at the same time, true that the sanctification of the individual glorifies God, and that those who assist at Mass participate in its fruits. Yet the main point of difference suggests an answer to the question proposed by ' Sacerdos.'

The teacher has to choose between the reception of Holy Communion and assistance at Mass on a week-day. Speaking objectively, from the point of view of his personal sanctification, there is no doubt that the better thing for him to do is to receive Holy Communion. The worthy reception of this, the greatest of the sacraments, which contains not merely grace but the Source of all grace, produces, with sacramental efficacy, many wondrous

[1] Op. cit., n. 444.

effects in the soul. It produces an increase of sanctifying grace. *Per accidens* it may produce even first grace—if received in good faith and with attrition.[1] It effects a twofold union, sacramental and spiritual, between the soul and Christ. It remits venial sins. It is an antidote against mortal sin. It calms and lessens the urge of concupiscence. It is the pledge of our future glory and happiness as it is the guarantee of our glorious resurrection.[2]

Those who assist at Mass join in the unbloody offering of the Sacrifice of Calvary.[3] Thus they participate in the most sublime act of worship that can be made to God. In the Mass God is, with infallible efficacy, adored, thanked, propitiated, impetrated and satisfaction is made to Him.[4] And all this is done not merely on behalf of the priest who is the celebrant, not merely on behalf of those for whom he specially offers, but on behalf of the whole body of the Church. Thus the Mass is a social act and has a social value. All who co-operate with the priest by providing the means of having Mass offered, by procuring that it be offered, by serving or by assisting at it, share, if they are worthy, in a particular way in the fruits thereof. In varying degrees, according to the nature and measure of their co-operation, they share in what are called the ' special fruits ' of the Mass. These fruits are propitiatory, impetratory and satisfactory and are independent of the intention of the celebrant. The Sacrifice of the Mass does not, however, confer, *ex opere operato*, on those who assist thereat, an increase of sanctifying grace. It does not confer, even *per accidens*, first grace. Nor does it effect immediately the remission of venial sin.[5]

While it is true, then, that in the Mass, in the offering and fruits of which all who assist participate, ineffable honour and glory are rendered to God—honour and glory far beyond that given by the reception of Holy Communion—yet, the individual does not, *per se*, derive as much personal spiritual benefit from assistance at Mass as he does from the reception of Holy Communion. We are not clear from our correspondent's statement whether there is one Mass on each week-day or only one Mass on one day during the week. In the former case at least, perhaps the best practical solution of the difficulty in the circumstances given, would be that the teacher vary his procedure

[1] Cf. St. Thomas, *S.T.*, 3, q. 72, a. 7 ; q. 79, a. 3.
[2] Cf. *Conc. Trid.*, Sess. xiii, c. 2.
[3] Cf. *Conc. Trid.*, Sess. xxii, c. 2.
[4] Cf. Prümmer, op. cit., nn. 241, 242.
[5] Cf. Cappello, *De Sac.*, i, nn. 574–5.

—receiving Holy Communion on some week-days and assisting at Mass on others. The individual is expected to be, and it is good for him to be, unselfish and generous in spiritual as well as in material things. By varying his practice in the manner suggested the teacher will show an unselfish and a social consideration for God's glory and, at the same time, a prudent concern for his own sanctification.

LICEITY OF CERTAIN ANNOUNCEMENTS REGARDING THE RECEPTION OF HOLY COMMUNION

A few priests from different parts of the country, having exchanged notes on their respective congregations, talked of the liceity and advisability of making certain parish announcements. One priest said it would not be proper or even lawful to announce that all the boy scouts of the parish in their 'uniform,' or the Children of Mary in their 'uniform,' or the forty-five pupils from the graduating class in the parish school in cap and gown, or the members of any other parochial society, with their badges or insignia, shall go to Holy Communion at the eight o'clock Mass next Sunday. Such an announcement might, perhaps, create embarrassment for some and might easily lead to unworthy Communions. This priest added that the Holy See had issued a warning or prohibition against such announcements. Another priest asked: when and where did the warning or prohibition of the Holy See appear? A third maintained that, apart from any prohibition, the obviously correct procedure was to encourage daily and frequent Communion, to make the announcements, but to refrain from any mention of uniforms, insignia or numbers.

EXILE OF ERIN.

In the course of his letter our correspondent records the question: when and where did a warning of the Holy See against certain announcements in regard to Holy Communion appear? The answer is that a relevant warning is contained in an Instruction issued on 8th December, 1938. In that year the Congregation of the Sacraments addressed a reserved Instruction to Archbishops, Bishops, Ordinaries of places, major Superiors of Orders and clerical religious Institutes 'on the daily Communion which is usual and almost general in seminaries, colleges, and communities, including religious ones, and on the abuses to be guarded against in connection therewith.' The Instruction was considered and unanimously approved at a plenary session of the Cardinals. It was ratified

by Pope Pius XI, who ordered that it be communicated as a reserved Instruction to the authorities enumerated above, to be exactly observed by them. Perhaps the most satisfactory way in which to answer the other questions raised by our correspondent is to give the main points of the Instruction. We do so the more readily inasmuch as they have not been given elsewhere in this work. A verbatim translation of the Instruction has been published by Bouscaren in his *Canon Law Digest*.[1]

It is pointed out in the opening sections of the Instruction that the salutary practice of frequent and daily Communion is to be commended and further propagated in accordance with the Decrees of Pius X and the laws of the Code. But there must be insistence upon the observance of the necessary conditions, namely, the state of grace and a right intention, to avoid unworthy reception. 'For the danger of receiving Communion unworthily, which is seen to be, as it were, inherent in the widespread practice of frequent and daily Communion, in view of human nature which tends to have little esteem for things to which it is accustomed by frequent use, is increased when the faithful, especially the young, approach the Holy Table, not singly but generally and in a body, as happens daily in seminaries and religious communities, frequently in colleges and institutions for the training and education of Christian youth, and sometimes in the gatherings which are held for the purpose of receiving the Most Blessed Eucharist at Easter time or on some other solemn occasion. For it can happen that some one, though conscious of grave sin, may yet approach the Holy Table influenced by the example of his associates and moved by the vain fear that if he stays away he will cause astonishment in the others, especially in his Superiors, and will be suspected of having committed a grave sin.'

The Sacred Congregation then suggests a number of general remedies for the prevention, as far as is possible, of all abuse in this connection. Preachers and directors are to exhort the faithful to frequent and daily Communion, but they must make it clear that such reception is not obligatory. The occasional abstention of some, where the practice of daily Communion exists, should not give rise to any astonishment or suspicion. And it must be insisted that Holy Communion may not be received unless the recipient is in the state of grace and has a right intention. Frequent confession should, therefore, be

[1] ii, pp. 208–15. Our summary and the passages quoted are based for the most part on the translation of Bouscaren, to whom we acknowledge our indebtedness.

promoted together with frequent Communion, not, indeed, that a person is always bound to go to confession before receiving, unless he is conscious of mortal sin.[1] But ample opportunities for frequent confession should be provided for all who are frequent or daily communicants. It should even be possible for them, if need be, to make a confession shortly before the time of Communion. Further details are given regarding the provision of confessors in seminaries and in religious communities of men and women. These details are an elaboration of the appropriate canons of the Code.[2] It is added that 'in all communities of young people of either sex, every effort must be made that a confessor be at hand and easily accessible at the time when Communion is being distributed to the community.'

In addition to these general remedies the authorities should employ others which may be suitable to special circumstances of person and place. A Superior should exhort his subjects to frequent reception of Communion, but he should, at the same time, make it clear that he does not reproach those who do not receive. Nor should he give any indication by his conduct that he seems to notice those who go to Communion frequently and to praise them, while blaming the others. Superiors of seminaries and similar institutions, in making a judgment on students regarding their progress in piety, must take no account of their greater or less assiduity in receiving the Blessed Eucharist.[3] The Instruction continues thus (*b*) 'In communities of boys and girls there should never be an announcement of a *General Communion* with special solemnity, and even outside communities, the very name "General Communion" should either not be used at all or its meaning should be carefully explained: namely, that all are invited to the Holy Table, but that no-one is obliged to approach; on the contrary each individual is entirely free to abstain . . . (*c*) When Holy Communion is being received all those things are to be avoided which create difficulty for a young person who wishes to abstain, in such a way that his abstinence will not be noticed; hence, there should be no express invitation, no rigid and quasi-military order of

[1] Canon 856.

[2] Canons 1358, 1361, 1367 and 518–23.

[3] In 1930 the same Congregation had issued an Instruction which dealt with the necessity and means of thoroughly testing candidates for Orders. Among the questions in regard to a candidate on which a written report must be made by the pastor is 'Num ad sacram synaxim crebro ac devote accedat?' Another form in which this question appears is as follows: 'An assiduus sit . . . ad frequentem aut etiam quotidianam communionem?' But the two Instructions have not precisely the same scope.

approach, no insignia to be worn by the communicants. (*d*) The Superior of the community should see to it that Holy Communion be not brought to the sick who do not expressly ask for it. (*e*) Promoters and directors of gatherings of young people which are convened, for example in public schools, for the reception of Holy Communion must take note that in such gatherings there are dangers akin to those which exist in communities, and they must employ all means for removing them, not only by announcing that each one is free to receive Communion or not and by providing sufficient opportunity for confession, but also by striving to remove all circumstances which might expose those who do not receive to astonishment from others, as was said above.'

The provisions of the Instruction apply primarily to the practice of Holy Communion in seminaries, colleges and communities. But it is clear that they apply also to the reception of Holy Communion by other groups, such as parochial groups. The Sacred Congregation exhorts prelates to exercise vigilance and care to ensure the attainment of the purpose of the Instruction. This purpose is that 'the Blessed Eucharist, which was instituted by God for the progress and spiritual welfare of souls, may not, through the malice of men and their negligence in failing to forestall or remove abuses, be turned to the detriment and eternal ruin of souls.' There is no need to comment further on this Instruction. There is, of course, no doubt about its binding force. The summary and the extracts we have given provide an answer to all the points raised by our correspondent.

OFFERING HOLY COMMUNION FOR OTHERS

Would you be so kind as to explain the meaning of the common expression 'to offer Holy Communion' for some person or intention. What is 'offered' (presented for acceptance) in Holy Communion and to whom? I cannot see how the reception of a Sacrament can benefit others directly (cf. St. Thomas, 3, q. 79, a. 7). Should not one rather say, 'I shall offer my Mass for you'? Yet this expression seems to be used only by priests, and to mean the application of the 'ministerial fruits' of the Mass. X. Y. Z.

The expression 'to offer Holy Communion' for another or for some intention is not strictly accurate—either in technical or in ordinary usage. To offer, in the words of our correspondent, is to present for acceptance. In a context which treats of sacrifice the word offering has a special significance. We speak

of the offering (*oblatio*) as a constituent element, in fact the most important element, of a sacrifice. We define sacrifice as *oblatio hostiae immolatae*—the offering of a victim which has been immolated. Thus, the offering is the formal element of the sacrifice. The Mass is a true and proper sacrifice. But the reception of Holy Communion does not correspond at all to the oblational element in the Sacrifice of the Mass—nor does it correspond to the immolation.[1] We may remark, in passing, that there have been a few theologians in the course of history who hold that the offering of the Mass was made at the Communion and not at the Consecration. These theologians taught, as a consequence, that the Mass of the Presanctified on Good Friday was a true and complete sacrifice. St. Thomas[2] teaches expressly that the Sacrificial offering of the Mass is completed before the Communion. The sacrificial offering of the immolated Christ is made by the dual consecration. The reception of Holy Communion is the participation in a divine banquet.[3] God invites us to His table to partake of the Victim which has been offered to Him in sacrifice. Thus the reception of Holy Communion is the very antithesis of making an offering: we receive a gift from God; we do not make a gift to God. In Holy Communion we have a gracious act on the part of God whereby man is admitted to His feast, to share in the Victim which belongs, in the fullest sense and by every title, to God alone. Billot writes:[4]

> Numquid, quaeso, aliquid dicetur vere offerri Deo, per eam praecise actionem qua ab homine in propriam utilitatem consumitur? Sane vero quidquid sumitur, in ipso sumendi actu non offertur et vice versa.

The reception of Holy Communion is the sacramental aspect of the Eucharist. And, as a sacrament, the Blessed Eucharist, like the sacrament of Baptism, for instance, can benefit, directly and *ex opere operato*, the recipient alone. This is the teaching of St. Thomas. We find it in the article referred to by our correspondent, and even more clearly elsewhere.[5] The reasons for

[1] Some theologians maintain that the Communion is a constituent element of the Sacrifice of the Mass. At the Communion, they say, the victim is destroyed or immolated—in a real manner according to some; symbolically according to others. We are not concerned here with that point. Of course, the Communion completes the ritual act.

[2] Cf. *S.T.*, 3, q. 83, a. 4 et 6.

[3] Cf. de la Taille, *The Mystery of Faith and Human Opinion*, p. 9.

[4] *De Ecclesiae Sacramentis*, p. 604.

[5] Cf. quaest. cit. a. 5. 'Hoc sacramentum simul est sacrificium et sacramentum: sed rationem sacrificii habet inquantum offertur; rationem autem sacramenti inquantum sumitur; et ideo effectum sacramenti habet in eo qui sumit, effectum autem sacrificii in eo qui offert, vel in his pro quibus offertur.' Cf. in *Ioann.*, 6, 1. 6.

the teaching are clear and compelling. The sacrament of the Eucharist was instituted by Christ after the manner of food. Food obviously only benefits the recipient directly.[1] But the reception of the Eucharist may benefit others indirectly in several ways. The worthy recipient of Holy Communion is given in this august sacrament a great increase of sanctifying grace and virtue. And, by reason of the unity and solidarity of the members of Christ's Mystical Body, this increase redounds to the credit and advantage of all the faithful. The total sanctity of the Mystical Body is increased: its sacrifice, its corporate acts have thereby an enhanced value in the sight of God.

Moreover, an individual, by his good works, may merit *de congruo* certain graces for a fellow-wayfarer in life or may gain indulgences for the dead. During and for some time after the reception of the Blessed Eucharist the recipient is in a particularly favoured position to merit for others. He is intimately associated with Christ in a close sacramental union. His prayers have in these circumstances a new and added value: they are more informed by charity: they are more acceptable to God. The recipient of Holy Communion is enabled to gain many special indulgences which may be applied for the souls in Purgatory. In brief, during and after a worthy Holy Communion the recipient is more competent than at other times to help his brethren of the Church militant and suffering. While, then, the *ex opere operato* graces and effects of the sacrament of the Eucharist belong to and directly benefit the recipient alone, he, as a consequence of worthy reception, but *ex opere operantis*, may merit, impetrate and satisfy more abundantly for his fellow-men. Accordingly, if the phrase 'to offer Holy Communion for another' be restricted to mean that the above-mentioned *ex opere operantis* and indirect effects, are or will be transferred or applied, as far as may be, by an act of will, to the benefit of that other—then the phrase has an intelligible, though a very strained meaning.[2]

It would be more accurate and, in fact, in perfect harmony with exact doctrine, if even a layman were to speak of offering his Mass or hearing Mass for the benefit of another. A layman can make this offering in a very real sense. In addition to the

[1] Cf. Cappello, *De Sac.*, i, n. 262.

[2] We say 'a very strained meaning' because what is offered for the other is not Holy Communion nor its directly sacramental effects—but the added merit gained on the occasion of the reception of the sacrament. Cf. Cappello, loc. cit.; Billot, op. cit., p. 539.

priest who, in the person and by the priestly power of Christ, and as the deputed minister of the Church, makes the sacrificial oblation, all the faithful, who are present, participate, in a special way, in the offering of the Mass. They are real, though secondary offerers. They all share, *suppositis supponendis*, in the *ex opere operato* fruits of the Mass. Independently of the intention of the celebrant they share in the general benefits which flow from every Mass to the universal Church. Likewise each of them obtains also, in due measure, a share in what are called the special fruits of the Mass at which he assists. And this latter share, for the most part, may be applied, according to the recipient's intention, for the benefit of others, for the living and for the souls in Purgatory.[1]

De la Taille, having stated that one cannot transfer to another the *ex opere operato* effects of Holy Communion, concludes with a passage which, we think, is an excellent summary of the correct teaching on the point at issue. He writes :[2]

Nihilominus exhortandi sunt fideles dum subvenire volunt proximo, ut communicent. Etenim, quia perceptione Eucharistiae expiamur, ideo et iam minus sumus luendis poenis obnoxii (quod etiam aliis utique vivis eatenus prodest, quatenus debitum poenae meum potest ob unitatem socialem extendi coetui cuius sum membrum), et potissimum ad impetranda bona evadimus aptiores (quod aliis etiam mortuis, proderit, quibus fausta imprecari satagemus). Praeterea indulgentias lucrari possumus, applicandas defunctis. Attamen non mea communio secundum se directe prodest aliis, sicut prodeat aliis directe meum sacrificium missae, mea eleemosyna, mea impetratio, aut si quid eiusmodi.

SACRAMENTAL AND SPIRITUAL COMMUNION

Is it correct to say with some spiritual writers that sacramental and spiritual Communion differ, not in kind, but in degree ? May St. Thomas (*S.T.*, 3, 80, 1 ad 3) and the Council of Trent (Sessio xiii, c. viii) be cited in favour of this view ?

MISSIONARY.

It is not strictly correct, in our opinion, to say that sacramental and spiritual Communion differ, not in kind, but in degree. In the Blessed Eucharist we can distinguish between the ' confection ' and the ' use ' of the sacrament. The reception of Holy Communion pertains to the ' use ' of the sacrament already confected at the Consecration.

[1] Cf. Cappello, loc. cit.
[2] *Mysterium Fidei*, Eluc. xxiv, § 1, p. 305, n. 6.

Cum alia sacramenta perficiantur in usu materiae percipere sacramentum est ipsa perfectio sacramenti : hoc autem sacramentum (Eucharistiae) perficitur in consecratione materiae ; et ideo uterque usus est consequens hoc sacramentum.[1]

Spiritual Communion is the loving desire to receive the Eucharist when it is not possible to do so really. It is, then, neither the ' confection ' of the sacrament, as is very obvious, nor the use of the sacrament in any real sense. In order that the sacrament be confected, the specifically sacramental act must be placed ; there must be the due conjunction of the essential matter and valid form. And for real reception or use of the sacrament the thus validly consecrated matter must be given as food to the recipient.[2] In spiritual Communion none of these things takes place. In reality then, spiritual Communion must be classed as a non-sacramental act and, as such, differs not merely in degree but in kind from a sacramental act—that is from an act which is the confection or reception of a sacrament. Moreover, sacramental Communion, *suppositis supponendis*, differs radically from spiritual Communion in its mode of causality and in some of its effects. Difference in causality argues, even demonstrates difference in essence. *Actio sequitur esse.* A sacrament has a specific kind of causality : it causes grace *ex opere operato*. And each sacrament produces its own particular sacramental grace in addition to sanctifying grace—which latter is an effect common to all the sacraments. The desire of a sacrament, *in casu* spiritual Communion, has no *ex opere operato* efficacy, nor does it produce the particular sacramental grace which is proper to the Blessed Eucharist.[3]

Any real desire of a sacrament is, however, naturally orientated to its real reception. This is particularly true of spiritual Communion which, like sacramental Communion, presupposes valid Consecration and is, in fact, constituted by a vivid faith in the real presence of our Lord under the sacramental species and an ardent desire to receive His flesh to eat and His blood to drink. Spiritual Communion, again *suppositis supponendis*, also produces sanctifying grace in the soul—an effect which it has in common with the real reception of the sacrament, in a different order of causality however. Spiritual Communion causes grace only *ex opere operantis*.[4] But in the light of all this it is not surprising to find writers loosely, or by analogy, describing

[1] St. Thomas, *S.T.*, 3, 80, 1 ad 1.
[2] Ut certo sit sacramentalis sumptio fieri debet per *manducationem* (et potationem), Lehmkuhl, *Th. Mor.*, ii, n. 143 (nota 1).
[3] Cf. Hervé, *Th. Dog.*, iv, n. 305.
[4] Cf. Billot, *De Eccl. Sac.*, p. 547.

spiritual Communion as sacramental or as a sacrament—just as they speak of Baptism by desire as one of the species of the sacrament of Baptism. Lehmkuhl writes thus :[1]

Spiritualis sumptio, si a sacramentali seiungitur, est perceptio ipsius fructus sacramenti extra realem S. Eucharistiae sumptionem : quae vocari potest ad analogiam aliorum sacramentorum, Communio in voto, seu desiderium Communionis.

Our correspondent refers to a passage in St. Thomas. For the sake of clarity we shall quote the relevant section :[2]

Effectus sacramenti potest ab aliquo percipi si sacramentum habeat in voto quamvis non accipiat in re : et ideo sicut aliqui baptizantur baptismo flaminis propter desiderium baptismi, antequam baptizentur baptismo aquae ; ita etiam aliqui manducant spiritualiter hoc sacramentum, antequam sacramentaliter sumant. Sed hoc contingit dupliciter : uno modo propter desiderium sumendi ipsum sacramentum ; et hoc modo dicuntur baptizari et manducare spiritualiter et non sacramentaliter illi qui desiderant sumere haec sacramenta iam instituta . . . Nec tamen frustra adhibetur sacramentalis manducatio, quia plenius inducit sacramenti effectum ipsa sacramenti susceptio, quam solum desiderium. . . .

In the context St. Thomas is dealing with the question : ' Utrum distingui debeant duo modi manducandi corpus Christi ? ' He answers the question in the affirmative. He distinguishes between *manducatio sacramentalis* and *manducatio spiritualis*. And by spiritual reception he means, primarily, effective or fruitful reception, in contradistinction to merely sacramental or unfruitful reception. In these circumstances it is not to be wondered at that St. Thomas emphasizes the value of spiritual reception. Let him speak for himself :[3]

In sumptione huius sacramenti duo sunt consideranda, scilicet ipsum sacramentum, et effectus ipsius. . . . Perfectus igitur modus sumendi hoc sacramentum est, quando aliquis ita hoc sacramentum suscipit, quod percipit eius effectum. Contingit autem quandoque . . . quod aliquis impeditur a percipiendo effectum huius sacramenti : et talis sumptio huius sacramenti est imperfecta ; sicut igitur perfectum contra imperfectum dividitur, ita sacramentalis manducatio per quam sumitur solum sacramentum sine effectu ipsius dividitur contra spiritualem manducationem, per quam quis percipit effectum huius sacramenti, quo spiritualiter homo Christo coniungitur per fidem et charitatem.

And in the passage referred to by our correspondent St. Thomas is answering the specific objection ' quod nullus possit manducare spiritualiter nisi etiam sacramentaliter manducet.' In view of this context we think that the inevitable emphasis by St. Thomas on the value of spiritual reception may not fairly be interpreted as implying that he held that sacramental and spiritual reception were the same in kind. It seems perfectly clear in St. Thomas that spiritual reception alone is not the sacrament of the Eucharist.

[1] Loc. cit. [2] *S.T.*, 3, 80, 1 ad 3. [3] Ibid., c.

The Fathers of Trent, in a chapter entitled : *De usu admirabilis huius sacramenti*, speak of three ways in which the sacrament of the Eucharist may be received.

Quoad usum autem recte et sapienter Patres nostri tres rationes hoc sanctum sacramentum accipiendi distinxerunt. Quosdam enim docuerunt sacramentaliter dumtaxat id sumere ut peccatores ; alios tantum spiritualiter, illos nimirum qui voto proposito illum caelestem panem edentes, *fide* viva *quae per dilectionem operatur* fructum eius et utilitatem sentiunt ; tertios porro sacramentaliter simul et spiritualiter, hi autem sunt qui ita se prius probant et instruunt, ut *vestem nuptialem induti* ad divinam hanc mensam accedant.[1]

But here again it seems to us that there is no question of specifically identifying spiritual reception of the Eucharist with the sacrament. The Fathers of the Council wished to point out, in accordance with the traditional doctrine, the value of the inner dispositions of the recipient and how useless—and worse—the external act is without them. This is the comment of the Catechism of the Council of Trent on the passage just quoted : ' Rightly and wisely, then, have our predecessors in the faith, as we read in the Council of Trent, distinguished three modes of receiving this sacrament ; for some receive the sacrament only, as sinners who dread not to receive the sacred mysteries with polluted lips and hearts who, as the Apostle says, eat and drink the body of the Lord unworthily. Of these St. Augustine writes thus : " He who dwells not in Christ, and in whom Christ dwells not, undoubtedly eats not spiritually His flesh, although carnally and visibly he press with his teeth the Sacrament of His flesh and blood." Those, therefore, who receive the sacred mysteries with such dispositions, not only obtain no fruit therefrom, but, as the Apostle himself testifies " eat and drink judgment to themselves." Others are said to receive the Eucharist in spirit only : they are those who, inflamed with a lively " faith which worketh by charity " participate, in wish and desire, of that proposed celestial bread from which they receive, if not the entire, at least very great fruits. Lastly, there are some who receive the Holy Eucharist sacramentally and spiritually ; those who, according to the teaching of the Apostle, having first proved themselves, and having approached this divine banquet adorned with the nuptial garment, derive from the Eucharist those most abundant fruits which we have already mentioned. Wherefore it is clear that those who, having it in their power to receive also with due preparation the sacrament of the Body of the Lord are yet satisfied with a spiritual Communion only, deprive themselves of the greatest heavenly goods.'[2]

[1] Sess. xiii, c. 8, Denz. 881.
[2] Part ii, c. 4, q. 53 (Donovan's translation).

It may be well to add that in holding that spiritual Communion differs in kind from and is in a lower category than sacramental Communion we do not, by any means, wish to reflect upon the value of the former as an exercise of piety. The Ascetical and Mystical writers are unanimous as to the wonderful value of spiritual Communion in the struggle for perfection. And we do not wonder at this. For spiritual Communion, properly made, implies the exercise of the greatest virtues, in particular the exercise of faith and charity. It embodies the ardent desire of the member for closer union with Christ, the Head of the Mystical Body, and as the fount and source of all grace—the desire for the union which is symbolized and effected in a very special manner in the sacrament itself in which 'His flesh, the flesh of the Son of Man, is the link between our souls and His Soul, for the purpose of making us partakers, beyond His Soul itself, of the Divine Nature.'[1] Thus spiritual Communion adds to the ordinary act of charity a special nuance and value by reason of its orientation towards the Eucharist. As Vermeersch puts it:[2] 'Praeter communem caritatis actum, praxis ista specialem rationem continet colendi ss. sacramentum, et inde peculiarem laudem meretur.' Spiritual Communion is then a very fruitful source of grace; it can be easily and frequently made—hence it cannot be too highly recommended in the Christian life.

[1] De La Taille, *The Mystery of Faith and Human Opinion*, p. 26.
[2] *Th. Mor.*, n. 417.

SECTION V

PENANCE

PERFECT CONTRITION

In an otherwise excellent pamphlet by Father Halpin, S.J., on perfect contrition (*Heaven Open to All*, Irish Messenger Series), the following Act is included in a manner which implies that it is an Act of Perfect Contrition:

'O my God, I am sorry that I have sinned against Thee, for Thou art so good; I will never sin again. O pardon me and help me by Thy grace.'

I respectfully submit that these words do not in themselves constitute an Act of Perfect Contrition, and request your views on the matter.

A. B. C.

Our correspondent does not give his reasons for maintaining that the prayer quoted is not an Act of Perfect Contrition. Any reason he might advance would apply with equal force to at least one other example given by Father Halpin.[1] Moreover it seems to us that the examples given are logical corollaries of the main thesis set forth in the 'otherwise excellent pamphlet.' And while one might easily differ from the author in regard to this main thesis it is not easy to see how one who accepts it can refuse to accept what seems to flow logically therefrom.

'A. B. C.' is well aware that considerable discussion has for centuries ranged around the motive of charity and of perfect contrition. A vast literature has appeared, and writers have divided into two main groups on the question at issue. Father Halpin belongs to what might be called the less strict group. His thesis is that God's love for us, His goodness to us, is an adequate motive for charity and perfect contrition. It is not maintained, of course, that this is the highest possible motive of this virtue. The thesis defended by Father Halpin is receiving more and more support in modern times, and seems to us to be the more acceptable view.

Perfect contrition, as Father Halpin states, proceeds from the motive of the love of God, and this love is motivated by the consideration of God's goodness[2]—which is the motive

[1] Cf. *Heaven Open to All*, p. 28.
[2] Cf. Pierse, *Virtues and Vices*. On page 226 we read: 'The motive of charity then is simply the divine goodness.'

mentioned in the Act of Contrition quoted in the query. Sorrow for sin is expressed because God is so good. Father Halpin might, indeed, claim that inasmuch as the kind of goodness is not specified, the act should be acceptable even to those who claim that the motive of charity and perfect contrition is the absolute goodness of God.

It may well be that our correspondent objects to the act quoted because he considers it insufficiently explicit. And it is true that it is not explicit in regard to the necessary qualities of contrition and may not therefore have a wide appeal. But that is not to deny that it is an act of perfect contrition. It contains the essential elements. A remark of Father Wouters is very apposite here. He says :[1]

Potest quis contritionem perfectam elicere, etiamsi non *explicite* addat se Deum *propter Deum eiusve infinitam perfectionem* amare, a.v. etiamsi non dicat v.g. : Mi Deus, detestor peccata mea, quia Te ob infinitam Tuam bonitatem amo, sed tantum : Detestor peccata (offensas Tui) quia summa bonitas es.

MOTIVE OF PERFECT CONTRITION

I regret that I am unsatisfied by your kind reply concerning the orthodoxy of the Act of ' perfect ' contrition which has as its formula : ' O my God, I am sorry that I have sinned against Thee, for Thou art so good : I will never sin again.'

My reason for holding that this is not an Act of perfect contrition is that it fails to imply either God's perfect goodness, or His supreme lovableness. The quotation you give from Father Wouters does not seem to me apposite, since it clearly expresses God's supreme goodness. The expression ' because Thou art so good ' might be applied to any benefactor, and does not contain the notion of supreme, perfect or infinite goodness. Nor does it seem to me that the orthodoxy of this Act (or that of the other to which you refer) follows logically from Father Halpin's thesis, for in his booklet, he again and again makes it plain that the belief in God's *perfect* goodness is a necessary condition for perfect contrition. (See *Heaven Open to All*, pp. 10, 11, 12, 13, 18, 21, 25 and 26.)

Of course a person might have perfect contrition and express it in inadequate words, but a formula for perfect contrition ought to express its essential conditions, which this type of Act fails to do.

A. B. C.

In his original query 'A. B. C.' did not state his reasons for maintaining that the formula of which there is question does not ' constitute an Act of Perfect Contrition.' Two possible

[1] *Manuale Th. Mor.*, ii. n. 296. Italics are Wouters'.

reasons occurred to us. But, on those reasons, we failed to see why our correspondent should have singled out the one particular formula for attack, proclaiming at the same time that the pamphlet was ' otherwise excellent.' For it seemed to us that the possible reasons for objecting to the particular formula cited could be urged with equal force against another formula given a few lines later in the same booklet.[1] Why, we had to ask ourselves, does our correspondent object to the one and not to the other—which other, in fact, he apparently regarded as excellent ? It now transpires, however, that he also impugns (in brackets) the ' orthodoxy ' of this second formula. We take it that by ' orthodoxy ' he means what might also be called validity.

The first possible reason which occurred to us as an explanation of ' A. B. C.'s ' objection to the formula was that he might not accept Father Halpin's thesis regarding the motive of perfect contrition and charity. While not agreeing with that position we could appreciate it. But as a reason for objecting to the formula it did not seem sound. And moreover, it would have been illogical for one relying on that objection to have described the pamphlet as being, apart from the one formula quoted, excellent.

In the final paragraph of our previous reply we referred to the second possible reason for objection to the formula, namely, that it might not be considered sufficiently explicit. And there, it now appears, we touched upon the pith of the objection which our correspondent had in mind. In that paragraph we wrote : ' It may well be that our correspondent objects to the Act quoted because he regards it as insufficiently explicit. And it is true that it is not explicit in regard to the necessary qualities of contrition.' There is, therefore, a measure of agreement between what we have written and what 'A. B. C.' writes. But, whereas, in his view, the defect mentioned invalidates the Act, in our view, it does not—for there is a very real distinction between saying that a formula is not explicit and declaring it to be invalid.

Our correspondent writes that the formula in question fails to *imply* God's perfect goodness. That this goodness is not explicitly mentioned is obvious ; but surely it is implied. When we say that God is good, we mean that He is infinitely good. The only kind of goodness that is in God is perfect goodness,

[1] *Heaven Open to All*, p. 28. Four short formulae, in all, are given as examples to illustrate the author's thesis.

so that the goodness we predicate of Him must always be without flaw, without limit. We may not predicate goodness of God as we do of creatures. Our human concepts, as descriptive of things divine, though not false, are inadequate, weak and beggarly: they can be applied to God only in an analogical manner.

The quotation from Father Wouters—given in our earlier reply—is apposite. It states that a person may elicit perfect contrition even though he does not explicitly add that he loves God for His own sake or on account of His infinite perfection. The example given, one of many possible examples, is subsidiary to that general statement. Even if belief in God's infinite goodness is a necessary condition for perfect contrition, it does not at all follow that an explicit Act of faith in His goodness must be made in order to have perfect contrition. Father Halpin does not suggest this latter necessity in any of the passages mentioned. The act of every theological virtue must be 'supreme' because God is the direct object. Contrition must be *appretiative summa*.[1] So, for that matter, must attrition.

Our correspondent rightly remarks that a person might have perfect contrition and express it in inadequate words. But his earlier contention seemed to be that inadequacy of words voided the queried formula so that it could not express perfect contrition! In fact, verbal expression or a formula is not at all necessary for valid contrition. Our correspondent goes on to state that a formula for perfect contrition *ought to* express its essential conditions. The essential conditions of contrition are that it be internal, supernatural, supreme and universal. Is it suggested that all those conditions should be explicitly mentioned in the formula for contrition?

Finally, though it be granted that a formula for perfect contrition *ought to* make explicit reference to the supreme goodness of God, it is not to be concluded that a formula which fails to do this is invalid. Perfect contrition is sorrow for sin that is based upon the motive of charity. The motive of charity is the divine goodness. Therefore, we submit that a formula, like that to which exception is taken, which expresses sorrow for sin because of the divine goodness, is a valid, or orthodox, formula for perfect contrition. We readily admit, as we have admitted before, that a more explicit formula might be more generally acceptable. But that is beside the point at issue.

[1] Would our correspondent admit that the formula on p. 12 is an Act of Perfect Charity? It runs: 'O my God, I love Thee above all things, with my whole heart and soul, because Thou lovest me.'

THE NATURE OF PERFECT CONTRITION

About 1904 a pamphlet on Perfect Contrition was published by Rev. Von den Driesch, with a preface by Lehmkuhl. The author states categorically (p. 7) that perfect contrition is that springing from the motive of love, imperfect that springing from fear. 'Our contrition is perfect if we are sorry for our sins from perfect love of God, from the love of benevolence or gratitude. Our contrition is imperfect if we are sorry for our sins because we fear God' (p. 8). This seemed very sensible teaching, because, seeing that the necessary object of the will is *bonum sibi*, the pure unselfish love of God for His goodness *in se* was something of a metaphysical feat not easily to be accomplished by non-philosophers. (I take it that something more than a mere *complacentia* in the perfection of God is required.) This difference between sorrow springing from love, and sorrow springing from fear was easily appreciated by children and lay people. Recent publications, however, seem to hark back to the old difficult distinction.

Please say whether we are entitled to teach Von den Driesch's theory.

P.P.

Our correspondent's query recalls one of the most controverted questions in the history of Catholic theology.[1] It may be of interest and of help to indicate briefly, by way of preface to our reply, the relevant aspects of the controversy.

Sorrow for sin, on the part of the sinner, has always, at every stage of man's history, been required as an essential pre-condition for its remission.[2] Under the Old Dispensation there was only one means whereby this remission of sin could be secured. That means was perfect contrition—sorrow motivated by charity or perfect love of God. In the New Dispensation we have in addition the sacrament of Penance. Accordingly, it is taught that, under the present dispensation, sin may be remitted in a twofold manner—firstly, outside the sacrament of Penance, by perfect contrition, which, however, must include at least an implicit *votum* of the sacrament; and secondly by the actual reception of the sacrament of Penance.[3] Needless to repeat, even when this second means is used, sorrow for sin is required. For many centuries no distinction was made by the theologians between the kind of sorrow which sufficed to obtain remission of sin outside the sacrament and that sufficient when sacramental absolution was actually received. What we now call perfect contrition, that is sorrow based upon the motive of charity,

[1] Cf. O'Neill, *Divine Charity*, pp. 64 et seq.
[2] Cf. St. Thomas, *S.T.*, 3, q. 85, a. 3: *Conc. Trid.*, Sess. xiv, c. 1. (Denz. 804).
[3] Cf. *Conc. Trid.*, Sess. xiv, c. 4 (Denz. n. 898).

was regarded as necessary for forgiveness in the sacrament as well as outside it. For close on eleven hundred years that teaching seemed to give rise to no problem for the theologians. But there was a problem. And the scholastics were quick to see it and to attempt a solution.[1] The problem might be stated thus: if perfect contrition, which sufficed for the remission of sin apart from the sacrament, were also necessary for forgiveness in the sacrament, wherein lay the efficacy of the sacramental absolution? Was this absolution merely a declaration of forgiveness already independently attained? If the answer to this latter question were in the affirmative, then the absolution would never seem to have any sacramental efficacy; it would never effect what it signifies. The early scholastics did not find a satisfactory solution to this problem. They did, of course, envisage the possibility of a penitent approaching the sacrament of Penance with less than perfect contrition. This imperfect sorrow came to be called attrition—a term apparently first found in the writings of Alanus of Lille.[2] The earlier writers regarded attrition as completely insufficient for forgiveness of sin even when conjoined with reception of the sacrament. Later, however, it was held not, indeed, that attrition was, of itself, sufficient, but that a penitent who approached the sacrament of Penance with this imperfect sorrow, somehow, in the course of its reception, achieved the requisite perfect contrition. Hence the phrase: 'Homo ex attrito fit contritus per sacramentum paenitentiae.' St. Thomas,[3] amongst others, adopted this solution: the attrite penitent attains the necessary contrition under the influence of the sacrament. But it is interesting to note, in passing, that St. Thomas seems to have regarded perfect contrition as essential to what we would call fruitful rather than to valid reception of the sacrament. According to him[4] when sacramental absolution was received by one who had only attrition for his sins, by one whose attrition had not, for some reason, become contrition under the influence of the sacrament, forgiveness and grace were not attained immediately. But the absolution became operative as soon as the penitent became contrite. Thus, St. Thomas seems to have held that the sacrament of Penance could be valid yet unfruitful and, as a corollary, that in these circumstances it could afterwards revive.[5]

[1] Hugh of St. Victor, Peter Lombard, Alexander of Hales, St. Thomas and St. Bonaventure were among those who discussed the question.
[2] Cf. *P.L.*, ccx, 360, 665.
[3] *S.T., Suppl.*, q. 1, a. 3; In 4, d. 18, q. 1, a. 5.
[4] *Suppl.*, q. 9, a. 1.
[5] Ibid; cf. In 4, d. 17, q. 3, a. 4.

It was only a natural development that some subsequent writers should begin to hold that attrition, of itself or on its own account, sufficed for the remission of sin in the sacrament. Others, however, clung to the earlier teaching, at least to the extent of requiring with attrition and the sacrament some initial love of charity. The Council of Trent dealt with the question of contrition and attrition in the fourteenth session.[1] It was taught by the Fathers of the Council that whereas perfect contrition reconciled the sinner to God before the actual reception of the sacrament, yet that this reconciliation was not to be attributed to the contrition itself without the *votum sacramenti*; that imperfect contrition or attrition, which usually is motivated by the consideration of the turpitude of sin or of the fear of hell and punishment, if it exclude the will to sin and include the hope of pardon, does not make a man a hypocrite and a greater sinner, but is a true gift of God and an impulse of the Holy Spirit, aided by which the penitent prepares for himself the way to justice. Still dealing with this attrition the statement of the Council continues:[2]

Et quamvis sine sacramento poenitentiae per se ad iustificationem perducere peccatorem nequeat, tamen eum ad Dei gratiam in sacramento poenitentiae impetrandam disponit. Hoc enim timore utiliter concussi Ninivitae ad Ionae praedicationem plenam terroribus poenitentiam egerunt et misericordiam a Domino impetrarunt.

It has been held by some writers that, in the passage just quoted, the Council decided in favour of the doctrine that attrition alone suffices in the sacrament. But this is not clear from the terms used. The Council does not say that attrition *suffices*[3] for the reception of grace, but that it disposes for its reception in the sacrament. The Fathers did not wish to pronounce upon the domestic dispute.[4] And the fact that the dispute was continued for a long time afterwards between the Contritionists and the Attritionists is a clear indication that the Council did not definitely decide the matter. The precise question at issue then was whether sorrow motivated by the fear of hell alone sufficed in the sacrament? The Attritionists answered in the affirmative.

[1] The Council had dealt with the preparation for justification in the Sixth Session. It required as part of that preparation that the sinner should begin to love God as the source of all justice. Cf. Denz., n. 798.
[2] Sess. xiv, c. iv. (Denz., 898.)
[3] Many writers, however, somewhat gratuitously, maintain that 'disponit' is equivalent to 'sufficit'; e.g. Prümmer, op. cit., n. 343, who writes: 'Hoc verbum "disponit" significat idem quod "sufficit"'; cf. *Dict. de Théo. Cath.*, t. 1, a. 2347.
[4] Cf. O'Neill, op. cit., p. 95 et seq., where Pallavicini's *History of the Council* is quoted.

The Contritionists required in addition some love of charity. We repeat that it cannot be held that Trent decided this question. Nor has any subsequent decision been given. At a period when the dispute was particularly acrimonious Alexander VII intervened—but only to forbid the disputants to hurl theological censures at each other.[1] The divergent views remain to some extent to the present day. But, in its present form, the controversy is dismissed by many writers summarily, yet not without reason, as a *lis de verbis*. On analysis all the disputants seem to demand the same kind of sorrow. And nowadays the vast majority state that sorrow for sin based upon fear of hell alone suffices in the sacrament for the remission of sin.[2]

There is another controversial aspect of the question proposed by our correspondent. All theologians agree with the statement that perfect contrition is sorrow for sin that is based upon the motive of charity, and that attrition is sorrow for sin based upon any lesser supernatural motive. To decide more nearly what is perfect contrition we have then to ask what is the motive of charity. Here again theologians are not agreed. Very many maintain that the motive of charity is the absolute goodness of God (*bonitas Dei in se*) prescinding from any relation of that goodness to us. Thus they hold that charity is a completely disinterested love, a love of friendship; that if any form of self-interest is introduced into love of God this love ceases to be charity. Consequently for these theologians love of God as our last end, *amor concupiscentiae* as it is called, love that is based on God's goodness to us (*bonitas Dei relative ad nos*), love of gratitude, even love of benevolence,[3] all lack the perfection, the disinterestedness of charity, and sorrow for sin that is based on any of them is not perfect contrition. We do not agree with that view of charity and perfect contrition. As our correspondent points out, that conception of the motive of charity would put an act of charity and of perfect contrition outside the reasonable reach of many. 'The metaphysical process involved in abstracting from God's desirability for ourselves, if we wish to elicit an act of charity, is certainly not one which the illiterate, the young or the mentally deficient could easily go through.'[4] Yet it must be remembered that according to our teaching *all* are strictly bound to make acts of charity frequently during life (and for many, an act of perfect contrition may be the only means of

[1] Cf. Denz. 1146.
[2] Cf. Cappello, *De Sac.*, ii, n. 130.
[3] Love of benevolence is said to lack the reciprocation of love of friendship—and hence is not charity; cf. Billuart, *De Poenit.*, d. iv, a. 3
[4] O'Neill, op. cit., p. 116.

salvation). If, then, we were to accept the view that charity is motivated only by the absolute goodness of God, that we must prescind entirely from, must go beyond the consideration of His goodness to us, it would follow that God has prescribed as necessary for salvation for all something that is morally impossible for many. *Quod absit!* Moreover, as is suggested by our correspondent, the concept of absolute goodness, that is of goodness prescinding from suitability, as a motive of love seems philosophically inaccurate. Goodness implies a relation of suitability. 'Bonum est id quod est conveniens naturae' is a familiar definition. It is because a good object is apprehended as suitable for a person that the person is moved towards it, is moved to love it.[1] In other words, once the relation of suitability in the good object is removed the basis of love is removed.[2] And charity fundamentally is love.

We prefer, then, the opinion of those theologians,[3] and their number is increasing, who hold that the motive of charity is simply the divine goodness; that love of God because He has been good to us (love of gratitude), or because He is our last end (love of concupiscence) is charity. St. John tells us that we should 'love God because God hath first loved us.'[4] St. Thomas states expressly on many occasions[5] that love of God as our last end is charity. It is scarcely necessary to note that love of charity, like the act of every theological virtue, must be supreme,[6] because God is its direct object. And this love must be absolute, not in the sense that it must be completely disinterested, but in the sense that God must be loved as an end and not merely as a means to some further end. But these conditions may be adequately fulfilled in love of gratitude and in love of concupiscence. Charity is love of God; it is motivated by the divine goodness. It follows that perfect contrition is sorrow for sin because sin violates that love, because sin offends the divine goodness. Attrition is sorrow for sin based upon lesser supernatural motives than love—in particular based upon the motive of fear of God and the punishment He has set for sin. It may be well to remark that according to all the theologians, sorrow for sin based upon fear must imply hatred of sin as an offence against God and must exclude the will to sin. Sorrow for sin,

[1] Cf. St. Thomas, *Summa Contra Gentiles*, I, iii, c. 3; *De Malo*, q. 6, a. 1.
[2] In 1699 a proposition which stated the existence of a state of completely disinterested love was condemned. Denz. n. 1827. The proposition was taken from a work of Archbishop Fenelon.
[3] Cf. Prümmer, op. cit., I, n. 554.
[4] 1 Jo., iv, 19.
[5] Cf. *S.T.*, 2, 2, q. 26, a. 1, et a. 4.
[6] That is *appretiative summa*—supreme in evaluation.

no matter what its motive, must be supreme. But all these are well recognized conditions on which we need not dwell here.

It is clear from what we have written that we are in agreement with the thesis of Father Von den Driesch quoted by our correspondent. This thesis, in our view, is doctrinally sound, and one is perfectly entitled to teach it. We do not suggest that love of gratitude or love of concupiscence of God are the highest forms of charity. There are degrees of charity,[1] and it may often be necessary for the director of souls to point the way to a more selfless stage of love of God. But we are concerned here, so to speak, with the minimum degree of love of God required for charity. The teaching expounded by Father Von den Driesch is very sensible. Its greatest merit is its simplicity. It is easy to understand. In its light an act of perfect contrition is simplified, is rendered reasonably possible for even the young and poorly instructed. As we have remarked earlier, for many the sole available means of salvation may be an act of perfect contrition. When we consider that God really wishes that all men be saved, we cannot believe that what may be the sole means of salvation for many will be other than relatively simple.[2] Father Von den Driesch holds that an act of charity and of perfect contrition can easily be elicited, may, in fact, be elicited without formally adverting to it as such, for instance 'while devoutly hearing Mass, while making the Stations of the Cross, while piously contemplating a crucifix or a picture of the Sacred Heart, while listening to a sermon.'[3] We are reminded of what St. Thomas has written concerning the Lord's Prayer :

> Oratio perfectissima est . . . quia enim oratio est quodammodo desiderii nostri interpres apud Deum . . . In oratione autem Dominica non solum petuntur omnia quae recte desiderare possumus, sed etiam eo ordine quo desideranda sunt . . . Manifestum est autem, quod primo cadit in desiderio nostro finis, deinde ea quae sunt ad finem : finis autem noster Deus est, in quem noster affectus tendit dupliciter, uno quidem modo prout volumus gloriam Dei : alio modo secundum quod volumus frui gloria eius : quorum primum pertinet ad dilectionem, qua Deum in seipso diligimus, secundum vero pertinet ad dilectionem qua diligimus nos in Deo ; et ideo prima petitio ponitur : *Sanctificetur nomen tuum*, per quam petimus gloriam Dei : secunda vero ponitur : *Adveniat regnum tuum*, perquam petimus ad gloriam regni eius pervenire.[4]

[1] Writers frequently enumerate three stages corresponding to the three stages or ways of the spiritual life.

[2] Tanquerey, *Syn. Th. Dog.*, iii. *De Poenit.*, n. 135, describes this theory of perfect contrition as 'misericordiae divinae valde consentaneam, eaque admissa multo melius intelligitur quomodo Iudaei iustificari potuerint absque sacramento, pariter quomodo Acatholici veniam peccatorum suorum obtinere valeant. . . .'

[3] p. 15.

[4] *S.T.*, 2, 2, q. 83, a. 9. c. Cf. ibid. ad 5.

CHARITY AND PERFECT CONTRITION IN ACT

Reading with great interest your treatment of 'Perfect Charity' and 'Perfect Contrition' I respectfully submit the following questions to you for solution :

(i) Let us suppose that a man in mortal sin decides that he will fight manfully, out of love of our Lord who died for him on the Cross, against a temptation to which he is being subjected. He does fight and overcomes the temptation. Is there good ground for thinking that, by this resistance, he not only overcomes the temptation, but gets rid of all his mortal sins as well ?

(ii) Again, let us suppose that a man in mortal sin is approached by a poor man who solicits an alms. The sinner recalls the words of our Lord : 'As long as you did it for one of these, the least of my brethren, you did it for me,' and reminds himself of all he owes to our Lord—and thus actuated gives the alms. Does that sinner thereby make an act of perfect charity and as a result free himself from his mortal sins ?

If the answers to these questions are in the affirmative, I think that they should be ventilated, especially in view of the fact that many consider the making of acts of contrition, etc., to consist merely in the recitation of certain formulae.

AIDAN.

In the course of our earlier reply we subscribed to the view held by a small but growing number of theologians that the motive of charity is simply the divine goodness and that, accordingly, love of God as our last end (*amor concupiscentiae erga Deum*), or love of Him because He has been good to us (*amor gratitudinis*) are acts of charity. Thus we held for the less strict view in regard to the motive of charity. We noted, however, and it must not be forgotten, that every act of a theological virtue must be supreme (*appretiative summus*) ;[1] that love of charity must be absolute—in the sense that God is loved as an end in Himself and not as a mere means to some further end,[2] and that there are degrees of charity. We have already indicated the arguments which led us to adopt the above-mentioned view. We shall not delay now to recall them in any detail. We refer those interested to our earlier reply. We may mention, however, as having special reference to our present query, that one of our arguments was based upon the fact that acts of charity are

[1] Cf. Pierse, *Virtues and Vices*, p. 226.

[2] The end pursued for its own sake is *absolute*—all means to it are *relative* ; cf. *Dict. de Théol. Cath.*, t. i, c. 134.

very necessary for salvation.[1] All adults are strictly bound to make such acts frequently during life. For very many an act of perfect contrition, that is sorrow for sin motivated by charity, may be the only means of salvation. From this we concluded, in view of God's salvific will, that acts of charity and perfect contrition cannot be very difficult, cannot, indeed, be other than relatively simple. The more commonly accepted theological view, according to which the motive of charity is the absolute goodness of God, does make acts of the virtue very difficult, in fact, morally impossible for many—presupposing, as it does, a process of abstraction. Tanquerey, very fittingly we think, describes[2] the view of the motive of charity which we accepted as *misericordiae divinae valde consentanea*. In conclusion to our previous reply we referred to Father Von den Driesch as holding that an act of charity and perfect contrition can be easily elicited; that it may be elicited without formally adverting to it as such, for instance 'while devoutly hearing Mass, while making the Stations of the Cross, while piously contemplating a crucifix or a picture of the Sacred Heart, while listening to a sermon.' And we quoted a passage from St. Thomas in which a somewhat similar sentiment was expressed. We might have multiplied quotations to the same effect and we shall give some others later in this reply. We referred to Father Von den Driesch because his pamphlet had been mentioned by our correspondent, and to St. Thomas, for obvious reasons. We feel that it was precisely these references and quotations which suggested the present query.

Our readers are well aware of the theological teaching, for which there is abundant scriptural evidence,[3] that an act of charity destroys mortal sin in the soul and justifies the sinner. Charity and mortal sin are mutually exclusive: they cannot co-exist in the same soul. Since perfect contrition is based upon the motive of charity, it follows that this contrition also suffices to reconcile the sinner apart from the actual reception of the sacrament of Penance. In the fourteenth session of the Council of Trent we read:[4]

[1] 'Actus caritatis necessarius est necessitate medii omnibus adultis, usu rationis capacibus . . . post caritatem habitualem adeptam aliquoties in vita.' —Prümmer, op. cit., i, n. 500. Not all the theologians who deal with the virtue of charity state a similar necessity of means, but there is no doubt that acts of charity, *aliquoties in vita*, are necessary by necessity of precept. *Syn. Th. Dog.*, iii, *De Poenit.*, n. 135; cf. Hurter, *Comp. Th. Dog.*, iii; *De Poenit.*, n. 468.

[2] Cf. St. John, xiv, 21, 23.

[3] Cap. 4. Denz. 898. Cf. Prop. of Baius condemned by Pope Pius V, Denz, 1071.

Docet praeterea (Sancta Synodus) etsi contritionem hanc aliquando caritate perfectam esse contingat, *hominemque Deo reconciliare* priusquam hoc sacramentum actu suscipiatur, ipsam nihilominus reconciliationem ipsi contritioni sine sacramenti voto, quod in illa includitur, non esse adscribendam.

It is clear from this statement that, in the Christian dispensation, for the reconciliation of the sinner outside the sacrament of Penance, the *votum sacramenti*, with perfect contrition, is required. But it is also clear that an implicit *votum* is sufficient and that such is necessarily contained in an act of charity or of perfect contrition.

Non requiritur votum *explicitum*; satis est votum seu propositum *implicitum* confitendi, quod in vera contritione perfecta necessario continetur.[1]

Moreover, every act of charity or of perfect contrition implicitly brings with it a sufficient purpose of amendment.

It follows from what has been said that every act of charity virtually contains an act of perfect contrition, and *vice versa*. At the same time it is worthy of note that the much more common theological opinion is, strange as it may seem, that an act of charity does not, *per se*, suffice for reconciliation in the sacrament of Penance. The reason for this view is that contrition is one of the acts which constitute the proximate matter of the sacrament and, as such an act, it must, in order to have a valid sacramental sign, be formally present. Perfect contrition is said to be formal when the sinner explicitly considers his sins and detests them out of the motive of charity. In practice it would be very difficult, if not impossible, to conceive a person conscious of sin approaching the sacrament of Penance, confessing his sins with sentiments of charity in his soul, and yet not formally detesting his sins.

Sane vix fieri poterit, ut quis accedens ad poenitentiam suscipiendam et cogitans de peccatis accusandis, eliciat actum caritatis, atque simul ad explicitam peccati detestationem non progrediatur.[2]

Having written so much by way of preface we may take our correspondent's two hypotheses together. The same principles apply to both. And if it be accepted, in the suppositions made, that the sinner in each case has made an act of charity, there is no difficulty about admitting that all his other mortal sins have thereby been washed away. In fact no other admission would be possible, since charity and mortal sin are so completely mutually exclusive. The act of charity would virtually or implicitly have contained an act of perfect contrition, the *votum sacramenti*

[1] Cappello, *De Sac.*, ii, n. 128. Note also words of the Council *quod in illa includitur*.

[2] Cappello, op. cit., n. 134.

and a purpose of amendment. But are the resistance to temptation and the giving of alms, out of love of gratitude for our Lord, acts of charity? One might, on first reactions, be inclined to answer that question in the negative, because an affirmative reply would seem to make acts of charity (which have such wonderful effects of reconciliation in the order of grace) too casual. But, on more mature consideration, in the light of what we have already written, we think that there are very good grounds for holding that these acts of resistance to temptation and of almsgiving, done consciously out of love of gratitude for our Lord, are really acts of charity[1]—provided, of course, the conditions recalled earlier be fulfilled; provided, that is, the love of our Lord, as God, be absolute in the sense explained and provided it be *appretiative summus*. We take it that, in the circumstances as given, in neither case did the sinner advert to his mortal sins and to the necessity of submitting them to the power of the keys. If he did thus advert it would be necessary for him, psychologically as well as morally, to relate his sorrow in some formal way to his sins and to have an explicit *votum sacramenti*. We say that this would be necessary psychologically because, as we remarked earlier in a somewhat similar context, it would be more than difficult to imagine a sinner conscious of his mortal sins, determined to love God above all, and yet not prepared to do God's known will in regard to these sins. The following quotation from Reuter[2] has a double relevance:

Quamquam qui *memor peccatorum* elicit actum perfectae caritatis, angi non debet de defectu doloris formalis. Est enim moraliter impossibile, ut memor peccatorum amet Deum super omnia, quin sua peccata detestetur. Et idem est de proposito de vitandis amore Dei peccatis; neque enim hoc sine formali dolore esse moraliter potest.

We have accepted the view that love of gratitude for God can be charity. Since Christ is God it follows that love of gratitude for Him can also be charity. We think that a consideration of Christ's sufferings and of all He has done for us is, and is divinely intended to be, the obvious way to and motive for our love of God. 'Let us, therefore, love God, because God hath first loved us.'[3]

As our correspondent suggests in the final paragraph of his query, there is to-day a tendency to make a too close identification of acts of charity and perfect contrition with the recitation

[1] 'The truth is that we can love God, as we can love our friend because of any attribute in which the aspect, goodness, can be found. . . . We can love God with Charity because of His goodness to us in the past, for in this divine benefaction we find the element of goodness which is sufficient as a motive for love.'—Pierse, op. cit., p. 225.

[2] *Th. Mor.*, iv, n. 247.

[3] 1 John, iv, 19.

of a formula. While formulae are valuable and helpful, and are sometimes necessary to define our sentiments explicitly, it must not be forgotten that acts of charity and contrition are fundamentally attitudes of mind towards God and sin, and that these attitudes can also be expressed in deed. In fact all real expression of them must be reflected somehow in our deeds. The test of our love of God has always been, as it must always be, our willingness to obey His laws. 'If you love me keep my commandments. He that hath my commandments and keepeth them he it is that loveth me.'[1] Thus, loving obedience to the commands of God is charity in act. It seems to us that the older theologians laid more stress on this effective and energized aspect of charity than do the modern writers.

THE USE OF A PROBABLE OPINION REGARDING THE MOTIVE OF PERFECT CONTRITION

It has been set down as a probable opinion—and one which might be taught to the faithful—that God's goodness to us is a sufficient motive for perfect contrition. But the use of a merely probable opinion is not allowable in regard to matters which are necessary for salvation. Sometimes, say when a priest is not available to give the sacraments to a person dying in mortal sin, an act of perfect contrition is absolutely necessary for salvation. In such circumstances a sinner could not be satisfied with an act which is merely probably one of perfect contrition. Hence it would seem that the faithful should be taught only the strict view regarding the motive of perfect contrition.

Comment would be appreciated.

J. M.

The opinion that God's goodness to us can be an adequate motive for perfect contrition is undoubtedly tenable. In other words it may be held that an act of sorrow motivated by love of gratitude or by love of concupiscence of God (love of God as our last end) is an act of perfect contrition and suffices, *cum voto sacramenti*, to bring about the justification of the sinner. This opinion is held by many theologians. Tanquerey writes:[2]

Huic opinioni favent etiam nonnulli hodierni auctores . . . iuxta quos amor *spei* et *gratitudinis* ad perfectam contritionem sufficere potest. Revera hic amor ut nobilissimus a sacra Scriptura commendatur, imo vix reperitur tum in sacris Litteris tum apud Patres expressio caritatis erga Deum, quae hoc motivo non informetur. . . . Unde censemus hanc opinionem esse misericordiae divinae valde consentaneam.

[1] John, xiv, 15, 21.

[2] *Syn. Th. Dog.*, iii, *De Poenit.*, n. 135.

Some of the reasons for this opinion are outlined in the foregoing quotation. We have discussed them more fully in earlier replies and it is unnecessary to repeat the discussion here.

The above view of perfect contrition may surely be followed when there is question of recovering the state of grace in preparation for the reception of a sacrament of the living—even in preparation for the celebration of Mass or the reception of Holy Communion in cases of urgent necessity in which a *copia confessarii* is not available.[1] Our correspondent mentions the case of the impending death of one in mortal sin when no priest is present to administer the sacraments. Here, indeed, the eternal salvation of the sinner will depend upon an act of perfect contrition and the faithful should be instructed that, in such cases, every effort should be made to elicit the act of contrition from the highest possible motives. When the issue at stake is so vital, the faithful should make assurance doubly sure and should follow not merely a safe but, as far as is possible, the safer and, in fact, the safest course. This is only common sense—the common sense which impels the probabilist to substitute, in this context, the axiom *in dubio pars tutior eligenda est* for the basic principle of probabilism : *lex dubia non obligat.* Noldin, for instance, writes :[2]

In dubio pars tutior eligenda est. Hoc axioma locum habet . . . ubi agitur de medio ad salutem necessario : ex praecepto caritatis enim aeterna salus necessario obtineri, aeterna damnatio necessario vitari debet ; ubi ergo agitur de conditione a qua aeterna salus dependet illa conditio ita adhiberi debet ut salus aeterna non adducatur in periculum.

But all this does not mean that the opinion set out above regarding the motive of perfect contrition is unsound or unsafe—though it may be described as less safe. In the history of the sacrament of Penance we find not a few parallel situations in which the less safe opinion has come to be regarded as perfectly sound, even in face of impending death. For example, many theologians used to hold that, *in articulo mortis*, there is an obligation to elicit an act of perfect contrition or charity even though the sacrament of Penance has been already received with attrition. St. Alphonsus admits that the contrary view—namely, that this obligation does not exist—is probable, but he adds that, in practice, the safer course is to be advised.[3]

The modern authors generally do not repeat this addendum of St. Alphonsus. Their contention is that the reception of the sacrament of Penance, with attrition, is equivalently an act of charity. Yet might it not be said here too that the faithful

[1] Cf. canons 807, 856.
[2] *De Principiis*, n. 236.
[3] *Th. Mor.*, l. vi, n. 437.

should be exhorted not to omit or neglect, especially *in articulo mortis*, any possible means of salvation? Noldin, however, having recalled the statement of St. Alphonsus that in danger of death we must follow the safest way, notes :[1] ' ceterum necesse non est ut via securissima sed sufficit ut simpliciter secura et tuta eligatur.'

EXTERNAL MANIFESTATION OF SORROW FOR SIN IN THE SACRAMENT OF PENANCE

James has committed a grave sin. He makes an act of sorrow and resolves to go to confession. However, having arrived at the church, he finds that the priest is already saying Mass. So he has to put off confession until the next morning. In the meantime he commits another grave sin and having now made his confession rather in a hurry, recalls that he forgot to make an act of sorrow for the fresh sin. He is now in a troubled state of mind and wishes to know if the absolution were valid ? Your opinion, please ?

SANCTION.

We are not sure that we understand the precise point of our correspondent's query. There seems to be some suggestion that the explicit making of an act of sorrow for sin (that is the recitation of a formula of contrition) is necessary for a valid sacrament of Penance. No doubt is raised in regard to the first grave sin for which an act of sorrow, duly related to the sacramental absolution, was made. The doubt arises apparently by reason of the second sin for which no express act of sorrow was recited. Sorrow for sin is, indeed, part of the sacrament of Penance which is an external sign and, therefore, for validity this sorrow must be somehow manifested externally. But this is not at all equivalent to saying that the recitation of a formula of contrition is necessary. While in practice, for obvious reasons, the confessor will, whenever possible, ask the penitent to recite a formula, the contrition may be sufficiently externated in the sorrowful confession of sin and petition for absolution.[2] In the case submitted it seems clear enough that the penitent integrally and sorrowfully confessed his sins for the purpose of obtaining absolution. In

[1] *De Praeceptis*, n. 59.
[2] Cf. Heylen, *Tractatus De Poenitentia*, p. 114 : ' Contritio debet esse ordinarie aliquo modo externe manifestata, quia iuxta sententiam communiorem est pars essentialis signi sacramentalis. Fit autem externa per confessionem ordinatam ad absolutionem.'

other words it is reasonable to hold that the penitent was really sorry for his sins, that his sorrow was sufficiently externated in his confession with a view to obtaining pardon and that, therefore, the absolution was valid. In the unlikely hypothesis that the penitent had not in fact real sorrow for the second grave sin then the absolution would be invalid. The first and most important quality in true sorrow for sin is that it be internal. It must be an act of will whereby sin is detested. Unless this act of will is present all external expressions are, of course, merely fictitious and utterly useless. Indeed, the external manifestation of sorrow for sin is not at all an essential quality of this sorrow considered *in se*. But some such manifestation seems necessary to verify the sacramental signification of Penance. Cappello, having enumerated the essential qualities of contrition ('ut sit vera sive interna, supernaturalis, etc.') continues :[1]

Nonnulli addunt aliam qualitatem; dicunt scilicet requiri ut contritio ad sacramentum poenitentiae necessaria, sit *sensibilis*, quamvis haud necessario *vocalis*. *Sensibilis* quia est pars sacramenti; *haud necessario vocalis* quia secus muti et moribundi impotentes loqui, absolvi non possent licet dent alia signa doloris. . . . Sensibilis sufficienter evadit ipsa dolorosa confessione, petitione seu expectatione absolutionis aliisque signis. Quae omnia vera sunt. At *sensibilitas* contritionis non est peculiaris dos sive qualitas quae huc spectet cum sit de ratione ipsius *signi*, atque proinde cuiuslibet sacramenti.

GENERIC CONFESSION OF FREE MATTER

I have seen it stated in a theological review that 'those guiltless of mortal sin can obtain valid absolution by merely eliciting externally an act of salutary contrition.' Is this statement correct? It seems to do away with the necessity of submitting 'materia absolutionis' in the sacrament of Penance. I would appreciate your comments.

A. A.

The statement quoted by our correspondent is, we think, over-condensed and is, consequently, liable to misinterpretation. But it has a perfectly correct meaning. It means that specific accusation of sin is not required for validity when a penitent has no necessary matter to confess. It must be remembered that in this context there is question only of the confession of free matter—that is of venial sins or of mortal sins already directly remitted by the power of the keys. We have described the statement quoted as over-condensed, because there is in

[1] *De Sac.*, ii, n. 134

it no express reference to confession—even to generic confession. But we take it that the author visualized the external act of salutary contrition as containing or constituting a generic acknowledgment of sin—inasmuch as sorrow would be expressed by the penitent for sins committed.

Apart from cases of necessity in which specific enumeration of sins is impossible, all post-baptismal mortal sins not already directly remitted by sacramental absolution must be confessed in number and in kind.[1] This is a requirement of divine law for the validity of the sacrament of Penance.[2] But it is the accepted teaching of theologians that, in cases of necessity, a generic confession, even of the mortal sins just mentioned, suffices for validity.[3] From this it follows that a generic confession must fulfil, *ex hoc capite*, the essential requirements of the sacrament. It is an easy step, and one confidently taken by the vast majority of writers,[4] to the position that a generic accusation of free matter is, even apart from cases of necessity, sufficient for validity.

Confessio generica, etiam extra casum necessitatis, sufficit ad valorem sacramenti paenitentiae, si agitur de peccatis quae materiam liberam constituunt. Ratio est quia ad essentiam sacramenti sufficit profecto accusatio generica; id autem quod in necessitate sufficit ad valorem sacramenti, etiam extra necessitatem, cum essentia sacramenti una atque immutabilis sit, debet sufficere, nisi adsit praeceptum positivum accusandi peccata secundum speciem et numerum.[5]

The mere statement by a penitent that a certain virtue had been violated might well be termed a generic confession, but no one questions the validity or liceity of such a confession of free matter. In this context generic confession is given the wider meaning of a simple acknowledgment that sin has been committed. It is our contention that this form of accusation, when only free matter is in question, provides all that is essential to the sacrament *ex parte confessionis*. It provides sufficient material for absolution and is, in every case, a valid confession of free matter.

But, cases of necessity apart, is a merely generic confession of free matter lawful? The theologians are not agreed on the reply to this question. The view that generic confession of free matter is lawful as well as valid has considerable and increasing

[1] Cf. canon 901.
[2] Cf. *Conc. Trid.*, Sess. xiv, c. 5 de paenit. Cf. c. 7 (Denz. n. 899.)
[3] Cf. Noldin, *De Sac.*, n. 266.
[4] Cf. Kelly, 'The Generic Confession of Devotion,' *Theol. Studies*, September, 1945, pp. 359–73.
[5] Cappello, *De Sac.*, ii, n. 60.

support. It is, at the very least, solidly probable. We subscribe to this view. There is no evidence of any divine command to confess in number and kind sins which constitute only free matter. Cappello writes :[1]

> Illiceitas, stante certa sacramenti validitate, aliunde oriri non potest quam ex positivo praecepto divino ; atque hoc praeceptum non adest.

It seems to us, then, that what suffices for validity in regard to the confession of free matter suffices also for liceity. Many theologians,[2] however, take the opposite view : that it is unlawful to be satisfied with a merely generic confession of free matter, when specific confession is possible. In other words, these writers hold that there is an obligation to submit, whenever possible, some specific matter for absolution. They suggest various sources for this obligation.[3] Most of them invoke the long-standing practice of the faithful who are accustomed to make specific confession, even when they have only free matter to submit. But this practice can hardly be said to fulfil the conditions of a custom *praeter legem*, which begets an obligation.[4] Moreover, this practice must be considered against the background of a developing doctrine. It may well have originated when as yet the theologians were unsure regarding the validity of generic confession. Some writers stress the judicial nature of Penance and derive therefrom an argument against the liceity of a merely generic confession, when a specific accusation is possible. They argue that the confessor must have sufficient information on which to base a complete judgment and that a generic confession provides him with no such information. But this looks like special pleading. It can hardly be denied that the confession of a specific venial sin—which would satisfy the most demanding of theologians—conveys little, if any, more real information to the confessor than does a generic acknowledgment that sin has been committed. Reference is also made by these writers to the danger of defective contrition and faulty direction if no

[1] De Sac., ii, n. 62.

[2] Cf. Lehmkuhl, ii, n. 363 ; Noldin, loc. cit. In Aertnys–Damen, *Th. Mor.*, ii, n. 293, we read : ' In praxi non convenit extra casum necessitatis se generaliter tantum accusare, tum quia est contra doctrinam Theologorum et contra praxim Ecclesiae.'

[3] Heylen, *De Poenitentia*, p. 171, writes : ' Utrum ad liceitatem sufficiat ' (confessio generica) extra casum necessitatis, si materia necessaria deficiat : videtur negandum. Rationes praecipuae sunt praeter praxim fere generalem omnium confessariorum : 1° periculum deficientis contritionis cum sit satis difficile dolorem elicere de peccatis in genere tantum expositis, 2° iudicium confessarii non posset esse nisi incompletum nec darentur necessaria monita, consilia, directio spiritualis.'

[4] Cf. canon 28. Was the practice observed ' scienter a communitate cum animo se obligandi ' ?

specific sin is mentioned. There may, indeed, be some such dangers, but they are only remotely and accidentally linked up with generic confession. And this remote and accidental association is, of itself, insufficient to establish any general obligation to make a specific accusation of free matter. At the same time, as all theologians point out, specific confession of some free matter should be recommended to the faithful. That is to say, though generic confession of free matter be regarded as both valid and lawful, it is very advisable that a definite sin or at least the violation of a particular virtue be mentioned. Such confession may safeguard more effectively the penitent's contrition, purpose of amendment and spiritual direction.

DOUBTFULLY SUFFICIENT MATTER IN CHILDREN'S CONFESSIONS

It may sometimes be difficult to decide whether children have confessed sufficient matter for absolution. They may confess what is objectively sinful, but the priest, from replies to further questions, may well wonder if they realized that they were doing anything wrong. On the other hand, and more frequently perhaps, they may confess faults which, strictly speaking, are not at all objective sins. What should the confessor do if he meets such cases ?

PERPLEXED.

It is clear that if a penitent has not confessed some subjective post-baptismal sin, mortal or venial, there is not sufficient matter for a valid sacrament of Penance and absolution may not be given.[1] When there is doubt regarding the sufficiency of the matter confessed, the confessor must try to solve the doubt. Judicious questioning in regard to the matter submitted may clear up the doubt. Or it may be possible to get the penitent to submit, from his past life, some other matter which was certainly sinful and thus provide material for valid absolution. Admittedly, neither of those procedures may be so easy or feasible in the case of children, who tend to be greatly confused by questioning of this kind. But it seems to us that the doubtful situations, envisaged in the query, can be solved satisfactorily on more direct and general lines. To take the first hypothesis : when children, who presumably have reached the age of discretion, confess something which is objectively sinful, it can,

[1] Cf. Prümmer, *Th. Mor.*, iii, n. 324.

as a rule, fairly and prudently be assumed, without further questioning, that there was some degree of subjective guilt—at least to the extent of slight venial sin and, consequently, sufficient matter for the sacrament. A rough idea and consciousness of right and wrong in certain familiar matters is very close to the mind of a child who has begun to use his reason. Regarding the second hypothesis of a child penitent confessing, as sin, something that is not objectively sinful, it must be remembered that it is subjective sin which constitutes sufficient matter for valid absolution. The fact, then, that the matter submitted is not objectively sinful is entirely beside this particular point of sufficiency of matter. When a child penitent confesses, as a sin, some fault or imperfection, it may be taken, as a general rule, that the child was conscious of some degree of subjective guilt and the confessor normally need not worry about the sufficiency of matter in the case. But when there is no objective sin it may be necessary for the confessor to correct the false conscience of the child.[1]

All this does not mean that there never will be cases of child penitents regarding whose capacity for the sacrament, on the basis of insufficient matter, the confessor will have no doubts. These penitents sometimes may volunteer no matter whatsoever and the confessor may not be able to elicit anything satisfactory or, in answer to questions, they may contradict themselves hopelessly. In all such cases the added doubt as to whether these penitents have reached the use of reason may well arise. So long as it remains seriously doubtful that penitents have confessed sufficient matter, absolution may not be given absolutely. Nor may absolution be given conditionally unless there is some good reason to justify incurring the risk of conferring an invalid sacrament. The general rule laid down by the theologians[2] is that, if the matter concerning which the doubt arises is grave, conditional absolution should be given. If the doubtful matter is venial (as will generally be true in the case of children), conditional absolution should not be given as a matter of course but only when an extrinsic consideration, like some spiritual necessity, warrants it.[3]

[1] Cf. Merkelbach, *Quaestiones de Variis Poenitentium Categoriis*, c. ii, Q. 1: 'Omnino provideat confessarius ut pueros dedoceat qui erronee putant mortale esse quod non est nisi veniale: non raro enim contingit pueros a matribus hac in re perperam instrui et a levibus peccatis sub poena inferni deterreri.' Cf. Cappello, *De Sac.*, ii, n. 832.

[2] Cf. Merkelbach, loc. cit.; Noldin, *De Sac.*, n. 227.

[3] Children need not be told that absolution has not been given. But in the case of adults the whole position should be clearly explained—provided, of course, the adults are capable of understanding the explanation.

Si dubia peccata accusata sunt mortalia absolvendus est sub conditione (*si capax es*); si peccata sunt venialia, et nihil certi ex vita anteacta colligi possit, *raro* et solum *sub conditione* absolvi potest; nam ex denegata absolutione grave damnum spirituale minime oritur, et sacramentum periculo nullitatis exponi nequit nisi damnum spirituale timeatur, quod aliter vitari non possit.[1]

POSTPONEMENT OF THE ABSOLUTION OF CERTAINLY DISPOSED PENITENTS

I should like to have your views on the postponement of absolution in the case of penitents who are properly disposed. I was rather amazed recently when I read in Wouters' *Manuale Theologiae Moralis*, ii, n. 405: 'Satis certo dispositis absolutio ex iustitia et regulariter quidem statim concedi debet; in aliquibus tamen casibus potest vel etiam debet differi nisi specialis adsit ratio absolutionem tunc quoque statim impertiendi.'

It seems to me that the postponement of absolution, suggested in the latter portion of this statement, far from being obligatory, is neither lawful nor indeed beneficial—apart, possibly, from a very rare case in which the penitent freely consents to it for some good reason. Your comments will be greatly appreciated by

CONFESSARIUS.

We agree entirely with our correspondent's objections to the postponement of absolution, as suggested by Wouters, in the case of penitents who are certainly disposed. We should say, however, that Wouters is not alone in espousing this view. In doing so he is following the teaching of St. Alphonsus[2] and a number of the older theologians. Among post-Code writers who uphold the view are Marc,[3] Ter Haar,[4] Aertnys–Damen[5] and Vermeersch.[6] Yet we can see good reason for our correspondent's amazement. The view advanced by Wouters and the other post-Code writers mentioned seems to be opposed to the obvious meaning of canon 886 in which we read: 'Si confessarius dubitare nequeat de poenitentis dispositionibus et hic absolutionem petat absolutio nec deneganda nec differenda est.' Here we have an explicit statement that absolution is not to be postponed when the confessor judges that the penitent

[1] Cappello. *De Sac.*, ii, n. 44.

[2] *Th. Mor.*, l. vi, n. 462: 'Certum est et commune apud omnes quod possit confessarius differre absolutionem poenitenti etiam disposito et etiam sine eius consensu semper ac prudenter iudicet dilationem esse utilem eius emendationi.'

[3] *Inst. Mor. Alph.*, ii, 1814.

[4] *De Occasionariis et Recidivis*, Th. 20, n. 427 et seq.

[5] *Th. Mor.*, ii, n. 449.

[6] *Th. Mor.*, iii, n. 496.

is certainly disposed. There is an obligation in justice to give absolution to such a penitent and to give it at once. As Chrétien has it:[1] 'Confessarius (tenetur) gravi obligatione iustitiae poenitentes qui moraliter certo dispositi sunt et absolutionem petunt, statim absolvendi.'

It is true that canon 886 marks a development of teaching. In pre-Code times it was commonly held that, even when a penitent was duly disposed, absolution might sometimes be deferred—if, for instance, a very serious obligation of restitution had to be discharged. Lehmkuhl proposes this general rule:[2]

Si notabiliter gravius est poenitentibus redire quam obligationem suam gravem implere ne iubeantur redire, sed statim absolvantur . . . si autem gravius est illam gravem obligationem, ad quam tenentur, implere quam redire, differatur absolutio.

In the pre-Code text-books we find frequently the statement that in the case of certainly disposed penitents, absolution, as a general rule, was not to be postponed. This phrase 'as a general rule' or some similar formula left room for exceptions. But in canon 886 there is no such phrase under which exceptions might shelter. We have the simple categoric statement 'absolutio nec deneganda nec differenda est.' And, since this unqualified formulation of the law is new, it should, we submit, be judged on its own merits. 'Canones qui ex parte tantum cum veteri iure congruunt . . . qua discrepant sunt ex sua ipsorum sententia diiudicandi.[3]

How, then, it will be asked, do Wouters and other post-Code authors attempt to justify a view which seems to be in such obvious conflict with canon 886? Firstly, of course, they deny that their view is opposed to the canon, which must be interpreted, they claim, in the light of the teaching prevailing at the time it was formulated. Thus Aertnys–Damen:[4]

Doctrinae propositae non obstat can. 886 . . . Hoc enim canone non immutata est doctrina communis theologorum, etiam recentiorum, secundum quam Confessarius ut medicus aliquando poenitenti, per se etiam sine eius consensu, absolutionem differre potest. . . .'

And Wouters writes:[5]

A priori valde improbabile videtur canonem repugnare doctrinae communiter, etiam a benignioribus auctoribus admissae. . . . Canon bene intelligi potest de norma generali seu per se sequenda; quod non prohibet quominus per accidens seu ob adiuncta specialia ab ea deflectatur.[6]

[1] *De Poenitentia*, n. 285.
[2] *Th. Mor.*, ii, n. 430.
[3] *C.I.C.*, canon 6, 3°.
[4] Op. cit., n. 449, nota.
[5] *Man. Theol. Mor.*, ii, n. 406.
[6] But cf. Gasparri, *Fontes Iuris Can.*, Introd., p. 64: 'Qua in re vix animadvertere attinet, canones haud semper cum suis fontibus omni ex parte in sententia congruere.'

But this author is somehow aware of the weakness of his interpretation—because, as we have stressed, phrases like *per se* and *de norma generali*, current in the pre-Code statements, are omitted—and apparently omitted deliberately, by the framers of canon 886. In awareness of this, Wouters immediately adds:[1]

Atque si illud minus placeat, observes: Canon dicit de *dispositionibus*, non autem de *dispositione* poenitentis, eaque ratione forte significat, absolutionem tunc poenitenti petenti eam non esse differendam, quum confessarius non dubitat de dispositionibus, quae ipsi non solum tanquam iudici, verum etiam tanquam medico hic et nunc exigendae videntur, ut absolutio sine gravi periculo propositi infringendi possit concedi.

We are not at all impressed by the distinction between 'dispositions' and 'disposition.'[2] Neither was the author. His hesistancy is clearly implied in the word '*forte*,' unobtrusively introduced. If Wouters means that, in the circumstances contemplated, the penitent is not certainly disposed, we willingly grant him his postponement of absolution. But, of course, in this hypothesis, there would be no question at all of applying canon 886. Or does Wouters suggest, in the passage quoted, that absolution should be postponed whenever the confessor—as a physician, which he always is—considers that there is a grave danger that the penitent will break his purpose of amendment? Such a suggestion would really be tantamount to demanding, somewhat contradictorily, a novel quality in the penitent's *propositum*. For it must be remembered that we are discussing all along here the case of a penitent who is certainly disposed. *Ex hypothesi*, then, he has the requisite *propositum* which is well recognized to be a firm, efficacious, *present* determination to avoid sin in the future. Must we add to this the untraditional requirement that there must be no grave danger that the penitent will break his resolution? Surely not.

That the confessor is a physician as well as a judge is a very old and well-recognized principle of theology. It is now stated expressly in the Code.[3] But the writers, whose views we are questioning here, invoke, in this context, that twofold role of the confessor for a special purpose—we might say for the purpose of special pleading. They claim that while the confessor, as a judge, may decide that a penitent is duly disposed, as a physician, he may consider that it would be in the best interests of this penitent to postpone absolution. In this line of argument the confessor, *qua* physician, strangely emerges as a more demanding minister than does the confessor, *qua* judge. We have written

[1] Loc. cit.
[2] Ter Haar, op. cit., n. 446, makes a somewhat similar distinction.
[3] Canon 888.

'strangely emerges'—because the contrary is suggested in canon 888, where the physician is described as a 'minister of mercy,' in contradistinction to the judge 'the minister of justice.' This, too, is the traditional concept. The physician is more lenient than the judge.

Wouters and those who share his view are compelled to urge a forced interpretation of canon 886. Why not take it as it stands 'secundum propriam verborum significationem in textu et contextu consideratam?'[1] Why introduce distinctions which are not in the law? If the legislators wished to state that absolution should or may occasionally be postponed, even when the confessor is certain of the penitent's due dispositions, why did they not say so? Or why did they not, at the least, leave the law open to this interpretation by retaining the saving phrases (like *per se* or *de norma generali*) current in the pre-Code law? Was it not because, in canon 886, they deliberately intended to take a definite step forward from the previously commonly held position—a step which, however, was in full accord with a general line of development from the earlier and more rigoristic teaching on the administration of the sacrament of Penance?[2] There is question here of positive ecclesiastical law which may be modified in the face of changing circumstances. The line of development to which we have referred, that is, the tendency towards a greater leniency in the administration of Penance, is mentioned by some of the pre-Code authors. Lehmkuhl, for instance, having noted that we must take into account the circumstances of the place and time in which we live, concludes:[3] 'Hinc fit, ut saepe nostro tempore confessarius paulo magis in dandam absolutionem inclinare debeat, quam prioribus temporibus, ubi fides vivida erat, fieri debuit.' And, indeed, the teaching which we believe to be contained in canon 886 was adumbrated in the pre-Code editions of authors like Noldin and Genicot. This teaching, then, did not come as a bolt from the blue. As we have noted, it fitted in with the general scheme of development.

But, whatever may finally be said of the pre-Code attitude in this matter, it seems perfectly clear that the supreme legislators in the Church now consider that, in modern circumstances, the postponement of absolution, in the case of those duly disposed,

[1] Canon 18.

[2] A similar line of development is discernible in the teaching on the disposition required for frequent communion, cf. *Dict. de Théol.*, s. v. 'Frequente Communion,' cc. 454–550.

[3] Op. cit., n. 431; cf. Reuter, *Neo-Confessarius*, n. 34.

is no longer the better or the proper course to follow. It is not denied that postponement of absolution might possibly serve some useful purpose. But there are great disadvantages which completely outweigh and perhaps nullify this possible purpose. There is firstly the disadvantage that the sinner is not immediately reconciled to God. He is left, apart from an act of perfect contrition, in a state of enmity with his Maker, in a state in which he is incapable of condignly meriting eternal life. He must abstain from reception of the Blessed Eucharist. Moreover, the postponement of absolution, in days when faith and charity have grown cold, might easily enough deter penitents from frequenting the sacrament. They might not return for absolution. It might not be easy for them to return to the same confessor. Reception of the sacraments should not be made unduly difficult. The sacrament of Penance, in particular, is a means and a help towards leading a good life, rather than a reward for having done so. We are aware that Wouters[1] and those aligned with him, in an attempt to preclude the dangers we have listed, hold that absolution should not be postponed in certain conditions. But the nature and the number of these conditions argue a weakness in the principle of postponement which these writers state. In fact the principle is so hedged around that it could rarely, if ever, be applied in practice to-day.

It is our view, then, that when a confessor has no doubt about the dispositions of a penitent who asks for absolution, the absolution should be given and at once. Thus it is never of obligation to postpone the absolution of such a penitent. Nor is it even lawful. That is to say, the obligation lies the other way. The certainly disposed penitent has, we repeat, a right in justice to receive absolution at once. Failure to give it is, *per se*, a mortal sin.[2] Of course, if a penitent freely consents, for a particular reason, to the postponement of absolution, this would be lawful. The penitent can forgo his right. And in these circumstances postponement of absolution would not be fraught with many of the disadvantages mentioned above and might serve some worthwhile purpose.

[1] Op. cit., n. 407.

[2] 'Ne fiat, nisi poenitens consentiat,' Prümmer, loc. cit.; cf. Noldin, loc. cit.

THE CONFESSOR'S JUDGMENT ON THE PENITENT'S DISPOSITIONS; USE OF PROBABLE OPINION BY PENITENT

Would you kindly reply to the following questions which arise out of the practical administration of Penance ?

(i) The confessor may grant absolution only to those who are disposed. What kind of judgment must he have formed in regard to the dispositions of the penitent before giving absolution ? Is it true that some authors are unduly strict in requiring that the confessor must have formed a judgment which excludes fear of error ?

(ii) If a penitent insists upon following an opinion which is regarded as incorrect by the confessor, may the latter, for this reason, refuse or defer absolution ?

NEO-CONFESSARIUS.

(i) The confessor is a judge. Before passing sentence he must consider the case submitted to him. In particular he must prudently estimate the dispositions of the penitent and form a judgment in their regard to decide whether he should absolve here and now, or whether absolution should rather be deferred for a time or even refused.[1] And if he decides that absolution should be given now, the further question may arise for solution: is it to be given absolutely or conditionally? All these possibilities may perhaps suggest the necessity of a somewhat elaborate and lengthy mental process. In fact, however, in the vast majority of cases, the appropriate judgment may easily and quickly be formed. In canon 886 we read : ' Si confessarius dubitare nequeat de poenitentis dispositionibus et hic absolutionem petat, absolutio nec deneganda nec differenda est.' If the confessor has no good grounds for suspecting the genuineness of the dispositions of a penitent who asks for absolution, then absolution is to be given here and now, and unconditionally. We may add that, in these circumstances, according to the general teaching of theologians, the confessor is *per se* gravely bound in justice to give absolution.[2] In very many cases the penitent will integrally confess his sins, will adequately express sentiments of sorrow and amendment—and there will be no solid reason for questioning the sincerity of his inner dispositions. That is to say, the due fulfilment of the external requirements will, as a rule, give a firm basis for a prudent judgment that the

[1] Cf. *Rit. Rom.*, tit. iii, c. 1, n. 23 : ' Videat autem diligenter Sacerdos, quando et quibus conferenda, vel deneganda, vel differenda sit absolutio.'
[2] Cf. Merkelbach, *Th. Mor.*, iii. n. 614.

penitent is sufficiently disposed.[1] As the Catechism of the Council of Trent has it :[2] ' si audita confessione, iudicaverit (confessarius) neque in enumerandis peccatis diligentiam, nec in detestandis dolorem poenitenti omnino defuisse absolvi poterit.'

Our correspondent is particularly interested in the precise nature of this judgment on the worthiness of the penitent which the confessor must have formed before giving absolution. And presumably he has in mind the giving of absolution unconditionally. That at least is what very many of the authors have in mind at this point of the discussion—though not all of them say so clearly, leaving, as a result, a somewhat confused impression upon their readers.

In canon 886, in reference to the confessor's judgment, we find the phrase *si dubitare nequeat*—which suggests, though it does not prove, that there should be some degree of certainty in this judgment. The authors are unanimous in stating that an absolutely certain judgment is not necessary. Nor do they require that the confessor have even strict moral certainty. The common expression of the accepted teaching nowadays is that a judgment which has a broad or loose moral certainty suffices. So Cappello writes :[3]

> Non requiritur certitudo *absoluta*, nec certitudo *moralis stricta*, requiritur et sufficit *certitudo moralis lata*, seu *prudens et probabile iudicium* de poenitentis dispositionibus.

And, for reasons which will be obvious later, to quote a Redemptorist theologian, we read in Wouters :[4] ' Ut confessarius licite absolvat, per se requiritur saltem certitudo moralis lata de debita dispositione poenitentis, sed ea etiam sufficit.' To justify their teaching that a judgment which is only morally certain in a wide sense suffices, the theologians invoke the dictum of St. Thomas :[5] ' Certitudo non est similiter quaerenda in omnibus, sed in unaquaque materia secundum proprium modum.' The same kind of certainty cannot be expected in every sphere. In seeking and deciding certainty of judgment, we must take into account the nature and the circumstances of the issue on which the judgment is to be formed. There is question, in our context here, of a judgment on the internal dispositions of a penitent, the external expression of which gives only a presumption as to their inner genuineness. In the nature of things, therefore, we cannot expect to have more than a wide moral certainty for the human judgment. Knowledge of the heart

[1] Cf. Cappello, op. cit., n. 778.
[2] Pars. ii, c. v, q. 58.
[3] Op. cit., n. 770.
[4] *Th. Mor.*, ii, n. 398.
[5] *S.T.* 2, 2, q. 47, a. 9, ad 2 ; cf. St. Alphonsus, *Th. Mor.*, 1, vi, n. 461.

of man is a divine attribute. To demand more than broad moral certainty for the confessor's judgment would give rise to endless scruples and anxieties—of which fact St. Alphonsus was so well aware when he wrote :[1] 'Administratio sacramenti fieret obnoxia nimiis scrupulis et difficultatibus,' and later :[2] 'Alias vix ullus posset absolvi.' In this, Penance differs from those sacraments in which the validity of the matter can be verified with much greater certainty—say the validity of the water for Baptism or of the oil for Extreme Unction.

Thus far there is general agreement in the statements of the writers. But when they come to explain what exactly broad moral certainty implies, we can note a certain divergence of teaching. The divergence, it seems to us, finds its *point de départ* in the negative aspects of this broad moral certainty. On the positive aspects there is agreement. There must be solid, prudent, probable reasons for judging that the penitent is properly disposed—otherwise the judgment could not be called morally certain or prudently probable in any true sense. But looking at this judgment from the negative standpoint, the dividing question is : must it exclude all grave and positive contrary doubt ? Some writers say emphatically that it must. Others, however, maintain that this exclusion is not at all necessary. Cappello, Genicot and Davis take this latter, the less strict view. In Cappello we read :[3]

Alii dicunt *prudenti* et *probabili* confessarii iudicio quod gravi motivo nitatur, non obstare *gravem* suspicionem, ita ut simul existere possint *prudens probabilitas* de poenitentis dispositionibus et *gravis ratio contraria*, cum alia aliam necessario minime excludit. Haec sententia . . . longe verior est.

But on the other side we have, among modern authors, Merkelbach, Prümmer, Lehmkuhl, Tanquerey, Noldin, Wouters, Aertnys–Damen, Ter Haar. The older writers also, for the most part, lean to this side.[4] The teaching of St. Alphonsus on the point is very interesting. He does not require physical certainty but a relative moral certainty—relative, that is, to the nature of the issue on which the judgment is to be formed. Again, following St. Thomas, he describes it as prudential certainty, the certitude of opinion—all of which he explains best when he writes :[5]

[1] Op. cit., l. vi, n. 57. [2] Ibid., n. 461. [3] Op. cit., n. 774.

[4] For example, cf. Suarez, *De Poenit. Disp.*, 32, a. 2. It is true that some theologians, like Vasquez and Sanchez, applied the principles of Probabilism to the question of the validity of the sacraments in certain circumstances. But in 1679 Innocent XI condemned a proposition which expressed this doctrine : 'Non est illicitum in sacramentis conferendis sequi opinionem probabilem de valore sacramenti relicta tutiore nisi id vetat lex, conventio aut periculum gravis damni incurrendi.'

[5] Op. cit., l. vi, n. 461.

'Sufficit quod confessarius habeat prudentem probabilitatem de dispositione paenitentis, et non obstet ex alia parte prudens suspicio indispositionis.' Many of the modern authors to whom we have referred belong to the school of St. Alphonsus. It is not surprising, then, that they re-assert (*pace* Genicot) the proviso that the judgment of worthiness made by the confessor should have such firmness as excludes positive contrary doubt. Ter Haar gives a very close and interesting analysis of the whole question. He discusses firstly the nature of doubt, opinion and certainty, following closely the teaching of St. Thomas. Opinion is described as an assent which admits fear of error but excludes positive or strict contrary doubt.[1] Ter Haar states his view in an elaborate thesis :[2]

Ut confessarius licite poenitentem sine conditione absolvat, non sufficit opinio aeque aut fere aeque probabilis de eius dispositione, quae nempe dubium positivum et proprie dictum ingeneret, sed requiritur et sufficit opinio aut unice probabilis aut certe et notabiliter probabilior, ita ut confessarius iudicio vere opinativo censeat paenitentem esse dispositum ; a. v. requiritur et sufficit ea quae a S. Thoma dicitur 'certitudo probabilis,' 'certitudo opinionis,' 'certitudo prudentiae' seu illa certitudo moralis imperfecta et late dicta quae, licet prudentem erroris formidinem admittat, tamen dubium positivum, prudens et stricte dictum excludat.

As the names listed indicate, this stricter view is not by any means exclusively held by writers of the Redemptorist school. For instance, we have it thus expressed in Merkelbach :[3]

Absolutio concedenda est poenitenti . . . qui certo est dispositus i.e. moraliter seu quasi certo, certitudine practica et imperfecta, quae omne prudens et grave dubium excludat, ita scil. ut gravis sit ratio id existimandi et nulla sit ratio seria dubitandi.

Noldin is referred to by Cappello as one of the exponents of the less strict view, but in the editions available to us, Noldin writes :[4] 'De existentia dispositionis in sacramento Poenitentiae sufficit *prudens et probabile iudicium*, quod gravi motivo nitatur, cui non obstat gravis suspicio.' In the light of this last phrase, which, incidentally, Cappello omits in his quotation, it is clear that Noldin must be listed with the upholders of the stricter view. Lehmkuhl's statement[5] is, perhaps, the clearest of all :

[1] It is interesting to read in Lugo (*De Fide. Disp.*, i, n. 316) 'Possumus duos gradus certitudinis moralis distinguere. Primus est, quam descripsimus, nempe quae excludit omnem prudentem formidinem errandi, et haec est propria certitudo moralis. Secundus est certitudinis minus propriae quae non excludit formidinem prudentem, sed solam dubitationem prudentem de illo obiecto.'

[2] *De Occasionariis et Recidivis*, Thesis xix. [3] Loc. cit.

[4] *De Sac.*, n. 390 (26th ed.).

[5] Cf. Reuter, *Neo-Confessarius*, n. 26.

De dispositione poenitentis sufficit et communiter requiritur prudens iudicium quod alii quamdam certitudinem moralem vocant, alii veram probabilitatem simul cum exclusione gravis rationis contrariae.

It seems to us that the stricter view is the better view. The situation envisaged by Cappello, by Davis and even more especially by Genicot, in which there is stated to be prudent probability on one side with grave reasons or suspicions on the other, is singularly like a case of doubt. In cases of doubt absolution may not be given absolutely. It may, indeed, be given conditionally if there is some reasonable cause. But in this context these writers are apparently not speaking of conditional absolution. We would have no quarrel with their viewpoint if they made it clear that they were. Elsewhere they speak of conditional absolution and among the principal cases enumerated by them in which it is to be given is that of a doubtfully disposed penitent. Thus Cappello writes :[1]

Absolutio conditionata potest aut etiam debet dari . . . si (confessarius) dubitet prudenter de poenitentis dispositione, quoties absolutio sine gravi incommodo differri nequeat.

Surely grave reasons for suspecting the dispositions of the penitent are an adequate basis for prudent doubt. If they are not, we should like to know when, in this view, the penitent's dispositions must be regarded as doubtful, so that at most only conditional absolution may be given.[2]

In writing at length on this question we have listed and quoted many writers. We have done so, not because we believe that problems are to be solved by counting heads, but because of our correspondent's supplementary point in his first question. We are asked if some authors are unduly strict in their requirements for the confessor's judgment. Our discussion will have made clear that very many writers do, indeed, take a stricter view than Cappello or Genicot; but we have not read any modern author who requires strict moral certainty for the confessor's judgment, or even moral certainty *simpliciter*. We have referred to Ter Haar's elaborate treatment of this whole question. We have noted that he distinguishes, in regard to assent of judgment, between a prudent contrary doubt and mere fear of error. The confessor's judgment on the worthiness of the penitent must exclude contrary prudent doubt but not necessarily fear of error. The other writers of the stricter school, if we may so call them, omit this refinement : they are content

[1] Op. cit., n. 98.

[2] Cf. Instr. S. Congr. de Prop. Fide, 1827 : ' Confessarii . . . absolutionem denegent iis qui vel nulla vel ficta tantum paenitentiae indicia praebent . . . illis vero differant quorum paenitentia incerta et suspecta merito habeatur.

to state the necessity of broad moral certainty or of prudent probability which excludes grave contrary doubt. If then there are authors who require, on the part of the confessor, a judgment which excludes fear of error, they may be described as unduly strict.

(ii) We can answer our correspondent's second question briefly. If the opinion which the penitent wishes to follow is really probable, either intrinsically or extrinsically, then the confessor may not refuse or defer absolution, simply because he holds a different opinion.[1] This remains true even if the confessor regards his own opinion as much the more probable or, indeed, as the only really sound opinion. Some of the older writers held that the penitent was bound to accept the opinion of the confessor since the latter is a judge. But the received teaching nowadays is that the confessor may not force his opinion upon a penitent who wishes to follow a different view—provided this is probable. Such a penitent cannot be regarded as indisposed by reason of his preference—and he has, if otherwise disposed, a right to absolution here and now. The situation would, of course, be different if a non-probable or false opinion were insisted upon by the penitent. In this hypothesis he would have no claim to absolution and the confessor should not give it. (We presume that there is question of an opinion which concerns the sacramental issues.) We might add here, in the light of what we have written earlier, that it is the confessor who has the right and duty of judging regarding the penitent's dispositions—and further regarding his own jurisdiction. But, as has been well said by St. Alphonsus,[2] confessors are not constituted judges of the probable opinions which penitents may wish to follow. There is a passage in the Saint's writings which so clearly answers our correspondent's question that we cannot better conclude than by quoting it.[3]

Quando paenitens uti vellet aliqua opinione probabili et aliunde iam foret dispositus, tunc tenetur confessarius eum absolvere ; quoniam ratione confessionis iam factae habet paenitens ius certum et strictum ad absolutionem. . . . Haec opinio est communis. . . . Immo hoc currit, etiamsi confessarius non haberet tamquam solide probabilem opinionem paenitentis, et paenitens non esset rudis eamque cum aliis gravibus DD. tamquam probabilem teneret ita ut paenitens rectam iam sibi formet conscientiam bene operandi. . . . Hoc tamen intelligendum est quando opinio paenitentis haberet aliquam, ut dixi, probabilitatem saltem apparentem ; nam si confessarius haberet eam ut omnino falsam . . . tunc non debet neque potest absolvere paenitentem.

[1] Cf. Vermeersch–Creusen, *Epitome I. C.*, ii, n. 162.

[2] *Theol. Mor.*, l. vi, n. 604. [3] *Prax. Conf.*, nn. 114–5.

THE NATURE AND SOURCE OF THE CONFESSOR'S JUDGMENT REGARDING THE DISPOSITIONS OF THE PENITENT

I am confused by what is at least an apparent contradiction in the teaching of theologians on the conditions required for the giving of absolution. On the one hand they insist that a confessor, before he may lawfully give absolution, must be morally certain that the penitent is properly disposed. On the other hand, the confessor is allowed to absolve a penitent who is *known*, say from the confession of another, not to have made an integral confession of his mortal sins.

I should be grateful for a brief discussion of these two points of teaching and for a suggestion as to how they can be reconciled.

CONFESSARIUS.

In the preceding question we have dealt at length with this controversial question. Our discussion covered our correspondent's first point. We need not, then, go over all the ground here again. But, as leading up to our correspondent's subsequent questions, it will be helpful to recall the reason why strict moral certainty is not required for the confessors' judgment regarding the dispositions of his penitent.

The reason is that the nature of the certainty required for a judgment must be proportioned or related to the matter adjudged. St. Thomas laid down the general principle:[1] 'Certitudo non est similiter quaerenda in omnibus, sed in unaquaque materia secundum proprium modum.' In our context the matter to be adjudged is the inner dispositions of the penitent. The confessor cannot read the human heart. He cannot see or estimate the internal motives which inspire the penitent. These can only be judged by their external expression. But this external expression need not, by any means, give an infallibly true reflection of the penitent's inner sentiments. It is well known that external expression may or may not correspond with the internal intention. But the general presumption is, here as in many other spheres, that the external and internal elements do correspond. Yet, it is no more than a presumption. Since then the confessor's judgment on a penitent's disposition must, in the nature of things, rest upon what are recognized to be very fallible foundations, it would be unreasonable to demand for it a strict moral certainty.

The mention of the source or foundation for the confessor's

[1] St. Thomas, *S.T.* 2, 2, q. 47, a. q. ad 2; Cf. Alphonsus, *Th. Mor.* l. vi. n. 461.

judgment leads us naturally to a consideration of our correspondent's second point. The sacrament of Penance has been instituted *per modum iudicii*. In this judicial trial the penitent is both accuser and accused. His confession provides the *materia circa quam* for the judgment. And it is a recognized general principle that the penitent's word is to be accepted in this matter.

Notandum est axioma in foro poenitentiae receptum: credendum est poenitenti tam pro se quam contra se loquenti; ipse enim in tribunali poenitentiae est reus simul et testis, sui advocatus et accusator.[1]

In other words, the penitent is presumed to be truthful and well disposed. The fact that the sacrament is voluntarily approached and a confession of guilt made, gives good ground for the presumption. Here again, on the basis of this presumption, the confessor can, as a general rule, prudently judge that an integral confession has been made, when the penitent declares that he has no further matter to submit—and absolution should be given. But what of a particular case in which the confessor *knows* that the penitent is concealing a mortal sin? It may be well to give at once an answer to that question. Our answer is: if the confessor has certain knowledge from an extra-sacramental source that the penitent has deliberately concealed a grave sin which he is here and now bound to confess—then the penitent is to be questioned on this particular matter, and, if he does not answer satisfactorily, absolution may not be given. This certain knowledge on the part of the confessor would destroy the general presumption—and the prudent judgment based upon it—that the penitent's statement is to be accepted.

It will be noticed that our answer is very closely restricted and qualified. Firstly, we have presupposed that the confessor derived his certain knowledge from an extra-sacramental source. For if the knowledge were obtained from the sacramental confession of another, say of an accomplice, the obligation of the seal enters and, in our view, the confessor should simply act as if he had not this knowledge. He may ask only the general questions and give the general exhortations which would constitute the normal manner of dealing with such penitents. This is only another way of saying that sacramental knowledge, safeguarded, as it is, by the seal, is not a source for the confessor's judgment regarding another penitent. The confessor must prescind from this knowledge. It cannot be allowed to modify

[1] Noldin, op. cit., n. 388. This principle is of long standing; cf. St. Thomas, Quodl. 1, a. 12: 'In confessione est credendum peccatori confitenti et pro se et contra se . . .'

his judgment or to remove the basis of that judgment, which is the principle that the penitent is to be believed. Though many prominent theologians [1] take a different view on this particular matter, we believe that the view we have expressed is by far the more logical and fits best with the common teaching on the sacramental seal. And we submit that the further qualifications of our answer to the question posed earlier (qualifications which will be generally accepted) serve as an argument for the view we have given.

We have presupposed that the sin, of which the confessor has certain knowledge, is subjectively grave, has not already been confessed and that the penitent is not excused from confessing it here and now. And we ask : how, in normal circumstances can a confessor be sure of all these conditions ? How, in particular, can he be sure of them when his awareness of the sin is derived solely from the confession of an accomplice ? This accomplice may be suffering from delusions, may have given an inaccurate or unfair version of things.[2] And so on. Our conclusion, then, is that rarely can a confessor have certain knowledge that necessary matter is being concealed by a penitent. Rarely, therefore, may he, on this ground, refuse absolution—though he may, not infrequently, judge it prudent to give only conditional absolution.[3] Jorio writes of the confessor's extra-sacramental knowledge that a grave sin is being concealed by a penitent :[4]

> Si noverit extra confessionem, *per se* debet paenitentem negantem absolvere, quia paenitenti pro se et contra se dicenti credendum est : nec per se relatio alterius maiorem fidem facere potest . . . Dixi : *per se* ; nam si confessarius sit omnino certus de peccato a paenitente commisso quia v.g. ipse furantem vidit . . . non potest negantem absolvere,[5] *modo certus sit* illum sui peccati non oblitum fuisse, nec ullum habere rationem illud reticendi. . . .

Our correspondent speaks of an apparent contradiction between the two points of doctrine mentioned. We hope that what we have written may have already, to a large extent, dispelled the confusion. A summary at this stage may, however, lead to a further clarification. And we can sum up thus : a confessor must, before giving absolution, form a morally certain judgment that the penitent is disposed. The nature of this moral certainty is conditioned by the matter under consideration. In our context, then, there is question of a prudent judgment based upon the general presumption that a penitent's external acts and statements reveal accurately his state of mind. This presumption is destroyed only by certain knowledge, derived from an extra-sacramental source, that the penitent is deliberately concealing what is here and now necessary matter for the sacrament. The presumption is not destroyed—and the judgment based upon it remains prudent—by knowledge of which the confessor is not entitled to take account, like sacramental knowledge. Nor is the presumption destroyed by suspicions which, in the nature of things, may easily be ill-founded. As we have seen, it is not easy, indeed it will rarely be possible, for a confessor to be certain that a penitent is deliberately concealing a subjectively grave sin which he is under serious obligation to confess in this particular confession.

[1] E.g. St. Alphonsus who, having mentioned the different views concludes (op. cit., l. vi, n. 631), 'Melius meo iudicio, sensit Croix, quod eo casu nullo modo absolvat, sed tantum aliquid oret ad occultandam negationem absolutionis.'

[2] Suarez, *De Poenit.*, d. 32, s. 3, n. 9, writes—and we see no reason for restricting his statement to extra-sacramental circumstances—'Quantumcumque confessarius sciat peccatum poenitentis ex aliorum relatione, tenetur in hoc iudicio magis credere ipsi poenitenti propter rationem factam.

[3] We are only discussing here the question of giving or refusing absolution —not the manner of giving it. [4] *Th. Mor.*, iii, n. 678.

[5] This, we think, is the only set of circumstances in which the penitent's word may not be taken—that is when the confessor knows of an unconfessed sin, 'extra confessionem et quidem scientia propria eaque omnino certa,' as Cappello, op. cit., n. 764, has it ; or in the words of Noldin, op. cit., n. 398, 'Si id sciat extra confessionem et quidem propria experientia eaque infallibili.'

DISMISSAL OF PENITENT WITHOUT ABSOLUTION

Your opinion on the following point regarding confession would be much appreciated.

Children who confess frequently are sometimes doubtful subjects for absolution (*ex defectu materiae*), and one might feel inclined to dismiss them with a blessing. One is tempted at times to act likewise with persons who confess weekly and confess merely very light things, e.g. slight distractions at prayer while persistently holding that they can recall nothing from the past. Is it prudent merely to give such persons a blessing, and if so, should they be told by the confessor that he is not giving absolution ?

SCOTUS.

If insufficient matter only has been submitted in the sacrament of Penance, and if prudent questioning does not elicit anything more, the penitent may not be absolved but should be dismissed with a blessing. Such a penitent has no right to absolution—and absolution, if given, would be invalid. If the penitent is an adult the confessor should explain that since the matter confessed is not sinful, absolution cannot be given. We think

that this explanation would very often induce an otherwise unwilling penitent to confess matter that is certainly sufficient.

If doubtfully sufficient matter has been confessed and the penitent is unwilling or unable to submit certain matter, then we think it is prudent to give conditional absolution from time to time. If, however, such a penitent were to come to confession weekly, we think that the confessor might prudently dismiss him with a blessing on the majority of occasions. Here, again, we think the confessor should inform the penitent that he is not giving absolution and the reason for this procedure. St. Alphonsus writes[1] in this connection :

Probabiliter posse absolvi sub condicione poenitentem pium, qui aliquas tantum imperfectiones fatetur, de quibus dubitatur an pertingant ad venialia ; hoc tamen non admitterem saepe,[2] neque si ille posset materiam certam de vita ante acta praebere.

In practice it seems to us that the necessity for dismissing penitents without absolution, because of insufficient matter, should rarely arise. Venial sins are sufficient matter, and properly disposed penitents will, we think, rarely refuse to submit sufficient matter if they fully understand the necessity for doing so. In regard to children we might add that though what they confess is often not objectively sinful, they may think it is. Thus there may be sufficient matter for the Sacrament here and now—though there may be the duty of correcting the false conscience.

ABSOLUTION OF PENITENTS WHO CONFESS ONLY HABITUAL VENIAL SINS

Most penitents confess certain habitual venial sins. Very little, indeed, will cause them to repeat these sins ; whereas to have contrition *appretiative summa* they must be resolved that nothing in the world will cause them to repeat them. If, then, they confess nothing but these small habitual venial sins, their confessions would seem to be usually unfruitful, probably invalid, for want of contrition *appretiative summa*. Are such people, therefore, usually to be absolved conditionally ; or, as theologians require some urgent need to justify absolving conditionally and there is rarely any urgency, are they to be absolved only rarely ?

If the confessor, to solve his difficulty, tries to get more serious matter out of the past life of the penitent he often finds it impossible.

[1] *Th. Moralis*, vi, 432 ; cf. Reuter, *Neo-Confessarius*, pp. 30–2.
[2] In *H. Ap.*, tr. 16, n. 6, St. Alphonsus defines 'saepe' as 'nisi semel in mense.'

People usually respond something like (*a*) ' I'm sorry for all the sins of my life,' or (*b*) ' I offended my parents in my past life '—and seem to resent being questioned further. Now (*a*) does not meet the case, because it just is not true. And (*b*) does not help either, because, firstly, sorrow for offending parents may very easily be only natural, not supernatural ; and, secondly, such offence of parents is usually venial and therefore, especially in older people remembering youthful peccadilloes, the contrition is probably not *appretiative summa*.

Many priests feel a difficulty about such confessions ; and people are extraordinarily dense to explanation, whether from the pulpit or *in tribunali*.

PAROCHUS.

We agree with our correspondent that the absolution of penitents who confess only habitual venial sins may give rise to a difficulty and a danger. We sympathize with the anxiety of priests in regard to these confessions. And, in this connection, we may well recall the warning words of St. Alphonsus to confessors :

Non absolvant poenitentes illos, qui afferunt tantummodo peccata venialia, sed habituata, nisi cognoscant illos vere poenitere, et proponere emendationem saltem de aliquo ex illis ; aut nisi pro materia proferant aliquod peccatum gravius vitae prioris. Quot confessiones invalidae (quae in se vera sunt sacrilegia) fiunt ob confessariorum hac in re negligentiam.

We do not think, however, that a practical solution to this difficulty should normally be found along the lines suggested by the wording of the query—that is, by giving conditional absolution, and this only rarely, as is sometimes recommended in the case of young children who submit only very doubtful matter.

Our correspondent has concentrated on one of the necessary qualities of sorrow for sin, namely, that it must be *appretiative summus*. He suggests that the danger of invalidity of the sacrament arises from the doubtful presence of this quality in the sorrow of those penitents who confess only habitual venial sin. Yet, the reference to the easy repetition of these sins in the future indicates that the weakness may perhaps also lie in the lack of firmness of the purpose of amendment. Needless to say, both these acts of the penitent are closely linked up, but it is usual to divorce them for the purposes of discussion.

The sorrow required for the remission of sin in the sacrament of Penance must, in the case of venial sin no less than that of

[1] *Praxis Conf.*, n. 188, cf. n. 71.

mortal sin, be *appretiative summus*.[1] That is to say, the penitent must so detach his will from sin that he is generally prepared to avoid future sin, at all cost. We have written 'generally prepared,' because it is neither necessary nor advisable to institute formal or specific comparisons between sin and other 'evils' in which the avoidance of sin may involve one. St. Thomas has emphasized these points :[2]

> Contritus tenetur in generali velle magis pati quamcumque poenam quam peccare . . . sed in speciali descendere ad hanc poenam vel ad illam, non tenetur. Quin immo stultum faceret si quis seipsum vel alium sollicitaret super huiuscemodi particularibus poenis.

A penitent who has confessed only sins of lying need not and should not ask himself whether he is and would be prepared to tell a lie, say, to save his life.[3] The act of sorrow is an act of will, though based, of course, upon an intellectual judgment that sin is the greatest evil. The quality of 'supremacy' is a feature of the present will-act of sorrow. It implies an absolute detachment from sin here and now. This degree of sorrow is quite compatible with a future lapse,[4] with a future preferment of even a trivial pleasure to the avoidance of sin. It can well be that, notwithstanding present genuine and supreme sorrow for sin, very little will cause the penitents to repeat these sins.

Somewhat similarly in regard to the firmness and 'affective efficaciousness' of the purpose of amendment : A penitent's purpose may have these necessary qualities here and now, even though he has a poor enough chance in the ordinary course of fulfilling his determination ; even though he knows the odds very much are that he will fall again in the same way. The purpose can be firm—though, in a sense, blind or blinded. It is, like the sorrow, essentially an act of will, not an intellectual judgment. Thus, if we may say so, the problem is largely psychological. It cannot be forgotten that the circumstances of repentance and confession create what we might call a special atmosphere in which the sinner feels and thinks somewhat differently from his normal manner, and vastly differently from the way he feels and thinks in the face of temptation. At the moment of repentance and confession, the penitent is often keyed up ; there is, or there seems to us to be, frequently a certain degree of unconscious ecstasy. The sinner can somehow

[1] We need not take into account here the theory of some theologians, like Billot (*De Paenit., Th.* xvi), who hold that for the *validity* of the Sacrament of Penance sorrow need not be *appretiative summus*.
[2] Quodl. I, a. q.
[3] Cf. St. Alph., *Th. Mor.*, l. vi, n. 433.
[4] Cf. St. Th., *S.T.*, 3, q. 84, a. 10.

forget or abstract from his weakness ;[1] or, if he is aware of it, he feels that he is given or will be given, hidden and new sources of strength ; that the future will be different ; that he will look upon things differently henceforth. It may well be that all this is the working of God's gentle Spirit, breathing hope of life into the bruised and broken reed, bringing balm to hurt minds unable fully to face the consciousness and spectacle of their own weakness and degradation. Whatever its explanation may be, it can give a psychological foundation for the 'supremacy' of sorrow and firmness of purpose in the case of many hardened and habitual sinners. How often, for instance, has a drunkard been known in moments of intense regret to make the solemn averment 'never again!' And yet often almost without the semblance of a struggle, his solemn resolution, of perhaps a few hours previous, collapses in front of the first licensed premises he meets. We are all unhappily aware that our expressions of regret and consequent resolutions, earnest and sincere when made, oftentimes prove unspeakably fragile. We are genuinely sorry, say for our pettiness, and are firmly resolved not to be petty in the future. Yet we so very easily relapse. Maybe the temptation comes in a new way from a new source, in new circumstances. Perhaps we delude and excuse ourselves by thinking that there are new circumstances, new annoyances. Maybe temptation comes in the old, well-known way, but we, strong enough in our regret and resolution at the moment of repentance, feel unable to resist the pull of temptation weighted, perhaps, by the force of long-standing habit.

We mention all this to indicate that relapse, even easy and casual relapse into sin, does not by any means necessarily argue insufficiency of sorrow and purpose of amendment.[2] There is, however, the danger of such insufficiency. And, as we agreed earlier, there is particular danger when a penitent confesses only habitual venial sins. It is more difficult to realize the malice of these sins and the necessity of having 'supreme' sorrow for them. The edge of conscience, in their regard, has been dulled by

[1] There is, of course (but very much less frequent especially in the group we are considering), the type of penitent who is in despair regarding future avoidance of sin, whom the confessor has to exhort to consider and rely upon the grace of God, recalling for him the phrase of St. Paul that 'I can do all things in Him who strengtheneth me.'
[2] Cf. Jorio, *Th. Mor.*, iii, nn. 396 et 706. It will often enough be true, as Reuter says, that 'Frequens relapsus in eadem venialia non tam arguunt defectum doloris ac propositi quam magnam naturae humanae fragilitatem et inconstantiam'—*Neo-Confessarius*, n. 187.

habit : their commission does not involve any great conscientious conflict. What, then, is the confessor to do in the case of penitents who confess only habitual venial sins ? He must, of course, try to eliminate the danger of an invalid sacrament. He must, therefore, ensure, as far as may be possible, that the requisite sorrow and purpose of amendment are present. Many ways of ensuring this have been suggested by the writers.[1] One of them, and the most satisfactory if it is feasible, is mentioned, only to be rejected as often impossible, by our correspondent. It is that the penitent be induced to mention some sin of his past life for which he is particularly sorry. ' Parochus ' says that penitents resent being questioned to any degree about their past life. That this is very often true we accept on the authority of our correspondent, who is a priest of long experience. Yet we feel that tactful questioning, preceded by an explanation of its purpose, will, in the vast majority of cases, secure admission of some past sin regarding the sorrow for which there is no doubt. We need hardly remind our readers that the questioning need not be detailed. When there is only free matter at issue, an acknowledgment that sins against a particular virtue have been committed is sufficient for validity and liceity ; indeed it can be held that a general submission of all past mortal sins, without indicating the virtue, similarly suffices. We take it that there will be no serious doubt as to sorrow for past mortal sin, especially in the case of a penitent who now normally does not commit such sin.

The sorrow and purpose of amendment for venial sin need not be universal. This points to another possible solution for the difficulty raised by our correspondent. It is sufficient that the penitent be sorry and have the *propositum* in regard to one venial sin or one class of venial sin confessed from his past life or as committed since his last confession. If then a penitent confesses a number of habitual venial sins, and the confessor is doubtful, as he often may be, about the sorrow, he should get the penitent to concentrate on one or two which are, in the circumstances, the more reprehensible, the more deliberate or the more frequent.[2] The penitent should be excited to sorrow for these and, if necessary, special motives of sorrow should be proposed.[3] It is particularly recommended that this procedure

[1] Cf. Jorio, op. cit., n. 399.
[2] Cf. Wouters, *Th. Mor.*, ii, n. 306.
[3] Cf. Reuter, loc. cit. This method obviates the necessity of getting a confession of sin from past life and is, therefore, valuable when such confession might give rise to hesitation and embarrassment.

should be adopted in regard to pious persons who normally confess only venial sin. They should be exhorted to divide and conquer, to devote their attention to the elimination or lessening of one or two particular vices at a time. Long and meticulous narrations of venial sin, to which some types of penitents are partial, should as a rule be discountenanced. It is often said in this connection, and the statement is almost axiomatic : ' Quo magis propositum de venialibus universale est eo minus efficax est.'[1] It is generally held by theologians that sorrow regarding the number or frequency of venial sins and a corresponding purpose of amendment are sufficient. ' Satis quoque est dolere de multitudine aut frequentia venialium, cum quis tunc necessario doleat de ultimis peccatis quae multitudinem constituunt.'[2] And St. Thomas says of the person guilty of venial sin :

> Ad poenitentiam peccatorum venialium requiritur quod homo proponat abstinere a singulis non tamen ab omnibus, quia hoc infirmitas huius vitae non patitur : debet tamen habere propositum se praeparandi ad peccata venialia minuenda.[3]

Consideration and explanation of this point may sometimes offer a further solution for the difficulty we are considering.

We feel sure that one or other of these means can be successfully used to excite the class of penitents under discussion to adequate sorrow and purpose of amendment. And then it will be lawful to give absolution absolutely. If, in the very exceptional case, all the means fail, notwithstanding the confessor's efforts, and genuine doubt as to the efficiency of sorrow remains, then absolution may be given only conditionally in accordance with the general principles regarding conditional administration of the sacraments. We think that the question of refusing absolution, under the head of insufficiency of sorrow for venial sin, should hardly ever arise. The following quotation from Reuter is apposite. Having referred to the giving of advice to the penitent and the proposal of suitable motives he writes :[4]

> Ubi videbitur poenitens his monitis dispositus, absolvi potest vel debet ; nec est paritas recidivi in peccata venialia cum eo qui recidit in mortalia ; nam peccata mortalia in homine maiorem arguunt malitiam quam venialia, quae facilius evitantur, et Deus creditur facilius dare amicis gratiam efficacem dolendi quam inimicis praesertim inveteratis, atque ex parte ipsorum gratia facilius erit efficax, utpote qui bene affecti sint erga Deum. Hinc plus fundamenti est credendi eos esse dispositos.

[1] Cf. Cappello, *De Sac.*, ii, n. 162.
[2] Aertnys–Damen, *Th. Mor.*, ii, n. 285 ; cf. St. Alph., *Th. Mor.*, I, vi, n. 449.
[3] *S.T.*, 3, q. 87, a. 1 ad 1.
[4] Loc. cit.

We accept, again in tribute to experience, the contention that it is difficult to explain successfully to people the necessity of submitting in Penance some sin for which there certainly is sufficient sorrow and purpose of amendment. But we hazard the opinion that repeated efforts to explain, from the pulpit and in the confessional, as the need arises, will be productive of fruit in very many cases and that the burden and anxiety of the confessor will be proportionately eased.

One other point from our correspondent's query: He rejects as useless the acknowledgment of penitents that they have offended their parents in the past. We cannot agree that such confession is useless. It is true, of course, that sorrow for this sin may be only natural. But so may sorrow for many other sins—for instance, those which involve loss of reputation. Surely 'Parochus' would not reject confession of all those sins as useless, solely because sorrow for them could easily be based upon a natural motive. Offence of parents is usually only a venial sin. Doubtless that is true. But it is hardly necessary to recall, we have indeed made the point already, that past venial sin is sufficient matter for the sacrament of Penance. Moreover, it seems to us that older people often profess very genuine and sincere regret, on supernatural as well as on natural grounds, for even minor offences and neglect of parents; that, in other words, sorrow for this class of sin grows rather than diminishes with the passage of years.

CONDITIONAL ABSOLUTION IN THE RECONCILIATION OF CONVERTS

After the reception of a doubtfully baptized convert the Ritual tells us that, after the general confession which usually follows, the convert is to be absolved conditionally. Why is this so? As I understand it, the sacraments are to be conferred conditionally only if there is a prudent doubt that *hic et nunc*, the sacrament if conferred absolutely would be invalid. Now, in the case contemplated there can be no doubt that the convert has sufficient matter and, *servatis servandis*, can be absolved absolutely. For even in the hypothesis that the convert's first baptism was not valid and that, therefore, the conditional baptism has removed all sin, nevertheless the matter disclosed to the confessor surely automatically becomes free matter which can be the object of absolute absolution.

What form would the condition contemplated by the Ritual take?

ANXIOUS.

The sacrament of Penance was instituted by Christ, *per modum iudicii*, for the reconciliation of those who fall into sin after the reception of Baptism. Hence, to use the customary terms of reference, the remote matter of the sacrament of Penance is post-baptismal sin. It should, of course, be pointed out that this sin is not the remote matter of Penance in the same way as true and natural water is the remote matter of Baptism. Strictly speaking, post-baptismal sin is rather the *materia circa quam*, the *materia removenda* in the sacrament of Penance. In this context, the theologians make a number of distinctions. They speak of sufficient and insufficient matter—the former being subdivided into necessary and free matter. Sufficient matter is that which suffices for a valid absolution. And a description of such matter can be deduced from canon 902. It is post-baptismal sin, mortal or venial, whether or not it has been already directly remitted by the power of the keys—that is, by sacramental absolution. For valid absolution, then, the penitent must submit some actual subjective sin[1] committed after the reception of Baptism. As was noted earlier, this sufficient matter may be necessary or free. Necessary matter is that which must be confessed, and it comprises all post-baptismal mortal sin of which the penitent is conscious after diligent examination of conscience and which has not already been directly remitted by the power of the keys.[2] Free matter is post-baptismal mortal sin which has already been directly remitted and all post-baptismal venial sin.[3] It follows from all this, that matter which is not subjectively sinful or which, though subjectively sinful, has not been committed after Baptism is not sufficient matter for valid absolution. The sacrament of Penance is not concerned with pre-baptismal sin, because, as has been noted, Penance was divinely instituted *per modum iudicii* and the jurisdiction and judgment exercised in its ministration by the Church do not extend to what the sinner had done before he was initiated as a member by Baptism. The Council of Trent makes this point clearly. It contrasts the sacraments of Baptism and Penance.

Nam praeterquam quod materia et forma, quibus sacramenti essentia perficitur, longissime dissidet: constat certe, baptismi ministrum iudicem esse non oportere, cum Ecclesia in neminem iudicium exerceat qui non prius in ipsam per baptismi ianuam fuerit ingressus. 'Quid enim mihi,' inquit Apostolus, 'de iis qui foris sunt iudicare?' Secus est de

[1] Otherwise the words of absolution are not verified—cf. Cappello, *De Sac.*, ii, n. 46.
[2] Cf. canon 901.
[3] Cf. canon 902.

domesticis fidei, quos Christus Dominus lavacro baptismi sui corporis membra semel effecit. Nam hos, si se postea crimine aliquo contaminaverint, non iam repetito baptismo ablui . . . sed ante hoc tribunal reos sisti voluit . . .[1]

Theologians raise the question whether sin committed in the actual reception of Baptism is matter for the sacrament of Penance.[2] It is difficult to give a satisfactory general answer to this question. It must be said, however, that in practice such sin should be confessed as doubtful matter and, if no certainly sufficient matter is presented, absolution should be given conditionally. From the analysis of a particular case it might sometimes be possible to conclude that the sin really antedated the reception of Baptism. If this were so, then the sin would be remitted by Baptism—at the moment of reception if the recipient then had the necessary attrition, or subsequently, *remoto obice*. It should be remembered that Baptism remits not merely original sin, but also all actual sins committed up to the time of reception, together with the temporal punishment due for these sins—if the recipient is sufficiently attrite. Even when this sacrament is validly, but unfruitfully received, it will revive, *remoto obice*, and will then remit all pre-baptismal sin for which the recipient has attrition. On the other hand, the examination of a particular case might lead to the conclusion that the sin was post-baptismal inasmuch as the sinful attitude persisted after the actual reception of Baptism. In these circumstances this sin would be valid matter for sacramental absolution.

All this has relevance in a reply to our correspondent's query. He asks why absolution is given only conditionally to a convert who, as part of the ceremony of his reconciliation, goes to confession immediately after his conditional Baptism. The answer is that, in the case, only conditional absolution is allowable inasmuch as the convert has not certainly sufficient matter for a valid sacrament of Penance. The former baptismal ceremony may have been invalid. If it were, the conditional administration would be the valid sacrament of Baptism. In this hypothesis the convert who confesses immediately afterwards would have no post-baptismal sins to submit—moreover all his sins, actual as well as original, would have been remitted by the Baptism. Our correspondent seems to think—and this is the root of his difficulty—that once a person has been baptized his pre-baptismal actual sins become sufficient, though free, matter for valid absolution. But, as has been pointed out, this is not correct. Even though by Baptism a person becomes a

[1] Sess. xiv, cap. 2, cf. Denz. n. 895.
[2] Cf. Noldin, *De Sac.*, n. 231; Cappello, op. cit., n. 48.

subject of the Church, the subjection is *ex nunc* and her penitential ministration does not extend to his pre-baptismal life. Billot writes :[1]

In tantum peccata intelligi possunt remitti aut retineri a ministris Ecclesiae, in quantum peccatores qua tales divinitus ponuntur sub iurisdictione sacerdotum tamquam pro Christo et Deo in mundo legatione fungentium. Unde demum consequitur, munus (administrationis sacramenti Paenitentiae) a Domino commissum non respicere nisi baptizatos et quidem quoad solas culpas quas post Baptismum commiserunt; nam sicut ex perpetua traditione accepimus, et apparet etiam ex natura rei, super eos qui charactere christianitatis carent, nulla est prorsus ministrorum Ecclesiae potestas, nulla iurisdictio.

Why, then, it might be asked, should converts have to go to confession immediately after their conditional Baptism? The reason is that the former baptismal ceremony may have been the valid sacrament. In which case all subsequent sins would have been post-baptismal and would be sufficient matter for valid absolution. Indeed, if they were mortal sins and had not been directly remitted by the power of the keys (as would generally be true in the case of a convert from heresy) they would be necessary matter. In face of the doubt regarding the validity of the former baptismal ceremony the Church advocates the safe course and prescribes that the convert, on the occasion of his reconciliation and conditional Baptism, shall make an integral confession of all grave sins committed—subsequently, of course, to the first baptismal ceremony.[2] It was commonly thought, in times past, that this integral confession (as well as the conditional absolution) should necessarily follow the conditional Baptism. But it is now clear that the confession may be made before the baptismal ceremony and may then immediately afterwards be repeated in general terms, to the same priest, for the purposes of the conditional absolution. This latter procedure, which was sanctioned by the Holy Office in 1874, is recommended by many writers.[3] It provides the priest with a good opportunity of instructing the convert more fully and of exciting him to sorrow for his sins before the baptismal ceremony. In this way the convert is prepared for the more fruitful reception of whichever sacrament he is capable of receiving—whether it be Baptism or Penance. For fruitful

[1] *De Ecclesiae Sacramentis*, q. lxxxiv, th. i.
[2] Cf. Noldin, op. cit., n. 230. Some theologians regard the convert's obligation of making an integral confession as merely doubtful. But it is more commonly held that the convert is certainly bound. Replies from the Holy Office are cited in favour of the common view. The replies refer to particular cases—yet they can be taken as giving an indication of the mind of the Holy Office even for the wider sphere.
[3] O'Kane–Fallon, *The Rubrics of the Roman Ritual*, nn. 446–8.

reception of Baptism an adult must have attrition for his sins.[1]

Our correspondent asks how the condition should be expressed in the absolution? The condition *si capax es* would adequately meet the situation. But it is not necessary to express the condition in words. It would suffice to form the conditional intention mentally. Apart from the conditional conferring of Baptism, when a former conferring was doubtfully valid, and the conditional anointing of one apparently dead, the Ritual does not prescribe the verbal formulation of the condition. Nevertheless the minister may regard such formulation as more satisfying. The formula *si capax es* is generally useful and commendable, inasmuch as it refers to validity and would cover all cases of conditional administration when there is doubt as to whether the recipient of a sacrament has all the requirements for valid reception.

THE SUPPLYING OF JURISDICTION IN COMMON ERROR

Would you kindly give a clear explanation of canon 209 concerning common error? Jorio (*Th. Mor.*, iii, n. 423, c.) writes: 'Non raro applicatio doctrinae de errore communi in praxi satis implexa est et quocumque modo explicetur difficultatibus non carebit.' And he subjoins: 'Caute igitur et prudenter procedendum ne temere quis obnoxius fiat poenis de quibus in canone 2366.'

Would a priest, who knows that he has no faculties from the local Ordinary, act validly and lawfully if he proceeded to hear confessions in a public church on the plea that there would be common error on the part of the people and that, therefore, the Church would supply jurisdiction?

MAGISTER.

In canon 209 we read: 'In errore communi . . . iurisdictionem supplet Ecclesia pro foro externo tum interno.' As our correspondent implies, and as Jorio states, it is not easy satisfactorily to interpret or to apply in practice this principle of law. The difficulty ultimately centres round the precise implications of the term common error. Or, more nearly, the difficulty might be said to lie in deciding the circumstances in which the situation, described in the law as one of common error, is verified. There is a considerable measure of disagreement among the commentators on this point. It would not be possible

[1] Cf. canon 752, § 1.

here to go over all the ground and to indicate and assess the arguments advanced for the different views. It must suffice to indicate the general lines of the discussion and to give a solution to the practical question proposed by our correspondent.

The general principle that the Church supplies jurisdiction in cases of common error has been accepted for centuries in canonical jurisprudence. The principle was taken over from Roman law and applied by the canonists, but until the compilation of the Code, it was not formally written into the law of the Church. The pre-Code commentators, though they disagreed on a number of associated points, were more or less unanimous on the meaning of the term common error. But soon after the publication of the Code variant interpretations were put forward. Broadly speaking there are two lines of interpretation to be considered. According to one, the situation of common error is verified only when the error is *de facto* common. And error is thus common, firstly, when the members of the community generally have made the erroneous judgment and, secondly, when a cause has been publicly placed and has been brought to the notice of the members of the community generally—a cause which would naturally lead them to make the erroneous judgment. As an illustration of this second type of common error many authors mention the situation in which it is announced at public Masses that a visiting priest will hear confessions in the church next day. The public announcement which has been made to the community provides a sufficient basis for common error. The members of the community will, if they think about it, naturally conclude, in view of the announcement they have heard, that the visiting priest has the necessary faculties.

The other line of interpretation goes further. According to it the situation of common error is also verified when the error is only *de iure* common. And there is error which is *de iure* common when a cause has been publicly placed which would lead the majority of the members of the community, if they were aware of the cause, to make the erroneous judgment—even though the cause has not been actually brought generally to their knowledge.

In both lines of interpretation it is required for common error, as a minimal condition, that a cause which could lead to the erroneous judgment of the general body, should have been publicly placed. But what is meant by saying that the cause must have been publicly placed? It is in the answer to this question that the diversity of interpretation is really manifested.

Those who hold what may, for brevity's sake, be called the *de facto* view, say that the cause is publicly placed in a true sense only when its existence has actually become known (say by a public announcement) to the general body of the community. The exponents of the *de iure* view maintain that the cause of the erroneous judgment has been publicly placed once the situation is that a public act has been done which can become known, as such, to the general body, even though it has not actually become so known.

This difference of view can, perhaps, best be illustrated by reference to the specific case mentioned by our correspondent. In the view of those who maintain that the error must be *de facto* common the Church would not supply faculties, under canon 209, to a priest who, unannounced beforehand, simply enters a confessional in a public church and proceeds to hear confessions—unless, perchance, the majority of the faithful in the community were present in the church when he did so and were, thereby, made actually aware of the public cause of the error. If only a few of the faithful were present, common error would not exist, they say, in the case and the Church would not begin to supply jurisdiction until the stage was reached that the majority of the faithful had become aware that a visiting priest was hearing confessions. On the other hand, in the view of those who hold that error which is *de iure* common suffices, jurisdiction would be supplied under canon 209 once the priest, however unannounced, entered the confessional in a public church and proceeded to hear confessions—even though only a few of the faithful are present and even though the general body of the faithful of the community were never to become aware that a strange priest was hearing confessions. Once the priest enters the confessional in a public church and proceeds to hear confessions, the exponents of the *de iure* view say, the cause of the erroneous judgment has been publicly placed and can come to the knowledge of the general body of the faithful. And therein lies a sufficient basis for common error within the meaning of canon 209.

As we mentioned earlier we do not propose to attempt an appraisal of the respective merits of these two lines of interpretation. The less strict, the *de iure*, view is safe in practice. It is held by very many of the modern theologians and commentators[1] so that there is, at a minimum, extrinsic probability for the view. There is a situation of positive and probable

[1] Cf. Vermeersch–Creusen, *Epitome Iuris Canonici*, i, n. 322.

doubt of law and so we can invoke the other provision of canon 209: 'In dubio positivo et probabili sive iuris sive facti, iurisdictionem supplet Ecclesia.'

In direct reply to our correspondent's specific query, we can, therefore, say that a priest who, knowing that he has no faculties from the local Ordinary, proceeds to hear confessions in a public church, acts validly. The Church supplies jurisdiction in such circumstances. But this priest would, in our view, be guilty of grave sin, unless there is some grave reason for forcing the Church to supply jurisdiction. If the *de facto* common error were present such a reason would normally be verified inasmuch as the faithful would expect the priest to hear confessions by reason of the public announcement. But it would be more difficult to find a justifying reason for forcing the Church to supply jurisdiction when a situation of only *de iure* common error is in question.

Finally, it should be pointed out that canon 2366 refers to the crime of a priest who presumes to hear confessions without the necessary jurisdiction. This crime is not committed by a priest who hears confessions in a situation of even *de iure* common error. In this situation the priest *has* the necessary jurisdiction—supplied by the Church. And even though the priest may have acted unlawfully in forcing the Church to supply, he does not, in our view, incur the penalty stated in canon 2366.[1]

FACULTIES ON A SEA VOYAGE

To avail himself of the faculties granted in canon 883, § 1, must the priest who is travelling retain his diocesan faculties until the end of the sea journey?

The case contemplated by our correspondent is, presumably, that of a priest whose faculties from a local Ordinary are due to cease on a certain date. If this date occurs while the priest is on a sea voyage, the question is: do the faculties granted by canon 883 also cease on this same date? In our view this question should be answered in the negative.

It is perfectly clear that the jurisdiction of a priest to hear confessions during a sea voyage does not come from any local Ordinary but from law—from the law stated in canon 883.[2] The possession of faculties from some one of the local Ordinaries

[1] Ibid., ii, n. 157. But for the contrary view, cf. ibid., iii, n. 569.
[2] Cf. Cappello, *De Sac.*, ii, n. 411.

mentioned in the canon, though necessary, is merely a condition precedent—the purpose of which is, perhaps, to ensure that the priest who obtains faculties from the law is a fit confessor for the faithful.[1] Whatever the precise *ratio* of the law may be, in order that he can avail himself of the jurisdiction given by canon 883 he must have received and must hold faculties from some one of the local Ordinaries enumerated. But it suffices that he hold these faculties; that they have not been withdrawn at the time when the sea voyage commences. Once this fact is verified, the delegation of law begins and lasts for the entire duration of that voyage. The vital question is then: have the faculties granted to the priest by one of the local Ordinaries mentioned been withdrawn? If this question can be answered in the negative, canon 883 applies and, so to speak, operates independently of the prior grant of jurisdiction. Thus, to originate the delegation of the jurisdiction contained in canon 883, possession of faculties from a local Ordinary is necessary. But once the canon has begun to apply and to operate, the faculties granted by it are entirely independent of and bear no strict relation to those held from the local Ordinary.

To demonstrate this independence in operation of canon 883, it may be noted that the faculties granted by it are generally much wider than those given to the priest by his own or other local Ordinary. For one thing, the faculties of canon 883 are not restricted by any local reservation. Moreover, a priest who enjoys the faculties of this canon can, during the sea voyage, validly and lawfully hear the confessions of female religious,[2] even though he may never have had such faculties from a local Ordinary. Again it is, we think, at least a probable opinion that a priest who holds even restricted diocesan faculties—say for male penitents only—can use the wider faculties granted by canon 883. In other words, the jurisdiction during the sea voyage is not subject to these local limitations. The reason for this view is that the law makes no distinction. It speaks simply of priests who have duly received, from an appropriate local Ordinary, faculties to hear confessions. The presence of

[1] Jorio, *Th. Mor.*, iii, n. 517, writes 'Ecclesia igitur in casu et idoneitatem praesumit talium sacerdotum, eo quod facultatem audiendi confessiones ab Ordinario rite acceperint.' This consideration may also lie behind the reply that jurisdiction from a religious Ordinary (who cannot grant faculties to hear the confessions of the faithful generally) does not suffice as a basis for canon 883. Cf. Reply of Commission for Interpretation of the Code, 30 July, 1934—*A.A.S.*, xxvi (1934), p. 494.

[2] The canon states that he can hear the confessions 'quorumlibet fidelium secum navigantium.' § 1; cf. § 2.

a restriction does not make the grant of faculties undue or unlawful.

We have not been able to trace in the writers any adequate formal discussion of the precise point raised by our correspondent. We have found a few relevant incidental statements, but it is not always clear what exactly the writers had in mind. Jorio upholds the view we have given. Perhaps he goes even further. He writes:[1]

> Praeterea putamus sufficere quod iurisdictio a proprio Ordinario rite accepta, non fuerit per actum *positivum* revocata *antequam* ab illa dioecesi seu loco sacerdos discederet, ad normam can. 880, § 1, non aliter; secus canon 883 vix sensum haberet, cum iurisdictio ad confessiones audiendas, ut plurimum vel ut ferme maxima concessio, ab Ordinario loci concedi sub clausula '*usque ad discessum e dioecesi.*' Certum autem est *non requiri* ut iurisdictio in casu conferatur ab Ordinario in *ordine ad confessiones audiendas in itinere maritimo*, quod verius nec posset.

And in Blat we read:[2]

> Sacerdotes omnes . . . dummodo . . . facultatem adhuc vigentem quando 'conscendunt' rite acceperint confessiones audiendi . . . nec refert quanam temporis limitatione illa fuerit concessa . . .'

Other writers, however, seem to suggest the opposite view. Chrétien, for instance, states:[3] 'Sacerdos debet esse *iam facultate donatus* et nunc gaudens.' And Berutti comments thus:[4] 'Dummodo utique (sacerdotes) aliqua iurisdictione audiendarum confessionum actu potiantur.' But we are not clear as to the exact significance of the phrases 'nunc gaudens' and 'actu potiantur' in Chrétien and Berutti. Do these writers mean that the faculties received from the local Ordinary must persevere during the whole period of the sea voyage in order to form what might be called a continuing necessary basis for the jurisdiction of canon 883? Or is the time reference, in the phrase quoted, to the moment at which the sea voyage begins? Both interpretations of their statements seem possible. But, as we indicated earlier, we would not admit the view implied in the former interpretation. We see no point whatsoever in demanding the perseverance of the faculty from the local Ordinary—since, in fact, this faculty has no value at all during the sea voyage.

The arguments advanced here and the authorities quoted for our view are, we submit, at the very least, sufficient to establish it as a probable opinion. We can say, then,

[1] Loc. cit.

[2] *Comment. C.J.C., De Rebus*, n. 206.

[3] *De Poenitentia*, n. 222.

[4] *Ius Pontificium*, xiv (1934), p. 63.

that there is a positive and probable doubt of law regarding the point in issue. Accordingly, the Church supplies jurisdiction.[1] This is a further and compelling argument for our negative reply to the correspondent's query.

RESERVATION OF SINS

At a recent clerical gathering a theological discussion concerning the reservation of cases was mooted. Two points which gave rise to a lively exchange of views were, firstly, whether there is any ground for maintaining that *peregrini* are not bound by the reservations of the place in which they are, and, secondly, if and how far ignorance excuses from reservation. Various arguments were advanced by some to show that *peregrini* should not be bound by local reservations. I shall not weary you with them nor with the theories put forward in regard to the second point. A rather animated discussion in which, as often happens, everybody seemed to be taking part at the same time, left some of us slightly confused. I shall, therefore, be grateful for a statement, as brief as you wish, of the theological teaching on the two points at issue.

NEO-SACERDOS.

(1) Before the publication of the Code of Canon Law it was, indeed, disputed whether *peregrini* were bound by the reservations of the place in which they actually were. It was then commonly held that they were not bound. This view can no longer be maintained. It is excluded by canon 893 which was authentically interpreted in the year 1920 by the Code Commission. The question was asked: 'Whether, under canon 893, §§ 1, 2, a *peregrinus* is bound by the reservations of the place in which he is.' And the reply was: 'In the affirmative.'[2] There is no doubt, therefore, about the present position. *Peregrini* are bound by these local reservations.[3] 'Neo-sacerdos' has kindly refrained from giving the arguments advanced by some of his confrères in favour of the view that *peregrini* should not be bound. We can, however, easily guess what these arguments were. All such arguments seem to be based on a misconception of the nature of reservation. And we may say briefly here that reservation is not a law in any strict sense of that word. It is essentially

[1] Canon 209: 'In dubio positivo et probabili sive iuris sive facti iurisdictionem suppletEcclesia pro foro tum externo tum interno.'
[2] Bouscaren: *Canon Law Digest*, i, p. 415.
[3] That is, of course, when they confess to a local priest. The faculties of their own parish priest would not be affected by the local reservations.

the recalling, by the competent superior, of certain defined cases to his own tribunal. As a consequence of this recall the inferior confessor's faculties of absolving are thus far limited. They do not normally extend to the cases recalled. Indirectly, of course, but only indirectly, this limitation of the power of the *simplex confessarius* affects the penitent.

(2) Under the phrase *reservatio casuum*[1] two categories of reserved cases may come. Firstly, there are those cases in which the sin itself is not reserved, but in which reservation arises by reason of a reserved censure which has been contracted by the commission of the sin. Here the sin is only indirectly reserved—*ratione censurae*. Secondly, there are the cases in which the sin itself is reserved. It is clear, in the first class of cases, that, if the censure is not incurred, there will be no reservation. Any kind of ignorance, therefore, which excuses from the censure will thereby excuse from the reservation. And, inasmuch as a censure can only be incurred as a result of grave subjective crime, whatever destroys grave imputability will excuse from the censure.[2] So, inculpable ignorance of the law violated or of the punishment attached will excuse. On the other hand affected ignorance of the law or penalty does not excuse from any *ipso facto* penalties.[3] Crass or supine ignorance excuses from *ipso facto* penalties if the statement of the law contains words like *praesumpserit, ausus fuerit, scienter, studiose, temerarie, consulto egerit* which demand full knowledge and deliberation.[4] Otherwise crass ignorance does not excuse. Culpable ignorance of the law or penalty, even gravely culpable ignorance that is not crass, excuses from *ipso facto* censures but not from vindictive penalties.[5] If, however, the penitent knew there was a censure attached to the violation of a certain law—but did not know the censure was reserved—he would, we think, incur the reservation, for the reasons given below in regard to sin.

When the sin itself is reserved, it may be asked whether ignorance of this fact excuses from the reservation? The answer is that it does not—unless the competent superior, who reserved the sin, states explicitly or implicitly that such ignorance will excuse from the reservation. This conclusion also follows from the essential nature of reservation as stated above. A sin is reserved in so far, and only in so far, as a competent superior recalls it to his own tribunal and thereby limits in its regard the faculties given to the priests. In the Dublin diocesan statutes,

[1] Canon 893, § 2.
[2] Cf. canon 2218, § 2.
[3] Canon 2229, § 1.
[4] Ibid., § 2.
[5] Ibid., § 3, 1°; cf. Cappello, op. cit., n. 534.

for instance, it is explicitly stated that inculpable ignorance of the reservation on the part of the penitent excuses.

Declaramus tamen ignorantiam reservationis peccati a parte poenitentis vere inculpabilem a reservatione dioecesana excusare, graviter onerata confessarii conscientia ante absolutionem impertiendam certiorem faciendi poenitentem de reservatione.[1]

IGNORANCE OF RESERVATION

Would you kindly answer the following points: (i) Does ignorance of the fact of reservation of sin excuse a penitent from incurring the reservation ? (ii) If a confessor who has not special faculties, through ignorance of the fact of reservation, absolves from a reserved sin, is the absolution valid ? I know that these questions are discussed in the text-books and elsewhere but I am confused by the discussions and would be very grateful even for a brief reply.

CONFESSARIUS.

(i) Sins may be reserved in two ways : directly or *ratione sui* and indirectly or *ratione censurae reservatae*. In this second way, as the terms indicate, the reservation arises by reason of the fact that the penitent has, as a result of a crime committed, incurred a reserved censure which prohibits him from receiving the sacraments. Needless to remark, in this case, if the penitent has not incurred the censure, say because of excusing ignorance, there will be no question of his sins being reserved. But suppose that the penitent, in full awareness of the existence of the censure, commits the crime, then, in our view, he incurs the penalty as stated in the law. That is to say, if the penalty is a reserved censure he incurs a reserved censure, even though he was completely unaware of the circumstance that it was reserved. It is our view also that ignorance of the fact that a sin is reserved (*ratione sui*) does not excuse the sinner from the reservation—unless the competent authority state explicitly or implicitly that a penitent who is ignorant of the reservation is not bound by it. The arguments for the views just expressed are derived from the nature of reservation which is essentially a restriction of the power of absolution of the confessor in regard to certain sins and censures. It means that, in ordinary circumstances, these cases are recalled and reserved to the tribunal of the competent superior. It is

[1] n. 19. The bishop would be regarded as stating implicitly that ignorance excused from reservation if he allowed this doctrine to be taught publicly in his diocese.

true that some few theologians[1] hold, as a probable view, that ignorance of the circumstance of reservation of sin or censure does excuse the sinner from incurring the reservation. These theologians seem to regard reservation as a law, which it is not. We cannot examine their arguments now. But to us they are totally unconvincing.

(ii) We think that if a *simplex confessarius* absolves, through ignorance or inadvertence, from a sin reserved *ratione sui*, the absolution must clearly be regarded as invalid. The confessor's power has been restricted in regard to this sin. He simply has not power, in the ordinary course, to absolve from it—so unless the circumstances are such that the reservation ceases, his absolution is invalid. Canon 900 enumerates the circumstances in which reservation of sin ceases to have force. There is no mention there of cessation of reservation when a non-privileged confessor, through ignorance or inadvertence, absolves from reserved sins. Of course if the authority, who reserved the sin, states that reservation ceases when a *simplex confessarius* absolves from it through ignorance or error—there would be no difficulty about the validity of the absolution. In the Code we have a statement which, however, covers only the case of sins reserved *ratione censurae reservatae*. In canon 2247, § 3, we read :

Si confessarius ignorans reservationem, poenitentem a censura et peccato absolvat, absolutio censurae valet, dummodo ne sit censura ab homine aut censura specialissimo modo Sedi Apostolicae reservata.

In the text and context it is evident that this prescription of law refers directly to absolution from reserved censures. And it will be noted that there is reference, not to all reserved censures, but only to those reserved by law to the Ordinary or reserved simply or specially to the Holy See. The law states that absolution from these censures, given through ignorance of their reservation, is valid. Once the censure has been absolved, there is no difficulty about absolution from the sins reserved only *ratione censurae*. We are aware that some theologians[2] would extend, *ex analogia iuris*, the principle of canon 2247, § 3, to cover the case where absolution is given, through ignorance of the reservation, from sins reserved *ratione sui*. We regard such an extension as completely unwarranted.

[1] Cf. Jorio, *Th. Mor.*, iii, nn. 572–4. But even Jorio admits that the view we have expressed is held almost unanimously by the post-Code writers.
[2] Cf. Jorio, op. cit., iii, n. 595 ; Cappello, *De Sac.*, ii, n. 556, 593.

ABSOLUTION FROM RESERVED SIN IN URGENT CASES

May any confessor (*quilibet confessarius*) absolve a penitent from sins reserved by the Ordinary to himself (for example perjury, in many Irish dioceses) *in casu urgentiore* ?

The text-books do not seem to distinguish clearly between censures reserved to the Ordinary and sins reserved by the Ordinary. (Cf. Arregui, *Summarium Th. Mor.*, n. 615, 2°.) This suggests that any confessor may absolve from reserved sins *in casu urgentiore*. Noldin (*De Sac.*, nn. 364–5), however, makes no mention of this, and in the chart for solving concrete cases given in Bouscaren–Ellis (*Canon Law*, pp. 912–13) it is stated that absolution from reserved sins cannot be given in this case—although it is admitted that Cappello holds the contrary view.

I should be very grateful for some light on this question.

S. V. D.

There are two possible interpretations of the opening sentence of this query. But in view of the terms used (which are taken from canon 2254, § 1) and the subsequent references it would seem that our correspondent's principal difficulty might be expressed thus : do the provisions of canon 2254 apply to the absolution of a sin reserved *ratione sui* ? As our correspondent indicates, the theologians and canonists are not in agreement on the reply to this question. Some authors expressly[1] extend the provisions of canon 2254 to the absolution of sin reserved *ratione sui*. On analysis they seem to give two main arguments for this extension. Firstly, they point out that in pre-Code law the extension was allowed and they quote, in proof, a Decree of the Holy Office dated 23rd June, 1883,[2] and a reply of the Sacred Penitentiary of 7th November, 1888.[3] The second argument advanced is that the necessity to absolve from sin reserved *ratione sui* may be no less urgent than that to absolve from reserved censures, that provision should be made to meet this urgency and that, therefore, *ex analogia iuris*, canon 2254 can be availed of to absolve from sin reserved *ratione sui*. Cappello, for instance, writes :[4]

> Hoc principium [can. 2254] valet quoque pro absolutione a casibus episcopalibus . . . et quidem non solum a reservatis cum censura . . . verum etiam a reservatis sine censura quod ex analogia iuris indubitanter affirmandum est . . . Unde si in aliquo casu urgentiore videatur poenitens absolvi non posse a peccatis ab Episcopo reservatis eo quod reservatio ipso iure non cesset ad normam can. 900, potest absolvi ad normam can. 2254.

[1] Ferreres, *Compendium Th. Mor.*, ii, n. 679, was one of the first to propose this extension. Ferreres is quoted without comment in Vermeersch–Creusen, *Epitome Iuris Can.*, ii, 179, nota 3, but cf. ibid., iii, n. 441 ; Cappello, *De Sac.*, iii, n. 579.

[2] Gasparri, *Codicis I. C. Fontes*, iv, n. 1102.

[3] Ibid., viii, n. 6437.

[4] Loc. cit.

Other authors[1] make no reference whatsoever to the possibility of applying canon 2254 to the case of sin reserved *ratione sui*. They prescind from or ignore this possibility and, in the context, their silence may fairly be interpreted as implying that, in their view, canon 2254 does not refer to the absolution of sin reserved *ratione sui*.

Finally, there are authors[2] who categorically reject the view that the provisions of canon 2254 can be invoked by a confessor to deal with sin reserved *ratione sui*. Yet, some of these authors concede that this view is extrinsically probable.

In our opinion there is no good intrinsic legal argument for the view that the provisions of canon 2254 can be extended to cover the absolution of sin reserved *ratione sui* and, *salva reverentia*, we would query even the extrinsic probability of this view. The argument that the pre-Code position demands this extension does not seem to be valid. In canon 2254, § 1, there is a precise and specific reference to certain censures—*si nempe censurae latae sententiae*. A clear-cut distinction is made in the Code between reservation of sin and absolution therefrom on the one hand and reservation of censures[3] and their absolution on the other. These questions are dealt with in separate books of the Code. It can be said, then, that the law of the Code has re-ordered this matter and has introduced changes and we can apply canon 6, 3°, ' canones qui ex parte tantum cum veteri iure congruunt . . . qua discrepant sunt ex sua ipsorum sententia diiudicandi.'

The analogy of law referred to in canon 20 is invoked to support the view that canon 2254 should be interpreted as covering absolution from sin reserved *ratione sui*. But it can be said in reply that ample provision is already expressly made in the Code[4] for the granting of absolution from reserved sin. We have the provisions of canons 882 and 899, §§ 2, 3. And in canon 900 it is declared that all reservation (*quaevis reservatio*)

[1] Cf. Noldin, *De Sac.*, nn. 364–5 ; Heylen, *De Poenitentia*, pp. 273–5 ; Genicot, *Th. Mor.*, ii, n. 348.

[2] Bouscaren–Ellis, *Canon Law*, p. 889 ; Jorio, *Th. Mor.*, iii, n. 499 ; Merkelbach, *Summa Th. Mor.*, iii, n. 590.

[3] Cf. canon 893, § 3.

[4] ' The analogy is here represented by a distinct provision of law, namely, canon 900. When we have given this canon its full effect the analogy is exhausted.' Bouscaren–Ellis, loc. cit.

ceases to have force in certain circumstances—which may be verified in a wide variety and number of cases. In 1925 the Commission for the Interpretation of the Code stated[1] that *quaevis reservatio* of canon 900 covered reserved cases established by the Ordinary as well as those set up by the Holy See, but that it did *not* include reservations of censures but only reservations of sins. This reply provides an interesting pointer to the conclusion, already stated, that the whole question of reservation of sins should be kept distinct from that of the reservation of censures. If we were to rely merely on the analogy of law it might be argued that there is far more reason for holding that canon 900 should apply to reservations of censures—especially in view of the comprehensive term *quaevis reservatio*—than there is for claiming that canon 2254 applies to absolution from sin reserved *ratione sui*. As we have noted there is in the latter canon a precise and, on the face of things, a restrictive reference to censures.

Moreover, it should be pointed out that the extension of canon 2254 to cover absolution from sin reserved *ratione sui* would give rise to a serious difficulty. When absolution is given from a reserved censure in virtue of canon 2254, the confessor is normally bound to impose on the penitent, *sub poena reincidentiae*, an obligation to have recourse to some authority who is competent to deal with the censure. This phrase *sub poena reincidentiae* is easily intelligible in the case of a censure. But how can it be understood in relation to a sin reserved *ratione sui*? Surely it cannot mean that a penitent, absolved from such a sin in virtue of canon 2254, who culpably fails to make recourse to the proper authority automatically, as it were, falls back into or re-commits the same sin from which he has been absolved. The writers who hold that canon 2254 can be availed of to absolve from sin reserved *ratione sui* are not unaware of this difficulty. To quote Cappello again :[2]

> Magnum tamen datur discrimen inter casum reservatum cum censura et sine censura. Nam si quis a peccato sine censura absolvitur in casu urgentiore ad normam can. 2254 tenetur quidem recurrere ad Superiorem competentem ; at si non recurrit, etsi culpabiliter, non datur poena reincidentiae : non in idem peccatum quia absolutione iam deletum, non in censuram quia non aderat.

This, in effect, is an admission that the view sponsored by him implies, in the circumstances, the total abrogation of the vital phrase of canon 2254—*sub poena reincidentiae*.

At the outset we noted that the first sentence of the query was capable of two interpretations. We have examined one—the

[1] *A.A.S.*, xvii (1925), p. 583 ; Cf. Bouscaren, *Canon Law Digest*, i, pp. 415–16.
[2] Loc. cit.

more obvious. But it is possible that our correspondent simply wishes to know if a *simplex confessarius* can absolve from sin reserved *ratione sui* in a more urgent case—even apart from canon 2254. In other words he may be asking whether reservation ceases, in virtue of canon 900, *in casu urgentiore*. The answer to this question is relevant to our earlier discussion. It will be remembered that one of the arguments put forward by those who hold that sin reserved *ratione sui* can be absolved in virtue of canon 2254, is that otherwise no legal provision is made for absolving such sins in more urgent cases. In our view, however, this difficulty is met, and such provision is adequately made, by the terms of canon 900. In this canon is listed a number of circumstances in which all reservation (of sin) ceases to have any force. Among these circumstances is ' quoties, prudenti confessarii iudicio, absolvendi facultas a legitimo Superiore peti nequeat sine gravi poenitentis incommodo.' While we think that this phrase *sine gravi poenitentis incommodo* is somewhat stricter or more demanding than the phrase of canon 2254 ' si durum sit poenitenti in statu gravis peccati permanere . . .'—nevertheless the phrase of canon 900 is sufficiently wide to cover all cases of really urgent necessity. In other words, when there is really urgent necessity for absolution it will not be possible, as a rule, to delay to seek faculties from the legitimate superior without causing grave inconvenience to the penitent. Accordingly, in these circumstances, the reservation ceases and a *simplex confessarius* can grant absolution. In a more recent edition[1] Cappello admits that there will hardly ever be a case of urgent necessity for absolution from reserved sin, which is not provided for under the terms of canon 900.

A highly competent discussion of the main question under consideration here appeared a short time ago in *Periodica*.[2] The author, Father Zalba, S.J., has listed the principal authors who have taken sides on the question. He rejects the view that sin reserved *ratione sui* can be absolved in virtue of canon 2254. He analyses the arguments for this view and finds them wanting. In regard to the claim that the view is at the least extrinsically probable he writes :[3]

> In rebus controversis in quibus hinc inde existunt opiniones inter auctore catholicos, probabilitas extrinseca tantum valet et tantum ab eius patroni sustinetur quantum argumenta in quibus fundatur. Iam vero, argumenta potiora quae allata sunt in favorem extensionis sunt quaedam necessitas et

[1] Op. cit., 4th ed. (1944), n. 402.
[2] Tom. xliii (fasc. II), 15 June 1954, pp. 161–71.
[3] p. 170.

ius antiquum quod in casibus urgentioribus etiam peccata comprehendebat. Sed neutrum eorum valere ostendere conati sumus et nobis haud videtur dubia reformatio disciplinae prioris in hoc puncto ut vi c. 6 sustineatur dispositio quae vi c. 20 non possit conservari.

There is one other small point in the query to which we should refer. Our correspondent says that the text-books do not distinguish clearly between censures reserved *to* the Ordinary and sins reserved *by* the Ordinary. This statement might give a false impression. It might be taken as implying that there are not or cannot be censures which are reserved *by* the Ordinary. While most of the existing censures are incurred by violations of general law and are reserved to the Ordinary by that law, it is important to remember that the Ordinary also is competent, *suppositis supponendis*, to attach censures, reserved to himself, to the violation of general or particular law. But censures, whether reserved to the Ordinary by the general law or by the Ordinary himself, can be brought under the terms of canon 2254.

EXTENT OF FACULTY TO ABSOLVE FROM RESERVED CASES GIVEN BY CANON 899, § 3

Cappello (*De Sac.*, ii, n. 559, 2°) states that, during the period of a mission or retreat, not only the priests who conduct the exercises, but other priests who attend for the purpose of hearing confessions have the faculties (granted by canon 899, § 3) of absolving from sins reserved by the Ordinary to himself. Bouscaren–Ellis (*Canon Law*, p. 912) think it probable that these faculties extend to censures reserved by the Ordinary to himself. If these opinions are correct, it would appear that, during the diocesan priests' retreat, the confessors present can, without further special faculties, absolve from sins and censures which the Bishop has reserved to himself.

Your opinions on these points will be appreciated.

PAUCAPALEA.

In canon 899, § 3, we read :

Ipso iure a casibus, quos quoquo modo sibi Ordinarii reservaverint, absolvere possunt tum parochi aliive qui parochorum nomine in iure censentur, toto tempore ad praeceptum paschale adimplendum utili, tum singuli missionarii quo tempore missiones ad populum haberi contingat.

It is widely accepted by commentators on this paragraph that the term 'missiones ad populum,' used in the final clause, covers not merely the special courses of sermons and exercises to be given to the faithful of each parish as prescribed in canon 1349, but that it includes all spiritual exercises or retreats given

at any time, especially if these are conducted in common for a group.[1] Some writers[2] hold, moreover, and the opinion is solidly probable, that on the occasion of such missions or retreats all priests who are delegated to hear the confessions of those attending the exercises have from law the faculty of absolving these penitents from cases reserved to the Ordinary by himself. Thus the term 'missionarii' is also given a wide interpretation. In addition to the missioners conducting the exercises, it is taken as including any priest who duly assists in the work of hearing confessions during the mission or retreat. It can, we believe, be held, as a tenable opinion, that the power to deal with reserved cases, granted by canon 899, § 3, extends to all who have faculties to hear confessions during the diocesan retreat of priests. At the least there is here a doubt of law, in which the Church would supply jurisdiction.[3]

This is more or less assumed by our correspondent. The particular point of his query is concerned with the exact extent of the grant of faculties made by canon 899, § 3. Does the grant cover only sins reserved *ratione sui* ? Or does it include power over censures which the Ordinary has, by his laws, reserved to himself ? Very few writers discuss this point explicitly. Many,[4] by their terms of reference and captions, imply that the faculty extends only to diocesan reserved sins. A few say this expressly. The writers who take this stricter line are doubtless influenced by the fact that the whole chapter, in which canon 899 occurs, is devoted *nominatim* to the reservation of sin. They are also influenced, we feel sure, by a reply of the Commission for the interpretation of the Code which, in 1925, declared that 'quaevis reservatio' of canon 900 referred only to sins reserved *ratione sui* and not at all to sins reserved *ratione censurae reservatae*.[5]

Our correspondent refers to Bouscaren–Ellis,[6] in whose work it is simply stated, without any discussion whatsoever, that the faculty granted by canon 899, § 3, probably extends to censures as well as sins, reserved by Ordinaries to themselves. In Wouters

[1] Cf. Noldin, *De Sac.*, n. 364 ; Vermeersch–Creusen, *Epitome Iuris Canonici*, ii, n. 180 ; Prümmer, *Th. Mor.*, iii, n. 427 ; Aertnys–Damen, ii, n. 396. Cappello, *De Sac.*, ii, n. 559, goes further. He maintains that the term probably includes spiritual exercises undertaken privately and individually. Merkelbach, *Summa Th. Mor.*, iii, n. 599, requires, on the other hand, that the exercises be conducted for the faithful generally—not for particular groups.

[2] Cf. Cappello, loc. cit. ; Noldin, loc. cit. ; Davis, *Moral and Pastoral Th.*, iii, p. 343 ; Jorio, *Th. Mor.*, iii, n. 582.

[3] Canon 209.

[4] Cf. Merkelbach, loc. cit. ; Noldin, loc. cit.; Davis, loc. cit.

[5] Cf. Sartori, *Enchiridion Canonicum*, sub canon 900, p. 232.

[6] Loc. cit. The authors' statement on the point is given in conjunction with a chart for solving concrete cases.

we also find a simple statement, without explanation or qualification, 'A peccatis (et censuris) quae quoquo modo Ordinarii locorum sibi reservaverint, absolvere possunt parochi. . . . singuli missionarii. . . .'[1] We think that there are solid arguments for this more liberal view. The term 'casus reservati' is used to describe reserved sins as well as reserved censures. The wording of canon 899, § 3, is significant. There is reference to cases which the Ordinary has reserved to himself *quoquo modo*. What is the force of this wide and expansive phrase, descriptive of the manner of reservation? If it does not cover reservations both *ratione censurae* and *ratione peccati* it is hard to see what particular force it can have. In canon 899, § 2, there is mention of the faculty over reserved cases which is attached by law to the Office of Canon Penitentiary. And canon 401, § 1, makes it perfectly clear that this faculty extends to the absolution of sins and censures reserved to the bishop.[2]

Reasonable answers can be given to the arguments on which the supporters of the stricter view seem to rely. The reference in canon 899, § 2, to the power of the Canon Penitentiary in relation to reserved censures (a power which, incidentally, is not mentioned in Book V of the Code) is, of itself, a clear indication that the chapter entitled *De reservatione peccatorum* is not, despite the title, exclusively concerned with the reservation of sin. The argument based on the authentic interpretation of 'quaevis reservatio' in canon 900 is not so strong nor, indeed, is it so relevant, as might appear at first sight. In canon 900 the question dealt with the *cessation* of reservation. Canon 889, §§ 2, 3, is concerned with the granting of power by law to certain confessors to *absolve* from reserved cases. Further, the wide term 'quaevis reservatio' of canon 900 has still a clear significance, even though it does not include sins reserved *ratione censurae reservatae*. As the second part of the reply of the Pontifical Commission in 1925 explicitly stated, the term covers sins reserved to the Pope as well as sins reserved to the Ordinary.[3] Whereas, if the words 'quoquo modo' of canon 899, § 3, do not cover sins reserved *ratione censurae reservatae* it is hard to find any reasonable purpose for their use in the context. According to the general principles of interpretation of laws,[4] and more specifically of reservation,[5] we are entitled, if there is doubt,

[1] *Man. Th. Mor.*, ii, 387.
[2] Cf. Jorio, loc. cit.; Vermeersch, *Periodica*, xxiii (1934), pp. 196*–97,* who support the wide interpretation of the faculties granted by canon 899, § 3.
[3] Cf. Sartori, op. cit., p. 233. [4] Cf. canon 19.
[5] Cf. canon 2245, § 4; canon 2246, § 2.

to take the more liberal view of the extent of the favour contained in canon 899, § 3. We have given solid arguments for this view. We have quoted and referred to writers who support it. In view of all this, we think we can fairly say that there is a positive and probable doubt of law regarding the point at issue. Here again, therefore, the Church would supply jurisdiction.

FACULTIES OF A PARISH PRIEST OUTSIDE HIS DIOCESE

Has a parish priest, when he hears their confessions outside his own diocese, faculties to absolve his subjects from *all* diocesan reserved sins? This question may seem very simple, but a reply, however brief, will be helpful.

PASTOR.

A parish priest has ordinary power to hear the confessions of his parishioners.[1] This means that he has power validly to absolve them everywhere.[2] When he hears their confessions outside the frontiers of his diocese his power to absolve is not restricted by the reservation of sins which applies within his diocese. For all reservation of sin loses its force outside the territory of the reserving authority.[3] Nor is a parish priest's power to absolve his subjects restricted by any local restrictions which exist in the diocese where he hears the confessions. The faculties of the parish priest to hear, in a diocese other than his own, the confessions of his subjects, come from law, and not from the local Ordinary of that diocese—and hence these faculties are not restricted by the local reservations. Thus the answer to 'Pastor's' query is a simple affirmative.

THE SEAL OF CONFESSION; THE USE OF CONFESSIONAL KNOWLEDGE

(i) Do you agree with the very strict distinction which Honoré and other writers on the secret of confession endeavour to establish between the obligation of not revealing confessional knowledge, and the obligation of not using such knowledge when all danger of revelation is precluded?

[1] Cf. canon 873, § 1. [2] Canon 881, § 2.
[3] Canon 900, 3°. Reservation ceases even though they leave the territory *in fraudem legis*.

(ii) Although theologians like Aertnys–Damen preface their paraphrase of the Instruction of the Holy Office (9th June, 1915) with the following modification: 'Etiam secluso quovis revelationis periculo et usu cum gravamine poenitentis, salva igitur substantia sigilli . . .' would it still be lawful to apply to all cases envisaged by this Instruction the principle insisted upon by St. Alphonsus and adopted by practically all theologians 'in materia sigilli non licet uti opinione probabili sive in dubio iuris sive in dubio facti'? In other words, could it be reasonably argued that, prescinding from the well-known dispute concerning the canonical validity of the Instruction, its practical binding force becomes certain in virtue of a reflex principle?

SIGILLUM.

(i) As our correspondent indicates, some modern theologians maintain that a strict distinction must be made between the obligation of the seal of confession and the obligation of not using sacramental knowledge when this use involves a *gravamen* for penitents—even though there is no danger of betraying their identity. In accordance with their view these theologians give a narrow definition of the seal of confession. They define it as the obligation of avoiding all use of sacramental knowledge which leads, directly or indirectly, to the identification of the penitent. This obligation is laid down in canon 889, § 1:

> Sacramentale sigillum inviolabile est; quare caveat diligenter confessarius ne verbo aut signo aut alio quovis modo et quavis de causa prodat aliquatenus peccatorem.

In addition to the foregoing obligation, and distinct from it, there is the prohibition expressed in canon 890, § 1: 'Omnino prohibitus est confessario usus scientiae ex confessione acquisitae cum gravamine poenitentis, excluso, etiam quovis revelationis periculo.' This prohibition, since cases in which there is danger of betraying the penitent are excluded, has not, it is maintained, direct reference to the sacramental seal. Merkelbach, for instance, writes:[1]

> Aliud est sigillum seu secretum servandum; aliud obligatio non utendi notitia in confessione acquisita etiam sine laesione secreti. Hoc ultimum a quibusdam parum accurate vocatur sigillum accidentale; imo multi de utroque simul tractant promiscue et sine distinctione. Oportet tamen ea distinguere: sigillum nempe valde strictius obligat quam alterum . . .

On the other hand, a great number of modern theologians give a wide definition of the sacramental seal—a definition which includes the two obligations mentioned above. That given by Prümmer may be taken as typical:[2]

> Sigillum sacramentale est strictissima obligatio servandi secretum de omnibus quae in ordine ad absolutionem sacramentalem dicta sunt et quorum revelatio redderet sacramentum onerosum seu odiosum.

Other writers, indeed, adopt a kind of compromise and give a twofold definition according as the sacramental seal is understood in a wide or narrow sense. Thus we read in Aertnys–Damen:[1]

> Sigillum sacramentale est notitiae sacramentalis secretum inviolabile, quod sensu *strictiori* sumptum, prohibet quamvis poenitentis *proditionem* eiusve periculum; sensu *latiori* sumptum excludit insuper quemvis *usum* notitiae sacramentalis, etiam secluso revelationis periculo, sed cum gravamine poenitentis.

It is obvious, however, that the writers who adopt this compromise consider that the use of confessional knowledge, which, though there is no danger of betrayal, involves a *gravamen* to penitents, is contrary to the obligation of the seal—understood in a true, though wide, sense. And so the vast majority of theologians adopt the view that the two obligations expressed in canons 889, § 1, and 890, § 1, are, at most, imperfectly distinct, are but two aspects of the one obligation of the sacramental seal. A recent writer, having referred to and rejected the less common view, continues:[2] 'We prefer to think of the obligation of not revealing sacramental knowledge, and the obligation of merely not using it to the detriment of the penitent, as two laws *imperfectly* distinct, or rather as two laws that are related to each other as a more perfect to a less perfect.

'To guard the relations between the human soul and the Creator in the Sacrament of Penance it is absolutely necessary that confessional knowledge be not revealed either directly or indirectly, but to further safeguard those sacred relations, and to make the approach to the Sacrament easy for the penitent, it is necessary that no use disagreeable to him be made of the knowledge he has confided in confession. In different grades of perfection, then, these two obligations are ordained to the same end. They are not, therefore, specifically or adequately distinct obligations.'

We readily grant that the two obligations expressed in the canons are very closely connected. No writer would validly claim that they are not. They both pertain to the divine law, their dual purpose is to safeguard the sanctity of the sacrament

[1] *Th. Mor.*, iii, n. 620, nota. Cf. Honoré, *Le Secret de la Confession*, pp. 122, 123.
[2] *Th. Mor.*, iii, n. 443.

[1] *Th. Mor.*, vii, n. 454; cf. Cappello, *De Sac.*, ii, n. 788.
[2] R. Culhane, C.SS.R., *The Ultimate Reason of the Inviolability of the Sacramental Secret*, p. 58.

of Penance and the rights of the penitent.[1] Yet we agree with the view of those theologians who define the sacramental seal as the obligation of avoiding the use of confessional knowledge *which leads directly or indirectly to the betrayal of the identity of the penitent.* We need hardly remark that the adoption of this view does not imply any failure to appreciate the gravity of the obligation stated in canon 890, § 1. At first sight the difference between the two views on the exact definition of the sacramental seal might seem to be merely a matter of terminology. There is, of course, the question of terminology; but there is also a practical consequence by reason of the penalties enumerated in canon 2369 for the violation of the prescription of canon 889. A consideration of these two canons convinces us that the term *sigillum sacramentale* in the Code must be given the precise definition accepted above. In canon 2369, § 1, we read:

> Confessarium, qui sigillum sacramentale directe violare praesumpserit, manet excommunicatio specialissimo modo Sedi Apostolicae reservata; qui vero indirecte tantum, obnoxius est poenis, de quibus in can. 2368, § 1.

If use of confessional knowledge, 'cum gravamine poenitentis sed excluso quovis revelationis periculo,' is an indirect violation of the seal, such use is clearly within the purview of canon 2369. But this conclusion will not be accepted even by those who give a wide definition of the seal.[2] Is not this attitude an admission that a violation of canon 890, § 1, is not in a true legal sense a violation of the sacramental seal?

It is of interest to note in passing that when the divine law of the seal came to be expressed in ecclesiastical legislation its expression took the form of a prohibition against the betrayal of the penitent. We find the phrase, 'the betrayal of the penitent,' in this context in early local councils;[3] we find it in the first general law of the Church on the seal;[4] we find it in the Code of Canon Law.[5] The distinction between use of sacramental knowledge which betrays the penitent, directly or indirectly,

[1] Cappello, op. cit., nn. 883–7. Culhane points out that the secret of confession is more sacred than a *secretum commissum*, that it is signified by the sacrament itself. He writes, p. 30: 'When the penitent subjects his sins to the priest in this divine tribunal by the very act of submitting them (*in actu exercito*) he signifies that he expects absolution from them subject to that privilege of secrecy by which Providence makes impenetrable to all men the affairs of God alone and conscience.' Cf. St. Alphonsus, op. cit., nn. 634–5.

[2] Cf. Jorio, op. cit., n. 740; Cappello, op. cit., n. 931.

[3] For a history of the seal, cf. Honoré, op. cit.; O'Donnell, *I. T. Quarterly*, vol. v, pp. 36–52; vol. viii, pp. 30–46, 317–33.

[4] IV Lateran, 1215, 'Caveat autem omnino, ne verbo aut signo aut alio quovis modo aliquatenus prodat peccatorem.' Denz., n. 438.

[5] Canon 889, § 1.

and use to the detriment of the penitent where there is no such betrayal is by no means new. It is clearly implied in a Decree of the Holy Office issued in 1682. It may be well to quote the principal part of that decree here:[1]

> Praevia matura consultatione dominorum consultorum facta fuit discussio sequentis propositionis. Scientia ex confessione acquisita uti licet, modo fiat sine directa aut indirecta revelatione et gravamine poenitentis nisi aliud multo gravius ex non usu sequatur, in cuius comparatione prius merito contemnatur. Addita deinde explicatione, sive limitatione, quod sit intelligenda de usu scientiae ex confessione acquisitae cum gravamine poenitentis seclusa quacumque revelatione, atque in casu, quo multo maius gravamen ex non usu sequeretur. Et statuerunt dictam propositionem, quatenus admittit usum dictae scientiae cum gravamine poenitentis omnino prohibendam esse etiam cum dicta explicatione sive limitatione.

The following comment will make the meaning of the decree clear. 'It was agreed that the use of sacramental knowledge was unlawful whenever it entailed a direct or indirect revelation of confession. The problem was whether, apart from such cases, the confessor would be free to use it against the penitent when, by so doing, he would, in a particular case, save the penitent or others from an evil much more serious than the inconvenience entailed by the revelation. The proposition implied that he would: that the use of sacramental knowledge "to the detriment of the penitent" would cease to be unlawful when the non-use of it would entail much greater evils. And, understood in that sense, the proposition was condemned by the Holy Office.'[2]

Our conclusion that the narrow definition gives the correct legal meaning of the term *sigillum sacramentale* is confirmed by the wording of the Instruction of the Holy Office[3] to which our correspondent makes reference in his second query.

In the course of this Instruction reference is made to reprehensible use of sacramental knowledge which cannot fail to offend and disturb pious penitents and to diminish their confidence—results which are foreign to the nature of the Sacrament of Penance. This reprehensible use may merely be classified as *usus cum gravamine poenitentis*—the phrase of canon 890, § 1. And the Instruction makes it clear that such use may be made without substantial violation of the sacramental secret. Moreover, it is indicated in the Instruction that the seal is not substantially violated when silence is kept about anything that might in any way betray the person of the penitent.

[1] Denz., n. 1220.

[2] O'Donnell, *I. T. Quarterly*, vol. viii, p. 325.

[3] 9 June, 1915; cf. Bouscaren, *Canon Law Digest*, i, pp. 413–4.

(ii) In proposing his second question 'Sigillum' prescinds from the dispute regarding the canonical validity of the Instruction we have quoted above. Doubts have, indeed, been raised regarding its binding force on confessors.[1] It was addressed to local Ordinaries and Superiors of religious Orders. It was not published in the *Acta*. It is not mentioned among the *fontes* of the Code. These facts notwithstanding, it is our opinion that the Instruction is canonically valid, that it binds all confessors, at least indirectly, and that it is an interpretation of the divine law.

We have remarked above that the use of confessional knowledge condemned in the Instruction is that which involves a *gravamen* for the penitent. The phrase *usus cum gravamine poenitentis* and the principle expressed by it are wide enough to cover all the practices reprobated. The phrase itself is old, but its full meaning has become clearer and its application wider in the course of years. It is now universally recognized that *gravamen poenitentis* is to be understood not merely in reference to a particular penitent but in regard to penitents in general.[2] In other words if the use of confessional knowledge—apart from any danger of revelation—is such as offends the faithful generally, lessens their confidence and thereby renders the frequentation of penance more difficult—it is *usus cum gravamine poenitentis*, is foreign to the nature of the sacrament and is forbidden by divine law. The Instruction of 1915 enunciated no new principle. It merely declared that certain practices regarding the use of confessional knowledge did constitute a *gravamen* for penitents. Some of these practices, indeed, were admitted as lawful by earlier theologians. And thus the Instruction marks a definite stage in the evolution of our understanding of the phrase *usus cum gravamine poenitentis*.

It is, then, passing strange to find, in a preface to a paraphrase of the Instruction, the words: *Secluso . . . usu cum gravamine poenitentis* (quoted by our correspondent from Aertnys–Damen).[3] For we repeat that the practices condemned in the Instruction are instances of *usus cum gravamine poenitentis*—a fact which seems to be accepted subsequently by Aertnys–Damen. The insertion of the above-mentioned words in the preface was forced upon our author by the earlier adoption of a wide definition of the seal. We might express the position thus: Since, for Aertnys–Damen, use which involves a *gravamen* for the penitent—danger of betrayal apart—is a violation of the seal, and since

[1] Cf. Wouters, *Th. Mor.*, ii, n. 430.
[2] Cf. Cappello, op. cit., n. 914. [3] Op. cit., n. 462.

the Instruction clearly, we think, prohibits use which is not a violation of the seal, some kind of qualifying clause, like that inserted, was demanded in the circumstances. The difficulty would not have arisen if a strict definition of the seal had been adopted.

We think that the system of Probabilism may not be used to solve doubts in regard to the cases envisaged by the Instruction. In other words, the principle laid down by St. Alphonsus and other theologians, as quoted by our correspondent, must be applied to these cases, although they do not involve violation of the seal in the true legal sense. Probabilists[1] admit that their principle *lex dubia non obligat* may not be applied to solve all cases of doubt. In particular it may not be applied:[2]

(1) si agitur de certo iure tertii; (2) si agitur de gravi periculo damni spiritualis vel temporalis (sive proprii sive alieni) quod praecavere debemus ex caritate aut ex iustitia.

We submit that the cases envisaged by the Instruction can be listed under both of those headings and are, therefore, outside the sphere in which the principle of Probabilism may be applied. The teaching of St. Alphonsus is perfectly clear. He wrote:[3]

Non est licitum uti opinione probabili in praeiudicium iuris certi quod alter possidet; poenitens autem possidet ius ne occasione suae confessionis ullum patiatur gravamen. Quidquid igitur alibi dixerim, re accuratius perpensa, puto hic omnino dicendum non licere uti opinionibus, ex quarum usu certum non sit moraliter nullum poenitenti gravamen inferri.

The phrase *gravamen poenitentis* has, indeed, a wider meaning for us than it had for St. Alphonsus, but the general principle enunciated by him remains valid and may be applied, with its fuller denotation, to-day. Cappello, who accepts the wide definition of the seal, sums up the teaching in regard to cases of doubt in these words:[4] 'Proinde in dubio sive facti sive iuris confessarius ad sigillum semper tenetur, quamdiu opinio favens sigillo vere probabilis est.' Another theologian[5] has well written that 'the removal of all obstacles to the due discharge of Christ's commission of mercy is of such transcendent importance that nothing less than certainty can be accepted as a basis of action.'

The Instruction of 1915 condemns practices which, it is maintained, constitute a *gravamen* for penitents. Every question of real doubt in this connection must be solved in favour of the penitent. And thus, even if it were admitted that the Instruction

[1] Cf. Noldin, *Th. Mor.*, i, n. 236. [2] Prümmer, op. cit., i, n. 333.
[3] Op. cit., n. 633, n. 661. [4] Op. cit., n. 888.
[5] O'Donnell, *I. E. Record*, vol. xviii (1921), p. 633.

has only doubtful canonical standing, in our opinion, it must, in virtue of a reflex principle, be regarded as certainly binding in practice. We might add that if it were really doubtful whether a particular practice or particular circumstances were covered by the Instruction, it must be held that they are covered in every case.

PETITION OF FACULTIES OVER RESERVATIONS FROM SUPERIOR AND VIOLATION OF THE SACRAMENTAL SEAL

I heard a priest say that in a village of a few hundred people it would not be lawful for the priest to ask the Vicar-General or Bishop, who knew these people, for faculties to absolve from a reserved sin or censure lest there be violation of the sigillum. Is this correct ?

PAROCHUS.

It is very clear from canon 900, 2°, that reservation of sin ceases whenever, in the prudent judgment of the confessor, faculties to absolve cannot be obtained from the legitimate superior, without incurring the danger of violating the sacramental seal. This danger would be present if, for instance, the letter petitioning the faculties were likely to be opened by outsiders. But it will also be present if the particular circumstances are such that the Superior himself may be able to identify the individual penitent for whom the faculty is sought—even though the Superior, in turn, will be bound by the seal.

Our correspondent's question refers to reserved censures also. These are not directly covered by canon 900. The Code Commission has replied that *quaevis reservatio* of this canon refers to reserved sins only.[1] In Book V of the Code there is no corresponding canon to indicate that reservation of censures also ceases in special circumstances. But, under certain conditions, the law grants to all confessors very wide powers to absolve from reserved censures—for example in the more urgent cases of canon 2254, as well as in danger of death—canons 882, 2252, when all *priests* have power. We are not concerned now with the situation arising from danger of death, but with a case in which there is difficulty in approaching the local Superior because of the danger of violating the seal. And here again if, *de facto*, there is even a probable danger that the legitimate

[1] Cf. *A.A.S.*, xvii, p. 583; Bouscaren, *Canon Law Digest*, i, p. 415.

Superior, when approached for faculties, may be able to identify the particular penitent, then it seems to us that the confessor could not be obliged to ask for faculties but might absolve from the censure in virtue of canon 2254. We presuppose, of course, that the other conditions of this canon are fulfilled. There must be question of an *ipso facto* censure which is not notorious; it must not be possible to make recourse to the Sacred Penitentiary without undue inconvenience. The writers generally say that, in considering this question of recourse, all the factors must be taken into account. Roberti, for instance, writes :[1]

Ceterum ad faciendum recursum ad S. Sedem requiruntur saltem decem vel quindecim dies. Ad faciendum autem recursum ad Ordinarium una vel altera dies sufficere potest. At omnia adiuncta consideranda sunt et peculiaris dispositio poenitentis, et periculum violationis sigilli, et dubium num forte poenitens sit rediturus.

Our correspondent is mostly concerned, we think, with a question of fact. We might express it thus : Is there, *eo ipso*, a danger of violation of the seal if a priest who has the pastoral care of a few hundred souls applies for faculties to deal with a reserved sin or censure to the local Ordinary, who knows these people ? As it stands that question must certainly be answered in the negative. Yet there could, of course, be circumstances in which, by reason of the nature of the crime or the intimate nature of the knowledge of the people by the Ordinary, the latter might be able to identify the penitent. In which case, as we have pointed out earlier, there would be danger of violation of the seal, and, consequently, the Ordinary may not be asked for faculties. But the fact that there are only a few hundred people in question does not, of itself, imply that there is a danger of violating the seal in every request for faculties over reservation from an Ordinary who happens to know these people. To say that such danger is always implied would bring the economy of reservation to a *reductio ad absurdum* in very many cases. Factors like those mentioned—the nature of the crime, the publicity associated with it, the Ordinary's degree of knowledge of the people, as well as the size of the community—are all to be assessed before deciding that there is danger to the seal.

We are well aware that a great many theologians state that a priest is guilty of an indirect violation of the seal if he reveals, from confessional knowledge, that grave sins have been committed in a small community or village. And a community or village of less than three thousand souls is regarded as small !

[1] *De Delictis et Poenis*, i, n. 317.

Si confessarius dicit *in aliquo loco* committi gravia peccata, quatenus illa *nonnisi e confessione cognoscat*, laedit sigillum, nisi peccata sint *notoria* vel locus *satis amplus*, nempe saltem tria millia incolarum.[1]

A pari, indeed *a fortiori*, it might be argued—and the argument seems to lie behind the priest's statement referred to in the query—that there is an indirect violation of the seal if a confessor reveals to his Ordinary that one of a congregation of a *few hundred* has incurred a reserved sin or censure. It seems to us that there is a great confusion here—a confusion which arises fundamentally from a misconception of what constitutes an indirect violation of the seal. We cannot now go into this question fully. We have dealt with it in the reply immediately preceding. It must suffice to say that many theologians regard as an indirect violation of the seal what is only use of sacramental knowledge *cum gravamine poenitentis*.[2] Such use is, of course, gravely forbidden; but to our way of thinking, it must be clearly distinguished from violation of the seal, direct or indirect. There is a violation of the seal only when the use of sacramental knowledge leads, directly or indirectly, to the *identification of the penitent*. 'Caveat diligenter confessarius ne verbo aut signo aut alio quovis modo et quavis de causa *prodat aliquatenus peccatorem*.'[3] Presupposing then, as we may fairly, and as the writers who give the illustration seem to presuppose, that there is no danger of identifying penitents, the unwarranted revelation by a confessor that grave sins were committed in a small community is not an indirect violation of the seal but a misuse of sacramental knowledge to which penitents might reasonably take exception. This misuse, we repeat, is gravely reprehensive; it may cause grave injury to the sacrament.[4] And we quarrel only with many authors' description of it, not at all with its condemnation. Surely the situation contemplated in this misuse is very different from that of a confessor, who, in the course of his sacramental ministrations to a small community, finds it necessary to approach his legitimate Superior for faculties over a reserved sin or censure? The use made of sacramental knowledge in this latter case cannot be regarded as *usus cum gravamine poenitentis*. (Here again we have assumed that there is no violation of the seal—that is no danger of identifying the particular penitent.) There is no parity between the two cases. And so the argument *a pari* goes by the board. Yet, we feel impelled to say, it would never have been contemplated if theologians generally had adopted a more exact definition of the sacramental seal and of what constitutes its indirect violation.

[1] Cappello, op. cit., n. 918; cf. Prümmer, *Th. Mor.*, iii, n. 447; Davis, *Moral and Pastoral Theology*, iii, pp. 325–6.
[2] Cf. canon 890, § 1.
[3] Canon 889—which deals with the obligation of the seal. Italics ours.
[4] 'Even though it be done without substantial violation of the sacramental secret it cannot fail to offend the ears of pious listeners and to produce in their hearts uneasiness and diminished confidence—a thing which is surely foreign to the nature of this Sacrament.' Cf. Instr. of Holy Office, 9 June, 1915—Eng. trans. Bouscaren, op. cit., i, pp. 413–4.

CASES REGARDING THE SECRECY OF CONFESSION

(i) If a priest has been invited to hear confessions in a church to which he is not attached and if he is almost certain, after beginning to hear the confession, that his remarks and the sins confessed by the penitents can be understood by those waiting outside the confessional—what exactly are his obligations in these circumstances? May he omit advising penitents who have confessed grave sin and are living in the occasion of this sin, about the obligation of avoiding the occasion? May he impose a light penance for grave sin? Is he obliged to appeal to those waiting for confession to remain a reasonable distance from the confessional?

(ii) If penitents who are very deaf begin by confessing their sins in a loud voice so that they can be heard by those waiting for confession, is the confessor bound to bring such penitents to the sacristy or to some remote place in the church? Or may he allow them to finish their confession and give them a penance by signs—e.g. by using his rosary beads—if they have confessed grave sin? Or should he give a light penance and omit any advice which would indicate that grave sin has been submitted—if he would have to give this advice in a loud voice in order to be heard?

(iii) Is a priest who gives absolution in such a loud voice that he can be heard distinctly by all who are waiting for confession guilty objectively of a violation of the sigillum? It would seem to me that he is guilty, because there may be a particular penitent to whom he must refuse absolution and those waiting, when they do not hear the words of the form, will know that absolution has not been given.

(iv) Is a priest who is in charge of a particular church bound to take sufficient precaution to ensure that the faithful will not crowd round the confessional making it morally impossible for penitents secretly to confess their sins?

(v) What is the obligation of those who hear penitents confessing their sins in the confessional?

CAIUS.

(i) In our view the confessor should insist that the penitents waiting for confession should return to a suitable distance, out of ear-shot, from the confessional. He should do this as soon as

he becomes aware of the fact that what is being said in the confessional can be overheard. But if he adverts to this fact only towards the end of a particular confession, it might be more prudent and less likely to cause *admiratio* if he were to wait until this penitent leaves the confessional. In the meanwhile he must omit any questions or remarks which would convey any indication or suspicion to the bystanders that mortal sin has been confessed. If, in fact, necessary matter has been submitted it may be possible by means of signs secretly to give a grave penance. But if this is not possible a light penance should be imposed. The circumstance that the priest is hearing confessions in a church to which he is not attached does not at all preclude him from insisting that the conditions in which secrecy of confession is possible and is maintained shall be observed. Indeed, not merely has he, as minister of the sacrament, the right, but he has the grave duty to insist upon this. He is the guardian of the sacrament which he is administering, the guardian also of the confessional rights of the penitents who come to him in the tribunal of Penance. One of these rights is the right to secrecy.

(ii) Suitable arrangements should be made, if possible, to hear the confessions of those who are deaf, or who have very defective hearing, in the sacristy or in some other private place. Of course, if these penitents have only light matter to confess, there is no great problem. If it is discovered only in the confessional, in the course of confession, that the penitent is deaf, the confessor should do what he can to prevent the penitent from speaking so loudly that he will be heard by those outside the confessional. It may be possible immediately to bring this penitent to the sacristy or to some remote place in the church. But much will depend upon the circumstances of the place and upon the attitude of the penitent. In some places apparently the procedure of bringing deaf penitents from the confessional to the sacristy is quite common and does not cause any surprise.[1] If this be so, the confessor should follow the procedure unless the penitent is very unwilling. If, however, it is gravely inconvenient to take the penitent to some private place, if doing so would give rise to the suspicion of serious sin, or would greatly embarrass the penitent, then the confessor should let the penitent complete his confession as best he can. The confessor should not ask any questions or give any advice which would indicate that grave sin has been submitted—if it is necessary to speak in a tone of voice which would

[1] Cf. Cappello, *De Sac.*, ii, n. 208.

be audible to the bystanders. Here again, if grave sin has been confessed as necessary matter, it may be possible to impose a grave penance by signs. If this is not possible a light penance is to be given. If penitents are completely deaf, little purpose can be served by taking them to the sacristy. In this case the confessor must be satisfied with the confession made and should impose the most appropriate penance possible in the circumstances.

(iii) Revelation of the fact that absolution has been given to a penitent is not, in itself, a violation of the sacramental seal. But in certain circumstances there might be involved in such revelation an indirect violation in the case of the penitents who have to be refused. 'Absolutio concessa non cadit, per se, sub sigillum. . . . Sed aliquando adesse potest periculum indirectae violationis pro iis qui non fuerint absoluti.'[1] This danger arises in the case submitted by our correspondent. Revelation of the fact that absolution has been denied is, of course, a violation of the seal. It is a betrayal of the penitent. In the circumstances mentioned by our correspondent this betrayal arises indirectly. There is the danger that the bystanders may become aware that absolution has been refused to a penitent when they do not hear, as usual, the words of absolution. Consequently, a confessor should not recite the prayers of the form of absolution so loudly that those outside the confessional may be able to discern whether absolution has been given or not. In a case in which absolution has to be refused, it is not lawful for a confessor to recite the words of the form while withholding his intention of conferring the sacrament. This procedure would be what is known as *simulatio confectionis sacramenti* and is never lawful.

(iv) When giving instructions on the sacrament of Penance priests should, we think, include a clear explanation of the strict right of the penitent to secrecy of confession. The faithful should be told not to crowd so closely to the confessional that they can hear what is being said by the penitent or by the confessor. Moreover, the priest in charge of the church should see that the seats for the accommodation of waiting penitents are arranged at a discreet distance from the confessional.

(v) It is clearly stated in canon 889, § 2, that all who have in any way obtained confessional knowledge are bound by the obligation of the sacramental seal. The penalties for deliberate violation of this obligation are referred to in canon 2369, § 2. Those, then, who overhear, either by accident or by deliberate

[1] Cappello, *De Sac.*, ii, n. 901.

effort, the matter which is being confessed by a penitent are bound to observe the secrecy of the seal in regard to this matter. In giving instructions on Penance this obligation should be explained to the faithful. It is pointed out, however, that a penitent who, in full awareness of the fact that he is being overheard, deliberately speaks so loudly that the bystanders necessarily hear him, cedes his right to sacramental secrecy. The bystanders in these circumstances would not then be bound by the confessional seal in regard to the matter thus revealed. But the obligation of a natural secret might remain even in this case.

GRAVITY OF PENANCE

The principles of theology seem clear on the subject of sacramental 'satisfaction.' The stock example of the authors appears to be the five decades of the rosary, or its equivalent, as a minimum grave penance. But when it comes to practice many priests seem to modify the requirements, not merely in exceptional cases but more generally. Can it be said that some cause will generally be present to justify the imposition say of five Paters and Aves as a grave penance ? Or, since there is no precise legislation of the Church may it be maintained that the custom of prudent priests has a certain force in this matter ?

ANGLUS.

The official teaching of the Church regarding sacramental satisfaction is summed up in canon 887, which says that 'the confessor should impose salutary and suitable satisfaction in proportion to the quality and number of sins and the condition of the penitent.' The Council of Trent[1] had stated this general principle, and continued—to state the reason for it—

Ne (sacerdotes) si forte peccatis conniveant, et indulgentius cum paenitentibus agant, levissima quaedam opera pro gravissimis delictis iniungendo alienorum peccatorum participes efficiantur.

The Roman Ritual[2] is still more explicit :

Postremo salutarem et convenientem satisfactionem, quantum spiritus et prudentia suggesserint, iniungat, habita ratione status, conditionis, sexus et aetatis et item dispositionis poenitentium. Videatque ne pro peccatis gravibus levissimas poenitentias imponat, ne si forte peccatis conniveat, alienorum peccatorum particeps efficiatur. Id vero ante oculos habeat, ut satisfactio non sit tantum ad novae vitae remedium, et infirmitatis medicamentum sed etiam ad praeteritorum peccatorum castigationem.

[1] Sess. xiv, c. 8.
[2] Tit. iii, c. 1, n. 19; cf. n. 20.

The conclusion derived from these sources is that a grave penance should be imposed for grave sins. To determine what is a grave penance objectively the further general principle is laid down by theologians that what is or might be imposed *sub gravi* by an ecclesiastical law is grave. Examples are given—amongst them is that mentioned by 'Anglus'—the five decades of the rosary. Other examples are : the hearing of Mass, the recitation of the little Office of the Blessed Virgin, and more generally prayers or spiritual exercises lasting a quarter of an hour. Many theologians mention five Paters and Aves as an example of a light penance.[1]

Theologians recognize that there are many causes which justify a modification of the normal gravity of a penance. The causes are implicitly contained in the clauses of the canon and the prescription of the Ritual. They are principally corporal or spiritual infirmity or, on the other hand, an extraordinary degree of contrition on the part of the penitent—or the confessor may himself assume the obligation of discharging part of the penance.

Can it be said that one of these causes is always, or as a rule, present ? We do not think so. Human nature is weak, but surely we are not all so weak ! Nor are all who are not weak extraordinarily contrite. And the presumption is that normally the priest will not assume any obligation of satisfaction on behalf of the penitent. While it cannot be denied that each penitent may have his peculiar characteristics, it remains true that the majority will be normal penitents. We do not think, therefore, that the general imposition of five Paters and Aves as a grave penance can be justified on this count. It is not a grave penance for the normal penitent. It may, even less may, be grave for some.[2]

'Anglus' refers alternatively to the absence of precise legislation. The Council of Trent and the Ritual indicate clearly[3] that very light penances are not to be imposed for grave sins—in the normal case. Theologians are unanimous that five Paters and Aves are objectively considered light matter. No priest would, we think, question that teaching. The general 'custom' referred to by 'Anglus' is then either out of harmony with the letter and the spirit of the regulations of the Church on this matter—or it presupposes that the vast majority of penitents is abnormal. Prudent priests will be the best judges as to

[1] Cf. Prümmer, *Th. Mor.*, iii, n. 396; Merkelbach, *Th. Mor.*, iii, n. 550; Davis, *Moral and Pastoral Theology*, iii, p. 265.
[2] Cf. Carbone, *Examen Confessariorum*, p. 215.
[3] Loc. cit.

whether a particular penitent is abnormal, but neither they nor we would admit that the general body of penitents is abnormal. We recognize the difficulty for an individual priest in adopting a more rigid standard for normal cases in the face of a general 'custom'—nevertheless we think that this more rigid standard is demanded by the ecclesiastical regulations.

THE THEOLOGY OF PENANCE IN POPULAR SOURCES

Can the confessor described in *A Summer in Italy*, pp. 163–4, be justified theologically ? In an age which is inclined to take its theology from a 'best seller,' instead of from approved authors, it would seem that his conduct is apt to give scandal.

The description of the confession given in *A Summer in Italy* is briefly : 'The priest drew the slide. As soon as his voice whispered to me I knew I was sunk. . . . This man would know all. But what he actually said, in a gentle voice, was this : "Well now I suppose all the usual sins since then ? [On the previous page we are told that it was years since the penitent had been to confession.] Women and drink and no Mass and bad language and dirty stories and all the rest of it ? Ah well ! My poor child. God has been very patient with you. Say three Hail Marys now. And God bless you."'

I should like to know also whether or not Theology confirms the penitent's first reaction given on p. 165 : 'Three miserable, miserly, paltry Hail Marys ! After years of defiance ! The thing was fantastic !'

MAURITIUS.

It is not possible, in the circumstances of the case, theologically to justify the confessor's manner of acting as described in the passage quoted by our correspondent. And we think that this description, if it be regarded as an exact and full account of what took place would be well calculated to give rise to a misunderstanding of the theology of the sacrament of Penance, and of the functions of the confessor and, consequently, would be apt to cause scandal.

It is a fundamental principle of the theology of Penance that necessary matter (that is all post-Baptismal mortal sins not already remitted by sacramental absolution, of which the penitent is conscious after a diligent examination of conscience) must be confessed in number and kind[1]—to the extent that such

[1] Canon 901 ; Cf. *Conc. Trid.*, Sess. xiv, cap. 5, cc. 6–8.

confession is physically and morally possible. As this last phrase indicates, it is well recognized that certain circumstances may excuse a penitent from material integrity. Indeed, there are circumstances in which a completely generic avowal of having committed sin, even a presumed avowal will, *faute de mieux*, be regarded as sufficient, at least for a conditional absolution. In the situation described in *A Summer in Italy*, it is clearly implied that the penitent had necessary matter to confess—even if account were taken only of his long absence from the sacraments. And there is no evidence to show that any of the causes which excuse from material integrity were present. In other words, the penitent was bound to confess the number and the proximate species of the mortal sins committed since his last confession. In saying this we do not mean to imply that a penitent must always be able to indicate the exact number of times a mortal sin was committed or that penitents should be unduly pressed or harried in regard to numbers. Often enough, especially in the case of those who have been away from confession for a long time, the exact number cannot be recalled. But some approximation to this number can and should be given. Now, according to the description of the case we are considering, there was no attempt on the part of the penitent to indicate, even approximately, the number of his lapses. Nor did the confessor, who is gravely bound to interrogate the penitent regarding what is necessary for integrity, make any effort to secure this inidcation. The confessor simply supposes—so runs the description—that the penitent has committed the usual sins since his last confession ; and there is no evidence that the confessor knows how long ago this confession was made. The reader of the book knows this from an earlier page. The confessor then mentions a few categories of sin—some in the most general way. The other possible sins are all covered by the phrase 'and all the rest of it.' Apparently the penitent accepted this statement of his sins—though there is no express evidence that he did. In fact, so far as the description goes, the penitent, apart from 'shoving himself by main force' into the empty confessional and reciting an act of contrition, seems to have been allowed to take little active part in the proceedings. We need hardly point out that it is most laudable, and sometimes very necessary and obligatory, that a confessor should help a penitent to make his confession. A confessor should always be kindly and helpful. He should be particularly so with those who have found the grace to come to confession after a long absence. He should be careful not to crush the bruised reed. He is a father and a physician.

But he is also a judge and minister of a divinely instituted sacrament and he must abide by the rules of its administration. No confessor has any power to alter the requirements of the sacrament and to substitute a generic confession of necessary matter for the specific enumeration of sin required, whenever it is possible, by divine and ecclesiastical law.[1]

In the case under discussion, the question of the liceity of the confessor's action in imposing such a light penance might also be raised. It is a familiar principle that the satisfaction enjoined by the confessor should bear some proportion to the number and kind of sins submitted for absolution and to the condition of the penitent. The Council of Trent gave this express command and mentioned a reason for it.[2] The penance imposed should be salutary and suitable. In determining the penance, the confessor acts as a judge and physician. He should take prudent account of the capacity of the penitent. He may reduce the penance for a number of reasons, such as the spiritual frailty of the subject—to mention a reason which might be relevant here. Of course, a confessor might also undertake personally to supplement or to supply for the penitent's satisfaction, though this course is not always commendable. While at first sight it might seem that, in the case under consideration, the confessor was clearly wrong in imposing such a light penance, his action might be justified for one of the reasons mentioned. Perhaps, indeed, the humiliation felt by the penitent on receiving such a small penance was the salutary satisfaction intended by the confessor. He may have had a special insight into the character and temperament of the person with whom he was dealing. But, of course, theology could not confirm the penitent's first reaction of 'fury' and indignation.

It has been noted earlier that there is the grave possibility of misunderstanding and scandal if the description of confession quoted be taken as a full and accurate account of what took place. As our correspondent remarks, many people to-day are regrettably prone to take their theology from popular writings whose authors have no theological training. It seems clear to us that, in the case in issue, the author's description of his reconciliation and confession is a condensed and highly dramatic account of what took place. There is evidence in the text and context that it could be so regarded. But the danger is that many readers may miss this evidence.

[1] Cf. Galtier, *De Poenitentia*, n. 413 et seq.
[2] Sess. xiv, cap. 8—cf. previous reply, par. 1.

VALIDITY OF THE ABSOLUTION OF AN UNRECOGNIZED ACCOMPLICE

A penitent confesses a *peccatum turpe* as necessary matter. The confessor, for some reason, inculpably fails to recognize the penitent as his *complex in hoc peccato turpi* and gives absolution. Is the absolution valid ?

THEOLOGUS.

Though some few theologians[1] regard the contrary view as probable, to us there seems to be no escape from the conclusion that the absolution is invalid. In canon 884 we have a direct and clear statement : 'Absolutio complicis in peccato turpi invalida est, praeterquam in periculo mortis.' And no ignorance of invalidating laws excuses from them, unless the contrary be expressly stated.[2] The writers who take the view that, in the circumstances envisaged in the case, the absolution is valid, regard the deprivation of jurisdiction in reference to the accomplice as a penalty which is incurred only by a confessor who absolves *sciens et volens*. And they invoke in support of their contention the text of the Constitution *Sacramentum Poenitentiae* issued on this matter by Pope Benedict XIV in 1741. Genicot, for instance, writes :[3]

> Quod si complicem *non agnoverit* plures non improbabiliter tenent absolutionem ipsius peccati turpis esse validam et directam quia nequit extendi ad confessarium qui complicem non agnoscat id quod Benedictus XIV et Pius IX statuerunt de eo qui eum sciens volens absolvat.

But we think that this argument is worthless against the categorical statements of the Code law. There is no longer reference to knowledge or voluntariety on the part of the confessor.

In the case submitted, though the absolution must, we believe, be held to be invalid, the confessor does not incur the censure laid down in canon 2367. By reason of his ignorance regarding the identity of the penitent he did not commit a crime[4]—he was not formally guilty in giving absolution—and where there is no crime there can be no censure.[5]

[1] Cf. Genicot, *Th. Mor.*, ii, n. 352, nota 3 ; Heylen, *Tractatus de Poenit.*, p. 4.
[2] Canon 16, § 1.
[3] Loc. cit.
[4] Canon 2195, § 1.
[5] Canon 2242, § 1.

INDIRECT ABSOLUTION FROM THE *PECCATUM TURPE*

May I make an observation on your solution to a question entitled 'Validity of the Absolution of an Unrecognized Accomplice'? You state that 'there seems to be no escape from the conclusion that the absolution is invalid.' Here, I believe, is an escape: 'Extra periculum mortis complici admittur iurisdictio in peccatum complicitatis nondum *directe* per claves Ecclesiae absolutum. Igitur manet, saltem probabiliter, eius iurisdictio in cetera peccata. . . . Hinc qui *bona fide* apud suum complicem confitetur, valide absolvitur, *directe* quidem ab aliis peccatis, *indirecte* a peccato complicitatis, a quo nondum absolutus est *directe* ab alio confessario.'

May I ask your opinion of this solution?

CROCETTA.

Our correspondent suggests an escape from our conclusion. We have seen a similar line of argument in some of the authors.[1] But *salva reverentia*, the argument does not seem sound to us. There are several reasons against it. Some of them have been mentioned in our previous reply. In particular, we noted there the clear statement of canon 884: 'Absolutio complicis in peccato turpi invalida est praeterquam in periculo mortis. . . .' This, then, is an invalidating law. Ignorance does not excuse from such a law unless the contrary is expressly stated.[2] The contrary is not stated in canon 884. Therefore, even when the confessor acts in ignorance, his absolution of his accomplice from the *peccatum turpe complicitatis* (which has been confessed as necessary matter) is invalid.

The argument advanced by our correspondent rests on the supposition that the confessor's faculties are withdrawn only in relation to the *peccatum turpe complicitatis*. But there is no good evidence for this supposition. Indeed, as we see it, the available evidence is clearly against it. In canon 884 there is reference to Apostolic Constitutions as the sources of this law and the Constitution *Sacramentum Poenitentiae*, by Pope Benedict XIV, is specifically named. What do we find in these sources on the point at issue? In the Constitution *Sacramentum Poenitentiae*[3] we read:[4]

Auctoritate Apostolica et Nostrae potestatis plenitudine interdicimus et prohibemus ne aliquis eorum . . . confessionem sacramentalem personae complicis in peccato turpi . . . excipere audeat, sublata praeterea illi ipso

[1] Cf. Noldin, *De Sac.*, n. 371; Heylen, *De Poenitentia*, p. 400.
[2] Canon 16, § 1.
[3] 1 June, 1741. This Constitution is given in Appendix V of the Code.
[4] §§ 4, 5.

iure quacumque auctoritate et iurisdictione ad qualemcumque personam ab huiusmodi culpa absolvendam; adeo quidem ut absolutio, si quam impertierit nulla atque irrita omnino sit, tamquam impertita a sacerdote qui iurisdictione ac facultate ad valide absolvendum necessaria privatus existit, quam ei per praesentes has Nostras adimere intendimus. . . . Cum ad hunc effectum, et in hoc casu, nullus confessarius utpote qui in huiusmodi peccati, et poenitentis genere . . . iurisdictione careat, et absolvendi facultate a Nobis privatus existat, habendus sit pro confessario legitimo et approbato.

In the Constitution *Inter Praeteritos*[1] we find this statement:

Quemcumque confessarium omni auctoritate et iurisdictione absolvendi personam complicem in peccato turpi . . . privavimus, adeo ut absolutio ab eodem data nulla atque invalida remaneat. . . .

In an Instruction of the Holy Office[2] it is stated:

Sacerdoti cuilibet omnis facultas et iurisdictio ad sacramentales confessiones personae complicis . . . excipiendas adimitur.

All these documents seem to indicate that the jurisdiction of a confessor regarding his accomplice in *peccato turpi* is completely withdrawn (outside danger of death)—at least when this *peccatum turpe* is confessed as necessary matter for absolution.

The only official statement quoted by the writers in favour of the supposition in our correspondent's argument is from a reply of the Sacred Penitentiary.[3] The statement runs:

Privationem iurisdictionis absolvendi complicem in peccato turpi et adnexam excommunicationem quatenus confessarius illum absolverit, esse in ordine ad ipsum peccatum turpe in quo idem confessarius complex fuit.

But it is not at all clear that this reply means that jurisdiction is withdrawn only in regard to the particular sin of complicity. As Cappello notes,[4] the statement might equally well be interpreted as meaning that jurisdiction over the accomplice penitent is withdrawn by reason of the complicity in *peccato turpi*. And even if this reply clearly stated that jurisdiction was withdrawn only in regard to the particular sin, a reply of the Penitentiary, which was not approved by the Pope, could not be regarded as derogating from the Apostolic Constitutions expressly invoked in canon 884. The full text of this reply of the Penitentiary is interesting. Whatever may be said about the meaning of the section of it already quoted, the final sentence seems to confirm the view that the confessor's faculties, in relation to his accomplice penitent, are completely withdrawn and, indeed, to confirm our earlier solution. The reply referred to the case of a confessor who absolved his accomplice when the *peccatum turpe*, though necessary matter, was not confessed. Even if the confessor

[1] 3 December, 1749; Gasparri, *Iuris Can. Fontes*, ii, p. 276.
[2] 20 February, 1866, *Iuris Can. Fontes*, iv, p. 267.
[3] 16 May, 1877, *Iuris Can. Fontes*, viii, p. 467.
[4] *De Sac.*, ii, nn. 619 and 621.

culpably abstained from questioning, it was submitted that he did not absolve from the *peccatum turpe*, since it was not confessed. But the Penitentiary, having made the statement already quoted, continued :[1]

> Tenetur nihilominus confessarius, sacerdoti qui hac ratione complicem, non tamen a *peccato complicitatis*, absolvit, omni studio ob oculos ponere enormitatem delicti sui et abominabilem abusum sacramenti paenitentiae, nec aliter ei beneficium absolutionis impertiri . . . non imposita obligatione ut a confessionibus complicis audiendis in posterum omnino abstineat, monita eadem persona complice, si denuo compareat, ut de peccato complicitatis et ceteris invalide confessis, apud alium confessarium se accuset.

For the sake of argument, however, let us admit the validity of our correspondent's supposition that jurisdiction is withdrawn only in regard to the *peccatum turpe complicitatis*. How would it follow, in this hypothesis, that the confessor, in the circumstances of the case under consideration, can validly absolve the accomplice penitent? The fact is that this penitent has submitted, as necessary matter for absolution, a sin over which the confessor has no power. One mortal sin cannot be remitted while another remains. This fact, then, that the confessor has no power over one mortal sin submitted, implies that the sentence of absolution is totally invalidated.

Why is the notion of good faith stressed in the argument set out by our correspondent? What has good faith to do with this precise question of the power of the confessor validly to absolve? Nothing at all, we submit. Good faith, whether on the part of the penitent or confessor, is not set down, in this context, as a ground for having jurisdiction supplied or as an excusing cause from an invalidating law. The confessor has power to give valid absolution—or he has not. If a confessor could validly absolve a penitent who, in good faith, confesses the *peccatum turpe complicitatis* he should, as far as his power is concerned, be able equally to absolve a penitent who is in bad faith. If the absolution were invalid in this latter case, the invalidity would not arise from defective jurisdiction in the confessor but by reason of some defect, perhaps in integrity or dispositions, on the part of the penitent. Of course if the penitent is in good faith and has perfect contrition, the sins are remitted—but the remission is not *vi absolutionis*. Nor is the good faith of the confessor in point. Again, he has faculties to absolve validly or he has not. His belief that he has these faculties, his ignorance that he has not, will not supply jurisdiction, unless the law or the appropriate authority say so.

[1] Loc. cit.

We have, indeed, a more fundamental objection to our correspondent's argument. We realize well that in voicing this objection we are rejecting something that is readily accepted by very many theologians. Restrictions of time and space prevent us from giving a full discussion now—but it may be well to ventilate the point we have in mind. Our objection is to the whole theory of indirect absolution of sins confessed. The theory is applied to the case under consideration here and also, and more commonly, to the case when sins reserved *ratione sui* are submitted, in good faith, to a *simplex confessarius* and are absolved by him through ignorance or even through malice. This theory of indirect absolution, especially in regard to reserved sins, was formulated a few centuries ago when the law did not provide, as it does now, for the cessation of reservation or the due delegation of a confessor in certain specified circumstances. In these former times, outside danger of death, recourse for absolution from reserved sins had normally to be made to the reserving authority. Whatever about the validity of the theory under the earlier system we see no argument for it in the Code law.[1] It must be remembered that we are considering here the theory of indirect absolution from necessary matter submitted in confession.

When a penitent confesses a *peccatum turpe complicitatis* or a reserved sin (in circumstances in which the reservation does not cease or in which the law does not supply faculties) all must admit, if words mean anything, that the accomplice or non-privileged confessor has not, in fact, any power over these sins. He cannot validly absolve from them. And he cannot, we repeat, leave these untouched and absolve from other mortal sins. Therefore any absolution given is invalid. The introduction by the writers of a distinction between direct and indirect absolution seems to be confusing and meaningless. The law does not know indirect absolution.[2] What can indirect absolution from the sins mentioned mean? It should mean that these sins are somehow touched and remitted by the absolution. But absolution from a sin surely presupposes that the confessor has faculties over that sin. Where, then, there is no jurisdiction, there is no valid absolution of any kind. Indirect absolution appears to be a contradiction in terms. It either implies an absolution without jurisdiction or it suggests an absolution where really there is nothing of the kind.

[1] We have noted earlier the principle stated in canon 16, § 1, that no ignorance excuses from invalidating or inhabilitating laws unless the contrary be expressly stated.

[2] In canon 901 we have a reference to mortal sins not yet directly *remitted* by the power of the keys.

If a penitent is in good faith and if the confessor, in ignorance or through malice, absolves from the sins in question here, it may, perhaps, be argued that, in fairness to the penitent, the absolution should be valid; that, in these circumstances, the Church should supply jurisdiction or dispense from its invalidating law. If the Church did this, then, of course, the difficulties would disappear; the absolution from the sins would be direct and there would be no necessity to resort to the unlikely, and to us the unintelligible, hypothesis of indirect absolution. But what does the Church do in the situation envisaged? The general law indicates that reservation ceases in certain cases;[1] that in others[2] the confessor is given faculties to absolve from reserved sins and censures. But nowhere in the general law is there an indication that absolution from a sin reserved *ratione sui*[3] is valid when given by a confessor through ignorance[4] or malice. Nor have we, in the matter of the absolution of an accomplice *in peccato turpi*, any indication that the Church dispenses, in face of the ignorance of the confessor, from the invalidating law of canon 884. In these texts of law there is no hint whatsoever of the possibility of anything like indirect absolution.

We can understand that when a penitent, in good faith or inculpably, fails to confess a mortal sin—even one over which the confessor has not power—the absolution may be valid. In this case the confessor has power to absolve from all the sins confessed. The penitent is, in the circumstances, excused from material integrity. But we think that it is not good terminology to speak of indirect absolution of the sin inculpably omitted in confession. That sin was not absolved. It never came under the sentence of absolution. Indeed if it were a sin over which the confessor had not power it could not be affected by this sentence. Yet the sin is remitted. The sinner has done, we presuppose, all that is required for a valid sacrament of Penance. Absolution was duly given from the sins confessed. Sanctifying grace was infused and thereby the unconfessed mortal sin is remitted—not absolved in any true sense. The sin still remains necessary matter for confession.

[1] Cf. canon 900. [2] Cf. canons 882–3.

[3] In canon 2247, § 3, it is expressly stated that absolution given by a confessor in ignorance of the reservation of certain *censures* is valid. This statement makes more significant the silence of the law on the points we have noted.

[4] Canon 207, § 2, makes a restricted gesture in favour of inadvertence, but the provisions of that canon are not relevant here. Particular law or local regulation may and sometimes does provide for the cessation of reservation in face of the confessor's ignorance or inadvertence. But our concern is with the interpretation of the general law—especially that stated in canon 884.

ABSOLUTION OF AN ACCOMPLICE—INCURRING OF PENALTY

(i) In commenting on canon 884 (*De absolutione complicis*) the writers generally stress the point that there is no withdrawal of faculties unless the sin of complicity is a grave sin, materially and formally, for both the parties concerned. If, then, before the sin is committed, the penitent has been persuaded by the accomplice that the act they were going to do was not sinful, or at least not gravely sinful, there would be no question in the subsequent confession and absolution of *absolutio complicis in peccato turpi* as mentioned in canon 884. Consequently, in these circumstances, canon 2367 which uses the same terms—'*absolvens vel fingens absolvere complicem in peccato turpi*' should not apply. Or, conversely, if canon 2367 does apply—and I know that the teaching is that it does—if, in other words, grave subjective guilt *ex utraque parte* is not always necessary to incur the penalty of canon 2367—why should such guilt be required in canon 884? Is there not some kind of contradiction here?

(ii) I have another difficulty on this same subject. I might state it thus: A penitent who has been duly absolved from a *peccatum turpe cum sacerdote* subsequently confesses to the *sacerdos complex*. The penitent has now no necessary matter and mentions *only* the former sin of complicity as a sin of the past. This sin is, of course, free matter now. Can the *confessarius complex* validly absolve in this case?

Your comments on these points will be greatly appreciated by

THEOLOGUS.

(i) As our correspondent notes, the commentators on canon 884 do state that there is no question of *absolutio complicis in peccato turpi* unless the sin of complicity was subjectively grave for both the parties concerned. Cappello writes:[1] 'Ut habeatur peccatum complicitatis de quo in casu . . . debet esse peccatum *mortale*, materialiter et formaliter.' Only in this hypothesis, therefore, would the authors regard the absolution as invalid. There seems to be no doubt about this point. If the sin of complicity was only subjectively venial for the penitent—because he was so persuaded, *ante factum*, by the confessor or because of any other reason—the withdrawal of faculties in regard to this sin would not, in fact could not, necessarily invalidate the absolution. In this case the penitent could be absolved validly by the *confessarius complex* from other sins confessed. The absence of jurisdiction over a venial sin and the consequent non-remission of this sin—supposing there is other matter for absolution—are, of course, quite compatible with a valid sacrament of Penance. Thus there would be little point

[1] *De Sac.*, ii, n. 610, cf. n. 613; cf. Jorio, *Th. Mor.*, iii, n. 601.

in a law which would withdraw the jurisdiction of a confessor over venial sin. It seems clear from a reply of the Sacred Penitentiary in 1877 that the withdrawal of jurisdiction contemplated in the documents on which canon 884 is based—and, therefore, in the canon itself—has reference, *per se*, only to the *peccatum turpe complicitatis*.[1] Indeed, the penitent might have been persuaded beforehand by the confessor that the *actio turpis* was no sin at all, in which case this act would not even be sufficient matter for absolution. How then could the confessor's jurisdiction over it be withdrawn? These considerations surely point to the conclusion of the commentators that the *peccatum turpe* of canon 884 must be a sin which is subjectively as well as objectively grave for both the parties. That is to say, formal complicity in grave sin is presupposed in the canon.

Our correspondent links up canon 884 with canon 2367. Obviously there is a link between them—but it must not be drawn too tightly. The canons referred to have different objects. Canon 884 is concerned with the restriction of the power of a confessor to absolve his *complex in peccato turpi*. Ordinarily the absolution is invalid. If the penitent is in danger of death the absolution is valid but the confessor acts unlawfully in giving it outside cases of necessity—unless, that is, there is no other priest present from whom absolution might reasonably be obtained without arousing grave scandal or infamy. Canon 2367 is not directly concerned with the validity of the absolution, but with the penalty contracted by a confessor who absolves or pretends to absolve his *complex in peccato turpi*. It is perfectly clear from the first paragraph of this canon[2] that the penalty is contracted by a confessor who *validly* absolves his accomplice in danger of death, if it is not a case of necessity in the sense explained. To prevent a fairly obvious danger of abuse and evasion of the penalty further provisions were laid down in canon 2367, § 2. It is stated there that a confessor who absolves or pretends to absolve his accomplice does not escape the penalty when the sin of complicity (which has not yet been directly remitted) is not confessed, if the failure to confess is due to the

[1] The reply was: 'Privationem iurisdictionis absolvendi complicem in peccato turpi et adnexam excommunicationem quatenus confessarius illum absolverit, esse in ordine ad ipsum peccatum turpe, in quo idem confessarius complex fuit.'

[2] Canon 2367, § 1. 'Absolvens vel fingens absolvere complicem in peccato turpi incurrit ipso facto in excommunicationem specialissimo modo Sedi Apostolicae reservatam; idque etiam in mortis articulo, si alius sacerdos, licet non approbatus ad confessiones, sine gravi aliqua exoritura infamia et scandalo, possit excipere morientis confessionem, excepto casu quo moribundus recuset alii confiteri.'

direct or indirect inducement of the confessor. The meaning in this context of the words 'direct' and 'indirect' was explained in a reply of the Sacred Penitentiary in 1896—and the explanation still stands. The reply stated that a confessor directly induces a penitent not to confess when he positively and explicitly advises silence regarding the sin of complicity, pointing out that he is already well aware of it. There is indirect inducement[1] not to confess when the confessor persuades the penitent that the act of complicity committed by them was not sinful or at least was not gravely sinful—so that the penitent now concludes that the act is not matter or, at any rate, is not necessary matter for the sacrament, and hence omits all reference to it. No writer had any doubt that the provisions of canon 2367, § 2, applied to a confessor who, directly or indirectly, induced a penitent not to confess if the inducement took place after the commission of the subjectively and objectively grave sin of complicity. The writers also considered the case in which the inducement was given *ante factum*, so that the penitent was persuaded to regard the *actio turpis patranda* as at most venially sinful and, hence, not necessary matter for confession. And, up to the year 1934, the almost unanimous solution of this case was that, in the circumstances, the confessor did not incur the penalty. In other words, it was held that the conditions of canon 884—that the sin be subjectively grave for both parties—should be verified in canon 2367. Otherwise the excommunication enacted by the canon would not be contracted. The writers were influenced also by the statement of the Sacred Penitentiary in its description of indirect inducement of a penitent not to confess the sin of complicity. The reference there is to 'actio turpis cum ipso *commissa*.'

The above-mentioned view is not tenable since 1934. In that year the following doubt was submitted for solution to the Holy Office:[2]

An inter *indirecte inducentes*, de quibus in canone 2367, § 2, . . . adnumerandus etiam sit confessarius qui sive intra sive extra confessionem sacramentalem, alicui persuaserit in turpibus inter se patrandis aut nullum aut certe non grave inesse peccatum eumque consequenter, de aliis tantum sibi postea confitentem, sacramentaliter absolvit vel fingit absolvere.

The reply given was 'Affirmative, facto verbo cum SSmo.' Commentators on this reply rightly conclude from it that a confessor who, *ante factum*, persuades his accomplice that their

[1] 'Indirecte vero inducit quando confessarius suadere conatur poenitentem sive quod actio turpis cum ipso commissa non est peccatum, sive saltem non tam grave ut de ipso inquietari debeat; unde poenitens concludit ipsi licere non declarare tale peccatum.'

[2] *A.A.S.*, xxvi (1934), p. 634.

act of complicity is not gravely sinful—whereas in fact it is—does not escape the penalty of canon 2367. The main argument for this conclusion is based upon the phrase of the dubium '*de turpibus inter se patrandis*'—a phrase which obviously refers to future acts and not to acts already committed. It is pointed out by many authors that the reply marks a further step in the tightening up of the legislation regarding the penalty for absolving an accomplice *in peccato turpi*.[1] Thus we have here an extensive interpretation of the law—an interpretation which carries the special approval of the Pope.[2] The Holy See is naturally anxious that, as far as is possible, all danger of abuse and evasion be eliminated in this most serious matter. No one would deny that false persuasion, *ante factum*, that a sin of complicity is not mortal—and hence need not be confessed—is a serious abuse and a studied evasion of the penalty of the law. Such evasion is not possible under the recent extensive interpretation of the canon.

The teaching on the point at issue in the query may, then, be summarized thus : if the persuasion that the act of complicity is at most venially sinful takes place before the act is committed (so that the penitent is not guilty of subjective mortal sin and, consequently, does not confess the act) the *confessarius complex* can, indeed, *suppositis supponendis*, validly absolve,[3] but he may not lawfully do so. And if he absolves or pretends to absolve in these circumstances he does not escape the excommunication of canon 2367. There is no contradiction in this teaching.

(ii) The theologians are not all agreed regarding the answer which should be given to our correspondent's second question. Many say that once the *peccatum turpe complicitatis* has become free matter, that is, once this sin has been directly absolved by another confessor, the *confessarius complex* can deal with it. These writers urge a parallel with the case of reserved sin, which, when once it has been duly absolved by a privileged confessor, falls thereafter, as free matter, fully within the power of a *simplex confessarius*. Among those who hold the foregoing view are St. Alphonsus,[4] Bucceroni,[5] Genicot,[6] Aertnys–Damen,[7] and Jorio.[8] While these authors hold that the absolution is valid—when the *peccatum turpe complicitatis* is free matter—they all point out that

[1] Cf. Vermeersch, *Periodica*, xxiii (1934), pp. 165–6.
[2] Cf. Jorio, op. cit., n. 609.
[3] The reply of the Holy Office does not touch the question of the validity of the absolution.
[4] *Th. Mor.*, I, vi, n. 555.
[5] *Th. Mor.*, iii, n. 1203.
[6] *Th. Mor.*, ii, n. 352.
[7] *Th. Mor.*, ii, 401.
[8] Op. cit., iii, n. 106.

there is a lack of reverence and a degree of danger when a penitent seeks and obtains absolution from a former *complex in peccato turpi*. Consequently, penitents (and confessors) should be deterred from this procedure.

On the other hand there are not a few theologians who maintain that the *confessarius complex* cannot, in the circumstances contemplated in the query, validly absolve from the *peccatum turpe*—even though it is now free matter.[1] They argue from the wording of canon 884, which categorically states that such an absolution is invalid, except in danger of death. No other exception is made. And the earlier documents, referred to in the canon, have somewhat similar phrases indicating that the confessor's jurisdiction over this particular sin of complicity is, apart from danger of death, permanently withdrawn. Benedict XIV describes the position thus :[2] 'Sublata propterea illi (confessario) ipso iure quacunque auctoritate et iurisdictione ad qualemcunque personam ab huiusmodi culpa absolvendam.' And Ballerini, in a note,[3] quotes the same Pope as stating that, in the circumstances under consideration, 'nullam esse absolutionem, etsi peccatum iam centies fuerit subiectum clavibus.' The parallel with the case of reserved sins—which is suggested by those who hold the opposing view—is far from perfect. Indeed there is hardly a parallel at all. The *ratio* of the law in canon 884 is very different from the *ratio* of the law of reservation. The withdrawal of the confessor's jurisdiction over the *peccatum turpe complicitatis* is clearly far more radical and final than is the restriction implied in reservation. This latter can cease in many ways other than in danger of death—for example, in the ways mentioned in canon 900. And no one would suggest that a confessor could absolve his *complex in peccato turpi* in the circumstances of canon 900.

The view of this latter group of theologians is, theoretically speaking, much the better. It has very strong arguments in its favour. The arguments for the other view seem weak—yet, in deference to the authorities who hold it, we must regard it as extrinsically probable. There is, then, a doubt of law on the point in issue and, therefore, in virtue of canons 15 and 209, the absolution would be valid. It is hardly necessary to add that the most satisfactory way to solve a practical case of this kind would be to get the penitent to confess some other free matter. This solution will rarely, if ever, be impossible.

[1] Cf. Ballerini–Palmieri, *Opus Theol. Mor.*, v, n. 415.
[2] Constit., *Sac. Poenitentiae*, 1 June, 1741.
[3] Loc. cit.

THE OBLIGATIONS OF THE ORDINARY CONFESSOR REGARDING RELIGIOUS WOMEN WHO DO NOT CONFESS TO HIM

Canon 520, § 1, directs that 'to every house of religious women must be given only one ordinary confessor who shall hear the sacramental confessions of the whole community unless, on account of the great number of religious or for some other just reason, two or more may be found necessary.' Keeping well in mind the added facilities for occasional recourse to other confessors, I should be grateful to know whether the ordinary confessor is under obligation of any kind when two or perhaps three sisters (in a community of about thirty) never or very seldom address themselves to him, but regularly go to another priest approved for the confession of women? Is it better for him to ignore the fact, *ne obstet libertati*?

DUBIUS.

The mind of the Church clearly is that the members of a community of religious women should habitually make their confessions to one ordinary confessor. This procedure is regarded as necessary to secure a certain uniformity of direction within the community and also, perhaps, to prevent abuses.[1] While it is recognized that special circumstances, such as the great number of religious, or some other good reason (like diversity of language), may demand a plurality of ordinary confessors, the general rule of canon 520, § 1, is as our correspondent notes, that each house of female religious should be given only one ordinary confessor who shall hear the confessions of all the community.[2] Yet, side by side with this general rule and the purpose it embodies, there is evidence in the law of the particular anxiety and care of the Church to make provision for the individual freedom of conscience of the religious. In the course of time, doubtless to meet new circumstances and needs such as those created by the increasing external activities of many religious communities and the established practice of frequent and even daily Communion, there is manifested in the law a progressive tendency to make wider provisions to ensure this freedom.[3] It may be well to recall the main relevant provisions of the Code law. If any female religious, for her peace of conscience or to help her progress in the spiritual life, ask for a special confessor, the local Ordinary is readily to grant her

[1] Cf. Schäfer, *De Religiosis*, n. 172.
[2] The supplementary confessors are appointed to act only *in casibus particularibus*—canon 521, § 2.
[3] Cf. Creusen, *Religious Men and Women in the Code*, n. 110.

request. He should, however, take care that abuses do not arise from this concession and if any do arise he must cautiously and prudently eliminate them, *salva conscientiae libertate*.[1] If any female religious wish to confess to one of the supplementary confessors (or to the extraordinary confessor)[2] the superioress may not, personally or through others, directly or indirectly make any enquiry as to the reason for this request, nor may she place any obstacle to or show any reluctance to the granting of the request.[3] Moreover, any female religious may, for her peace of conscience, validly and lawfully confess to any priest approved by the local Ordinary for the confessions of women, provided the confession of the religious be made in a place legitimately designated for hearing women's confessions. Here again it is pointed out that the superioress may not directly or indirectly prohibit the religious from exercising this right and the religious is under no obligation to inform the superioress of the matter.[4] All female religious who are seriously ill, even though not in danger of death, may, as often as they wish while the serious illness lasts, send for and make their confessions to any priest who has faculties for the confessions of women—and the superioress may not directly or indirectly prohibit them from doing so.[5] A superioress who interferes with the legal rights of her subjects in this matter of free approach to confessors other than the ordinary confessor is to be warned by the local Ordinary and if, after such warning, she repeats the offence she is to be deprived of her office and the Sacred Congregation of Religious is to be immediately informed.[6]

The foregoing provisions of law present ample evidence of the anxiety and determination of the Church to safeguard the freedom of conscience of the individual religious. Of course there is a question of freedom within the scheme of canon law which does not allow religious women the same liberty of choice of confessor which is allowed to the ordinary faithful. Due account must be taken of the mind of the Church, regarding the ordinary confessor, as set out at the head of this reply and consideration must also be had for the requirements of religious discipline and community duties. Abuses could easily arise under both heads in this matter of the habitual or almost exclusive recourse of a religious to the 'occasional' confessor. The superioress has the right personally to correct abuses regarding domestic discipline, but if the abuses of which she becomes

[1] Canon 520, § 2.
[2] Cf. Bouscaren–Ellis, *Canon Law*, p. 246.
[3] Canon 521, § 3.
[4] Canon 522.
[5] Canon 523.
[6] Canon 2414.

aware are immediately connected with the administration of Penance she should inform the local Ordinary.[1] He is charged to exercise vigilance to prevent abuses in this context. In cases of doubt the liberty of conscience of the religious must be sustained. But in all this matter it is the confessor whom the religious approaches who can most surely diagnose abuses and most effectively correct them. This confessor should direct the religious to observe the general rule of presenting herself for confession to the ordinary confessor—or, if the circumstances warrant it, he should advise her to ask for a special confessor. As Cappello writes :[2]

Confessarius qui comperiat religiosam consuevisse ad ipsum recurrere absque ulla rationabili causa, ordinario communitatis confessario derelicto, debet prudenter curare ut abusus eliminetur et lex canonica de unitate confessarii, quantum fieri potest, stricte servetur.

The duty of the ordinary confessor is to hear the confessions of those members of the community who come to him. *Per se* all should come, but it is not his function to round up or to exercise any pressure on recalcitrant members. To do so or, indeed, to draw attention to the failure of particular members to approach him for confessions would seem to be an intervention outside his proper sphere and could be interpreted as an attempt to curtail unduly the freedom of conscience of those concerned. Moreover, in the circumstances, the ordinary confessor will have little evidence for deciding whether the regular frequentation of confessors other than himself constitutes a serious abuse. We think, therefore, that, in so far as he personally is concerned, the problem should be solved in favour of the liberty of conscience of the religious. It is hardly necessary to add that all female religious should be clearly instructed on the law regarding their confessors. They should be told particularly that they are bound, *per se*, to make their confessions regularly to the ordinary confessor and that their privilege of approaching occasional confessors should be used with prudence and moderation.

[1] Cf. Creusen, op. cit., n. 124; Schäfer, op. cit., n. 175.
[2] *De Sac.*, ii, n. 453.

SECTION VI

INDULGENCES

CONDITIONS FOR GAINING PLENARY INDULGENCES ATTACHED TO PIOUS EXERCISES CONTINUED OVER A PERIOD

A plenary indulgence under the usual conditions may be gained once a month by the carrying out of a great many daily exercises, ejaculations, etc. According to the *Raccolta* the phrase 'under the usual conditions' implies Confession and Holy Communion, a visit to a church or semi-public oratory and praying for the intentions of the Holy Father. According to a decree of the S. Paenit. Ap., quoted in the *Raccolta*, the obligation of praying for the Holy Father's intentions may be fulfilled by reciting one Our Father, one Hail Mary and one Glory be to the Father. Assuming that one is entitled, by reason of performing a number of these daily exercises, to receive many of these plenary indulgences once a month, is one required to make a separate Confession, a separate Holy Communion, a separate visit to a church and a separate *Pater*, *Ave* and *Gloria* for each plenary indulgence ?

CLERICUS.

As our correspondent notes, it is frequently laid down in the grant of plenary indulgences for certain prayers or good works, that in order to gain these indulgences the *suetae conditiones* must be fulfilled. This means that the person who wishes to gain the plenary indulgences must go to Confession, receive Holy Communion, visit a church and pray for the Pope's intentions.[1] It is pointed out in canon 933 that several indulgences cannot be gained by the single performance of one and the same work—even though, on different titles, several indulgences are attached to this work—unless the prescribed work be Confession or Holy Communion or unless the contrary be expressly stated. It is clear, then, that Confession and Holy Communion, which are among the *suetae conditiones* for the gaining of a plenary indulgence, need not always be repeated, separately, for each indulgence. No similar exception is made by the general law in regard to the other customary conditions—the visit to a church and the prayers for the Pope's intentions.

[1] Cf. *Ench. Ind.* (1952), Praenot., n. 4.

It may be well at this point to take each of the *suetae conditiones* in turn and to indicate how and when they must be fulfilled in order to gain the indulgence. The Confession[1] prescribed may be made on any of the eight days which precede the day to which the indulgence is attached or on this day itself or within the subsequent octave. If the indulgence is granted (as in the case submitted by 'Clericus') for pious exercises which are continued over a number of successive days (such as a triduum, novena, etc.) the prescribed Confession may be made also within the octave which immediately follows the completion of the exercises. Moreover, the faithful who are accustomed, unless they are legitimately prevented, to go to Confession at least twice a month, or who are accustomed, worthily and piously, to receive Holy Communion daily—even though they abstain once or twice in the week—can gain all indulgences without the actual confession which would otherwise be a necessary condition for gaining them.[2] In the case of Jubilee indulgences and of those given *ad instar iubilaei* actual Confession is, however, necessary. But this exception apart, a single confession will suffice as the *sueta conditio* for gaining all the indulgences available over a fortnightly period; and, in the case of those who are daily communicants, in the sense described, actual Confession is not at all required.

The Holy Communion prescribed as one of the *suetae conditiones* may be received on the vigil of the day to which the indulgence is attached, on the day itself, and within its octave. And if the indulgence is granted for pious exercises which are continued over a number of successive days the prescribed Holy Communion may be received also within the octave which immediately follows the day on which the exercises are completed.[3] Here again, it is clear that a single reception of Holy Communion suffices for the gaining of all the indulgences available on any one day—even though Holy Communion is a necessary condition for each indulgence. But as far as the general law goes—apart, that is, from particular concessions which, of course, the Church is competent to grant—it seems that the repetition, *toties quoties*, of the reception of Holy Communion is necessary in order to gain each of several plenary indulgences which are attached to different days. If then one could, *suetis conditionibus*, gain a plenary indulgence on each separate day of the week the reception of Holy Communion on one day would suffice for

[1] Sacramental confession is necessary—but not absolution, cf. *Decr. Auth.*, nn. 214, 295, 395 ad 4.
[2] Canon 931, §§ 1–3.
[3] Ibid.

the gaining of only one of the indulgences available. In the case submitted by our correspondent there is not question of several plenary indulgences attached to one and the same day—for the gaining of which a single reception of Holy Communion would certainly suffice. Nor is there question, precisely, of several plenary indulgences attached to different days—for the gaining of which the repetition of Holy Communion would be a necessary condition. The situation envisaged in the case is that in which a plenary indulgence is granted for each of several pious exercises continued daily for a month. Yet, even here, it seems to us that to gain the plenary indulgence granted for the completion of each pious exercise there must be a separate reception of Holy Communion—unless, perchance, all the pious exercises and the other necessary conditions were completed on one and the same day.[1]

The visit to a church (public oratory, etc.) prescribed as one of the *suetae conditiones* must be repeated separately for each indulgence. This does not mean that a separate journey must be made to the church. Several visits can be made on one and the same occasion by leaving the church and re-entering it:

> Ad lucrandas plures indulgentias pro quibus singulis visitatio ecclesiae praescripta sit, tot visitationes iterandae sunt, quot sunt indulgentiae lucrandae, seu tot vicibus ex ecclesia egredi et denuo ecclesiam ingredi necesse est quot sunt indulgentiae, pro quibus visitatio ecclesiae praescripta est, lucrandae.[2]

The prayers for the Pope's intentions must also be repeated separately for the gaining of each indulgence. If a particular prayer is designated, this prayer must be said in the original language or in a duly authenticated translation. When prayer in general for the Pope's intention is prescribed it must be vocal, but the selection of prayers is left to the choice of the faithful.[3] It was stated by the Sacred Penitentiary[4] in 1933 that the condition of praying for the Pope's intention is adequately fulfilled by reciting, for this purpose, one *Pater*, one *Ave* and one *Gloria*. But the faithful are free to say any other prayer, according to their piety and devotion to the Holy Father. The prayers for the intention of the Pope need not be recited on the occasion of the visit to the church—unless this is expressly stated.

[1] 'Indulgentiae adnexae piis exercitiis, quae pluribus actibus constans eodem die vel diebus temporibusque diversis explendis, uti sunt precet triduanae, novendiales etc., solummodo positis omnibus actibus omnibusque expletis conditionibus acquiruntur, nisi aliter cautum sit.'—*Ench. Ind.*, Praenot., 6.
[2] De Angelis, *De Indulgentiis*, n. 84; cf. *Decr. Auth.*, n., 399.
[3] Canon 934, § 1.
[4] *A.A.S.*, xxii, p. 363.

When plenary indulgences are granted, *toties quoties*, for the visitation of a church it is necessary, in order to gain these indulgences, to recite six *Paters*, six *Aves* and six *Glorias* on the occasion of each visit.[1]

GAINING OF INDULGENCES FOR THE SOULS IN PURGATORY

I presume that a *plenary* indulgence is a full and total remission of the temporal punishment due on account of the sins of a *particular person*. Of its very nature, then, it is a *relative* thing, differing in this respect from a partial indulgence. Now, in the case in which a plenary indulgence is applied to a soul in Purgatory, will you please indicate the latest theological opinion as to whom it relates—the person who performs the prescribed works, or the soul to whom it is intended to apply it ?

The solution of the problem appears to rest on the Church's or Pope's intention. That is to say, does the Pope *apply* such indulgences to the particular soul indicated by the person who performs the prescribed works, or does he merely *concede* them to his living subjects as *applicable* to the poor souls ? The latter opinion used to be cited as the more common (cf. Ferreres, *Comp. Theol.*, ii, n. 794, 2°). According to advocates of this opinion, no one can apply an indulgence to the poor souls unless he has previously made it his own.

How do the supporters of this view explain the anomaly of the chosen soul, who, let us presume, has no temporal punishment at all for remission ? He would, in our hypothesis, be incapable of gaining an indulgence of any kind for *himself* and, therefore, incapable of helping the souls in Purgatory by means of indulgences. Can this position be upheld ?

Is not the second opinion cited above more in accord with reason and common sense ? In so far as the Divine Will permits a plenary indulgence to be applied at all, even by way of suffrage, doesn't it appear reasonable to assume that this indulgence *relates* to the soul to whom it is applied rather than to the person who performs the prescribed works ? Is not this the reason why it is generally admitted that a plenary indulgence must be applied to a particular soul, rather than to a number together.

I shall be grateful for a little light on this subject.

SAGART BOCHT.

A plenary indulgence implies, *ex parte concedentis*, a full and complete remission of the temporal punishment due by the soul for whom the indulgence is gained.[2] Since the debt of one soul

[1] Cf. Sacred Penit., 5 July, 1930, *A.A.S.*, xxii, p. 363.
[2] Cf. Aertnys–Damen, *Theol. Mor.*, ii, n. 1109.

may be greater than that of another, it follows that the extent of a plenary indulgence will be conditioned by or relative to the needs of a nominated beneficiary. Obviously, however, total remission of temporal punishment cannot be won for a soul in whom the guilt of sin remains. An indulgence is ' remissio coram Deo poenae temporalis debitae pro peccatis, ad culpam quod attinet iam deletis[1] . . . ' Accordingly, a person must be in the state of grace before he can gain any indulgence for himself.[2] Moreover, one who has unremitted venial sin on his soul cannot gain for himself a fully *plenary* indulgence. The presence of this guilt of venial sin constitutes an obstacle to full remission of temporal punishment. But this person can gain the indulgence in part—greater or less according to his dispositions : ' Plenaria indulgentia ita concessa intelligitur ut si quis eam plene lucrari non possit, eam tamen partialiter lucretur pro dispositione quam habet.'[3]

Indulgences are granted to the living *per modum absolutionis*, but to the dead—who are no longer under the jurisdiction of the Church—*per modum suffragii*.[4] Thus, on the due performance of a work, for which there is a plenary indulgence applicable to the souls in Purgatory, the Pope offers to God, out of the treasury of the Church, sufficient satisfaction to compensate for the debt of temporal punishment due by the particular soul for whom the indulgence is gained. Theologians are not agreed as to whether the particular soul infallibly benefits to the extent of a plenary indulgence.[5] Some say that this infallible benefit is obtained ; others that there is no infallible benefit. The most acceptable view is a sort of *via media* between categoric affirmation and denial. God infallibly accepts the offering of plenary satisfaction, made by the Church authority on behalf of the souls in Purgatory, but this offering is not infallibly applied, in full measure, for the particular soul nominated. This view fits well into the practice of the Church and faithful according to which repeated plenary indulgences are applied for particular souls. Our correspondent asks whether, in the case of indulgences for the dead, the Pope applies them to a particular soul ? From what we have said above, it follows that the Pope rather makes an offering of satisfaction to God on behalf of the soul for whom the indulgence is gained.[6] The actual application and its measure depend upon the Will of God. Apropos of this point, a

[1] Canon 911.
[2] Cf. canon 925 . § 1.
[3] Canon 926.
[4] Canon 911.
[5] Cf. Noldin, *De Sac.*, n. 315.
[6] Cf. Galtier, *De Poen.*, n. 603.

question was submitted to the Congregation of Indulgences in 1840. The question was :[1]

Utrum per indulgentiam altari privilegiato adnexam intelligenda sit indulgentia plenaria animam statim liberans ab omnibus purgatorii poenis, an vero tantum indulgentia quaedam secundum divinae misericordiae beneplacitum applicanda ?

The Congregation replied :

Per indulgentiam altari privilegiato adnexam, si spectetur mens concedentis et usus potestatis clavium, intelligendam esse indulgentiam plenariam, quae animam statim liberet ab omnibus purgatorii poenis ; si vero spectetur applicationis effectus, intelligendam esse indulgentiam, cuius mensura divinae misericordiae beneplacito et acceptationi respondet.

On the other hand, it seems equally to follow from our earlier discussion that the concession of an indulgence for the dead does not have to pass, so to speak, through the hands of the agent who performed the indulgenced works. It is nevertheless true, as our correspondent notes, that some theologians take the contrary view. They say that indulgences applicable to the souls in Purgatory must first be possessed by the living agent. St. Alphonsus[2] is one of the main supporters of this opinion. He is followed by a number of modern writers. Prümmer, for instance, writes :[3] ' Indulgentiae applicandae animabus purgatorii debent prius possideri ab homine vivo, qui deinde illas applicat animabus purgatorii.' A practical consequence of this opinion would be that one who is not in the state of grace could not gain any indulgence for the dead ; and one on whose soul there is any guilt of venial sin could not gain a plenary indulgence for the dead. Like our correspondent, we consider this view less reasonable and less tenable. In the light of the description of the way in which indulgences for the dead operate *per modum suffragii*, we see no point in requiring that the indulgences should first be possessed by the person who performs the indulgenced work. This person rather fulfils a condition, whereupon the Pope makes a grant out of the treasury of the Church as outlined earlier. This is the generally accepted description of the procedure. It is Prümmer's : ' Ideo ex thesauro Ecclesiae Summus Pontifex offert satisfactiones illasque per modum petitionis seu suffragii applicat animabus purgatorii.'[4] Moreover, it is quite clear that certain indulgences—for instance those granted, *toties quoties*, for visits to a church on 2 November—cannot be gained for the living. In what sense, then, can these be said to be possessed by

[1] *Dec. Auth., S. C. Indulg.*, n. 283.
[2] *Theol. Mor.*, l. vi, n. 534.
[3] *Theol. Mor.*, iii, n. 551.
[4] Ibid.

the living before being applied to the souls in Purgatory ? And if they need not be thus possessed in this particular case—why need they in other cases ?

Our correspondent refers to an anomaly which, he says, follows from the theory that indulgences for the dead must first be possessed by the living agents. He instances the case of a chosen soul who has no personal debt of temporal punishment and suggests that, if the theory just mentioned is true, this soul could not gain any indulgence for the dead.[1] Though we accept our correspondent's conclusion, we do not appreciate the force of this particular reason. We do not see the anomaly. There would be an anomaly only if it were held that the living agent should possess the indulgence *formaliter qua remissio poenae temporalis personalis*. But the advocates of the theory under discussion do not necessarily hold this. A chosen soul, such as is contemplated by our correspondent, could gain indulgences for the souls in Purgatory, could build up a credit balance for the remission of the temporal punishment due by these souls, without this balance being formally applicable to him personally. This seems to be what Palmieri has in mind when he writes :[2]

Acquiritur (remissio poenae) non quatenus ipsis formaliter remissio poenae quam ipsi debent concedatur ; sic enim non esset amplius locus remissioni alterius, sed quatenus causam ponunt, propter quam facultas iis fit applicandi defunctis eam remissionem poenae, cuius valorem aequivalenter ex thesauro subministrat Ecclesia.

Coming to the practical problem mentioned above : is the state of grace necessary in order that one may gain indulgences for the dead ? Whoever holds the view that these indulgences are first possessed by the living must answer this question in the affirmative. On the other hand, if that view is not valid the main reason for the affirmative answer is removed. And we have suggested that the view is not valid. There are further grounds for holding that the state of grace—though eminently desirable—is not a *sine qua non* for gaining indulgences for the dead. For example, from a reply of the Congregation of Indulgences in 1855, it seems clear that the plenary indulgence of a privileged altar can be gained by a priest even though he is not in the state of grace.[3] The works, for the performance of which an indulgence applicable to the dead is granted, derive their satisfactory value from the concession of the Church—

[1] It is hardly necessary to recall that one cannot gain indulgences for another living person (canon 930). This impossibility, however, arises from the positive arrangement of the Church and not from the nature of things.
[2] *De Indulgentiis*, n. 539.
[3] *Dec. Auth., S. C. Indulg.*, n. 366.

ex opere operantis Ecclesiae, as it were—and not from the dispositions of the agent.[1] An alms will attain its purpose of alleviating distress, even though the almsgiver may have completely wrong dispositions. It will be noticed that canon 925, § 1, does not answer the question posed at the head of this paragraph. This section of the canon refers only to indulgences to be gained for oneself: 'ut quis capax sit *sibi* lucrandi indulgentias. . . .' It is of interest to recall that this same question was submitted on two separate occasions to the Congregation of Indulgences. On the first occasion, in 1822, the Congregation postponed a decision and replied: 'Dilata.'[2] To the repeated question the reply given in 1847 was 'Consulantur probati auctores.'[3] Apparently the Congregation did not wish to give a categoric decision on a matter regarding which approved theologians held divergent views. This divergence of view remains, as we have indicated, down to the present day. Our correspondent asks for the latest theological opinion. We do not subscribe to the suggestion that the latest is necessarily the most acceptable. We may, however, mention that we have at hand a work published in 1947 by Father Seraphinus de Angelis, *Substitutus pro Indulgentiis*. Regarding the disputed question: whether the state of grace is necessary for the gaining of indulgences applicable to the souls in Purgatory, this author writes:[4]

> Hinc inde sunt A.A. magni nominis . . . Nobis verior videtur sententia negativa, quamvis sententia contraria sit communior et fidelibus magis commendanda. Sane: etsi quammaxime deceat quod fidelis qui indulgentiam defuncto applicat in statu sit amicitiae Dei . . . nullimode affirmari potest hoc esse omnino necessarium. Opus enim, quod ipse praestat, est simplex conditio, qua posita, Summus Pontifex applicat defuncto indulgentiam; pretium vero, quo poena remittitur quodque ex thesauro meritorum Christi et Sanctorum depromitur, ponitur ab Ecclesia, in qua numquam deest gratia. . . . Argumentum contra nostram sententiam, quod scilicet nemo potest alteri applicare indulgentiam nisi prius eam suam fecerit, falso nititur fundamento.

A final point: we do not quite understand our correspondent's remark that it is generally admitted that a plenary indulgence *must* be applied to a particular soul rather than to a number together. Perhaps he is generalizing from a particular instance. He may be thinking of the indulgence attached to a privileged altar. The Congregation of Indulgences has stated that if a priest who enjoys a privileged altar offers Mass for several

[1] If the Church prescribes the state of grace, as it sometimes does, as a condition for gaining an indulgence for the dead—then, of course, this condition must be fulfilled.
[2] *Dec. Auth., S. C. Indulg.*, n. 253.
[3] Ibid., n. 341.
[4] *De Indulgentiis*, n. 60.

deceased persons, he must apply the plenary indulgence to one particular soul.[1] This is a positive regulation. In the nature of things, there is nothing essentially indivisible about a plenary indulgence. *Per se*, then, it might be divided among several souls. If it be asked how, in these circumstances, would its extent be measured, we can only reply, in the words of Cappello used in a slightly different context:[2] 'non hominum est iudicare.'

CONDITIONS FOR THE GAINING IN FULL OF PLENARY INDULGENCES

In a discussion concerning plenary indulgences two opposing views were taken. One held a rigorous opinion that an integral plenary indulgence is extremely difficult to earn and, moreover, one could never be sure that he had obtained it. The other, more moderate, view held that any practising Catholic could be morally certain of gaining a plenary indulgence for himself because the only obex to the integral acquisition of the plenary indulgence is unrepented venial sin.

Could you shed some light on this *dubium* which is pertinent to the Marian Year?

SACERDOS SIMPLEX.

It will facilitate somewhat a reply to our correspondent's query if we first recall a few preliminary points of definition. An indulgence is the remission before God of the temporal punishment due for sin which has been forgiven *quoad culpam*. This remission is granted from the treasury of the Church, by the ecclesiastical authority, and it is granted to the living *per modum absolutionis* and to the dead *per modum suffragii*. A plenary indulgence is one which, so far as the intention of the granting authority is concerned (*quantum est ex parte concedentis*), remits or is capable of remitting all the temporal punishment due for sin by the person to whom it is granted. If the recipient of the plenary indulgence has no unforgiven sin on his soul he will receive full and complete remission of all the temporal punishment due by him. In this case the plenary indulgence is *plene* or *totaliter plenaria*. But a plenary indulgence may also be gained by one in whose soul there remains the unforgiven guilt of venial sin. In this case the indulgence, though plenary *ex parte concedentis*, does not remit all the temporal punishment due by

[1] *Dec. Auth., S. C. Indulg.*, nn. 402 and 451.
[2] *De Sac.*, ii, n. 956.

the recipient but only that due for the sins already forgiven *quoad culpam*: it does not touch the temporal punishment due for the unforgiven venial sin. In these circumstances, the plenary indulgence might be described as *relative plenaria*. It is pointed out in canon 926 that, when a plenary indulgence cannot be gained in full, it may be gained partially in accordance with the dispositions of the subject. So long as any guilt, however slight, of unforgiven sin remains in the soul the temporal punishment which corresponds to this guilt cannot be remitted by an indulgence, and a plenary indulgence will be less fully plenary *pro tanto*. It is true that the temporal punishment due for some venial sins may be very slight, but, however slight, the fact that it is not remitted by the indulgence means that this is not an *indulgentia totaliter plenaria*. All the writers point out that in order to gain fully a plenary indulgence the recipient must not merely be in the state of grace but must also be free from all guilt of committed venial sin and from all deliberate attachment thereto.

When, therefore, our correspondent asks if it is difficult to gain fully a plenary indulgence he is equivalently asking if it is difficult for a person to achieve the state of complete freedom from the guilt of venial sin and from all deliberate attachment to such sin. This is not a simple question. There are many intangibles and imponderables involved. But it seems to us that, in view of the fragility and weakness of human nature, it is not easy to attain the state mentioned. Nor is it easy to be morally certain that it has been attained. The writers do not formally discuss this problem, but some of them note that in very many cases plenary indulgences are not fully gained. And it is fair to argue from infrequency to difficulty. Noldin, for instance, writes:[1]

> Licet omnis indulgentia plenaria, quantum est ex parte concedentis, totam poenam temporalem delere possit, non tamen omnes eam plene, sed quamplurimi solum ex parte lucratur.

The concession contained in canon 926, already quoted, might also be used as an argument for this view. It indicates the mind of the Church and its awareness that frequently plenary indulgences are not fully gained.

[1] *De Sac.*, n. 317.

SECTION VII

EXTREME UNCTION

THE REMOTE MATTER OF EXTREME UNCTION

In cases of sudden attack during war or in cases of very widespread and sudden epidemics the priest's supply of *oleum infirmorum* might quickly be exhausted and it might not be possible to get further supplies. In such circumstances could the Pope give priests power to bless *oleum infirmorum* so that they would be able to anoint the dying? Or might unconsecrated olive oil be used for the administration of Extreme Unction in such crises? I know that one may not follow a probable opinion when the validity of a sacrament is in question—but what is one to do in cases of necessity like those mentioned?

PAROCHUS.

It is laid down in the *Code of Canon Law* that the sacrament of Extreme Unction is conferred by means of unctions with oil duly blessed.[1] Later we are told that the oil used in Extreme Unction should be 'ad hoc benedictum ab Episcopo vel a presbytero qui facultatem illud benedicendi a Sede Apostolica obtinuerit.'[2] Hence it is now perfectly clear that the Holy See can grant the faculty of blessing the *oleum infirmorum* to those who are only in priest's orders. And, of course, such a grant would be made if the circumstances were really to require it.

The theological and liturgical tradition has always demanded that, for the validity of Extreme Unction, oil which had been blessed beforehand must be used in the administration of the sacrament. In the Western Church, tradition has further demanded that the oil should have been blessed by a bishop. This teaching is found in many of the early local councils and in the writings of some of the Fathers. The scholastics are unanimous on the point. Hence it is not surprising to read in the Decree for the Armenians:[3] 'Quintum sacramentum est extrema unctio cuius materia est oleum olivae per episcopum benedictum,' and in the teaching of the Council of Trent:[4]

[1] Canon 937.
[2] Canon 945.
[3] Cavallera, *Thesaurus Doctrinae Cath.*, n. 1287.
[4] Ibid., n. 1276.

'Intellexit enim Ecclesia, materiam (Extremae Unctionis) esse oleum ab episcopo benedictum.' In the year 1611 the Holy Office described[1] as 'temeraria et errori proxima' the proposition 'quod sacramentum extremae unctionis oleo episcopali benedictione non consecrato ministrari valide possit.' And more than two centuries later this declaration was recalled when the Holy Office replied *negative* to the question :[2] 'An in casu necessitatis parochus ad validitatem sacramenti extremae unctionis uti possit oleo a se benedicto ?' This constant insistence in the Western Church on the necessity, for validity, of an episcopal blessing of the oil used in Extreme Unction led some few writers[3] to hold that even the Holy See could not delegate priests to give the blessing. Yet the priests of some of the Eastern rites have claimed, and have exercised from early times, the power of blessing the *oleum infirmorum*. And this position was accepted and confirmed by the Holy See. In an Instruction on the Italo-Greek rites issued by Pope Clement VIII in 1595 we read :[4]

Circa oleum sanctum infirmorum non sunt cogendi presbyteri Graeci olea sancta praeter chrisma ab episcopis dioecesanis Latinis accipere, cum eiusmodi olea ab eis in ipsa oleorum et sacramentorum exhibitione ex veteri ritu conficiantur ac benedicantur.

In 1742 Pope Benedict XIV repeated this provision.[5]

The position then is that unblessed oil does not suffice for the valid administration of Extreme Unction. The necessary blessing can be given by any bishop or by a priest who has obtained the appropriate faculties from the Holy See. In some of the Oriental rites the priests have these faculties in virtue of a general grant. In the Western Church priests require express and special delegation.[6] As has been noted earlier, the oil to be used in the administration of Extreme Unction is not merely *oleum benedictum*—but *oleum ad hoc benedictum*—that is, oil blessed as *oleum infirmorum*, and blessed in accordance with the formula prescribed by the Church in the liturgical books. Consequently, in the normal course of things, it would be gravely unlawful, by reason, *inter alia*, of the danger of invalidity, to use for anointing, oil other than *oleum infirmorum*. In cases of necessity, such as those mentioned by our correspondent, it may be possible to replenish the supply of *oleum infirmorum* by adding

[1] Ibid., n. 1289.
[2] Ibid.
[3] Cf. Kilker, *Extreme Unction*, p. 303.
[4] Cavallera, op. cit., n. 1288.
[5] Ibid.
[6] Even a cardinal who is not in episcopal orders has not from general law the privilege of consecrating the holy oils—canon 239, § 1, 20°.

to it unblessed olive oil *minore copia*. This may be done on repeated occasions. If the supply of *oleum infirmorum* has been completely exhausted and if further supplies cannot be obtained, a priest may, in face of this necessity, conditionally anoint with the blessed oil of catechumens or chrism. These holy oils are not *ad hoc benedicta*, in the sense of canon 945, and therefore are not certainly valid matter for the sacrament of Extreme Unction. Nevertheless, they have been blessed by a bishop and are possibly valid matter for anointing and, therefore, may be used in urgent cases for which *oleum infirmorum* cannot be obtained. In Vermeersch–Creusen we read :[1]

Ut valor sit certus oleum debet esse pro extrema unctione benedictum, quamvis oleum catechumenorum vel etiam chrisma cum probabili valore in necessitate adhiberi possit.

Some writers suggest that, in the cases of necessity contemplated, it would be preferable to use, for the anointing, oil of catechumens rather than chrism[2]—as the addition of balsam to the latter makes it less essentially oil of olives. But there seems to be little point in this preference in view of the quantity of balsam added. Chrism, as well as oil of catechumens, may be used for conditional anointing when *oleum infirmorum* cannot be obtained in time. This view does not violate the principle that one cannot act in accordance with a probable opinion when the validity of the sacraments is in question. In our context this principle means that a priest may not use what is merely probably valid matter when certainly, or more certainly, valid matter is available. It does not mean that a priest may not give the recipient the possible benefit of the ministration of a sacrament with doubtfully valid matter when more certainly valid matter cannot be obtained in time. The proposition condemned by Pope Innocent XI reads :

Non est illicitum in sacramentis conferendis sequi opinionem probabilem de valore sacramenti, relicta tutiore . . .[3]

The words *relicta tutiore* provide a basis for the point which we have made, namely that the use of merely probably valid matter is not at all unlawful in cases of necessity, when certainly, or more certainly, valid matter is not available.

[1] *Epitome Iuris Can. C.*, ii, n. 230.
[2] Cf. Kilker, op. cit., p. 315.
[3] Denz., *Ench. Symb.*, n. 1171.

CONDITIONAL EXTREME UNCTION

I find it difficult to understand the teaching of Father Davis, S.J (*Moral and Pastoral Theology*, iv, pp. 8, 9), on the conditional administration of Extreme Unction. Will you kindly discuss this teaching.

PERPLEXUS.

The general teaching in the section of Father Davis's work to which reference is made seems perfectly clear. Our correspondent does not give us any indication as to what precise point he finds difficult. Father Davis explains the circumstances in which Extreme Unction is to be administered *sub conditione*. His explanation is mainly a practical commentary on canons 941 and 942. With his *general* explanation we are in perfect agreement.

When, however, Father Davis mentions in detail the actual conditions which may or may not be added, he makes a statement which, in our view, is not clear and is, therefore, at least very liable to misinterpretation. It may well be that it is this statement which gives rise to the difficulty experienced by 'Perplexus.' Father Davis writes :[1]

> When the pastor doubts as to whether or not the sick person has reached the age of discretion, or whether the danger of death is present, or whether the person is dead, the sacrament should be given conditionally The condition expressed in the Ritual is : *Si vivis*. No other condition should ever be expressed such as : *Si dispositus es*, for if such conditions, taken literally, were fulfilled, the sacrament, having been received invalidly, owing to want of due dispositions, could never reassert itself.

The first sentence of that passage is a free translation of canon 941 and, needless to say, we have no quarrel with it. The rest of the passage is somewhat confusing. Father Davis cannot mean that the condition *Si vivis* is to be added whenever the sacrament is given conditionally—when, for instance, there is doubt as to whether the subject has reached the use of reason. Yet the statement quoted is liable to this (mis)interpretation. It is true, of course, that the condition *Si vivis* is the only one expressly mentioned in the Ritual. Clearly, however, that condition is to be used in the form only when it is doubtful if the subject of Extreme Unction is still living. This, doubtless, is what Father Davis had in mind. We thoroughly agree with his rejection of the condition : *Si dispositus es*. But in stating his reasons for this rejection, our author seems to have omitted

[1] Op. cit., p. 8 (we quote from the third edition, 1938).

an important negative. He writes : 'If such conditions, taken literally, were fulfilled, the sacrament, having been received invalidly . . .' He must have meant : 'If such conditions . . . were *not* fulfilled'—otherwise there could be no question of invalidity on this score. In other words if the condition : *Si dispositus es* were inserted and verified or 'fulfilled' the sacrament would be valid—and fruitful.

A further point is that all conditions other than *Si vivis* do not belong to the *Si dispositus es* class. Yet Father Davis seems to suggest that the above is a complete division of conditions in the context. He speaks of the condition *Si vivis* which, of course, he accepts and which may be expressed, and then seemingly of all other conditions, such as *Si dispositus es*, which not merely may not be expressed, but are rejected. As against this seeming suggestion we may remind our readers that the condition : *Si capax es* is very commonly—almost universally—recommended by theologians.[1] This condition is comprehensive, has reference to validity and, therefore, is not open to the objection inherent in the rejected condition *Si dispositus es* : it will not inhibit the possible reviviscence of a valid but unfruitful sacrament. It is passing strange that Father Davis makes no reference—in any part of his work, we think—to a condition so widely recommended and useful as *Si capax es*. If by this silence or still more by the passage 'no other condition [other, that is, than *Si vivis*] should ever be expressed' the author means that the condition *Si capax es* may not be used ; must rather, like *Si dispositus es*, be rejected, we entirely disagree with him. He may, however, mean, he probably does mean, that the only condition which may be externally expressed in the form of Extreme Unction is *Si vivis*—for he says later that, when it is doubful if the subject has contumaciously persisted in impenitence in regard to manifest mortal sin, the intention on the part of the priest of doing all that he can do is sufficient conditional intention in such cases. While we agree that it is not necessary to express externally the condition *Si capax es* to cover conditional administration not covered by the phrase *Si vivis*, we would by no means regard such expression as reprehensible. In fact it might, on occasion, be very helpful.[2]

We are not sure if we have touched upon the difficulty which

[1] Cf. Prümmer : *Th. Mor.*, v. iii, n. 580 ; Merkelbach : *Th. Mor.*, iii, n. 84, n. 705 ; Wouters : *Th. Mor.*, ii, n. 581, n. 583.

[2] Merkelbach has the following interesting passage, op. cit., n. 85, 4° : 'Conditio non est voce exprimenda, nisi quandoque ut scandalum vitetur, vel si a rituali praescribatur.'

has perplexed our correspondent. But we think it very likely that we have. We suggest that the paragraph quoted above, and which presumably is responsible for the difficulty, should, in future editions, be rewritten, so as to make the author's precise meaning more clear and thus less liable to be misunderstood.[1]

CONDITIONAL ADMINISTRATION OF EXTREME UNCTION

(i) Your reply to 'Perplexus' regarding conditional Extreme Unction is clear and, I think, will be considered generally satisfactory. A clerical friend states that he gets over such conditions in every case by simply forming, at the essential point, the intention of doing what the Church requires. Is this procedure safe ?

(ii) In a recent discussion, a young divine held that, when conditional absolution *a peccatis* was given, Extreme Unction should always be given *sine conditione*. His plea was that this latter sacrament thus conferred righted whatever might be wanting in the conditional absolution. What are your views ?

PERPLEXUS ALTER.

(i) In the course of the earlier reply we touched upon the question of verbally expressing conditions in the administration of Extreme Unction. We understand the statement of our correspondent's clerical friend to mean that he never expresses a condition in the conferring of the sacraments. Whenever conditional administration is indicated, he merely restricts internally his intention *ad mentem Ecclesiae*. We are asked if this is a safe procedure. There is no doubt that the procedure described effectively conditions the intention of the minister and thus ensures that the administration is conditional. And the primary purpose of conditional administration is secured : the sacrament is safeguarded from irreverence and profanation. The internal intention of the minister is the important factor. The expression of that intention is secondary. Failure to express it verbally does not affect its nature.

When, however, the Ritual prescribes a condition as part of the form of a sacrament, that condition should be expressed. There are two such cases.[2] If it is doubtful whether Baptism were validly conferred, the condition *si non es baptizatus* should

[1] The passage has been re-written in the fourth edition.
[2] Cf. O'Kane–Fallon, *Notes on the Rubrics of the Ritual*, nn. 173, 847, 854.

be expressed in the form when the sacrament is repeated. So, too, when Extreme Unction is administered in cases of apparent death the condition *si vivis* should be expressed in the form. Clearly, then, in the circumstances of these two cases, the procedure of our correspondent's friend is not correct.[1] In all other cases of conditional administration there is no obligation to express any condition. All that is required is that the minister modify appropriately his intention. The procedure mentioned in the query secures this modification and is, therefore, apart from the cases mentioned above, correct. In treating of conditional administration of Extreme Unction to a patient who may be contumaciously impenitent in regard to grave sin, Dr. Kilker writes :[2] 'Since the condition need not be expressed, it may be advisable for a priest simply to intend the bestowal of the sacrament *ad mentem Ecclesiae* or *ad normam iuris*.' And Father Davis states[3] of the same circumstances : 'The internal intention on the part of the priest of doing all that he can do is sufficient conditional intention in such cases.'

(ii) The young divine's general contention, as reported by our correspondent, would lead to the conclusion that, in practice, conditional Extreme Unction should hardly ever be given. This conclusion cannot, of course, be admitted. It is manifestly at variance with the legislation of the Church. It is laid down in the Code and in the Rubrics of the Ritual that there are several cases (of frequent occurrence in practice) in which the sacrament of Extreme Unction must be given conditionally. The cases expressly mentioned are :[4] When it is doubtful if the subject of the sacrament has reached the use of reason, is really in danger of death, is already dead or is contumaciously impenitent in regard to manifest mortal sin. The enumeration in the canons is not complete. We might add that Extreme Unction is to be conferred conditionally also when it is doubtful whether an unconscious patient has been baptized, is a Catholic, or has been already anointed in the same danger of death. In all the foregoing cases, Extreme Unction must be conferred conditionally. The fact that only conditional absolution was given will not alter that prescription.

It may, perhaps, be that what was only a particular statement of the young divine has been mistakenly construed as a general

[1] The rubrics which have reference to the administration of the sacraments are preceptive. Cf. O'Kane–Fallon, op. cit., nn. 13 et seq.
[2] *Extreme Unction*, p. 249.
[3] *Moral and Pastoral Theology*, iv, 8.
[4] Canons 941, 942.

principle. For, while it is by no means universally true that Extreme Unction should be given absolutely (*sine conditione*) whenever absolution has been given conditionally, neither is it true that Extreme Unction should always be given conditionally whenever absolution has had to be given conditionally. In other words, there are circumstances in which only conditional absolution may be given, whereas Extreme Unction may, and should, be given absolutely. The acts of the penitent are at least the quasi-matter of the sacrament of Penance.[1] Hence an unconscious dying Catholic, who has not given or cannot give any sign of confession or contrition, may receive only conditional absolution. This patient, however, may and should be anointed absolutely, because attrition and an habitual implicit intention suffice for the reception of Extreme Unction. Canon 943 says :

Infirmis qui, cum suae mentis compotes essent, illud saltem implicite petierunt aut verisimiliter petiissent, etiamsi deinde sensus vel usum rationis amiserint, nihilominus absolute praebeatur.

In such cases the contention and plea of the young divine are valid, though the plea is strangely expressed.

ADMINISTRATION OF EXTREME UNCTION IN THE CIRCUMSTANCES OF CANON 942

In the course of a reply on the sacraments in general you write : 'Conditional administration [of the sacraments] is admissible only when there is doubt regarding the requisites for validity and not when the doubt concerns liceity merely. Many of the sacraments, while validly received, may at the time of reception prove unfruitful because the recipient lacks some of the dispositions necessary for fruitful reception. . . . The presence of dispositions in the recipient of the sacraments has reference normally only to liceity. Hence the general rule that sacraments should not be conferred conditionally on the presence of dispositions. Consequently, it may be said generally that the condition *si dispositus es* should not be used. But in the sacrament of Penance, which is exceptional in this matter, certain dispositions of sorrow and amendment on the part of the recipient are required for validity and, accordingly, this sacrament may lawfully be conferred conditionally on the presence of those dispositions.'

Had you forgotten the content and implications of canon 942 ? Your point that Penance is exceptional in that dispositions of sorrow, etc., are required for validity must be accepted. These dispositions

[1] *Conc. Trid.*, Sess. xiv, c. 3, can. 4. There is no need to refer here to the difference between the Thomist and Scotist view on the 'matter' of Penance. The practical conclusion drawn follows from both theories.

are not required for the validity of Extreme Unction—yet canon 942 states clearly that if there is doubt as to whether the person to be anointed is impenitent and contumaciously persevering in manifest mortal sin, the sacrament may be given conditionally. Thus the canon plainly suggests that Extreme Unction, at least, may be conferred conditionally on the presence of dispositions—which, *ex hypothesi*, pertain to liceity only. And I might add the cryptic query, though it is only very secondary to my main question, if Extreme Unction, why not, absolutely speaking, the other sacraments ?

DECRETIST.

Our correspondent is a lover of the law. He will not let pass gladly or unchallenged the suggestion that relevant canons or any of their implications are being ignored. He thinks we should have commented on canon 942 in our reply. He is right. For completeness we should have discussed the point he now raises. It is a very interesting point. It is mentioned in some form by a number of writers. We assure 'Decretist' that we look upon canon 942 as an old friend. We had no desire to forget or ignore it. We were aware of the problem created by it and we are very glad that our attention has once again been directed to that problem.

Since our discussion must centre around the precise meaning and particular purpose of canon 942, it will be well to have the words of the law set down before us. They are :

Hoc sacramentum non est conferendum illis qui impoenitentes in manifesto peccato mortali contumaciter perseverant; quod si hoc dubium fuerit, conferatur sub conditione.

Obviously enough, the general purpose of the canon is to lay down a rule whereby irreverence to the sacrament of Extreme Unction may be avoided in certain circumstances. A person who impenitently and contumaciously persists in manifest mortal sin, is, at the least, unworthy of Extreme Unction. It may also be that such a one lacks some requisite for validity. The minister of the sacraments is bound, on many titles, not to confer these holy rites on subjects who are manifestly unworthy, or in circumstances in which they would certainly be invalid. Holy things are to be treated reverently; they are not to be given to dogs; pearls should not be cast before swine.[1] We may remark in passing that the conditions of canon 942 must be strictly verified before it would be lawful to refuse Extreme Unction under this head. And in O'Kane–Fallon we read :[2]

[1] Cf. Matt., vii, 6.

[2] *Rubrics of the Roman Rite*, p. 461. (The rubric of the new edition of the Ritual repeats canon 942 verbatim.)

'Obstinate perseverance in impenitence in the case of manifest mortal sin is not an easy thing of which to convict a person with certainty. Every condition required by the rubric must be present in order to justify a refusal of the sacrament.' If there is doubt about the presence of any of the conditions, Extreme Unction may and, in our opinion, should be conferred (*conferatur*) conditionally.

Leaving aside the general purpose of the canon, which is the avoidance of irreverence, it may be asked, and this really is the question at issue in the query, what is the exact *ratio* for the prohibition in canon 942? Why precisely must the sacrament of Extreme Unction be denied to one who perseveres contumaciously impenitent in manifest grave sin? Is it simply and solely because such a person lacks the necessary dispositions for fruitful reception? Or is it because one who contumaciously persists in manifest mortal sin must be regarded as lacking the intention necessary for valid reception? It must be remembered that, for validity, the recipient must have at least an habitual intention of receiving this sacrament.[1] Our correspondent seemingly takes the view that the canon refers primarily to the dispositions, or rather to the lack of dispositions, on the part of the sinner. Many others also hold this view. But there is the other view, in our opinion the much better view, which interprets canon 942 as covering principally and fundamentally the question of the intention, and not merely the dispositions of the recipient.[2] This latter interpretation, we submit, is preferable from every standpoint. In particular it accords perfectly with the analogy of teaching and thus escapes the difficulty mentioned by our correspondent, namely, that canon law espouses the doctrine that Extreme Unction may be conferred conditionally on the presence of dispositions which are necessary for liceity only.

Our correspondent does not seriously question the accepted general teaching that the sacraments are to be conferred conditionally only when there is doubt regarding some requirement for validity. At first sight, by reason of its reference to the sinner's contumacious persistence in impenitence, canon 942 does seem to contain an exception to the general rule. But if

[1] An implicit habitual intention suffices; an interpretative intention does not. It is sometimes suggested that the words of the canon 943, *verisimiliter petiissent*, indicate the sufficiency of an interpretative intention. But the words rather refer to an interpretative petition; cf. Kilker, *Extreme Unction*, p. 257, et seq.

[2] Jorio, *Th. Mor.*, iii, n. 868, simply says: 'Cum igitur ad validam receptionem referri debeat ex capite intentionis—de hac enim agit canon 942.'

we consider more closely the wording of the law and the situation envisaged by it, we can readily see that this attitude of mind of one who is impenitent and contumaciously perseveres in manifest mortal sin is such that there are good grounds for concluding that this sinner has not the requisite intention for valid reception of the sacrament. If ever he had this intention in the past, his present attitude, as contemplated in the canon, implies its effective withdrawal and exclusion.[1] Accordingly, we think that canon 942 is rightly interpreted as having primary reference to the absence of the necessary intention, manifested, it is true, by contumacious impenitence in mortal sin. In this interpretation, the latter portion of the canon which deals with conditional administration in cases of doubt implies no exception to, or departure from, the general teaching. Briefly, then, if we interpret the prohibition of canon 942 as resting fundamentally upon the absence of the intention of reception necessary for validity—and this we may do without any violence to its wording—we have, without more ado, the answer to our correspondent's main difficulty.

It has been noted earlier that some writers, with 'Decretist,' adopt the view that canon 942 refers primarily to the lack of dispositions in the sinner. Kilker says that this 'seems the better view.' He quotes[2] as maintaining it Prümmer, Blat, Tanquerey, Vermeersch and O'Donnell. But Kilker does not appear to hold consistently to what he had described as the better view. If canon 942 refers primarily and principally to the dispositions of the sick man, then the most obvious, most logical and most accurate way to express the condition, if the circumstances of the law are doubtful, is by the words *si dispositus es*. Like so many others, however, Kilker somewhat illogically rejects this formulation of the condition. He writes:[3] 'The condition to be attached to the administration of the sacrament in these cases wherein it is doubtful whether or not the subject is contumaciously persevering in manifest mortal sin will depend to a great extent upon the convictions of the priest. In the first place, however, the condition *si dispositus es* should never be appended. Such a condition would make the validity

[1] Kilker, op. cit., p. 230, writes: 'True, the disposition influences, in many cases, the intention to receive or not to receive this sacrament.'

[2] Op. cit., p. 229. It can, of course, be admitted that 'it is not alien to the policy of the Church to forbid the anointment of a subject whose dispositions are so evil as to be incompatible with the intrinsic sanctity of the Sacrament.' But it can be said to be foreign to the general teaching and practice to allow sacraments to be conferred conditionally when the doubt merely concerns some requirement for fruitful reception.

[3] Loc. cit.: cf. Blat, *Comm. I. C.* p. 247.

depend upon the dispositions of the subject at the time of reception. Consequently, if *de facto* he is not well disposed, he is not anointed. *Dispositus* includes within its scope more elements than the law contemplates.'[1] It is interesting to find the following statement in the fifth edition of Vermeersch–Creusen :[2]

Quare, omnibus perpensis et recedentes a priore nostra sententia, censemus sub conditione 'si capax es' extremam unctionem ministrandam esse; et omnino sentimus cum Noldin–Schmitt iii, 446, d, conditionatam administrationem imperari canon 942 quia, in casu, propter probabilem impaenitentiam nolentis, dubia est ipsa voluntas suscipientis sacramentum, quae ad valorem est necessaria.

In reply to 'Decretist's' secondary question we can simply say that for us it does not arise. We do not admit that canon 942 contains any exception to the general teaching in regard to the conditional administration of the sacraments. The secondary question and difficulty arise only for those who, like 'Decretist,' accept the view that canon 942 refers primarily to the recipient's dispositions. And since it is their difficulty we must naturally leave it to them to find its solution.[3]

CONDITIONAL ADMINISTRATION OF EXTREME UNCTION UNDER CANON 942

Your treatment of conditional administration of Extreme Unction according to canon 942 emboldens me to seek further light on the same subject.

(i) Given the prescription contained in the canon, would you agree that the procedure suggested by Kilker, as quoted by you : 'it may be advisable for a priest simply to intend the bestowal of the sacrament *ad mentem Ecclesiae* or *ad normam iuris*,' is simply not conditional administration at all, but absolute, and that such procedure simply fails to attach, either mentally or verbally, a prescribed condition of administration ?

(ii) In connection with the supposed danger of invalidity in the use of the formula *si dispositus es* as a fulfilment of canon 942, am I right in believing that a verbal formula expressing a condition does not

[1] We have no quarrel with the teaching in this quotation. We have given it to indicate that our author has not been fully consistent in adhering to the interpretation of canon 942, for which he had earlier expressed a preference.

[2] *Epitome Iuris Can.*, ii, n. 226.

[3] Kilker does not suggest any solution for this particular difficulty. He does discuss the formulation of the condition and concludes : 'Since the condition need not be expressed, it may be advisable for a priest simply to intend the bestowal of the sacrament *ad mentem Ecclesiae* or *ad normam iuris*.'

strictly form part of the *forma sacramenti* ? Obviously a mentally conceived condition does not. In other words, is it not true that, in regard to verbally expressed conditions, the validity of the sacrament does not depend—as it does depend upon the meaning of the *forma*—upon the meaning of the words with which I express the condition but rather upon the fulfilment of the condition as conceived in my mind ? The import of the question is this : the words *si dispositus es* are no doubt ambiguous by themselves ; they could stand for *si habes statum gratia* or *habes puram intentionem*, etc. But, if I am sufficiently wideawake, in dealing with a case of sickness, to think of the conditions of canon 942 and to wish to express the condition that I know to be rather lengthily indicated there, by the very natural but ambiguous formula *si dispositus es*, does the ambiguity of the words in themselves in any way imperil validity ?

DOGMATICUS.

(i) Canon 942, we may recall, forbids the administration of the sacrament of Extreme Unction to those who remain contumaciously impenitent in manifest mortal sin. If there is doubt whether these circumstances are fully verified in any particular case the sacrament should be conferred conditionally. In our reply, we maintained that canon 942 should be interpreted as having primary reference not to the absence of dispositions in the subject, but to the absence in him of the requisite intention for valid reception. This absence of intention is manifested by or is implied in his impenitent contumacious perseverance in manifest mortal sin. We pointed out how this interpretation fits in with the generally accepted teaching that sacraments are to be conferred conditionally *only* when there is doubt regarding the presence of some element which is necessary for validity. Whereas, if the canon be interpreted as being concerned with the absence of dispositions, we have in it a departure from that generally accepted teaching. For, in Extreme Unction, the dispositions of the recipient are a matter of liceity only. We quoted Kilker as one of the writers who holds, against our view, that the canon refers to the dispositions of the recipient ; that, therefore, there is question of liceity only. Kilker does not discuss the difficulty raised by this interpretation—namely, the implied break from the received doctrine regarding conditional administration. He argues at length,[1] indeed, that there is nothing unusual in the Church forbidding the administration of Extreme Unction to one who is not properly disposed. While there can be no quarrel with that conclusion, we must insist that both it and the arguments

[1] *Extreme Unction*, p. 229.

on which it is based leave unrelieved the difficulty mentioned above. And, moreover, if we may digress for a moment, we would point to a certain anomaly in Kilker's argumentation. To establish his conclusion he invokes[1] 'an inspection of the rubric of the *Rituale* before its latest revision.' This rubric was: 'Impoenitentibus vero, et qui in manifesto peccato mortali moriuntur . . . penitus denegetur (Extrema Unctio).' But later Kilker writes of this same rubric, in a slightly different context:[2] 'Since the revision of the Ritual's rubrics, such an argument from the text of the Ritual is altogether inadmissible. The present rubric uses the identical terminology of the Code, thus destroying all the value of the reasoning from such a source. The former rubric divided into distinct classes impenitents and those dying in manifest mortal sin. The Code speaks of only one class, viz. those who are contumaciously impenitent in manifest mortal sin.' And though Kilker professedly opts for what we may call the 'dispositional' interpretation of canon 942, he seems to be attracted, almost unconsciously, to the 'intentional' view when he writes—again apropos of the former rubric:[3] 'The old rubric seemed to forbid the administration also to those who were *actu* in mortal sin, thus depriving of the sacraments persons rendered unconscious in the act of sin. Now, it is not altogether unlikely that a man in mortal sin "*actu*" should have an *intention* of afterwards repenting and receiving the sacraments. Such a man the present canon does not seem to exclude, because it demands a *contumacious* impenitence which presupposes absolute unworthiness of the sacrament, for it precludes the possibility of the *intention* of subsequent repentance.'

At the end of our previous reply we referred briefly to suggested ways of formulating the condition when Extreme Unction is to be conferred conditionally in the circumstances of canon 942. We noted that Kilker rejects the formula *si dispositus es*—as do many other writers also.[4] Kilker[5] rejects this formula because it is too wide. A man could be badly disposed without being contumaciously impenitent in manifest mortal sin. The more accurate formulation of the condition under canon 942 would be 'si non es contumaciter impoenitens in mortali.'[6] But this is an unwieldy formula and, as Kilker remarked,[7] it may often be rather difficult to keep its various elements in mind. And so he concludes with the sentence referred to by 'Dogmaticus.'

Kilker is not the only writer who takes this line. In Wouters we read:[1]

> Attamen alicui videri potest, hunc esse sensum can.: si dubius fueris de contumacia, sacramentum conferatur sub conditione, *determinatione conditionis in medio relicta*; quo posito, canon non obstat, quominus apponatur conditio: *Si capax*, etc. Ceterum certo licet sacramentum ministrare: *Ad mentem Ecclesiae*.

Yet it seems to us that the formulae 'ad normam iuris,' 'ad mentem Ecclesiae' and such like are, in themselves or as they stand, too wide to express any precise restriction of the minister's intention, as is required when conditional administration is prescribed. It will be remembered that, according to defined Catholic doctrine, there is required, for validity, in the minister of the sacraments the intention, at the least, of doing what the Church does. 'Si quis dixerit in ministris, dum sacramenta conficiunt et conferunt, non requiri intentionem saltem faciendi quod facit Ecclesia, anathema sit.'[2] And, as they stand unqualified, the phrases *ad mentem Ecclesiae* and *ad normam iuris* scarcely express any more than this general conformation of the minister's intention to the mind of the Church or to the law of Christ. Behind every valid act of sacramental confection there must be that general conditioning of the ministerial intention.

In our view, when, in certain defined circumstances, the law prescribes conditional administration of sacraments, the general conditioning referred to is insufficient. The law demands something more specific, some more precise restriction of the minister's intention and, accordingly, some more definite determination, either verbally or mentally, of the condition. Otherwise, indeed, there would seem to be no particular point in specially prescribing conditional administration. And it should be noted that in those cases in which the Ritual gives a conditional form, it states the condition very precisely in relation to the circumstances. Thus regarding Baptism: *Si non es baptizatus . . .*, *Si tu es homo*; and regarding Extreme Unction: *Si vivis. . . .* There is nothing generic about these conditions. Hence we agree with 'Dogmaticus' that bestowal of a sacrament *ad mentem Ecclesiae*, etc., is, taking these words in their general significance, absolute rather than conditional administration.

[1] Ibid.
[2] Op. cit., p. 240.
[3] Op. cit., p. 232. We have italicized the word 'intention.' Other italics are the author's.
[4] Cf. Jorio, *Th. Mor.*, iii, n. 868; Prümmer, *Th. Mor.*, iii, n. 580.
[5] Op. cit., p. 247.
[6] Cf. Blat, *Comm. I. C.*, l. iii, p. 1, n. 286.
[7] Op. cit., p. 249.

[1] *Th. Mor.*, ii, n. 583.
[2] *Conc. Trid.*, Sess. vii, c. 11 (Denz., n. 854); cf. Florence, 'Decree to Armenians' (Denz., n. 695). An internal intention is necessary.

We have consistently qualified our reference to the meaning of the phrases under discussion by adding the words 'in themselves' or something equivalent. We have done this because, doubtless, as will emerge more fully from the reply to our correspondent's second question, these phrases could be used to cover a more precise restriction of the minister's intention and, consequently, could express a strictly conditional sacramental form. That is to say, the minister might use the phrases to convey, might wish to express by them, a very definite and precise meaning. They could, for example, be intended to mean—conditional on the mind of the Church as expressed in canon 942 or *ad normam juris canonis* 942. And, to be fair to Kilker, that, we think, is how he would consider them in the context of the passage quoted by our correspondent. Our point, however, is that apart from a mental process restricting their meaning, somewhat after the manner mentioned, the phrases are inept formulae or means of expressing or covering conditional administration of the sacraments, when this administration is formally prescribed in the canons, in the Ritual, or by the accepted theological teaching. Taken in their literal meaning, taken at their face value, the phrases are too wide and too generic to meet specific requirements. And the process of narrowing them down by qualification seems to us as cumbrous as it is unnecessary—unnecessary because there are other simple and acceptable formulae which can adequately express the conditions prescribed.[1]

(ii) In what we have written above we have indicated and partially anticipated the lines of our reply to our correspondent's second question. To take that question in order: Apart from the few cases in which the Ritual gives a specific conditional form, there is *per se* no obligation verbally to express the condition when sacraments are conferred *sub conditione*. It is sufficient that the condition be formed mentally by the minister. There is no specific conditional form given in the Ritual to correspond to the circumstances of canon 942. Whenever the Ritual prescribes a verbal formula expressing the condition, this formula may in a sense be said to be part of the sacramental form. It is described as such by the Ritual itself.

Cum Baptismum absolute iterare nullo modo liceat, si quis sub conditione (de qua infra) sit baptizandus, ea conditio explicanda est hoc modo: Si non es baptizatus. . . . Hac tamen *conditionali forma* non passim aut leviter uti licet. . . .[2] Si vero dubitetur an infans fuerit baptizatus, utatur hac

[1] Many writers rightly extol the value of the simple formula 'si capax es.'
[2] Tit. ii, c. 1, n. 9.

forma: N. si non es baptizatus. . . .[1] Quod si dubitet an vivat adhuc, Unctionem prosequatur, sub conditione pronuntiando *formam* dicens: Si vivis, per istam sanctam Unctionem. . . .[2]

Yet it is true, as our correspondent says, that the omission of the verbal formula expressing the condition—even when this is given in the Ritual—would not invalidate the sacramental form. Nor, indeed, would the omission of even a mentally conceived condition interfere with validity. These omissions do not imply any substantial change in the operative part of the form. They would simply effect that the sacrament would be conferred absolutely and, in this event, there would be, when the law prescribes conditional administration, danger of grave irreverence. The purpose of the condition, then, is not at all to ensure validity, but to prevent the grave irreverence of conferring a sacrament invalidly when all the requisites for validity are not present. The danger of this irreverence can be effectively precluded without any verbal formula if the minister mentally forms his intention of administration conditional on the presence of what is necessary for validity—the hypothesis being that there is solid doubt about this last point. And since the danger of irreverence can be obviated, that is, since the main purpose of the condition can be attained without any verbal formula, the use of such to express the condition is not obligatory, except in a few cases, and, even in these cases where a formula is prescribed, its omission is, *per se*, only a venial sin.

The more fundamentally important thing, then, is the mental conception of the condition which can, of itself and apart from any words, effectively restrict the ministerial intention. Nevertheless, if verbal expressions are used, it is rightly presumed here as elsewhere that, in their accepted customary meaning, they reflect accurately the internal attitude of mind. Words and phrases have from their nature and general usage a normal and customary sense. They have become apt modes of expressing a certain meaning. And again, in the absence of evidence to the contrary, it must be presumed that this is the meaning implied when they are used. The phrase *si dispositus es*, in its literal and obvious sense and according to common usage, would, we think, be taken to mean, in our context: if you are disposed *simpliciter*, that is, disposed to receive fruitfully as well as validly, the sacrament of Extreme Unction. Therefore we would reject this phrase as unsuitable for the expression of a condition in sacramental administration. In its literal sense it has reference

[1] Tit. ii, c. 2, n. 22.
[2] Tit. v, c. 1, n. 14. In these quotations from the Ritual, the italics are ours.

to requirements for liceity as well as validity. Kilker also would reject it if taken in this sense ;[1] so, it is clear, would ' Dogmaticus.' But, we repeat, the sense we have given is that which is naturally and customarily conveyed by the words. The phrase *si dispositus es* is not, in itself, ambiguous. By a mental qualification on the part of the minister it can, however, be forced to express a narrower meaning than the customary—if, as our correspondent has it, the minister is sufficiently wideawake. If, then, the minister is sufficiently wideawake to recall the contents of canon 942 and to wish to express by the brief phrase *si dispositus es* the condition appropriate to that canon, there is no new danger of invalidity in this procedure. The words *si dispositus es* are not really ambiguous in these circumstances. They are given a definite meaning—an unusually restricted meaning it is true—by the minister. He uses them to convey or to cover a precise mental attitude. Moreover, as we have already remarked and our correspondent has underlined the point, it is the mental conception of the condition which is of paramount importance. But let us suppose that the minister is not so wideawake and that he uses the condition *si dispositus es* without any mental restriction of its meaning in accordance with the contents of canon 942—that is, he uses the words in their customary sense—then we would maintain that the sacrament is invalid if the recipient is not disposed to receive it fruitfully. It cannot be valid but unfruitful and therefore, *remoto obice*, it cannot revive. We feel that ' Dogmaticus ' would agree. He requires a wideawake minister who thinks of the contents of canon 942 to justify, in the circumstances, the use of *si dispositus es* as the condition. But, when it is possible to do so without sacrificing any point, why not cater also for the less wideawake minister and for ourselves in our less wideawake moments? Why demand from the minister a degree of awareness which for some may sometimes be difficult? Why ask for a mental process whereby a phrase has to be invested with an unusual meaning? Why use a phrase which is naturally apt to refer to dispositions necessary for fruitful as well as for valid reception? Why not use a phrase, such as *si capax es*, which *vi verborum*, so to speak, makes the administration conditional only on the presence in the subject of whatever is required for validity?

[1] Op. cit., p. 247.

EXTREME UNCTION AND THE REMISSION OF TEMPORAL PUNISHMENT

Some little time ago a few of us priests were discussing informally a number of theological problems. Our discussion ranged particularly around the administration of the last rites—partly because one of our group had just returned from a sick call. Somebody mentioned, and subsequently stressed with vigour, the efficacy of Extreme Unction in remitting the temporal punishment due for sin forgiven. Such emphasis on this aspect of anointing came as a surprise to most of us. As students we had indeed heard the remission of temporal punishment listed amongst the effects of Extreme Unction. When, however, this particular effect was emphasized, as it was in our discussion, we thought we saw grave difficulties against it—difficulties drawn from the practice of the Church : the giving of the last blessing, indulgences, Masses and prayers for deceased who were anointed before death. Presumably, when the remission of temporal punishment is listed as an effect of Extreme Unction, it is meant that, presupposing the conditions for valid and lawful reception of the sacrament, this effect is produced *ex opere operato* and so infallibly. If that be so it seems, at least at first sight, that there is little enough need, if there is any, for further suffrages for those who die after the due reception of Extreme Unction. We discussed this point at some length but we were not satisfied. ACTUARIUS.

There is no doubt that the remission of temporal punishment is one of the effects of the sacrament of Extreme Unction. In the appropriate explanatory chapter of the Council of Trent we read :[1]

> Res etenim (Extremae Unctionis) gratia est Spiritus Sancti cuius unctio delicta, si quae sint adhuc expianda, ac peccati reliquias abstergit, et aegroti animam alleviat et confirmat. . . .

The debt of temporal punishment (*reatus poenae temporalis*) which may remain after the guilt (*reatus culpae*) has been remitted must most surely be included among the *reliquiae peccati*. And it is so listed by the theologians generally. The remark of Suarez is very much in point :[2]

> Optime inter reliquias peccatorum numerari potest reatus poenae post remissionem culpae relictus. . . . Imo licet aliae sint peccatorum reliquiae, in nullas alias tam proprie cadit verbum *abstergit* sicut in reatum poenae ; ille enim proprie tollitur, aliae vero reliquiae non ita proprie.

The doctrine that Extreme Unction remits the debt of temporal punishment is not of late origin. It has been maintained from the patristic age down through the centuries—though,

[1] Sess. xiv, *Doctrina de sac. Extremae Unctionis*, c. 2, Denz., 909.
[2] Disp., xli, s. 1, n. 17.

at one period, comparatively close to our own, some theologians were reluctant, for passing controversial reasons, to admit or at least to stress it. As a summary of the relevant teaching in the first nine centuries we read in the *Dictionnaire de Théologie Catholique* :[1]

Que conclure ? Sinon que l'extrême onction était alors considerée comme complétant l'œuvre de la pénitence. C'est bien sinon notre langage, du moins notre pensée : le sacrament des malades ôte *les restes des péchés*. Le pseudo-Egbert le dit : après l'extrême onction l'âme est pure *comme celle de l'enfant après le baptême*.

And we note that the Council of Trent, in its introductory remarks on Extreme Unction, recalls that this sacrament was regarded by the Fathers as the complement and consummation of Penance and of the whole Christian life.[2]

Many of the scholastics simply state that the purpose of Extreme Unction is to prepare the soul for immediate entry into glory. Such entry implies, of course, the remission, and, indeed, the total remission, of the debt of temporal punishment. St. Thomas frequently asserts that Extreme Unction removes the relics of sin and prepares the recipient for immediate entry into heaven.[3] The reference to the wiping out of the debt of temporal punishment is particularly clear in a passage in the *Summa contra Gentiles*, where St. Thomas is discussing the purpose for which Extreme Unction was instituted :[4]

Salubriter (homini) providetur ut per hoc sacramentum praedicta curatio (poenitentiae) compleatur et a reatu poenae temporalis liberetur, ut sic nihil in reo remaneat quod in exitu animae a corpore eam possit a perceptione gloriae impedire. Unde manifestum est, quod hoc sacramentum est ultimum et quodammodo consummativum totius spiritualis curationis, quo homo quasi ad participandam gloriam praeparatur.

In modern writers we find precisely the same doctrine and the same main line of argument. Cappello says that the efficacy of Extreme Unction to wipe away the debt of temporal punishment is a manifest inference from the whole purpose of this sacrament. This purpose is ' perfecta sanitas animae cum eius immediato introitu in gloriam, nisi magis expediat restitutio corporalis salutis hominis naturaliter morituri.'[5]

We have quoted representative writers from various periods in the history of theology to show that the doctrine that Extreme Unction remits temporal punishment has been constantly and commonly taught. It would be very easy to multiply quotations,

[1] T. 5, c. 1984.
[2] Cf. Denz., 907.
[3] Cf. *S.T.*, 3, q. 65, a. 1 ; *Suppl.*, q. 29, a. 1 ; q. 32, a. 2 ; *In IV Sent.*, l, iv, d. 23, q. 1, a. 1.
[4] L. iv., c. 73.
[5] *De Sac.*, ii, p. 2, n. 117.

but it is not necessary to do so in a reply of this kind. When the theologians state that temporal punishment is remitted in Extreme Unction, they do mean that this effect is caused with sacramental efficacy. In other words, they teach that the wiping out of the relics of sin (among which is the debt of temporal punishment) is achieved *ex opere operato*. Moreover, it is held that Extreme Unction has the power to remit *all* the debt.[1] This conclusion follows from a consideration of the purpose of the sacrament which is the preparation of the soul for *immediate* union with God in glory. And the Council of Trent suggests no restriction of the power of the sacrament to wipe away the relics of sin : ' *reliquias peccati abstergit*.' If, then, the recipient of Extreme Unction is perfectly disposed, if he is truly sorry for all his sins, mortal and venial, and has the requisite devotion ; if, in brief, he places no obstacle to the full effectiveness of the sacrament, it can be said that his debt of temporal punishment will be completely wiped away. But the dispositions, devotion and co-operation of the recipient, while sufficient for valid and lawful reception, may not reach the degree required in order that the sacrament may produce its full fruit. As Suarez sums it up :[2]

Dico igitur (Extremam Unctionem) remittere quidem reatum poenae ex opere operato, iuxta dispositionem, et devotionem recipientis, ideoque non semper totum auferre.

In view of the frailty of human nature, we may well suspect and fear that frequently the dispositions of the recipient of Extreme Unction will be less than perfect. There may be, for instance, some venial sin unrepented. In the present economy of forgiveness there is no remission of the guilt of sin—even of venial sin—without repentance. And until the guilt (*reatus culpae*) is remitted there can be no question of remission of the temporal punishment. Again, after the reception of Extreme Unction the patient may have committed faults for which a debt of temporal punishment is contracted. In brief, then, we cannot measure the dispositions of the recipient of the sacrament. We know, however, that there are many ways in which they can fall short of perfection. And so we are never sure that some debt of temporal punishment does not remain, even though Extreme Unction, which can remit the entire debt, has been received. We cannot, then, be in any sense certain that the dying and the deceased do not need, even after anointing, further suffrages by the way of Masses, indulgences and

[1] Cf. Cappello, op. cit., n. 149.
[2] Loc. cit.

prayers to pay some debt of punishment. This lack of certainty provides the answer to our correspondent's principal difficulty. It gives a reasonable explanation for the practice of the Church. She is most anxious to provide in any possible way for the dying and the dead those helps that are necessary to hasten their admission to the vision of God. If there is any doubt about their need—and, as we have seen, we can never be certain—they are given the benefit of the doubt. This favour is, in the circumstances, a dictate of charity. So anxious is the Church on the point that she offers Masses, indulgences and prayers for adults who die immediately after being baptized. It may often seem, indeed, that the Church is prodigal in the helps she provides. But, remember, we can never be sure of the need to be met. Better say that the Church, as a wise and generous mother, provides abundantly. And whenever there is in fact a superfluity of suffrages for a particular soul, we may rest assured that in the total divine economy this superfluity is not wasted, but is turned to good account—perhaps to succour other needy or abandoned souls. If one accepts the reservation implied by some theologians that the *total* remission of temporal punishment is not an effect of Extreme Unction, one has a further obvious reply to our correspondent's difficulty. Toner, for example, writes :[1] ' It is not suggested that Extreme Unction, like Baptism, sacramentally remits *all* temporal punishment due to sin, and the extent to which it actually does so in any particular case may, as with Baptism, fall short of what was divinely intended owing to obstacles or defective dispositions in the recipient. Hence there is still room and need for indulgences for the dying. . . .'

We mentioned earlier, in passing, that, at one period, not a few theologians were reluctant to mention—some even rejected—the remission of temporal punishment as an effect of Extreme Unction. This was particularly true of many post-Reformation moralists.[2] Several reasons, connected with the circumstances of the time, as we hinted already, are advanced to explain the attitude of these theologians. The Protestants denied the doctrine of Purgatory. Catholic writers were faced with the task of defending both the existence and necessity of this place

[1] *Cath. Encycl.*, vol. v, p. 728, Art. ' Extreme Unction.' While we admit a disparity between Baptism and Extreme Unction in their efficacy to remit temporal punishment, we cannot see that the reservation, as made here, regarding the later sacrament, is logical. It finds no basis in a consideration of the purpose of Extreme Unction, or in the words of Trent.
[2] Cf. Cappello, op. cit., n. 131, et seq.; Kilker, *Extreme Unction*, pp. 32–3, *Cath. Encycl.*, art. cit.

or state of purgation. Oftentimes, with more zeal than prudence, many of them went to great lengths to emphasize its necessity. They stressed anything that would point thereto. They ignored anything which might seem to point in another direction. The *raison d'être* of Purgatory is linked up with the necessity of paying a debt of temporal punishment. There were writers who contended that all men—except in the rarest cases—would have some such debt to pay after death, so that Purgatory might be said to be necessary for almost every soul. Not unnaturally, then, these theologians were anxious to avoid any aspect of teaching which suggested that the debt of temporal punishment might often be wiped out in this life. Thus they whittled down the traditional doctrine on the effects of Extreme Unction. They ignored or denied the fact that this sacrament remits temporal punishment. And all this because ' passing controversial interests were subordinated to Catholic theory.'[1] Similarly, too, these theologians were afraid (our correspondent echoes the difficulty) that, by stressing the power of anointing to wipe out temporal punishment, indulgences and prayers for the dead would no longer seem to serve any purpose. The reluctance of these writers to admit and express the full traditional teaching on the effects of Extreme Unction was also due, and in no small measure, to the Jansenistic spirit which was abroad in their day and with which many theologians, especially moralists, were infected.[2] In accordance with this rigoristic spirit they rang the changes on the difficulty of forgiveness of sin ; they were insistent that divine justice demanded inexorably temporal punishment for sin after the guilt had been forgiven, and that it would be almost a travesty of divine justice to suggest that satisfaction could easily be made. It has been suggested, too, that the theologians whom we are discussing here were influenced in their teaching on the effects of Extreme Unction by statements on Purgatory contained in private revelations—of which there were many in those days. The reasons given may explain, may even partially excuse, the lapse of theologians from the constant traditional doctrine. To us it is abundantly clear that they did lapse. Yet they themselves were possibly unaware of it. Enthusiasm in defence of other dogmas seems to have clouded their vision. Ignorance of the traditional doctrine on the effects of Extreme Unction may have been their most reprehensible fault as, indeed, it was a contributory cause of their error. In modern times this

[1] Toner, loc cit.
[2] Cf. Cappello, loc. cit.

traditional teaching has been fully vindicated and restored to its rightful place. This happy position is due in no small degree to the much discussed work of Kern which appeared in the early part of the present century.[1]

REPETITION OF EXTREME UNCTION

In 'Moral Theology' by Jone–Adelman (1948) (n. 630, 4°), it is stated that: 'Extreme Unction may be *repeated* during the same illness if the patient rallies after the anointing and his illness again becomes critical. But in such a case, there is no obligation to repeat it. In doubt whether one may repeat it or not one may generally decide in favour of repetition.' I should like to have your comments on this statement—which seems somewhat strange to me.

VICARIUS.

The meaning of the statement quoted from Jone–Adelman is somewhat obscure. We take it, however, in view of the earlier statements in this context, that the sentence quoted does not really mean that there is no obligation to repeat the sacrament of Extreme Unction when there is a new and distinct danger of death, in one and the same illness. In our view, this teaching would be completely unacceptable. The question of the repetition of Extreme Unction has a very interesting history.[2] Perhaps this history, which indicates a great variety of theory and practice in the past, may be responsible for some hesitancy on the part of even modern authors to declare definitely the obligations in this matter. As a clear example of this hesitancy we may quote Noldin who writes:[3]

Hoc sacramentum in eadem infirmitate et in eodem mortis periculo semel tantum administrari potest, quia efficacia sacramenti tantum durat, quamdiu durat idem mortis periculum, in quo illud collatum est. *Iterari* autem potest (vel etiam debet) quoties infirmus in novum mortis periculum incidit.

It is the teaching of theology that the sacrament of Extreme Unction retains its special grace and efficacy (generally described as *confortatio animae in periculo mortis*)[4] for, and only for, the duration of the danger of death in which it was conferred. When this danger ceases—whether or not the illness has also passed—the sacramental efficacy of the anointing ends. The

[1] *De Sacramento Extremae Unctionis Tractatus Dogmaticus*, published in 1907; cf. Kilker, loc. cit.; McDonald, *I. T. Q.*, v., pp. 330–45.
[2] Cf. Kilker, *Extreme Unction*, pp. 185, et seq.
[3] *De Sac.*, n. 448.
[4] Cf. St. Thomas, *Suppl.*, q. 30, a. 1.

circumstances in which alone this sacrament can operate are no longer present. If, then, the patient falls into a new and distinct danger of death, even in one and the same illness—there is need of a new anointing (the efficacy of the former having ceased), and there is an obligation to administer this anointing—an obligation precisely similar to that which demanded the former administration.

It is not stated in the passage quoted in the query that the danger of death, in which the anointing was given, has passed and that a new danger has supervened, but that the patient had rallied and his illness has again become critical. If, however, the meaning of 'rallies' is that the danger has passed, and if the repeated crisis means that there is a new and distinct danger then, we repeat, this teaching is unacceptable. But Jone–Adelman may have in mind in this passage another type of case which will be familiar enough to priests—the case in which a patient is anointed in what seems to be an imminent danger of death and then rallies somewhat, without, however, being out of danger, and again relapses into an imminent danger. In regard to this type of case, some theologians[1]—and Jone and Adelman seem to be amongst them—suggest that Extreme Unction *may* but *need not* be repeated. We would join issue with this view also. In such cases the sacrament may not be repeated. *Ex hypothesi*, there is here no new and distinct danger of death—but an ebb and flow of the same danger. The patient passes from a proximate or imminent to a remoter degree of danger and then back again to the imminent degree. In these circumstances not merely is there no obligation to repeat the sacrament—but it may not be repeated. It is a moot point whether the repetition of Extreme Unction in the same danger is a valid sacrament:[2] it is certainly an unlawful procedure:

In eadem infirmitate hoc sacramentum iterari non potest, nisi infirmus post susceptam unctionem convaluerit et in aliud vitae discrimen inciderit.[3]

It will be noted that this law demands a twofold condition: firstly, the recovery of the patient—from the first danger—and, secondly, the advent of a new danger. It must be remembered that the subject of Extreme Unction need only be in a remote danger of death; a proximate or imminent danger is not at all necessary. The theological principles are, then, perfectly clear. We may sum them up thus: In one and the same danger of death whether it be proximate or remote or a mixture of both

[1] Cf. Prümmer, *Th. Mor.*, iii, n. 582. Kern, *Tract. de Ext. Unctione*, pp. 337–8, examines and rejects this view.
[2] Cf. Kern, op. cit., pp. 338–63.
[3] Canon 940, § 2.

—which, as a continuing state, danger of death will so often be[1]—the sacrament of Extreme Unction may be given only once. But as often as there is a new and distinct danger of death—even in the same illness—the sacrament may and must be repeated.

We are not unaware that, though the theological principles are clear, there will sometimes be difficulty in making their practical application. Frequently enough it will be hard for the priest to decide whether the danger in which he has anointed a patient has passed and whether there is now a new and distinct danger. This difficulty may arise in the case which, we think, is visualized in Jone–Adelman. In such circumstances the priest will weigh up whatever evidence—expert or other—is available to him and come to a decision. If there is genuine doubt as to whether a new and distinct danger of death has arisen for his patient, the priest may surely repeat the anointing. And, in this matter of the administration of the last sacraments, which are of such great importance to the dying, we venture to state the principle that the patient not merely may, but should, be given the benefit of the doubt. What may be done in these circumstances should be done. In other words, we hold that in such cases the priest should repeat the anointing. There is, we believe, an obligation at least in charity to do so. Thus we go further than do Jone–Adelman in the final sentence of the quotation. We would not accept the principle that there is no obligation to confer a doubtful sacrament of Extreme Unction. Of course, various causes may excuse from this as from other obligations. But the obligation is there. We have in the Code an instance where the law demands that conditional Extreme Unction (that is, a doubtfully valid sacrament) be conferred.[2]

The form of the verb used, *conferatur*, expresses an obligation.

THE PRINCIPAL EFFECT OF EXTREME UNCTION. REPETITION OF THE SACRAMENT

The views expressed by you on the repetition of Extreme Unction seem much too rigorous. I have known patients who were in serious danger of death continuously for a year, or longer. Both doctor

[1] For the purpose of this sacrament, a remote danger of death is not at all necessarily distinct from an imminent danger which may precede or follow it. If such a distinction had to be made, then a patient anointed in a remote danger would have to be anointed again when the danger became imminent.
[2] Canon 942.

and nurses were agreed about this. If your opinion had been followed, there would have been an interval of a year, or more, between their reception of Extreme Unction and their death. You say : 'It is a moot point whether the repetition of Extreme Unction in the same danger is a valid sacrament ; it is certainly an unlawful procedure.' I have been able to consult only three sources—Prümmer, Davis and O'Kane–Fallon ; all three conclude that in such cases the anointing may be repeated after a month. This view seems more in accord with the doctrine of the Church and with the usual practice.

You summed up the effects of Extreme Unction as 'confortatio animae in periculo mortis.' They are much more than this. The Council of Trent says that they are an unction of the Holy Spirit which (i) cleanses from sin, primarily from venial sin ; (ii) cleanses from the remains of sin ; (iii) cheers and strengthens the mind of the patient so that he may bear his sufferings with more fortitude, resist the temptations of the devil and, if expedient for his salvation, recover his health. (Denzinger, 999 ; *Catechism of the Council of Trent*, p. ii, ch. vi, quest. 14.) This doctrine seems to differ somewhat from that given in the *Summa* where the remission of sin, mortal and venial, and of the debt of temporal punishment are regarded as indirect effects. It is clear that (i) and (ii) are received and ended when the sacrament is received ; while (iii) continues as long as the danger of death remains. A person in danger of death may justly be expected to avoid mortal sin and nearly all venial sin. But if the danger continues too long, the weakness of human nature will reassert itself. To remedy this, the patient will need the cleansing effect of the sacrament again.

Canon 940 is the obstacle here. I would suggest, with great deference, that the use of the two words 'periculum' and 'discrimen' leaves a way out. In canon 940, § 1, it is stated that a person may be anointed only 'in periculo mortis' ; in § 2, that the anointing may not be repeated, 'nisi infirmus post susceptam unctionem convaluerit et in aliud vitae discrimen inciderit.' 'Periculum' means danger, which may last a long time ; 'discrimen' may be translated as 'turning-point' or 'crisis' which can last only a short time. During one and the same danger of death there may be many turning-points or crises. When a person has recovered from one crisis and fallen into another he may be anointed again, though the danger was continuous all the time. 'Convaluerit' does not *necessarily* mean that he should have recovered so much as to be out of danger. It may safely be presumed that a person does not continue in the same crisis for longer than a month. In writing this, I may be the fool who rushes in where experts fear to tread. My excuse is that the matter is of great importance for the dying. Like you, I believe that every help that can be given them should be given them. AUDAX.

Our correspondent's letter raises a number of interesting points. We were rather surprised at the charge made in the

opening sentence that our reply on the 'Repetition of Extreme Unction' seemed much too rigorous. On first reading that sentence, we thought that the accusation of undue rigorism was based on our contention that a priest *should* repeat the anointing in cases in which it is doubtful whether the patient has fallen into a new and distinct danger of death. But it is quite clear from the final sentence of his letter that 'Audax' is whole-heartedly on our side in this contention.

We cannot understand why 'Audax' should have quoted from our former reply the sentence: 'It is a moot point whether the repetition of Extreme Unction in the same danger is a valid sacrament: it is certainly an unlawful procedure.' Does he challenge the accuracy of that statement? Surely not. It is a commonplace of theology. Theologians may, indeed, differ as to when a new danger of death can be held to be present, but no theologian would assert the principle that the anointing may be repeated in one and the same danger. The more common opinion is that the repetition of the anointing in one and the same danger of death is not a valid sacrament. In the earlier reply we gave some references. But, perhaps, we had better quote a representative author.

Longe communior et probabilior sententia est sacramentum extremae unctionis valide in eadem infirmitate eodemque mortis periculo iterari non posse

writes Cappello.[1] In fact, two of the authorities[2] consulted by 'Audax' have statements very similar to that quoted by him from our reply. Why, then, does he, in this context and on this ground, contrast their teaching with ours and say that theirs is more in conformity with the doctrine of the Church? Admittedly the authors referred to by 'Audax' do, at a later stage, mention the liceity, in certain cases of lingering illnesses, of repeating Extreme Unction after a month from the former anointing. Had the question been put to us, we also would have granted the liceity of this procedure. But we shall leave over to the end of our reply a fuller discussion of this point.

We did say that the special grace and efficacy of Extreme Unction—that is, the principal effect of the sacrament—might be described as 'confortatio animae in periculo mortis.' In this we were following the teaching of St. Thomas and of a whole host of illustrious theologians—including St. Albertus Magnus, Suarez, St. Alphonsus, Lehmkuhl, Cappello, to

[1] *De Sac.*, ii, p. 2, n. 274.
[2] Cf. Prümmer, *Manuale Th. Mor.*, iii, n. 582; O'Kane-Fallon, *The Rubrics of the Roman Ritual*, n. 841.

mention just a few.[1] And we could quote many patristic writers for the same teaching.[2] Opposed to it we have the Scotist view that the principal effect of Extreme Unction is the final remission of venial sin; the contention of a few writers that the effects of Extreme Unction are all equally principal; the opinion of some Oriental theologians that the cure of bodily illness is the principal effect of this sacrament. It is implied in all this that the sacrament of Extreme Unction has a number of effects. They are enumerated by the Council of Trent—as quoted by our correspondent. But there is no divergence between this teaching of Trent and that given by St. Thomas (in his *Summa Theologica*[3] and elsewhere[4]), and by the theologians. All admit that Extreme Unction has several effects. But there is a sort of hierarchy among these effects, and the question is: which of them is the principal, the primary, effect? In view of the statements of 'Audax' this question is worth pursuing a little further.

It is the accepted teaching of theology that each sacrament has an effect which is peculiarly its own (*res sacramenti*) while, at the same time, it will have one or more effects in common with the other sacraments. All the sacraments have the common effect of causing sanctifying grace. But if each of the sacraments did not have a special purpose and effect, there is no good reason why Christ should have instituted a sevenfold system, seven distinct sacraments. St. Thomas had this in mind when he was discussing[5] the effects of Extreme Unction. His argument runs thus: Since a sacrament effects what it signifies, we can discern the principal effect from the signification, that is from the sacramental sign used. And as Baptism signifies a washing, so Extreme Unction signifies a healing (*medicatio*), a strengthening. Consequently, the primary purpose of this sacrament is to bring about a spiritual healing, the healing of the infirmity of sin. This healing presupposes life, spiritual life, just as bodily healing presupposes the existence of bodily life. Hence, Extreme Unction is not normally a sacrament for those who are spiritually dead in mortal sin; it is *per se* a sacrament of the living. It may remit sin, but this is not its primary purpose or principal effect. St. James[6] speaks only hypothetically of the remission of sin—*si in peccatis sit, dimittentur ei*. The text of the Apostle implies that the healing of the sick person—*et oratio fidei salvabit infirmum et alleviabit eum*

[1] Cf. Kilker, *Extreme Unction*, p. 38.
[2] Cf. Cappello, op. cit., n. 178.
[3] *Suppl.*, q. 30, a. 1.
[4] *Summa Contra Gentiles*, c. 73.
[5] Cf. *S. T., Suppl.*, q. 30.
[6] *Epistle*, v. 15.

Dominus . . .—is the primary effect. If there is no sin to be remitted by Extreme Unction, then, of course, no sin is remitted. Are we to conclude, then, that in such a case the sacrament is deprived of its primary effect? This cannot be. The principal or primary effect gives the *raison d'être* of the sacrament; it is to produce this specific effect that a special sacrament was instituted. The principal effect must, therefore, be a *per se* result of a valid sacrament; it must be produced in all who receive the sacrament validly and do not place an *obex*, and it must be substantially the same for all these recipients. Indeed, it can be said that one who is incapable of receiving this principal effect of a sacrament is not a valid subject.[1]

In the light of all this, it will be seen that the final remission of venial sin cannot be the principal effect of the sacrament of Extreme Unction. And, if it were, the sacrament should be received only at the point of death when the recipient would no longer be capable of sinning. In fact, the Scotist view did lead to the undue postponement of the reception of Extreme Unction—which postponement has been condemned by Papal decrees.[2] If all the recipient's sins, mortal and venial, have already been wiped out—the principal effect of the sacrament, the *raison d'être* of its institution, would be unattainable, in the Scotist view. But, as has been noted, the principal effect of a sacrament is one produced in every valid recipient who does not place an obstacle. The comforting and strengthening of the soul wrought by Extreme Unction fulfil this requirement. The spiritual weakness of the recipient, which may be due to original sin, to actual sin or to the circumstances of illness, can always be healed: the soul of one who is in danger of death from sickness always needs to be comforted and strengthened. Thus the view that *confortatio animae in periculo mortis* is the primary or principal effect of Extreme Unction emerges as the most acceptable.[3] As has already been noted, it can find support in the text of St. James. In the Decree to the Armenians we read:[4]

> Effectus vero (sacramenti extremae unctionis) est mentis sanatio et, in quantum autem expedit, ipsius etiam corporis.

'Audax' thinks that the view we have sponsored is out of

[1] Cf. Cappello, op. cit., n. 181; Kilker, op. cit., p. 40.
[2] Cf. Pius XI, *Explorata res est*, *A.A.S.*, xv (1923), 103.
[3] 'Audax' admits that this effect continues while the danger of death continues. This admission is tantamount to a concession that 'confortatio animae in periculo mortis' is the special, the principal, effect of Extreme Unction.
[4] Denz., n. 700.

harmony with the teaching of the Council of Trent. But this is not so. We would direct his attention to the Council's introductory paragraph dealing with Extreme Unction:[1]

> Clementissimus Redemptor noster . . . extremae unctionis sacramento finem vitae tamquam firmissimo quodam praesidio munivit. Nam etsi adversarius noster occasiones per omnem vitam quaerat et captet, ut devorare animas nostras quoquo modo possit: nullum tamen tempus est, quo vehementius ille omnes suae versutiae nervos intendat ad perdendos nos penitus, et a fiducia etiam, si possit, divinae misericordiae deturbandos, quam cum impendere nobis exitum vitae perspicit.

It should be remembered that not every person who is in danger of death is a valid subject for Extreme Unction, but only one who is in danger of death from sickness or old age. Only in this latter case do the special difficulties mentioned by Trent arise.

Our correspondent points out that, if the danger of death continues for a long while after Extreme Unction has been received, the patient may, through the weakness of human nature, again commit sin. This, of course, is perfectly true and no one is more aware of its truth than is the Church. But to conclude that this possibility of sin, or even the actual commission of sin, should be a ground for re-anointing is to prove far too much. It might be equally argued that if a patient committed sin, even immediately after being anointed, then the sacrament should be conferred again; the patient would need once more the cleansing effect of Extreme Unction. But 'Audax' would hardly go as far as this, though his argument should lead to it. His argument also ignores the fact that the sacraments of Penance and the Blessed Eucharist, as well as acts of repentance and reparation, are available to the patient, and, by the use of these means, under the strengthening grace of Extreme Unction, any sins committed after anointing, and while the same danger of death continues, can be wiped out *quoad culpam et quoad poenam*. But it is somewhat futile to indulge in *a priori* considerations regarding the repetition of Extreme Unction when we have tradition, confirmed by positive ecclesiastical law, to guide us. 'Audax' is not unaware of this futility. He notes that canon 940 is an obstacle to the facile conclusion that Extreme Unction should be repeated whenever the patient needs to be cleansed from his sins. His suggestion that a distinction can, and should, be made between *periculum* and *discrimen* is interesting and ingenious. It would seem too that, in strict linguistic usage, the suggested distinction is not without

[1] Denz., n. 907; cf. n. 909.

some basis. But in traditional teaching, the terms *periculum mortis* and *discrimen vitae* have been used synonymously. The statement of Trent on the issue is informative :

Declaratur etiam esse hanc unctionem infirmis adhibendam, illis vero praesertim, qui tam periculose decumbunt, ut in exitu vitae constituti videantur, unde et sacramentum exeuntium nuncupatur. Quod si infirmi post susceptam hanc unctionem convaluerint iterum huius sacramenti subsidio iuvari poterunt, cum in aliud simile vitae discrimen inciderint.[1]

Here, those in danger of death (*qui periculose decumbunt*) are equiparated to those who are *in discrimine vitae*. The words *aliud simile* should be noted. If the distinction suggested by 'Audax' were logically applied to this passage from Trent, it would follow, we think, that Extreme Unction should be administered only to those who have reached a crisis in their illness, and only so long as the crisis lasts.

We have left over to this stage a discussion of the rule of anointing once per month those who are suffering from a fatal lingering illness and of whom it may be said generally that they are in a continuous danger of death over a long period. Our correspondent clearly favours this rule. But we do not see how his distinction between *periculum* and *discrimen* helps to establish it. 'Audax' should repeat the anointing whenever the patient enters a new crisis even in the same lingering danger of death. But there is no good reason why a new crisis should develop once per month. Crises might arise much more frequently or much less frequently. And if the distinction made by 'Audax' has any validity, the point is that Extreme Unction should be repeated at every new crisis—because, in these circumstances, the patient is a valid and lawful subject for reanointing and we both agree that every spiritual help possible should be given to those who are in danger of death.

It seems to us that undue emphasis is often placed upon the time element in discussing this matter of the repetition of Extreme Unction. It is true that many theologians of the scholastic period approached the question almost exclusively from a consideration of the time factor.[2] But St. Thomas took a different line :[3]

Quaedam vero sunt aegritudines diuturnae . . . 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

[1] Ibid., n. 910.
[2] Many, following the teaching of St. Albertus Magnus, held that, in cases of protracted illnesses, there should in every case be an interval of a year before Extreme Unction could be repeated. Cf. Kilker, op. cit., pp. 187, et seq.
[3] *S.T., Suppl.*, q. 33, a. 2.

statum per illam aegritudinem reducatur, iterum potest inungi, quia iam quasi est alius infirmitatis status, quamvis non sit alia infirmitas simpliciter.

We have already quoted the teaching of Trent in which, as in St. Thomas, there is no reference to a time factor, but solely to the onset of a new and distinct danger of death, the patient having convalesced from the former danger. The Code of Canon Law[1] and the new Ritual[2] similarly refer to a new and distinct danger. Whenever, then, there is a new and distinct danger of death—no matter how closely in time it may follow upon a former similar danger in which the patient was anointed—Extreme Unction may, and should, be repeated. And, contrariwise, so long as it is certain that the patient continues in one and the same danger, this sacrament may not be repeated. The law and the rubrics demand two conditions for the repetition of anointing : recovery from the former danger of death, and onset of a new danger. The phrase : '*Nisi infirmus convaluerit*' does not mean that the patient has made a complete recovery, that the disease has passed ; but, if words have any meaning, the phrase does imply that the condition of the patient has improved, that he has had a considerable change for the better. St. Alphonsus wrote :[3]

Unde adverte quod in morbo diuturno, si infirmus certe manserit in eodem periculo mortis, non poterit rursus inungi.

And in O'Kane–Fallon (consulted by 'Audax') we read :[4] 'A mere continuance of life, no matter how long, does not of itself justify the administration of the sacrament a second time. All theologians seem to agree that a recovery of some kind is required.' But in very many cases of lingering illness there will be doubt as to whether a patient, who has been anointed in danger of death and lives on for a considerable period, has recovered from the former and is now in a new danger. To solve such *doubtful* cases many writers have given the practical rule that Extreme Unction may, and should, be repeated after an interval of about one month from the previous anointing. This rule is based, not upon the certain onset of any new crisis, but upon the presumption that, in the absence of certain evidence to the contrary, a patient who has lived on for a month is, at least morally, in a new danger of death. In all this matter, the priest is only expected to form a reasonably prudent judgment on whatever evidence he has. The writers who favour the monthly rule, including those consulted by 'Audax,' make

[1] Canon 940, § 2.
[2] Tit. v, c. i, n. 8.
[3] *Th. Mor.*, l, vi, n. 715.
[4] Op. cit., n. 843.

it clear that they are relying on the presumption mentioned. In fact, 'Audax' himself refers to the presumption: 'It may safely be presumed that a person does not continue in the same crisis for longer than a month.' Resort to presumptions of this kind is lawfully made only when there is doubt. Hence, the rule of anointing once per month does not apply automatically to all cases of lingering illness: it can be applied only to doubtful cases. To quote O'Kane–Fallon again:[1] 'The period of a month merely represents a rough estimate based on intelligent experience, and is merely proposed as a practical working rule to be applied only in *doubtful* cases.'

To sum up then: Extreme Unction may, and should, be repeated as often as the patient falls into a new and distinct danger of death—irrespective of the length of time from the former anointing, irrespective also of whether there is, or is not, a new illness. Extreme Unction may not be repeated lawfully—nor even validly according to the majority—in one and the same danger of death. When there is doubt as to whether a patient has recovered from a former and fallen into a new danger, the sacrament may and, we believe, should be repeated. In very many cases of lingering illness, after a lapse of time from a former anointing, it will be doubtful whether the patient has recovered from the danger in which he was anointed and has by now fallen into a new and distinct danger. In such cases, when there is no certain evidence, the lapse of about a month from the former anointing may be taken in practice as giving rise to a presumption that the former danger has passed and that a new and distinct danger has supervened—and, consequently, the patient may, and should, be anointed again.

THE OBLIGATION OF SUPPLYING THE SEPARATE UNCTIONS

A patient suddenly becomes very seriously ill. The nurse in charge sends for the priest and doctor. They arrive together. The doctor on seeing the patient informs the priest that a very urgent operation must be performed and that any delay is dangerous. In view of this statement the priest anoints the patient on the forehead with the short form and, having completed this anointing, departs. The patient does not die that day and next morning he asks the priest to repeat the anointings in full. May the priest in question or any other priest accede to the patient's request?

NEO-SACERDOS.

[1] Op. cit., n. 844, nota 2.

A number of points are suggested by our correspondent's query. It will be of interest to discuss some of them, and the discussion will serve to give the reason for our reply to his specific question. Firstly, it is of historical interest to note that, for a long time, it was a matter of dispute among the theologians as to whether the customary anointings of the five senses were all necessary for the validity of the sacrament of Extreme Unction.[1] In the Scholastic period it was held, almost exclusively, that the five anointings were essential for validity.[2] In the time of St. Alphonsus, while the opposite opinion has gained some adherents, the Scholastic view is still described as the more common and more probable and is to be followed in practice.[3] Subsequent discussion, and, in particular, an examination of the history of the manner of administration of this sacrament, led more and more theologians to hold the view that the separate anointings of the various senses were not necessary for validity.[4] In 1906 the Holy Office decreed that:

> In casu verae necessitatis sufficere formam: *Per istam sanctam unctionem indulgeat tibi Dominus quidquid deliquisti. Amen.*[5]

From this decree, stating the validity of a single form for Extreme Unction in cases of true necessity, it was not unfairly concluded that a single unction was similarly sufficient. A singular form implies a single unction—so ran the argument. But that was only an inference. As yet there was no explicit authoritative statement that a single unction sufficed for validity. It could be maintained, therefore, that there was still room for some degree of doubt on this question, especially in view of the earlier theological opinion.

But since the publication of the Code and the new edition of the Ritual, all possibility of doubt on the point has been removed. In canon 947, § 1, we find this statement (repeated in the Ritual):

> In casu autem necessitatis sufficit unica unctio in uno sensu, seu rectius in fronte, cum praescripta formula breviore.

Here, at last, we have an explicit declaration of the validity of a single unction, with the appropriate form, in cases of necessity. It is clear, then, that the essential sacramental rite is contained

[1] Cf. *Dict. de théol. Cath.*, *v. Extrême Onction*, t.v., c. 1936, et seq.
[2] Cf. St. Thomas, *Suppl.*, q. 32, a. 6.
[3] *Th. Mor.*, l, vi, n. 710.
[4] We find Billot adhering to the older view: 'Unctio quinque sensuum est certo sufficiens, sed et probabilius etiam essentialis.' *De Sac.*, ii, Thesis xxv.
[5] *A.S.S.*, xxxix., p. 273.

in the single unction—which, accordingly, would be valid even outside cases of necessity. But apart from such cases, it would be gravely unlawful to administer Extreme Unction according to the short form. As the commentators[1] point out, the necessity of which there is question here may arise from many sources. The most obvious cases of such necessity are those in which it is feared that the patient may die before the longer rite can be completed or when it is doubtful if the patient is already dead. The circumstances of the urgency of surgical or medical treatment can also give rise to the requisite necessity. It follows from all this that the priest, in the circumstances mentioned in the query, acted validly and lawfully in anointing the patient according to the short form.

The canon which states that a single unction suffices in cases of necessity, equally clearly lays down, for these cases, the obligation of supplying, when the urgency ceases, the unctions which have been omitted :

> In casu necessitatis sufficit unica unctio . . . salva obligatione singulas unctiones supplendi, cessante periculo.

This statement, like the earlier phrase of the same canon, also marks the end of a long period of theological discussion and controversy. As the wording of the canon suggests, the obligation of supplying the unctions is not entirely new.[2] The earlier history of the obligation is, however, shrouded in some doubt and uncertainty. Those theologians who, even prior to 1906, maintained the validity of a single unction, required, for the most part, that the omitted unctions be supplied or rather that the sacrament be repeated conditionally afterwards. This they required *ad cautelam*, because in view of the earlier opinions some degree of doubt regarding the validity of the single unction might be said to remain. On the other hand, the majority of these writers thought that the omitted unctions should be supplied only *conditionally* because, *in their view*,[3] the validity of the anointing with the single unction was at the least highly probable. When, in 1906, the Holy Office declared a singular form, and, by implication, a single anointing, to be sufficient, the question of supplying the other unctions was more acutely discussed. Some writers took the line that there was no obligation whatsoever to supply these unctions. Some even went so

[1] Cf. Vermeersch–Creusen, *Epitome Iuris Canonici*, ii, n. 231.
[2] Cf. Kilker, *Extreme Unction*, p. 377.
[3] There was, of course, the other view. Kilker says, loc. cit. : ' No theologian dared to declare the conditional repetition unnecessary, for the opposite opinion holding only validity of the fivefold unction was [in the words of D'Annibale] *antiquior, communior et tutior ideoque omnino sequenda*.'

far as to say that it was unlawful to do so. The sacrament had already been validly conferred, as the word *sufficere* in the decree indicated. But there were other writers who took the opposite view and who were insistent upon the obligation of supplying conditionally the omitted unctions afterwards, if time allowed. They would not agree that the decree of 1906 settled this matter or, indeed, that it decided the question of the validity of the single unction ; the decree referred to the form only and not at all to the application of the matter.

From 1906 to 1917 the theologians continued to express their divergent views on the matter.[1] In 1917 it was indicated, in a reply of the Holy Office, that the omitted unctions were to be supplied, in accordance with a previous decree of 1907—not conditionally, however, but absolutely. As Kilker notes, this reply must have come as a surprise. Its terms did not correspond exactly[2] with any of the divergent views held by the theologians. They had considered the question of supplying the unctions solely in relation to their views on the validity of the single unction. For those who held that this short form was certainly valid, there was no need to supply the omitted unctions ; for those who held that the short form was, at best, doubtful, there was an obligation to supply the unctions conditionally. ' Both sides failed to take into account the possibility that, even if the single unction were valid, the separate unctions should be supplied when they have not already been employed.'[3] The reply of the Holy Office in 1917 did not completely end the discussion. And for this reason : reference was made in the reply to a previous decree of 31 January, 1907—a decree which had never been officially published. In the absence of the official text of this decree, the theologians could not be sure as to the exact content of the reply of March, 1917. It was, however, inferred from this reply that the decree of 1907 demanded that the omitted unctions be supplied. Later in the year 1917 the *Ephemerides Liturgicae*[4] published (without stating its source), the decree of 1907. As published, the words relevant here are : ' Si vero infirmus supervixerit, suppleantur singulae unctiones et orationes.' It is stated earlier in the decree that its purpose was to prevent future doubt by reforming the decree of 1906. It is passing strange, as the writers remark, that this reforming decree of 1907 should never have been officially published and should have been ignored in a subsequent edition

[1] Cf. Kilker, op. cit., pp. 381–5, for a fuller discussion.
[2] Cf. *A.A.S.*, ix, p. 178.
[3] Kilker, op. cit., p. 385.
[4] August, 1917, p. 437.

of the Ritual.[1] Whatever the explanation of these facts may be, the obligation in regard to the omitted unctions now is: they are to be supplied when the urgency, by reason of which they were omitted, ceases; they are to be supplied absolutely, not conditionally—in accordance with the reply of 1917.

This reply raised another difficulty. When the separate unctions are supplied, is the sacrament of Extreme Unction repeated? Some theologians took the view that it is. They escaped the prohibition against repetition stated in canon 940, § 2, by saying that this prohibition applied only when the sacrament had been conferred with all the customary unctions. Those theologians (and they were very many)[2] who held that Extreme Unction could not validly be repeated in the same danger were in a quandary. They had recourse to the explanation that there was, in the circumstances, a new danger of death and that this was the force of the words *cessante periculo*. Other theologians hold that the supplying of the separate unctions is in no sense a repetition of the sacrament. Some of these would even say that the supplied unctions are not strictly sacramental acts, but only ceremonies.[3] In this latter view the supplying of the unctions would almost correspond to the supplying of the ceremonies of solemn Baptism. But perhaps the most common view, and we think the most acceptable, is that the supplying of the separate unctions completes the rite sacramentally; that these unctions pertain to the integrity of the sacrament and produce, with sacramental causality, certain actual graces peculiar to Extreme Unction.[4] In the words of Vermeersch–Creusen,[5] apropos of supplying the unctions *absolutely*: 'Nec iteratur extrema unctio, sed perficitur.' This controversy on the nature of the supplied unctions, unlike the earlier controversies which we have mentioned, has not been ended by any authoritative statement. Nor is it likely to find this issue. The controversy is theoretical and, no matter what view is espoused, the practical obligation of supplying the unctions, when the urgency ceases, is clear.

But there are a few other questions, practical questions too, regarding that obligation which may well be asked and which, indeed, are implicitly asked by our correspondent. These questions are: When does the obligation arise? When does

[1] 1913 edition.
[2] Cf. *Irish Theological Quarterly*, July, 1907, pp. 330–45.
[3] Cf. Lehmkuhl, *Th. Mor.*, ii, n. 718.
[4] Cf. Noldin, *De Sac.*, n. 432, n. 438.
[5] Loc. cit. Cf. Quinn: *Some Aspects of the Dogma of Extreme Unction*, p. 80, et seq.

it cease? Is it a grave obligation? On whom does it rest? We shall take these questions in the order given.

When does the obligation of supplying the omitted unctions arise? The answer is contained in the words of the Code and Ritual—*cessante periculo*. These words mean on the cessation of the danger, urgency or necessity which justified the administration of the sacrament in the short form. We have seen that the urgency or necessity may arise from many circumstances. Often, the cessation of this urgency will simply be a question of time—*generatim si tempus adsit*. Theologians are agreed that the words *cessante periculo* cannot be interpreted as meaning that all present danger of death for the patient has ceased. If this were the meaning, the patient would no longer be a valid subject for Extreme Unction or for any part thereof. Nor can the words mean simply that this particular danger of death has ceased and that the patient has fallen into a new danger. If there is a new danger of death, even in one and the same illness, there will be question not of supplying omissions in a previous sacramental rite, but of conferring the sacrament anew. Moreover, even when it is perfectly clear that there is not a new danger of death, but obviously a continuance of one and the same danger (as might easily be true in circumstances like those mentioned in the query), the obligation of supplying the separate unctions urges.

When does the obligation of supplying the unctions cease? This question, in particular, covers the point our correspondent has in mind. The obligation clearly ceases if, before the unctions can be supplied, the subject has died or has recovered from the danger of death in which he has been anointed. We are not concerned here with these circumstances, but rather with the situation in which, as is contemplated in the query, the patient, who has been anointed urgently with the short form, continues to live on for some time in the *same* danger of death. Some theologians say that the obligation of supplying the unctions ceases if an hour has elapsed since the anointing with the short form. At the basis of this view lies the contention that there must be a moral union between the supplied unctions and the previous single anointing, and that, if a notable time has intervened, the possibility of this moral union does not exist. In the circumstances, and in the light of recent teaching on supplying for an invalid consecration in the Mass, an hour must, it is said, be regarded as a notable period of time. In Genicot–Salsmans we read:[1]

[1] *Th. Mor.*, ii, n. 417.

Cessante urgentia seu periculo, si nondum aegrotus exspiravit, aliae unctiones absolute supplendae sunt, saltem ad ritum consueto modo complendum. Quae obligatio supplendi post notabile tempus, puta post horam, deficere videtur, cum vix iam unctiones moraliter uniri possint.[1]

It is worthy of note that Genicot and Salsmans incline to the view that the supplied unctions are merely ceremonies which have no specifically sacramental effect and this, doubtless, influenced them in reaching the conclusion that the obligation of supplying the unctions ceased after a comparatively short period of time. These authors might logically have reached the same conclusion in regard to the supplying of the ceremonies in Baptism—but the word *quamprimum* of canon 759, § 3,[2] stands in the way. The canon which states the obligation of supplying the separate unctions does not suggest that this obligation ceases after any definite time. In fact the implication of the canon seems to be that the unction may and should be supplied, so long as the same danger of death, in which the patient was urgently anointed, persists.

This view is based upon the contention that the supplied unctions are strictly sacramental; that they operate to produce grace with sacramental efficacy.[3] The view accords perfectly with the accepted teaching that the sacrament of Extreme Unction is given to strengthen the soul in this danger of death and that its efficacy persists so long as the particular danger in which it was conferred remains. Kilker concludes that either view of the duration of the obligation may safely be accepted. He gives the following practical rule which, we think, will be generally approved. 'Supplying of the unctions in cases where the brief formula has been used may be done as long as the identical danger of death continues. A priest is not to be blamed, however, who feels himself freed from all obligation on this score after an hour has intervened without presenting an opportunity to perform the subsequent rite.'[4] In reply to our correspondent's particular query, we would, accordingly say that the unctions *may* be supplied next day—and, since the patient asks particularly for them, we think they

[1] The selection of one hour seems rather gratuitous. We do not see why the possibility of a moral union should cease after an hour, especially when we consider that this sacrament remains efficacious for the duration of the danger of death in which it was conferred. Could it not be said that the persistence of the danger of death gives a moral unity to the various integral parts of this sacrament of Extreme Unction?

[2] Cf. Vermeersch–Creusen, op. cit., ii, n. 231.

[3] Cf. St. Thomas, loc. cit., where he explains why the five senses must be anointed as the *principia agendi et peccandi*.

[4] Op. cit. p. 395.

should be supplied. If there is any danger of misunderstanding, *admiratio* or scandal, the priest should explain that he is not repeating the sacrament, but only supplying the unctions previously omitted owing to the urgency. Rarely enough, we imagine, will the precise situation contemplated in the query arise in practice. Normally, if it is not possible to supply the unctions within a short space of time, it will not be at all possible to supply them.

Is the obligation to supply the unctions grave? We think that it is, *per se*. We have an obligation in conscience stated in the Code and Ritual. This obligation will be grave *pro ratione materiae*. If we accept the view, and it is the more acceptable view, that the supplied unctions are strictly sacramental, producing grace by sacramental causality, we must assuredly conclude that there is grave matter at issue. And, even if the view be taken that the supplied unctions are ceremonial rather than sacramental, we should still conclude, on the analogy of the obligation to supply the ceremonies omitted in private baptism, that there is grave matter and a serious obligation. We have written that, in our opinion, the obligation is, *per se*, grave. *Per accidens* there may be only a light obligation, or even no obligation if the supplying of the unctions would cause entirely disproportionate inconvenience or would give rise to *admiratio* or scandal which could not be forestalled by an explanation. In the case stated in the query there is, presumably, no question of any of those factors excusing the priest from the obligation of supplying the unctions, if this obligation exists. He might, however, excuse himself on the grounds that in the view of some writers, the obligation has ceased, because a notable period has intervened since the urgent anointing. But, as we have indicated earlier, in view of the request of the patient and particularly if he persists in this request, there would be some obligation, at least in charity, to supply the omitted unctions.

On whom does the obligation of supplying the unctions rest? It is expressly stated in the Code[1] that the ordinary minister of Extreme Unction is bound in justice to administer this sacrament. The ordinary minister is the parish priest of the place where the sick person is at the time.[2] The parish priest may act personally or through his assistants. In cases of necessity every priest is bound in charity to administer Extreme Unction.[3] Somewhat similarly we may say, that the obligation of supplying

[1] Canon 939. [2] Canon 938, § 2. [3] Canon 939.

the unctions rests primarily, and as an obligation in justice, upon the parish priest of the place—who, here again, may act *per se vel per alium*. Other priests may have an obligation in charity to supply the unctions in cases of necessity. This latter obligation, as distinct from the obligation to anoint with the short form, will not so easily arise. Indeed, it is said[1] that if a priest 'has anointed *ex caritate* with the short form, the "supplying" of the unctions can be left to the pastor.' It will be noted here that one priest may confer this sacrament with the short form while another may supply, in fact may be bound to supply, the unctions. But, once again, in the normal course of things, the priest who confers the sacrament in the case of necessity will also, if time allows, supply the unctions. If the patient were anointed with the short form in one place and, before the unctions could be supplied, were transferred to another place, the obligation of supplying the separate unctions would rest upon the parish priest of the second place.

THE POSSIBILITY OF SALUTARY REPENTANCE FOR MORTAL SIN AFTER DEATH

Is it permissible to hold that there is at the end of one's life on earth a fractional instant, no longer time and not yet eternity, in which for the last time God lets the soul see in some new mysterious way the question of 'God or not God' to which it must answer?

TABULA RASA.

It is the accepted teaching of Catholic theology that the moment of death, which is the moment at which the human soul separates from its body, definitely marks the end of man's period of probation and merit. We cannot tell precisely at what moment this separation of soul and body takes place. Somatic death very probably is a gradual process but there must, nevertheless, be a precise point of time at which the soul leaves the body. Up to this point man is in *statu viae*, he is a *viator* and is capable of merit and repentance. Beyond this point of time he is not thus capable. After death comes the particular judgment for man—a judgment which is based upon his manner of life as a *viator*, upon his state of soul at the moment of death. Thus, it seems clearly contrary to the accepted Catholic teaching to maintain that there is, after the

[1] Kilker, op. cit., p. 392.

moment of separation of soul and body, any period, even a fractional instant, in which the soul can freely decide to remain obdurate in mortal sin and to reject God finally or, contrariwise, to turn back to God in repentance. The length of this period makes no difference whatsoever to the principle. If we postulate that there is any period of probation, however short that period, we run counter to the principle that man's time of probation ends at the moment of death. It can, we think, be admitted that, at the last moments of its earthly life, the soul gets some illumination whereby it is enabled to see more clearly the consequences of sin and of turning away from God and can then make the deliberate choice of remaining obdurate in mortal sin.

The possibility of effective repentance on the part of those who die in mortal sin, or at least of some of them, has been mooted in various forms at different periods in the history of Catholic theology—from the time of Origen down to our own day. But at no time did Catholic teaching countenance this possibility.[1] The theologians appointed to prepare the *schemata* of the dogmatic constitution *De fide Catholica* for the Vatican Council made this interesting statement:[2]

> Hic locus, ubi de lapsu humani generis agitur, existimatus est opportunior ad inserendam definitionem de aeternitate poenae infligendae pro quovis lethali peccato in hac vita non expiato. Definitio huius dogmatis censebatur maxime necessaria propter periculum grave erroris, qui etiam inter homines catholicos disseminatur. Universim poenas inferni earumque aeternitatem nonnisi homines impii et incredituli negant; sed sunt nunc aliqui qui sibi aliisque persuadere conantur, salva fide catholica, admitti posse quorundam peccatorum mortalium, quibus maculata anima ex hac vita decesserit, expiationem et remissionem futuram in altera vita. Pendere vero, aiunt, hanc futuram expiationem ab animi dispositione in qua homo obierit; pro iis nimirum qui, non animo obdurato, sed cum aliqua voluntate emendationis, attamen rei mortalis peccati et ante eius remissionem decesserint, locum fore salutari paenitentiae et remissioni peccati in altera vita; atque ita, qui actualiter infecti peccato lethali moriuntur, non omnes in aeternum damnari.

These theologians seem to have had particularly in mind theories like that of Hirscher[3] who taught that those who died in mortal sin could do salutary penance in the next life if they retained some desire of amendment and hence did not die with hearts completely obdurate in sin.

Our correspondent has kindly directed our attention to a recent work[4] in which what appears to be a modified version

[1] Cf. St. Thomas, *S. T., Suppl.*, q. 99, aa. 2, 3, 4.
[2] Cf. Friedrich, *Documenta ad illustrandum Concilium Vaticanum*, ii, p. 21.
[3] *Die Christliche Moral* (1838), iii, §§ 691–2.
[4] *Theologumena II: De Ratione Peccati Poenam Aeternam Inducentis* (1947), by Father John B. Manyá.

of the theory of Hirscher is propounded. In order to demonstrate the reasonableness of eternal punishment for sin, the author of this recent work examines closely the nature of the sins so punished or rather he analyses the mentality of the sinner who is eternally damned. In this analysis the author claims that he is following basic principles laid down by St. Thomas. Briefly, the relevant points of the author's thesis are the following.[1] Only those sinners are condemned to eternal damnation who have, by a full and free exercise of their will, remained absolutely and finally obdurate in their aversion from God by mortal sin. This full free will act of absolute and final obduracy can be made, and is made, only in the moment after the soul separates from the body. Of course, every mortal sin is objectively a complete turning away from God as our last end. And prior to the separation of soul and body, man, by his mortal sins, does predispose himself to reject God finally—but he does not, at least subjectively, then make the will act of total and final rejection. This act is made only when the soul, freed from the fetters of the body and illumined by a special intuitive knowledge, freely and irrevocably chooses 'God or not God.' And in this final choice depends the fate of the soul for all eternity. If the soul, despite the clear perception of the realities which is given to it, obdurately chooses to remain turned away from God, then eternal punishment is seen to be a reasonable and the only fitting punishment for such a choice. In fairness to the author, it must be pointed out that he does not suggest that it is easy for the sinner to repent and to turn to God in this moment of final illumination and choice or that many sinners will so repent; but he does suggest that this repentance is possible for some sinners.

We think that this recent view is untenable. However we look at it, the view really extends the period of probation, and of possible repentance for some, beyond the limits of the present life. We cannot identify the last moment of this life with the first moment of the next life. There is a succession of states—*status viae, status termini*. As we noted earlier, there must be a point of cleavage at which the *status viae* ends and that point, in the traditional teaching of the Church, is the precise moment at which the soul leaves the body. We cannot accept that any soul which is in mortal sin when it leaves the body can make an act of salutary repentance. The act of will made by a disembodied soul in mortal sin of necessity conforms to and

[1] Cf. review by Father William A. Heusman, S.J., in *Theological Studies*, x (1949), pp. 118–22.

confirms the prior state of aversion from God—whether that act be made immediately after or long after the soul departs from the body. Father Manyá claims that his view is based upon Thomistic principles. But we have not been able to discover anything in the relevant sections of St. Thomas[1] which would lend any support to the view that man's eternal fate can ever depend upon any free and independent act of the soul after it leaves the body. On the contrary. St. Thomas emphasizes, over and over again, that the soul receives its reward or punishment immediately after it leaves the body:

> Statim igitur cum anima separatur a corpore praemium vel poenam recipit pro his quae in corpore gessit.[2]

Indeed, in the teaching of St. Thomas, the disembodied soul is totally incapable of the type of free will act contemplated by Father Manyá. St. Thomas holds that, immediately after its separation from the body, the soul becomes *immobilis*, so that a change of will from good to evil or evil to good is no longer possible:

> Animae statim quum a corpore fuerint separatae, immobiles secundum voluntatem redduntur, ut scilicet ulterius voluntas hominis mutari non possit neque de bono in malum, neque de malo in bonum.[3]

And again:

> Animae quae statim post mortem efficiuntur in poenis miserae, redduntur immobiles secundum voluntatem. . . . Inordinata voluntas numquam ab eis tolletur. . . . Animae (separatae) malorum immobiliter inhaerebunt fini quem sibi elegerunt.[4]

Thus the separated soul, from the instant it leaves the body, is incapable of an independent free will act of choice of 'God or not God'; it must, of necessity, confirm the choice already made before the moment of separation.

[1] Cf. loc cit.
[2] *Summa contra Gentiles*, lib. iv, q. 91.
[3] Ibid., q. 92.
[4] Ibid., q. 93.

SECTION VIII

HOLY ORDERS

THE RECENT APOSTOLIC CONSTITUTION ON SACRED ORDERS

I should be very grateful for a discussion of the following questions which arise out of the recent Apostolic Constitution on Holy Orders :

(i) Is the Constitution an infallible pronouncement ?

(ii) Does the Constitution imply that the *traditio instrumentorum* is not, and never was, part of the substance of the sacrament of Holy Orders ?

(iii) Alternatively, is it implied in the Constitution that the imposition of hands was determined by Christ as the matter of this sacrament ?

(iv) Does the fact that the sacred orders of Diaconate, Priesthood and Episcopate alone are dealt with in the Apostolic Constitution suggest that the Subdiaconate is not part of the sacrament of Orders ?

DOGMATICUS.

We feel that a really adequate answer to the foregoing questions would demand, as a background, some general discussion of the theology of the sacrament of Holy Orders. But for considerations of space, among other reasons, we must confine ourselves to the specific points raised as arising out of the recent Apostolic Constitution. This Constitution, entitled *Sacramentum Ordinis*, was published on 30 November, 1947.[1] We may say, in passing, that this Apostolic Constitution is a most welcome document, giving, as it does, a definitive decision on the much-controverted and vitally important question of the essential matter and form of the sacrament of Orders as contained in the Diaconate, Presbyterate and Episcopate.

(i) Does this Apostolic Constitution contain an infallible pronouncement ? Perhaps, before answering this question, we should point out that the provisions of the Constitution are of a disciplinary as well as of a doctrinal nature. We are accustomed to associate infallibility with a purely doctrinal definition. In this Apostolic Constitution the Holy Father has decided that the imposition of hands is the one only matter in each of the sacred orders of Diaconate, Presbyterate and Episcopate, and that the form of these orders is the words determining the

[1] *A.A.S.*, xl. (1948), pp. 5–7.

application of this matter. Later in the document the Holy Father specifies precisely, in regard to each of the individual sacred orders in question, what imposition of hands and what form are meant. He even marks out in the Preface—which constitutes the form—the exact words which are essential to validity. In giving these decisions, the Pope invokes the fullness of his apostolic Authority :

> Quae cum ita sint, divino lumine invocato, suprema Nostra Apostolica Auctoritate et certa scientia declaramus et, quatenus opus est, decernimus et disponimus : Sacrorum Ordinum Diaconatus, Presbyteratus et Episcopatus materiam eamque unam esse manuum impositionem, formam vero itemque unam esse verba applicationem huius materiae determinantia.[1] . . .

He is dealing with a question which is intimately associated with Christian faith and morals. The guardianship of the sacraments is one of the most sacred trusts committed by Christ to His Church. The validity of these sacraments is a matter of paramount importance in the life and discipline of the faithful.[2] The decision is binding on all :

> Nulli igitur homini liceat hanc Constitutionem a Nobis latam infringere vel eidem temerario ausu contraire.[3]

It seems, then, that the decisions of the Constitution fulfil all the conditions for an infallible pronouncement :

> Romanus Pontifex . . . omnium christianorum pastoris et doctoris munere fungens, pro suprema sua Apostolica auctoritate doctrinam de fide vel moribus ab universa ecclesia tenendam definit.[4]

Yet, by reason of the partially disciplinary nature of the decisions, we cannot predicate infallibility of them precisely as we should of a purely doctrinal definition. When we say that the decisions of the Apostolic Constitution are infallible, we mean that there is, through divine guidance, no possibility of error in the Pope's judgment that the matter and form, as described by him, suffice for the valid sacrament of Holy Orders. This papal judgment is not something merely theoretic. It concerns, more nearly, a definite concrete practical fact. This fact is that, here and now and henceforth (unless and until some future Supreme Ecclesiastical Authority legitimately decides to add to these requirements of matter and form), imposition of hands, with the appropriate determining words, suffice, beyond yea or nay, for the valid sacrament of Holy Orders and that, therefore,

[1] *Constit. Apostolica, Sac. Ordinis*, n. 4.

[2] Cf. Hürth, 'Commentarius in *Const. Apost.*,' *Periodica*, xxxvii (1948), p. 20. 'In re vero tanti momenti, cui importantissimae adnexae sunt sequelae, bonum Ecclesiae exigit, ut Summus Pontifex Suprema sua Auctoritate incertitudinem et dubia auferat.'

[3] *Constit. Apostolica, Sac. Ordinis*, n. 6. [4] *Conc. Trid., Constit. de Ecclesia*, c. 4.

the *traditio instrumentorum* is no longer required for validity.[1] What we have just written will serve to indicate the difference between the papal pronouncement in the Constitution and an infallible definition on a purely doctrinal matter. In the latter there will be finality, immutability, independence of any time factor. In the Papal Constitution on Holy Orders—which is mainly a decision regarding present and future factual requirements—these qualities are not found. Thus, the Holy Father gave no decision in regard to the requirements in the past for valid ordination in the Latin rite. His pronouncement has no retroactive force. The Church may, in the past, have legitimately demanded the *traditio instrumentorum* as part of the essential rite. Conceivably, though it is hardly likely, at some time in the future, the Supreme Ecclesiastical Authority may demand, as essential, something in addition to the present requirements. For if this could be, and was, done in the past, there is no absolute reason why it might not be done again. To quote the words of the Constitution :

> Quod si ex Ecclesiae voluntate et praescripto eadem [traditio instrumentorum] aliquando fuerit necessaria ad valorem quoque, omnes norunt Ecclesiam quod statuit etiam mutare et abrogare valere.

To answer directly, then, our correspondent's first question we should say that the Constitution contains an infallible pronouncement regarding the present requirements of matter and form for valid ordination to the Diaconate, Presbyterate and Episcopate. This is indicated by the solemn language of the pronouncement, by the matter in issue and by the manner of the obligation of acceptance imposed.

(ii) It is clear from the teaching of the Council of Trent that the Church has no authority to interfere with the substance of the sacraments :

> Praeterea declarat, hanc potestatem perpetuo in Ecclesia fuisse, ut in Sacramentorum dispensatione, *salva illorum substantia*, ea statueret vel mutaret quae suscipientium utilitati . . . magis expedire iudicaret.[2]

The *traditio instrumentorum* is no longer—whatever about the situation in the past—required for validity in the Sacred Orders of Diaconate, Presbyterate and Episcopate. In other words, the *traditio instrumentorum* is treated as an element of the sacramental rite which comes within the power of the Church to change. From this fact alone we could conclude that the

[1] 'Statuimus instrumentorum traditionem saltem in posterum non esse necessariam ad Sacrorum Diaconatus, Presbyteratus et Episcopatus Ordinum validitatem.'—*Constit. Apost.*, n. 4.
[2] *Conc. Trid.*, Sess. xxi, c. 2.

traditio instrumentorum does not pertain to the substance of the sacrament of Holy Orders—at least in the sense in which that term *substantia sacramentorum* was understood by Trent. But this term has been used in more than one sense. And we venture to state that this absence of an univocal use of the term has been responsible, to no small degree, for much of the confusion in the theology of the sacrament of Holy Orders. If the term *substantia sacramentorum* be taken to mean the matter and form required for the validity of the sacraments, and if in the past—as the Decree to the Armenians seems to imply[1]—the *traditio instrumentorum* was, in the Latin rite, at least part of the valid matter of Sacred Orders, then, indeed, the recent Apostolic Constitution would imply a new interference with the substance of this sacrament. Fortunately, however, we have, in the Constitution itself, a definition or description of what is meant by the Tridentine term *substantia sacramentorum* :

> id est ea quae, testibus divinae revelationis fontibus, ipse Christus Dominus in signo sacramentali servanda statuit[2]

Anything, accordingly, which can be shown from revelation to have been prescribed by Christ cannot be altered. The Church has claimed power to make a change regarding the *traditio instrumentorum*. We may conclude, therefore, that this *traditio* is not part of the sacramental sign as determined by Christ, that it does not, and never did, pertain to the 'substance' of the sacrament of Holy Orders. This conclusion is implied in the whole tenor of the Constitution and is, moreover, explicitly stated :[3]

> Quibus colligitur, etiam secundum mentem ipsius Concilii Florentini, traditionem instrumentorum non ex ipsius Domini Nostri Iesu Christi voluntate ad substantiam et ad validitatem huius Sacramenti requiri.

There is another closely allied question which may well occur to the reader at this point. The question is : does the Apostolic Constitution favour the view that the Church could, and in fact did, change the matter and form of the sacrament of Holy Orders ? As we have noted, it is stated clearly in the Papal document that, if the *traditio instrumentorum* and the accompanying form were ever required for validity, this provision was a matter of ecclesiastical law. The Holy Father does not make any direct statement on the power of the Church to change the matter and form of Holy Orders. He speaks only hypothetically. If, at any time in the past, the Church did require the *traditio instrumentorum* for validity, that change

[1] Cf. Denz., n. 701. [2] n. 1. [3] n. 3.

is now unmade. For what the Church has made by her laws, she can likewise unmake. The Pope set down the hypothetical statement at three distinct points,[1] in order that all doubt regarding the present position should be removed. Into these hypothetical statements we can, however, fairly read a strong concession to the views of those who hold that the Church could, and did change, the matter and form of Holy Orders. There is a particularly significant phrase used regarding the form :

> Suprema Nostra Apostolica Auctoritate declaramus et quatenus opus est, decernimus et disponimus Sacrorum Ordinum Diaconatus, Presbyteratus et Episcopatus . . . formam vero itemque unam esse verba applicationem materiae determinantia quibus univoce significantur effectus sacramentales . . . quaeque ab Ecclesia qua talia accipiuntur et usurpantur.[2]

(iii) The Apostolic Constitution does not contain a decision that the imposition of hands pertains to the substance of the sacrament of Holy Orders—that is, of course, understanding the term *substantia sacramentorum* in the sense in which it is defined in the Constitution. This is only another way of saying that the Holy Father has not given a decision that the imposition of hands was appointed by Christ as the matter of this sacrament. It is, however, stated in the Papal document that the imposition of hands was the ancient and universally recognized manner of efficaciously signifying the sacramental effects of Holy Orders :

> Iam vero effectus, qui Sacra Diaconatus, Presbyteratus et Episcopatus Ordinatione produci ideoque significari debent, potestas scilicet et gratia, in omnibus Ecclesiae universalis diversorum temporum et regionum ritibus sufficienter significati inveniuntur manuum impositione et verbis eam determinantibus.[3]

But, we repeat, the Holy Father does not affirm, or deny, that the imposition of hands was appointed by Christ. To pronounce on this theoretical and historical question would be beside the practical purpose of the Apostolic Constitution.

(iv) The text of the Apostolic Constitution is headed *De Sacris Ordinibus Diaconatus, Presbyteratus et Episcopatus*. But in canon law Subdiaconate is also listed among the Sacred Orders.[4] The heading of the Constitution cannot, therefore, be interpreted as a taxative enumeration of the Sacred Orders. The heading simply indicates that the document purports to deal with the three Sacred Orders expressly mentioned. The Constitution does not refer at all, either directly or by implication, to the Sacred Order of Subdiaconate. It would be entirely erroneous, then, to attempt to read into the document any decision on the sacramental nature of this Order. There has been a long-standing controversy on this question.[1] The advocates of the different views will not find, and cannot expect to find, any support in the Apostolic Constitution.

[1] 'Quod si ex Ecclesiae voluntate et praescripto eadem (traditio) fuerit necessaria ad valorem . . .,' n. 3; 'Declaramus, et quatenus opus est, decernimus et disponimus,' n. 4; 'Declaramus, et, si unquam aliter legitime dispositum fuerit, statuimus instrumentorum traditionem saltem in posterum non esse necessariam,' n. 4.

[2] *Constit. Apost.*, n. 4. [3] ibid., n. 3. [4] Canon 949.

[1] Cf. Cappello, *De Sacra Ordinatione*, nn. 91, et seq.

SECTION IX

MATRIMONY

THE MEANING OF MARRIAGE—A RECENT THEORY

Some time ago I came across a book entitled *The Meaning of Marriage* by Dr. Doms. While I was mightily impressed by the thesis expounded by the author, and, for the most part, by his reasoning, I experienced a whole host of difficulties. My difficulties cannot easily be summarized. Could you kindly give a critical evaluation of the work in question? If that is asking too much, as an alternative would you briefly consider the following point?

It is to me a virtually unimportant consideration that the theory of marriage propounded by Doms is openly opposed to the teaching of St. Thomas. But it is a vital consideration and a source of serious difficulty that it seems so hard to reconcile the theory with Canon 1013 of the new Code. I had thought that the Encyclical *Casti Connubii* followed closely the lines of Canon 1013. And yet I find that Doms claims the support of that same Encyclical—which, in turn, in the relevant passage, quotes the Roman Catechism. Doms also independently invokes the teaching of the Roman Catechism as he does that of a number of authoritative writers.

I have, perhaps, stated my difficulty rather oddly. I will be grateful for any light you can throw upon the matter.

SACERDOS.

We have read the work to which our correspondent refers. The original appeared in German in 1935 under the title *Vom Sinn und Zweck der Ehe*. A French translation appeared some time later. The English version, that referred to by 'Sacerdos,' entitled *The Meaning of Marriage*, was published in 1939.[1] From this version an entire chapter on the teaching of St. Thomas has been omitted. The views propounded by the author have given rise to much discussion.[2] They have appealed to, and have been warmly received by some, but have been severely criticized and rejected by many. We are asked to give a critical evaluation of the work. We feel we could not do justice to the theory or to the argumentation of Dr. Doms in the space available here. Our correspondent is not unaware of this difficulty and proposes an alternative query. But, if he will forgive our saying so, it is not much of an alternative, since the particular difficulty which he raises goes so nearly to the root of Dr. Doms's theory that any adequate treatment of it would demand an almost complete critical evaluation of the work. We have the impression, rightly or wrongly, that 'Sacerdos' was conscious of this and that he has been mildly disingenuous in presenting us with, what is in fact, a kind of Hobson's choice!

[1] London: Sheed and Ward.
[2] Cf. *Revue Apologétique*, lxvii, p. 193, et seq.

Dr. Doms's work is not, nor does it claim to be, an exhaustive treatment of the theology of Christian marriage. It is principally a discussion of one particular aspect, namely, the meaning of marriage and of the marriage act in relation to the 'ends' of marriage. As the German title suggests, the author distinguishes between the meaning or essence (*Sinn*) of marriage and its purpose (*Zweck*). Existence is prior to purpose. A thing is something before it exists for something. And this existence has a meaning independent of purpose. There is, therefore, a meaning immanent in marriage itself. This meaning is 'that fulfilment of love in the community of life of two persons who make one person' (*Zweieinigkeit*). 'The marriage act represents the two-in-oneship of marriage not because of the symbolical value given it by human convention, but because of an essential content given it by God. We no longer have to make the choice between the two purposes of sexual activity—*either* procreation of children *or* the subjective fulfilment of husband and wife. Rather can we say: The marriage act has one immediate purpose, and that is the realization through fusion of bodies of the real two-in-oneship of husband and wife. . . . In nature it is orientated round two *ulterior* purposes, one personal, the other biological. The *personal* one is the fulfilment of husband and wife as persons, a fulfilment which takes place on every level of their being. The final *biological* purpose is procreation.'[1] It had been noted earlier[2] that the advent of a new human being, which is the chief biological result of the successful sexual act, depends upon a number of factors over which man has no positive control or influence. Thus, according to Dr. Doms, we must firstly and distinctly consider the inner meaning of marriage, which includes the sexual act, although it has no conscious interest in procreation. That act has one immediate purpose—the realization of the meaning of the essence of marriage, the achievement of the real two-in-oneship. The act has two ulterior purposes. Marriage fulfils all these purposes

[1] pp. 85–6. [2] p. 71.

by the realization of its meaning.[1] If it be maintained that procreation is the immediate purpose or meaning of marriage, then no satisfactory explanation can be given of certain unions which are rightly regarded as valid and sacramental marriages. They must have a meaning which is not procreational. The only possible meaning is the two-in-oneship of the husband and wife. 'To sum up: the immediate purpose of marriage is the realization of its meaning, the marital two-in-oneship. In the process of this realization a community of fundamental importance for human society is formed. This intimate community is marriage. As a result of marriage, two human beings come to live a life single in everything from religious community to sexual. But the presence of sexual community is what expressly constitutes marital community, for every other community can be realized outside marriage. By marriage, we mean the enduring love-relationship of two grown-up persons of different sex, who come together to form one indivisible and indissoluble community of life in which they can fulfil and help each other. The supreme point of intimacy in this community occurs when they become one in the marriage act. The two-in-oneship of husband and wife is a living reality, and the immediate object of the marriage ceremony and their legal union.'[2]

Dr. Doms contends that if all the foregoing be true—and, in his view, it is all obviously true—then there can no longer be sufficient reason for speaking of procreation as the primary purpose of marriage—in the sense in which St. Thomas used the phrase—and for regarding all other purposes as secondary. 'Perhaps it would be best if in future we gave up using such terms as "primary" and "secondary" in speaking of the purposes of marriage. It would be better if we just spoke of the procreative and personal purposes immanent in marriage and distinguished them from its *meaning*.'[3]

But, as our correspondent remarks, that contention seems, at least at first sight, to be in conflict with the teaching of canon law, in which *procreatio prolis* is described as the primary purpose or end of marriage:

> Matrimonii finis primarius est procreatio atque educatio prolis; secundarius mutuum adiutorium et remedium concupiscentiae.[4]

We might add that the vast majority of theologians for centuries have used the terminology 'canonized' in the law, and that similar language is to be found in the Encyclical *Casti Connubii*.[5]

[1] p. 87.
[2] p. 94.
[3] p. 88.
[4] Canon 1013.
[5] Cf. English translation (C.T.S.), pp. 26, 28.

It is perfectly obvious that Dr. Doms does not accept the terminological usage of St. Thomas—this, however, is for our correspondent an unimportant consideration. It is equally obvious that the use of *terminology* suggested by Dr. Doms is in disharmony with that accepted by writers generally, including Pope Pius XI and, in particular, with that of canon law, and for that reason we regard it as unacceptable. It is, moreover, a matter for regret that Dr. Doms set himself up against, and suggested a break away from, the time-honoured and accepted usage of terms. This attitude has served his theory badly. It has led to severe and to some unsympathetic criticism. Even apart from any inherent suitability (which may nearly always, in the case of widely accepted terms, be presumed to exist), theologians rightly are slow to break away from, are resentful of an attempt to reject, the recognized use of terminology. For one thing they know such an attempt will, almost inevitably, lead to confusion. There is evidence of this confusion in Dr. Doms's work. The author rejects the old usage of terms, but he does not in any sense wish to reject the doctrine implied in the canon law. He writes:[1] 'Canon 1013, which marks the procreation and upbringing of children as the principal purpose of marriage, remains for all that, in its full power.' Earlier he had written:[2] 'On the biological plane procreation is the purpose of marriage just as the apple is the purpose of the apple-tree's blossoming. But it would be ridiculous to say that the only purpose of the beauty of the blossom is to form the fruit.' It may be said, then, that the difficulty which arises from a consideration of Dr. Doms's teaching in relation to canon 1013 (and in relation to the Encyclical which, in the passages referred to earlier, follows the usage of that canon) is firstly one of terminology. It does not follow from the fact that procreation is commonly called the primary purpose of marriage that what Dr. Doms calls the meaning as well as the other purposes are not regarded as important and as essential, and may not receive their due place. But we do not suggest that the only difficulties to be found in Dr. Doms's work are those which arise from his usage of terms. For instance, when he writes[3] that 'the two-in-one-ship of husband and wife is the immediate object of the marriage ceremony and their legal union,' we wonder if he accounts sufficiently for the implications of canon 1081, which states that marriage is constituted by the consent of the parties.

[1] p. 89.
[2] p. 86.
[3] p. 95.

The canon then defines matrimonial consent as :

actus voluntatis quo utraque pars tradit et acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad prolis generationem.

And canon 1082, dealing with the knowledge required in the contracting parties for valid consent, says :

necesse est ut contrahentes saltem non ignorent matrimonium esse societatem permanentem inter virum et mulierem ad filios procreandos.

In reply to Dr. Doms's comparison of the procreational purpose of marriage to the purpose of the apple blossom, it may be pointed out, as one of many answers, that no theologian suggests that marriage and the marriage act have not a meaning and purpose other than the merely procreational.

Our correspondent does not raise these points. But he is puzzled by the fact that Dr. Doms maintains that his view is supported by the Encyclical. As we have indicated more than once already, the terminological usage of canon 1013 is accepted in *Casti Connubii*. Yet Dr. Doms quotes from it a passage which, he claims, favours the view he has put forward, even favours his use of terminology. The passage invoked is the following. 'This mutual inward moulding of husband and wife, this determined effort to perfect each other can, in a very real sense, as the Roman Catechism teaches, be said to be the chief reason and purpose of matrimony, provided matrimony be looked at not in the restricted sense as instituted for the procreation and rearing of children, but more widely as a companionship embracing the whole of life, so that life is no longer an individual venture, but a partnership.' These words do, indeed, favour the view advanced by Dr. Doms to the extent at least that they stress the importance of what he calls the meaning of marriage. But they do not demand or imply the necessity or advantage of a break away from the received usage of terms which has been in vogue for centuries and is accepted elsewhere in the Encyclical. A similar comment might be made on the section of the Roman Catechism referred to in the Encyclical[1] as well as on the other sections quoted independently by Dr. Doms.

Finally, it seems to us that the other authorities cited by Dr. Doms do no more than emphasize very particularly the personal aspect of community of life between husband and wife in marriage (an aspect which has never been completely ignored in Catholic theology). There is nothing in their writings, as we know them, which could be construed as a definite rejection

[1] II, c. viii, q. 24.

of the old usage of terms or, needless to say, as a rejection of the accepted teaching. Dr. Doms admits all this when he writes :[1] 'Spiritual community of husband and wife has always lived in the minds of Catholic theologians alongside procreation—the so-called first purpose. In modern times it has been more and more heavily emphasized.' There is no denying that this shifting of the emphasis is an important development. Dealing with the ideas propounded by Dr. Doms, a reviewer in the *Osservatore Romano* has written :[2] 'The future will decide whether these new ideas will withstand the criticisms which they will assuredly arouse, but it is unquestionable that they appear of their nature to solve many problems and to throw light effectively on many delicate and controverted points.'

We might sum up fairly by saying that many writers may have laid undue stress on the procreational aspect and purpose of marriage—almost implying that it had no other essential purpose. As part of a reaction against that attitude, Dr. Doms lays all the emphasis on the 'meaning' of marriage. In order to do so, he thinks that it is necessary to depart from the accepted meaning of the terms of reference and to relegate the procreational purpose of marriage somewhat to the background. Perhaps the most satisfactory and most acceptable teaching on marriage lies somewhere between these two views. It consists in emphasizing, on the one hand, the personal element, the community of life of the partners, the *Zweieinigkeit*, while, on the other hand, maintaining in accordance with the accepted doctrine and usage that the *procreatio prolis* is, in the fullest sense, the *finis primarius* of marriage.

Since the above reply was written, the Holy Office has issued a Decree[3] on the ends of marriage in which a negative answer was given to the question : 'Whether the opinion of certain modern authors can be accepted who either deny that the primary end of marriage is the procreation and education of children or who teach that the secondary ends are not essentially subordinate to the primary end, but are equally principal and independent.' In his Allocution[4] to the Italian Catholic Midwives, Pope Pius XII referred to the extensive current literature which exalts the personal values of marriage and relegates to a secondary place the procreation and education of children. This, the Holy Father pointed out, is a serious

[1] Introd., p. xviii.
[2] Cf. Pref., p. vii.
[3] *A.A.S.*, xxxvi (1944), p. 103, 1 April, 1944.
[4] *A.A.S.*, xxxxiii (1951), p. 835, et seq., 29 October, 1951.

inversion of the order of ends established by the Creator Himself. Marriage is a natural institution and has as its primary purpose, not the personal perfection of the parties, but the procreation and education of offspring. But this does not mean that we must deny or depreciate what is good and lawful in the personal values resulting from marriage and its use. But they must not be separated from the primary function of marriage which is the procreation of new life.

THE MEANING OF *MATRIMONIUM PUTATIVUM*

The Code Commission declared in 1949 that the word 'celebratum' in canon 1015, § 4, means marriage celebrated *coram Ecclesia*. Even before the decision this interpretation was given by Noldin (*De Sac.*, n. 513). But he adds the words 'etsi haeretica vel schismatica' and so appears to exclude from the benefits of a putative marriage those who contract an invalid marriage before the civil registrar although they are not bound by the canonical form of the Church. Must it be held that such an invalid marriage cannot be regarded as putative and must the children be regarded as not benefiting by the rule of legitimacy? The question is sometimes of practical importance and your opinion on it would be appreciated by

M. D. L.

As our correspondent mentions, the Code Commission, on 26 January, 1949, replied *Affirmative* to the question :

An sub verbo 'celebratum,' canon 1015, § 4, intelligi debeat dumtaxat matrimonium coram Ecclesia celebratum.[1]

This last phrase 'matrimonium coram Ecclesia celebratum' is generally taken to mean a marriage contracted in accordance with the canonical form prescribed by the Church—that is, normally, the marriage consent is exchanged in the presence of a duly authorized priest and at least two witnesses, as is laid down in canon 1094. Special provision is made in canon 1098 for exceptional circumstances in which marriage can validly be contracted in the presence of witnesses alone. Needless to say, a marriage contracted under the provisions of canon 1098 is a 'matrimonium coram Ecclesia celebratum.'

Prior to the authentic interpretation of canon 1015, § 4, the commentators on the Code were divided[2] on the question whether it was necessary, in order that a marriage merit the

[1] *A.A.S.*, xxxxi (1919), p. 158.
[2] Cf. Payen, *De Mat.*, i, n. 135.

description *matrimonium putativum*, that the form of celebration prescribed by the Church should have been observed. This requirement is not mentioned in the text of the law which refers only to the continuing good faith of at least one of the parties. Yet, despite this silence of the text, many commentators took the view, now confirmed by the Code Commission, that celebration according to the form prescribed by the Church was a necessary element of a putative marriage. One of the principal arguments advanced in favour of this view was the pre-Code teaching which, it was maintained, should be retained in accordance with canon 6, 4°. According to this teaching a putative marriage was one which had the external appearances of a valid contract, but which, in fact, was vitiated by some invalidating flaw unknown, as such, to at least one of the parties. In other words, in pre-Code law, a marriage could be described as putative only if it had the 'species seu figura matrimonii'—and to have this the external observance of a prescribed form of celebration was necessary :

In genere dici potest speciem seu figuram matrimonii consistere in expressione consensus in forma substantiali ; nam forma substantialis dat speciem, aut si mavis, species et forma idem est. Atqui forma substantialis ubi viget Decretum *Tametsi* . . . est forma Tridentina ; ubi non viget, est talis expressio quae iure naturae sufficiat.[1]

The reply of the Code Commission refers expressly to marriages celebrated 'coram Ecclesia.' As was noted earlier, in the commonly given interpretation of this phrase it would refer to marriages contracted in accordance with the canonical form of celebration and would not cover marriages contracted otherwise even though the parties were not bound to observe the canonical form. Yet, again following the pre-Code teaching, we think that the invalid marriages of those not bound to observe the canonical form can certainly be described as putative marriages[2] and do enjoy the privileges of such marriages—provided they have the 'species seu figura matrimonii,' that is provided the consent is expressed in some legitimate or recognized form and, of course, provided at least one of the parties thinks the marriage is valid :

Pro eis matrimonium habebit speciem seu figuram matrimonii, si consensus matrimonialis ita expressus fuit ut iure naturae vel civili satis sit, licet ob aliquod dirimens impedimentum sit invalidum.[3]

It seems, then, that the phrase 'matrimonium coram Ecclesia

[1] Gasparri, *Tractatus Canonicus De Matrimonio* (pre-Code edition), n. 240.
[2] Cf. Vlaming, *Praelectiones Iuris Matrimonii*, i, n. 56.
[3] Gasparri, op. cit. (ed. 1932), n. 47.

celebratum' must have a wider meaning than that which is commonly given to it. The phrase may be taken to mean not merely a marriage contracted in accordance with the canonical form of celebration in the case of those who are bound to observe this form, but also a marriage celebrated in any form which the Church regards as sufficient for those who are not bound by the canonical form. We can see no good reason in the context for Noldin's bracketed addition 'etsi haeretica vel schismatica.' At best the addition is incomplete and, therefore, confusing. Cappello is somewhat more satisfying. He writes :[1]

Matrimonium quod acatholici baptizati seu Ecclesiae subditi ineunt inter se nulla servata forma ad normam canon 1099, § 2, aut coram ministro acatholico potest esse putativum sensu canonico ideoque applicandum praescriptum canon 1114. Hoc praescriptum applicatur quoque matrimonio inito in infidelitate si utraque vel alterutra pars baptizetur.

THE DUTY OF REVEALING OCCULT DEFECTS TO PROSPECTIVE MARRIAGE PARTNER

A discussion has arisen about the duty of a person contemplating marriage to reveal certain defects. The actual case concerned a woman who had spent a time in a mental hospital and whose mother was likewise a patient in such an institution for years before her death. One priest told the woman that she was bound in justice to reveal this to her prospective husband. Another priest said that there was no such duty, while an older man, with great experience, said that he would urge people to notify strangers who contemplate marriage that insanity was prevalent in the family of the prospective partner. Your view on this problem would be appreciated.

C. C.

Before attempting to solve the particular case submitted by our correspondent, it will be well to recall the general principles set down by the moralists regarding the obligation of prospective marriage partners to reveal occult defects to each other before the marriage. There is a grave obligation in justice to reveal occult defects which invalidate the marriage contract or which would cause serious injury to the other party.

Ex iustitia patefaciendi sunt defectus illi qui matrimonium vel irritum vel graviter noxium reddant.[2]

[1] *De Sac.*, v, n. 746.
[2] Payen, *De Mat.*, i, n. 327 ; cf. Cappello, *De Sac.*, v, n. 131.

There is no excusation from the obligation of revealing such defects. Of course the party who suffers from them may simply renounce the particular marriage arrangement. It may, however, sometimes be difficult in practice to decide whether a particular defect will cause serious injury. There is a grave obligation in charity to reveal occult defects which would make marriage very seriously difficult or continuously unhappy. In applying this principle, account must be taken of the likelihood of the defects becoming known to the other party subsequently to the marriage. It is accepted teaching that there is no grave obligation to reveal even serious occult defects which, if they became known, would make the marriage very unhappy or difficult, but which, in fact, will never come to the knowledge of the other party :

Ex caritate declarandi sunt illi defectus qui, post nuptias ab altera parte reperientur et graves discordias, imo forte infelicem matrimonii exitum secum ferent.[1]

There is no obligation to reveal minor occult defects or more serious ones which would make the marriage less desirable[2] or even defects which, if known, would deter the other party from the marriage—provided these latter defects are not likely to give rise to serious difficulty or continual unhappiness.

It is difficult, on the evidence available, to attempt a final decision on the case before us. We have no detailed evidence of the nature of the mental illness from which the woman suffered or of the duration of this illness or of the prognosis. Assuming that the illness was of a grave nature and may possibly recur, the woman is gravely bound to reveal the defect to the man. And in this assumption the obligation is in justice. On the other hand if the woman is now, and has been for a considerable number of years, in good mental health and if the medical prognosis is satisfactory, she is not bound in justice to reveal the defect. But if it is likely that the husband will in the future discover the defect, she is bound, and we would say gravely bound, in charity to reveal it before the marriage. In regard to the obligation of outsiders to reveal the defect to a stranger suitor, we should point out that there is question here of a natural secret. While it is lawful to reveal a natural secret if, and to the extent, that this is necessary to prevent injury to an innocent third party, rarely enough will this condition be verified. If the condition be certainly verified, there would be an obligation in charity to make the revelation—but obligations

[1] Payen, loc. cit.
[2] Cf. Cappello, loc. cit.

in charity do not urge when they involve disproportionately serious inconvenience.

As a practical conclusion, we would suggest that the woman mentioned in the query be seriously exhorted to make her suitor aware of the facts, as it is very likely that he will come to know of them in the future and that he will then be seriously disturbed by the pre-nuptial deceit of his wife. The consequences for both parties may easily be serious distrust and unhappiness.

MARRIAGE UNDER BIRTH-CONTROL CONDITIONS

A discussion arose between some fellow-curates and myself regarding a theological question and we have agreed to submit it to your arbitration.

My affirmation was that 'a marriage entered into under birth-control conditions is not *sub hac ratione* invalid.' Unlike philosophers, we did not at first make the distinction between marriages entered into under absolute (excluding all natural intercourse) birth-control conditions, and those entered into under relative (excluding natural intercourse for a certain time) birth-control conditions. But I was ready to maintain that even the first category of marriages were not necessarily invalid. My argument proceeded along the following lines :

There is an adequate distinction between the possession of a right and the use of that right.

The essential object of the marriage contract is not the procreation of children, but the *right* to the procreation of children : it is the *ius in corpus in ordine ad actus per se aptos ad prolis generationem* (canon 1081). Now, a married couple could agree to the transmission of the rights of marriage—each one could give to the other the *ius in corpus* which is the essential object of the marriage contract—and yet forbid the use of that right ; the contract would consequently be unlawful but not necessarily invalid. I supported this argument by a quotation from the *A.A.S.*, vi. 520. 'Nam ambo hi voluntatis actus in suo esse simul permanere possunt : uno sc. actu voluntatis intenditur contractus ipse matrimonialis, altero, excluditur bonum aliquod (fidei vel prolis) quod ab ipso contractu dimanere deberet.'

For marriages contracted under relative birth-control conditions, this seemed conclusive : they could be valid.

As for marriages contracted under absolute birth-control conditions : I cannot find any philosophical reason to prove that the possession of a right is incompatible with the perpetual exclusion of the use of that same right. On the contrary, in the marriage of the Blessed Virgin Mary and St. Joseph we find proof that those two things are perfectly compatible.

However, I find a note in *Le Mariage* (Martin, ed. ii, p. 12, n. 14) :

Exclure à jamais le faculté d'user d'une chose semble contradictoire avec l'intention de transmettre un droit sur cette chose, puisque le droit est une faculté d'usage. Voir les arguments pour et contre en Cappello (n. 635-6).' I was unable to consult Cappello, but the very fact that this author put the question in doubt was enough to enable me to prove my case, because canon 1014 says : 'Matrimonium gaudet favore iuris, quare in dubio standum est pro valore matrimonii.' In virtue of this statement the marriage must be regarded as valid.

Another curate, however, maintained the truth of the following statement : 'The condition of birth-control as a *conditio sine qua non* of entering into the marriage contract certainly and absolutely nullifies the contract.'

J. M.

The marriage contract is based upon the legitimately manifested mutual consent of a legally qualified man and woman. This consent is an act of will whereby each of the parties to the marriage gives to the other and accepts from the other a perpetual and exclusive right over the body for the purpose of acts which are naturally calculated to generate offspring.[1] It is presumed in law that true internal consent is present when the parties externally, by word or sign, express their agreement to the marriage contract.[2] If, however, one or both of the parties, by a positive act of will, exclude the marriage contract itself, or all right to the conjugal act or some essential property of marriage, true matrimonial consent is not present and the contract is invalid.[3] Moreover, it may happen that consent is given conditionally : if the condition concerns the future and is contrary to the substance of marriage, the contract is similarly invalidated.[4]

The issue between 'J. M.' and his *confrères* is whether birth-control conditions are contrary to the substance of marriage and whether, consequently, they invalidate the marriage contract into which they are inserted. 'J. M.' has rightly made a distinction between the transference of the right and the use of the right.[5] The principle may be laid down that when the parties to a marriage mutually give and accept—in accordance with law—the right to natural conjugal intercourse, there is valid matrimonial consent. This remains true, even though side by side with this mutual transference and acceptance of the right, there is a concomitant intention—or condition—not to use or to abuse the marriage act. If, on the other hand,

[1] Canon 1081, § 2.
[2] Canon 1086, § 1.
[3] Ibid., § 2.
[4] Canon 1092 § 2.
[5] Cf. De Smet, *De Sponsalibus et Matrimonio*, nn. 155–6.

this right to natural intercourse is not transferred, the contract is invalid. Thus, for instance, if the condition implies that the right to onanistic intercourse alone is given, the marriage is null. A mutual pact to this effect is not at all necessary in order that the contract be invalidated. If one or other of the parties by a (positive) internal act of will intend to transfer only the right to onanistic intercourse, valid matrimonial consent is thereby (by the internal intention alone), excluded. At the same time the presence of a mutual pact or the express proposal of abuse as a *conditio sine qua non* are important factors as a proof in the external forum and further give rise to certain presumptions of law to be mentioned later.

It follows from what has been said that a general reply cannot be given to the question whether a marriage entered upon under birth-control conditions is invalid. Such a marriage, we think, is not *necessarily* invalid—as our correspondent states. Birth-control conditions *may* not imply the exclusion of the *right* to the natural conjugal act and hence are not necessarily contrary to the substance of marriage. If, the evil condition notwithstanding, the parties intend to transfer to each other a perpetual and exclusive right to natural intercourse, the marriage is valid —if they do not, it is invalid. The distinction between absolute and relative birth-control as made by 'J. M.' will not alter the question in this respect. The perpetual and exclusive right to natural conjugal intercourse is transferred—or it is not. If the intention of one or of both of the parties is to exclude its transference either for a time, or after a certain time, or perpetually, the contract is invalid because there is an intention or condition contrary to the substance of marriage. It is clear, therefore, that we must examine each case of marriage contracted under birth-control conditions on the individual merits. We must try to discover what precisely the intention of the parties was—for this intention is the deciding factor. There are also certain presumptions to which we may have recourse in accordance with the practice of the Roman Curia.

The Rota has considered many cases of marriages contracted under birth-control conditions. In some cases the contract has been declared null: in regard to others the decision *non constat de nullitate* has been given. In the course of the decisions, various points of law have been stressed. The distinction between the exclusion of the obligation[1] and the exclusion of its

[1] 'Non solum si agatur de intentione, sed etiam si de conditione apposita contra prolem fieri debet eadem distinctio, utrum exclusum fuerit ipsum ius an tantummodo eius exercitium' (*S. Rom. Rot. Dec.*, vol. xxii, p. 178).

fulfilment has been consistently made. It is pointed out that the mere intention not to fulfil properly the marital obligation does not invalidate.[1] The proposal to abuse marriage must then be examined to discover whether the right to natural conjugal intercourse is excluded or only its proper exercise. The general presumption, until the contrary is proved, is that only the proper use is excluded—and that consequently the marriage is, *sub hac ratione*, valid. When, however, there is a mutual agreement to exclude absolutely the proper use of marriage, or when such exclusion is made a *conditio sine qua non* of the contract, the presumption then is that the right itself is excluded and not merely its due exercise—and that, as a consequence, the marriage is invalid.[2] In other words when marriage is contracted under absolute birth-control conditions, the presumption is against the validity of the marriage—not for its validity as 'J. M.' suggests. That is the point made in the quotation from Martin. The phrase *semble contradictoire* suggests that the presumption is against the transmission of the marital right and so against the validity of the marriage. Cappello, in a passage dealing with marriage contracted under the condition that perpetual chastity be observed, uses similar language:[3]

> Excluso ante matrimonium exercitio in perpetuum, ius radicale coeundi *vix aut ne vix quidem* intelligi potest, cum ius sit ipsa potestas utendi aliquando.

The statement of our correspondent's colleague goes too far, we think. It must be modified thus: The condition of birth-control as a *conditio sine qua non* of entering into the marriage contract *may* nullify the contract; if it is a condition of absolute birth-control, there is a strong presumption that it does so. If the condition is one of relative birth-control, the presumption is in favour of the marriage. 'A condition or intention (not to have children), even though it be accepted and reduced to an agreement between the parties, overcomes the presumption in favour of marriage only when it is made absolutely and without limitation of time.'[4]

It may be well to recall the general position here. Theologians are not unanimous on the point at issue. It is usually stated by writers that a condition *contra bonum prolis* may refer to the abuse or to the (chaste) non-use of the marriage right. As Gasparri writes, even when there is question only of a condition

[1] Cf. *S. R. Rotae Dec.*, xix, p. 208.
[2] Cf. *S. R. Rotae Dec.*, xix, p. 161.
[3] *De Sac.*, v, n. 636.
[4] *S. R. Rotae Dec.*, xix, p. 502.

of chaste non-use, if one of the contracting parties intend by this condition to transfer or to accept no marriage right, the contract is null by reason of defective consent. The same author continues :[1] 'If, however, a contracting party intends by the condition (of non-use) to exclude only the use of the matrimonial right, *salvo ipso iure*, a sub-distinction must be made. If the condition is that chastity be observed for a time . . . all admit that the marriage is valid. . . . If, on the contrary, the condition is that chastity be observed *in perpetuum* there is a grave controversy among theologians as to whether, or not, the marriage is valid.' Gasparri insists,[2] of course, that the controversy concerns only the case in which there is a condition in the strict sense—and not merely a simple intention or vow or mode regarding the observance of chastity. Some writers[3] consider that such a strict condition (of perpetual non-use) is against the substance of marriage, which is, thereby, invalidated. Others[4] take the opposite view—of which Benedict XIV says :[5] *multum probabilitatis inesse.*

We have indicated the conclusions which, we think, are to be derived from the principles of law and the presumptions enunciated in many Rotal decisions. It will be clear from what we have written that, in our opinion, there is an adequate distinction between the exclusion of the marriage right and the exclusion (even perpetual) of the use of that right. The distinction, we admit, is a very fine one—but it is possible. And, therefore, a marriage contracted under the strict condition of perpetual abuse or non-use of the matrimonial right, though very probably invalid, cannot be said to be *necessarily* so on this ground.[6]

MARRIAGE CONSENT UNDER BIRTH-CONTROL CONDITIONS

Your reply to a recent question regarding marriage under birth-control conditions has helped to clear up a number of difficulties. There is, however, one point about which I am still confused.

In contrast to the proper use of marriage one can consider two cases : (i) Marriage contracted under the condition of perpetual non-use of the marriage rights. (ii) Marriage contracted under the condition of absolute or perpetual abuse of the marriage rights.

[1] *De Mat.*, ii, n. 1008. [2] Ibid.
[3] Cf. Cappello, loc. cit. [4] Cf. Lehmkuhl, *Th. Mor.*, ii, n. 882.
[5] *De Synodo Dioec.*, l. xiii, c. xxii, n. 12.
[6] Cf. *S. R. Rotae Dec.*, xxi, pp. 12–15, for an excellent exposition of these points.

Regarding the first case, you quote two opinions, both probable : one affirms the validity, the other the invalidity of such a marriage. Your conclusion therefore must be that such a marriage is not necessarily invalid. But in what direction does the *presumption* lean—towards its validity or invalidity ? One is led to conclude from your words 'very probably invalid' that the presumption favours the invalidity. But from the statement 'The general presumption, until the contrary is proved, is that only the proper use is excluded—and that, consequently, the marriage is, *sub hac ratione*, valid' one might conclude the opposite. I would agree entirely with the opinion that the marriage must be presumed valid and canon 1014 would seem to exclude any contrary opinion.

As for the second case—perpetual abuse—you definitely state that though a marriage contracted under such a condition is not necessarily invalid, yet the presumption favours its invalidity ; and several directions of the Rota confirm this conclusion. But why not again invoke canon 1014 and say '*In dubio standum est pro valore matrimonii* ?' In the case you refer to, the Rota's decision was 'non constat de nullitate' : did it also add 'sed praesumendum est de nullitate ?' If it did not, must we ? If so, why ? Is there not an apparent contradiction between canon 1014 and the directions of the Rota ? Were these directions issued before 1918 and consequently abolished by the Code ?

Three cases are considered by the Rota. In the first two cases the existence of a contract, *in no way affecting the essence of the marriage contract*, but only the *fulfilment* of the obligations undertaken in the contract, seems to be the factor determining the validity or invalidity of a marriage. Can any reason be given ? The distinction between *ius* and *exercitium* is surely such as to permit of two contracts—one contract by which the rights of marriage are handed over (the essence of the marriage contract), and a second by which those same rights will not only not be used but will be abused—without the unlawfulness of the second affecting the *validity* of the first ?

J. M.

Canon 1092, § 2, dealing with conditional matrimonial consent, states :

> Conditio, semel apposita et non revocata, si de futuro contra matrimonii substantiam, illud reddit invalidum.

A condition is against the substance of marriage if it excludes the right to the proper marriage act or if it excludes any essential property of marriage.[1] The question with which we are concerned here is : Are birth-control conditions *contra matrimonii substantiam* ? These conditions may be taken as implying either

[1] Cf. canons 1081, § 2 ; 1086, § 2 ; Gasparri, *De Mat.*, n. 892.

the abuse of marriage (e.g. onanism), or the non-use of marriage (chaste abstinence).[1] We shall deal firstly with conditions of abuse. The answer to the question stated is that birth-control conditions (of abuse) are against the substance of marriage, if they imply that the right to natural intercourse is not exchanged, or that a right to onanistic relations alone is given. Unless the right to the natural marital act is exchanged, there is no marriage. If, however—and this is possible—the birth-control conditions merely imply the evil intention on the part of one or both of the parties to abuse the marriage right—which *is* transferred—they are not against the substance of marriage and do not invalidate the contract. How are we to know what birth-control conditions do imply in any actual case? Obviously the ultimate deciding factor is the intention of the parties. The nature of this intention is revealed in the internal forum by confession. In the external forum it is gathered from indications and circumstances.[2] Thus, if it be proved that the birth-control conditions (of abuse) were absolute, that is without any time limitation, this circumstance gives a presumption that the right to proper intercourse was excluded and that, therefore, the marriage was invalid. Why? Because such a condition of perpetual abuse, or contrary use, in a normal interpretation, seems incompatible with true matrimonial consent which has reference to a mutual right of bodily use *in ordine ad actus per se aptos ad prolis generationem*. The sinful condition is inserted into the consent and seems to vitiate and to restrict it; seems to turn it aside completely and for ever from its proper object—so that, indeed, it may be said that the object of the contract seems no longer to be the right to natural intercourse, but merely the right to onanistic acts. That, however, is only a presumption which admits of contrary proof. On the other hand, if the birth control conditions are limited, the presumption is that true consent was given, though there was a concomitant intention of abusing marriage for a time. This, again, is only a presumption deriving from the favour of law which marriage enjoys.

Even when parties to a marriage allege that they gave consent under absolute birth-control conditions the contract must be upheld in the external forum until the presence of these conditions is proved. The fact that the parties had given consent under a mutual agreement making perpetual birth prevention

[1] Cf. Gasparri, op. cit., n. 897; *S. R. Rotae Dec.*, xix, p. 500.
[2] Gasparri, op. cit., n. 898, writes: 'In foro externo ex circumstantiis iudex desumet.' *S. R. Rotae Dec.*, xix, p 44, 'ad indicia recurrendum est.'

a *conditio sine quae non* would constitute such a proof.[1] It follows, then, that a marriage contracted with a mutual agreement of absolute birth prevention, must be regarded as invalid until the contrary be proved. The following quotation from a decision of the Rota[2] confirms the points we have made:

> Ut autem discernatur, an quisque dum bona fidei vel prolis exclusit, obligationem ipsam reiecerit vel potius eius adimplementum, ad indicia recurrendum est. Ita sane ius ipsum seu obligationem ipsam ille coniunx exclusisse censetur, qui bona fidei vel prolis absolute aut in perpetuum respuit. Ita pariter causa attendenda est, ob quam exclusio fuit posita. Quod si matrimonium initum fuerit ea sub lege vel conditione, quod unum vel aliud e matrimonii bonis excluderetur, aut etiam pacto de hac re inter coniuges statuto, tunc cessat favor quo in iure matrimonium gaudet, seu demonstrata existentia conditionis vel pacti de excludendis matrimonii bonis, vel saltem de excludendo uno vel alio de iisdem bonis, iam retinetur obligationem ipsam fuisse in se exclusam. . . .

That is a typical passage. There is no doubt whatsoever that, according to the jurisprudence of the Rota, the presence of an agreement of perpetual abuse in matrimonial consent gives rise to a presumption against the validity of the marriage.

Does the jurisprudence of the Rota contradict canon 1014? 'J. M.' thinks it does, and asks, therefore, if the directions of the Rota are prior to 1918? We assure him that all our references are to cases decided in 1927 and in subsequent years. We assure him, too, that the principles expressed in canon 1014, in canon 1092, § 2, and by the Rota judges are by no means new. They go back in substance at least to the decrees of Gregory IX.[3] There is no question, then, of any change of principle in canon 1014. Nor can it be admitted that the decisions of the Rota contravene or ignore this canon, which states that marriage enjoys the favour of the law and that, therefore, in cases of doubt, its validity must be upheld until the contrary is proved. There is hardly a decision in which these provisions are not recalled. But we must not unduly or unreasonably extend their application. An Instruction on Matrimonial Procedure was issued in 1936 by the Congregation of Sacraments.[4] Canon 1014 was quoted and the following comment was added. 'In order that the presumption for the validity of the marriage be relevant, the doubt in favour of the marriage must be prudent, that is, it must be supported by some probable foundation.' It has been recognized, too, that departure from the principle of canon 1014 is lawful when

[1] Cf. *S. R. Rotae Dec.*, xix, p. 164, and p. 499.
[2] Ibid, p. 44.
[3] Cf. Denz., n. 446
[4] *A.A.S.*, xxviii, p. 313.

there is question of fact.[1] It is almost superfluous to add at this stage that there may be presumptions in regard to marriage other than that stated in canon 1014. The Instruction just mentioned states that presumptions of man have their place, especially in cases regarding want of consent.[2] Presumption is a recognized form of proof and can exclude prudent doubt. 'J. M.' asks why the presumption of canon 1014 is not invoked to uphold the validity of marriage contracted under an agreement of absolute birth prevention; why, in fact, the presumption should lie the other way? We have not seen any reasons stated but, in the light of what we have just written, many possible explanations suggest themselves. It can be said that the doubt in favour of the validity of the marriage is not prudent when the consent has been restricted by an agreement or *conditio sine quae non* of perpetual abuse. There is, of course, a possibility that true consent has been given, but it could hardly be called a prudent possibility—and, therefore, the presumption of canon 1014 does not apply. Again, it might be said that this latter presumption can only be availed of when at least the *species* of true matrimonial consent is present, and it can be denied that consent, under the conditions in question, has the *species* of true matrimonial consent. Moreover, the presumption against the marriage which arises from the nature of things when consent is conditional on perpetual contrary use is more specific than, and, consequently, overcomes, the generic presumption of canon 1014.

What we have written has, we hope, provided answers to the main questions raised by 'J. M.' in regard to marriage contracted under the condition of perpetual abuse. A few minor points remain under this head. At the end of our *previous reply* we referred to a report of a case in which it was alleged that the man had declared beforehand his intention of abusing marriage. The decision given, however, was in favour of the marriage. Our correspondent asks if the Rota declared that the presumption was against validity? It did not, and neither did, nor must, we. Why? Because there was no evidence to show that the condition of perpetual abuse was reduced to a mutual pact or to a *conditio sine qua non* in the consent. And it is only in these circumstances that the presumption of canon 1014 yields to a presumption against the marriage. In the words of the Report:[3]

[1] Cf. *Instr. of the Holy Office* (1872), apud Cappello, *De Sac.*, v, n. 53; canon 1828.
[2] Loc. cit., p. 314.
[3] *S. R. Rotae Dec.*, xxi, p. 23.

Pactione subducta, res constricta manet ad intentionem seu propositum a viro manifestatum devitandi in matrimonio generationem prolis, quod propositum ex praesumptione iuris, suo loco vindicata, retinendum est uti mera peccaminosa voluntas matrimonio abutendi, salva eius substantia, quousque contrarium non probetur. Et causis adiunctis diligenter rimatis, invocata praesumptio quam cessare, communiri potius videtur.

Nor, indeed, was it even juridically *proved* in the case that the man had manifested beforehand the intention to abuse marriage perpetually.[1]

We now pass on to consider marriage consent that is restricted by a condition of chaste non-use of the marriage rights. Is this condition against the substance of marriage? Again the answer must be: Yes, if it implies that the conjugal right is not exchanged. All theologians admit that a condition that chastity be observed for a time, or at certain times, is not against the substance of marriage—because the exercise of a right can be temporarily excluded without prejudice to the existence of the right. Theologians are not agreed, however, as to whether a condition of perpetual chastity is opposed to the substance of marriage. Some[2] say that it is not; that it does not necessarily imply the exclusion of the radical marriage right, which can be, even perpetually, separated from the actual use of that right, and that, therefore, the marriage may be valid. In other words it is maintained by this group that the exchange of a radical right of use is compatible with a stipulation or condition in the actual exchange that the right be never used.[3] Others[4] maintain that this condition is against the substance of marriage; that, in excluding for ever the use, it thereby excludes the right itself—for the right is one of use; and that, accordingly, the marriage is invalid. Inasmuch, however, as the question is seriously controverted by representative theologians neither opinion can be regarded as certain. 'J. M.' asks in which direction the presumption leads? We may answer in the words of Gasparri:[5]

Stante hac controversia, in praxi si agatur de matrimonio contrahendo non permittatur cum illa conditione; si de contracto, interim matrimonio favendum, donec S. Sedes aliud declaraverit.

It may seem inconsistent to say that the presumption in the case of a condition of perpetual non-use is in favour of the marriage, whereas in the seemingly parallel case of a condition

[1] Ibid., p. 22.
[2] E.g. Gasparri, op. cit., n. 903.
[3] Canon 1086, § 2, refers to '*omne* ius ad coniugalem actum.'
[4] E.g. Cappello, op. cit., n. 636.
[5] Op. cit., n. 904.

of perpetual abuse, the presumption is said to be against the marriage. But a close examination of the question will dispel the seeming inconsistency, for the two cases are by no means perfectly parallel. The condition of perpetual chastity is not a *conditio turpis*. There is an obvious distinction between abuse and non-use:

Hoc in casu (non-usus) non quadrat distinctio inter obligationem eiusque adimplementum, nec intrat matrimonii *abusus* vel peccaminosa voluntas, qui quaeve intactum relinquere potest ius matrimoniale, sed distinctio fit inter ius seu facultatem utendi, et *usum* seu iuris exercitium, ita ut si ius vel facultas sit penitus subducta, habeatur conditio substantiae repugnans, minime vero si usus tantum fuerit exclusus.[1]

A strict condition of perpetual abuse seems so irreconcilable with the transfer of a right of proper use that the presumption is against a true transfer. A strict condition of perpetual non-use is not, we admit, easily reconciled with the transfer of a right of use, yet it does not seem so irreconcilable that it destroys the presumption of law in favour of the marriage. In brief, a prudent doubt in favour of the marriage remains—hence there is room for the application of canon 1014.

In the final paragraphs of his query 'J. M.' comments on two—out of three—hypotheses made by the Rota. The hypotheses have reference to the possible ways in which an evil intention *contra prolem et fidem* may be expressed in matrimonial consent. They are worth recalling here. The intention might be expressed by way of a condition mutually accepted and thus take the form of a pact. Or a condition might be expressed by one of the parties while the other party remains silent in its regard or is unaware or even opposed to it. Thirdly, the evil intention might take the form of a positive act of will by one or both parties. In the first hypothesis (that of a pact) if the condition is absolute or perpetual there is a 'violent presumption' that the marriage consent has been so corrupted that it is invalidated. In the other hypotheses the marriage is presumed to be valid. It is not true to say that, in the first case, the factor determining invalidity is the existence of a contract in no way affecting the essence of marriage but only the fulfilment of its obligations. It is precisely because the agreed condition under which consent is given seems to affect the essence of the consensual contract, seems to be against its substance, that the marriage must be presumed invalid. As the Rota report has it:[2]

[1] *S. R. Rotae Dec.*, xix, p. 500.
[2] *S. R. Rotae Dec.*, xxi, p. 15.

In primo casu, cum violenta exsurgat praesumptio voluisse coniuges mutua iura per pravam voluntatem determinare, distinctioni inter obligationem huiusque exsecutionem non est locus.

Marriage is a consensual contract. The consent is an act of will whereby both parties mutually exchange 'ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad prolis generationem.' If a man wishes to contract marriage he must contract its substance. He must consent to what is essential in the contract. If, by a contrary condition, he excludes what is essential or substantial the marriage cannot be valid.

Some conditions are clearly opposed to the substance of marriage. The precise force of others may not be so easy to determine even in the abstract—yet when they are expressed in the consent in the form of a pact, they are presumed to be opposed to the substance of marriage and, therefore, to invalidate it. The same conditions, differently expressed, would not be taken as destroying the favour of law which marriage enjoys, as is indicated in regard to the second hypothesis mentioned above. Our correspondent makes no comment on the third hypothesis which is governed by canon 1086, § 2. He has, we take it, no difficulty in realizing that the contract is invalidated when one or both of the parties, by a positive act of will, exclude the marriage itself or all right to the conjugal act or any essential property of marriage. Canon 1092, § 2, is only the application of that principle to conditions. The distinction between *ius* and *exercitium* is valid—otherwise there could never be question of the validity of a marriage contracted under conditions of abuse or non-use of the marriage right. Two contracts—one primary, having the right for its object, the other, a mode, determining the non-use or abuse of the right—are possible. But that is not the question at issue here. We are concerned with one contract—a consensual contract—entered into under certain conditions. A condition is a circumstance on the verification of which the validity of an act is made to depend. Obviously, conditions can affect and even alter the nature of consent. In our present context a condition means some circumstance adjoined to the matrimonial consent on the verification of which circumstance the validity of the consent depends. The fact that marriage is entered into conditionally does not mean that there are two contracts. The condition does not stand apart; it enters into, forms part of the one contractual consent which is, perhaps, modified or even annulled according to the nature of the condition inserted. If the

condition is incompatible with true matrimonial consent—this consent, as such, is destroyed.[1]

It may be some other kind of consent but it is not matrimonial consent. An illustration from a wider field might help to make our meaning clearer. Thus, for instance, a unilateral contract is invalidated if both parties to it are rendered liable to obligations. A contracts to give B a gift of a horse (worth £40) provided B pays £50 for him. All will agree that the condition is not merely unlawful but that it destroys the gift nature of the contract. It may be a sale but it is not a valid gift. Canon 1092, § 2, is not concerned with merely unlawful conditions (they are mentioned in § 1 of the same canon) but with conditions which are contrary to, and therefore destructive of the substance of marriage.

MARRIAGE CONSENT OF SINFULLY STERILIZED WOMAN; OBLIGATIONS CONSEQUENT ON STERILIZATION

I should be grateful for your replies to the following queries—

(i) Bertha, a non-Catholic, married civilly John, a Catholic. Five children were born of the union. After the birth of the last child she was sterilized by having the 'tubes tied' (as she said). Now, twelve months after the operation, Bertha wishes to become a Catholic, and both parties wish to be married in church and to live a Catholic life. (*a*) Can she be received into the Church without being willing to have the tubes reopened? (*b*) Would the marriage in the church be valid if reopening of the tubes is not necessary, i.e. is the *bonum prolis* excluded?

(ii) Can a Catholic woman be admitted to the sacraments who, on the advice of her doctor, has become sterilized, solely to avoid children?

MISSIONARY.

Our correspondent's query raises a number of interesting points. As a background to a discussion of them some more general questions must be briefly considered. Sterilization, in any form, implies a serious impairment of bodily integrity. Such an impairment is lawful only when it is genuinely necessary to avert grave danger to life or bodily health. Apart from this necessity a person who seeks or willingly accepts sterilization

[1] Cf. De Smet: *De Sponsalibus et Matrimonio*, n. 155.

is guilty of a grave violation of the fifth commandment of the decalogue. Consequently, to seek or to allow sterilization simply in order to escape the 'burden' of children is completely and gravely unlawful. This remains true even though there is no question of a marriage already contracted or of one to be contracted. When the question of marriage enters, there is, however, a further factor to be considered. Both parties to marriage have the general right that their marriage be fruitful. Procreation and education of offspring are the primary purpose of marriage. It may be said, then, that children are part of the normal right and expectation of the marriage union and of the exercise of the conjugal act. It follows from this that a woman who unlawfully has had herself rendered incapable of conception impinges upon the husband's right and is guilty of the further sin of marital injustice. Pre-nuptial concealment of her induced sterility would involve serious and sinful deception of the husband. But the consequent error on his part would not be equivalently substantial and would not, of itself, invalidate his marriage consent.

Female sterility may be induced in various ways.[1] Our correspondent's query refers to one way—the ligature or resection of the fallopian tubes. Sterilization induced by this method is not completely irreparable:

> Quandoque restitui potest communicatio inter ovaria et uterum, si simplex fuerit resectio tubarum vel inclusio uteri.[2]

The tubes, which link the ovaries with the womb, may be reopened or reconnected so that the ovum may pass along them. We understand, however, that the operation whereby this may be achieved is not a simple or a minor procedure and that the chances of success grow less with the passage of time from the sterilizing operation. The difficulty of a particular repair operation and the likelihood of a successful issue are a matter for surgical estimation. This estimate is a relevant factor for a final reply to some of the points raised in the query under consideration.

In this query the most fundamental, though not the first, question is whether a woman who has had herself sterilized simply to avoid all future pregnancies may validly marry. At first sight, perhaps, this question may seem to pose no problem. We assume that the woman, despite the sterilizing operation, is not impotent. Sterility, even permanent sterility, is, of itself,

[1] Cf. Merkelbach, *Quaestiones de Embryologia et Sterilisatione*, pp. 65–6.
[2] Ibid., p. 67.

no bar whatsoever to marriage. For this we have the categoric statement of the Code : 'Sterilitas matrimonium nec dirimit nec impedit.'[1] But the question may be pressed. It may be put thus : does not the fact that a woman has had herself sterilized, simply to avoid pregnancy, necessarily imply that her matrimonial consent is restricted by a condition or positive intention *contra bonum prolis* and is consequently invalidated ? This question must, we think, be answered in the negative. In the situation envisaged there is no indication of a condition *contra substantiam matrimonii*. Indeed, there is not any evidence of a condition in the strict sense. Nor is there any evidence of a positive intention or act of will which excludes the marriage itself or one of its essential properties or all right to the conjugal act.[2] The object of the marriage consent, which makes the contract, is *ius in corpus perpetuum et exclusivum in ordine ad actus per se aptos ad prolis generationem.*[3] A woman who has had herself sterilized—however unlawful the operation and its purpose—may transfer and accept this bodily right to the normal conjugal acts of which she remains capable. Though, in the circumstances, these acts cannot *de facto* lead to the generation of offspring they remain *per se apti ad prolis generationem* because they belong to the category of acts from which generation follows. They are the species of acts which are the natural and the normal prelude to procreation. Considered in themselves, as *actus hominis*, they are in no wise different from acts which, *de facto, cooperante natura*, lead to the generation of offspring. Provided, then, that the sterilized woman transfers and accepts the perpetual and exclusive right to the normal conjugal acts—and it must be presumed that she does this when she goes through the form of marriage[4]—her marriage consent is valid notwithstanding her sterile condition unlawfully induced to avoid children. Gasparri writes :[5]

Ex dictis colligitur quid dicendum in casu mulieris quae, antequam ad nuptias accedat chirurgicam operationem subiit ea praecise intentione ut maternitatis fastidia evitet. Scilicet haec peccavit mortaliter. . . . Quaeritur num matrimonium in casu nullum dicendum sit ex defectu consensus. Nonnulli affirmant etiam inter illos qui censent impotentiae impedimentum deesse ; sed putamus eorum sententiam veram non esse. Nam fieri potest (et ob favorem iuris praesumendum est) ut haec mulier, dum matrimonium contrahit, velit tradere—acceptare ius in corpus in ordine ad actus per se aptos ad prolis generationem, perpetuum et exclusivum, eo vel magis quod iam persuasum habeat coitus esse infoecundos ; quo posito consensus matrimonialis adesset.

[1] Canon 1068, § 3.
[2] Canon 1086, § 2.
[3] Canon 1081, § 2.
[4] Cf. canon 1086, § 1.
[5] *De Matrimonio*, n. 829.

As has been noted earlier, the law states clearly that sterility does not invalidate or prohibit marriage. In this discussion we have assumed, in accordance with the generally accepted view, that sterility is *impotentia generandi*, incapacity to have children. In other words the *bonum prolis* cannot be actually attained by the sterile. It follows from all this that a positive intention regarding the generation of offspring is not a necessary element of valid matrimonial consent. The *bonum prolis* need not be envisaged or intended by the parties as even presumptively possible. Such an intention could not be present in the case of those who are aware of their sterile condition, whether or not the sterility is blameworthy. No one questions the capacity of very elderly women to give valid matrimonial consent, though these women may be perfectly aware of their incapacity to have children and even though, let us suppose, they have deliberately postponed marriage until they had reached a definitely sterile age. Somewhat similarly—we admit that the analogy is not perfect—the fact that a woman has had herself sterilized solely to avoid pregnancy does not at all imply that the possibility of valid matrimonial consent is necessarily excluded in her case.[1] If this possibility were so excluded, it would mean that this woman is really incapable, by reason of her sterility, of contracting a valid marriage—a conclusion which runs counter to the express statement of the existing law. As De Smet notes :[2]

Coram jure naturae aeque habiles sunt ad matrimonium mulieres dicta ratione steriles, sive a natura tales existant sive operatione chirurgica sint steriles effectae idque sive operatio fuerit legitima sive criminosa et cum prava intentione generationem vitandi peracta.

We hope that we have now sufficiently cleared the ground for brief replies to the specific queries submitted. We shall take these queries in the order selected by our correspondent.

(i) We assume that Bertha was sterilized solely for the purpose of avoiding further pregnancies. This, of course, was a gravely immoral procedure. We assume also that Bertha was aware of and consented to the sterilizing operation which she knew to be seriously sinful. It is very possible, however, that as a non-Catholic, Bertha may have been in good faith in accepting medical advice that she should be sterilized. But on the assumption that she was guilty of grave sin, we would say

[1] The marriage consent of a sterilized woman might be invalid on other counts. The point here is that her unlawfully induced sterility does not necessarily invalidate it.
[2] *De Sponsalibus et Matrimonio*, n. 557.

in reply to question (*a*) that Bertha may be received into the Church if she is truly repentant for the wrong she has done. True repentance would imply the willingness or preparedness to do now what is reasonably possible to have the sterile condition cured.[1] It is for conscientious medical or surgical experts to decide, in all the particular circumstances of the case, whether a successful repair operation is reasonably possible. Speaking in more general terms, we can say here that if the operation would involve danger to life or health Bertha is clearly not bound to undergo it. And, in our opinion, taking account of the fact that she has already given five children to John—even though they were born *extra matrimonium*—she is not bound to undergo the operation if it would itself involve serious inconvenience or discomfort. Presumably a repair operation would entail these effects. Consequently, in our view, the presumption is that Bertha is not bound to undergo the repair operation. This presumption would cede to a contrary medical judgment that the operation could easily be performed and would not entail the consequences mentioned.

We have already discussed the implications of question (*b*). As we pointed out in that earlier discussion, the fact that Bertha has been sterilized, before her marriage, solely for the purpose of avoiding future pregnancies, does not necessarily preclude the possibility of her giving valid matrimonial consent. The actual attainment of the *bonum prolis* is, indeed, deliberately excluded, but this exclusion is not equivalent to a condition *contra substantiam matrimonii* or to a positive act of will excluding the marriage itself or all right to the conjugal act and, therefore, does not, of itself, invalidate Bertha's consent. If Bertha and John consent to the mutual exchange of perpetual and exclusive bodily rights regarding normal conjugal acts, their marriage is, *sub hoc capite*, valid.

(ii) Our correspondent's second question is very indefinite. We are not told, for instance, whether the Catholic woman is married and has already had some children. If she is married, or is contemplating marriage, the principles we have outlined earlier should be applied.[2] The Catholic woman has presumably committed grave subjective sin. She cannot be absolved from this sin unless she is truly repentant and is, therefore, prepared to make due reparation. In the case, the reparation should take the form of having the sterility corrected if, in the judgment of medical experts, this is reasonably possible. As we have suggested earlier, if the woman is married and already has given some children to her husband, a lesser cause will excuse her from the obligation of undergoing the corrective operation. Our correspondent asks if the woman may be admitted to the sacraments. In the normal case there would be question only of giving absolution; the woman would not be a public sinner and the priest's knowledge of the sterilization would have been obtained *in tribunali*.

[1] Cf. Merkelbach, op. cit., p. 96.

[2] Incidentally, if the woman is unmarried and has no intention of getting married, while voluntary sterilization would be gravely sinful, the obligation of undergoing a corrective operation need not be urged.

THE CONFESSOR'S DUTY REGARDING MATRIMONIAL IMPEDIMENTS

The parties have arrived in the church for a marriage. To break up the arrangements would involve serious inconvenience. Everything is ready and special preparations have been made. At the last moment the confessor discovers the diriment impediment of either affinity in the direct line, *matrimonio consummato*, or *ordo sacri presbyteratus*. The impediment is known only to the party confessing.

(i) The confessor at the moment forgets about the two exceptions mentioned in canon 1043 and gives a dispensation.

(ii) The confessor remembers the two exceptions and is grievously perplexed. If he stops the marriage he believes he will violate the *sigillum confessionis*. If he allows the ceremony to go on he believes it will be an invalid marriage.

(iii) Even when matters are explained by the confessor to the penitent, he (the penitent) insists on going on with the marriage. In face of all that has been arranged he could not suffer a break-up just then.

What is to be said regarding these hypotheses?

X.

As is indicated by our correspondent, the two impediments mentioned are expressly exempted from the wide ambit of the power of dispensation granted to local ordinaries, parish priests and confessors in canons 1043, 1044 and 1045. In the query there is reference only to the confessor—*qua* confessor. He, like the others, simply cannot validly grant a dispensation, even in urgent danger of death, from the two impediments of which there is question here. This is perfectly clear from the canons. There is no room for any discussion on this point. A very interesting discussion could develop, however, if the impediments concerned were those arising from diaconate or

subdiaconate or from affinity, *matrimonio non consummato*. The discussion would then centre around the precise extent of the confessor's power of dispensation under canons 1044 and 1045, § 3. Does this power extend to impediments which are of their nature public but which are *de facto* occult? Major orders and affinity are public impediments. Their existence can be proved in the external forum.[1] But, *de facto*, in particular circumstances, they may be occult in the sense that they are known only to a very few. In these circumstances they would be classed as *casus occulti* in the phrase of canon 1045, § 3.[2] The commentators are not agreed as to whether a confessor has power to deal with such occult cases. The much more probable opinion is that he has not.[3] In urgent danger of death, his power of dispensing from matrimonial impediments is expressly limited to the internal sacramental forum—and this would seem to cover only impediments which are, both of their nature and in fact, occult. The authors are also divided on another question regarding the confessor's power to dispense from matrimonial impediments. The question is: can a confessor grant a dispensation for the internal extra-sacramental forum in virtue of canon 1045, § 3,—that is, in the circumstances of what was known as the *casus perplexus*: all preparations are made for the marriage when the confessor becomes aware of the impediment and the marriage cannot be postponed, without probable danger of grave evil, until, at least, the Ordinary can be approached? Some theologians hold that, in these circumstances, the confessor can give a dispensation for the internal non-sacramental forum.[4] But it is more generally held that he cannot. It is, indeed, true that the clause of canon 1044 (quoted above) is omitted from canon 1045, § 3. On the other hand, it would be passing strange if a confessor were granted greater power of dispensation in the circumstances of the *casus perplexus* than he is given in urgent danger of death.[5]

But to return to our correspondent's hypotheses: (i) The confessor has no power to dispense from the impediments mentioned. A dispensation from them, given by him, even through ignorance or inadvertence, is of no value. The parties cannot validly marry. They may have gone through the ceremony—let us suppose that they have—but there is no

[1] Cf. canon 1037.
[2] Cf. Reply of Code Commission, 28 December, 1927, *A.S.S.*, xx, p. 61.
[3] Cf. De Smet, *De Sponsalibus et Matrimonio*, n. 794.
[4] Cf. Noldin, *Th. Mor.*, iii, n. 607.
[5] Cf. Vermeersch-Creusen, *Epit. I. C.*, ii, n. 312.

marriage. What is the confessor to do when he discovers his mistake? It is not possible to answer this question in any definite way without knowledge of all the circumstances of an actual case. All we can do is to indicate some of the possibilities. The parties may be in good faith. Only one of them—we are told in the case given by 'X'—was aware of the impediment and he or she may be convinced that the dispensation given by the confessor, *in foro sacramentali*, was valid. Yet, since the impediments are of their nature public, the alternative of leaving the parties in good faith does not commend itself—unless the penitent refuses to allow the confessor to discuss the matter with him. The confessor is bound by the seal. Outside the sacrament, he may raise the matter of the impediment and dispensation from it only if he gets permission from the penitent to do so. If the penitent refuses this permission, there is nothing further the confessor can do. If, however, the confessor gets due permission to raise the matter of the dispensation, he should point out to the penitent that it was invalid and that, consequently, the marriage was null and void. The parties would then either have to separate, get permission to live as brother and sister, or apply to the Holy See for a dispensation and convalidation of their marriage. While the Holy See can grant a dispensation from the impediments in question, it very rarely does so:

> Neque umquam, ut videtur, dispensavit a primo gradu affinitatis in linea recta, ut viduus duceret *legitimam* uxoris defunctae filiam. Rarissime dispensat a *presbyteratu* . . . ab impedimento *affinitatis* in primo gradu lineae rectae consummato matrimonio.[1]

Nevertheless, if the parties wish to make recourse to the Holy See, they should be helped to do so.

(ii) The confessor realizes, *in tribunali*, that he cannot grant a dispensation. He should explain this to his penitent, who should be told also that he cannot validly enter this marriage unless a dispensation is obtained from the Holy See, and that such dispensations are only very rarely given. This explanatory warning may deter the penitent. Without permission, the confessor can take no extra-sacramental action to prevent the ceremony. Any such action based only on sacramental knowledge would, of course, be a violation of the seal.

(iii) We have to a large extent anticipated what can be said in reply to this third hypothesis. We repeat that, without the penitent's permission to refer to the impediment, the confessor

[1] Payen, *De Mat.*, i, n. 634.

can do nothing, outside the tribunal, to prevent the marriage ceremony. And in the circumstances, as outlined in this hypothesis, it is most unlikely that any such permission will be given. The confessor should try to bring home to the penitent the magnitude of the crime he is about to commit and the penalties[1] he may incur by knowingly attempting to contract marriage in face of these diriment impediments—a marriage which, by reason of the impediments involved, the Holy See very probably will not validate.

Thus, in the hypotheses proposed, *ante factum matrimonii*, the only way open to the parties seems to be the hard way of postponement at least, and very probably indeed, of abandonment of their marriage. This, then, is the course which must be advised by the confessor—in so far as he can give the advice without violating the sacramental seal. It must be remembered that, *ex hypothesi*, his sole knowledge of the impediments is that derived from the penitent's confession. If the confessor adverts, during the confession, to his incompetence to deal with the impediment revealed, there is no difficulty about giving the advice to his penitent *in tribunali*. But, outside the sacrament, no matter what attitude the parties adopt regarding the marriage, the confessor cannot refer to the impediment without the penitent's permission.

THE IMPEDIMENT OF LIGAMEN AND PRESUMED DEATH

Eric and Joan, both non-Catholics, were married in an Anglican church. They had one child, a boy. After two years they separated, but were subsequently reconciled. A month after their reconciliation Joan and the boy left for a holiday. Neither of them has returned to Eric since. Thirty years have elapsed and he has now no knowledge of their whereabouts.

Meanwhile, ten years after Joan's desertion, Eric married Ethel in a registry office. He had given a full account of his earlier marriage and of the desertion of his wife. Ethel now earnestly desires to become a Catholic and has come for instruction, having overcome some opposition from Eric, who is a Freethinker. Ethel has explained the history of her marriage with Eric and of his earlier marriage. How is the priest to proceed in this case ?

M. C.

[1] Cf. canon 2388 and *Lex Sacri Coelibatus* (*A.S.S.*, xxviii, p. 242 and xxix, p. 283), if the impediment is that arising *ex sacro presbyteratus ordine*.

From his covering letter it is clear that 'M. C.' is concerned as to whether or not he may, in the circumstances, presume that Joan has died and may convalidate the marriage of Eric and Ethel. So we shall confine our remarks to this point. In canon 1069, § 2, we read :

> Quamvis prius matrimonium sit irritum aut solutum qualibet ex causa, non ideo licet aliud contrahere, antequam de prioris nullitate aut solutione legitime et certe constiterit.

Accordingly, under this head, before Eric and Ethel may be allowed to contract marriage *coram Ecclesia*, it must be established with certainty, in accordance with due legal procedure, that Joan has died. What is the legal procedure whereby the fact of Joan's death can certainly be established ? A somewhat similar question was put to the Congregation of Sacraments in 1920 by a Spanish Ordinary.[1] He asked whether a wife might be admitted to a second marriage when her former husband was presumed to be dead ? The Congregation replied that the Ordinary should complete the canonical investigations in accordance with the Instruction of the Holy Office, *Matrimonii vinculo*, given in 1868. If, having completed these investigations, the Ordinary could not form for himself a judgment (regarding the husband's death) sufficiently certain to entitle him to allow the second marriage, he should send all the documents of the case to the Congregation of Sacraments. This also is the reply which must be given to 'M. C.'s' query. He will find the text of the Instruction of 1868 in the *Acta Sanctae Sedis*,[2] and in the *Fontes*.[3] A summary of the Instruction is given in English in Bouscaren's *Canon Law Digest*.[4]

In view of the statement of his query by 'M. C.' we may note here, as is stated at the very outset of the Instruction of the Holy Office, that mere absence, however protracted, does not suffice to establish the death of a married partner. Nor are the presumptions of death accepted by civil law regarded as sufficient by the Church. Positive proofs are required—documentary proof preferably. If documentary proof is not available, resort is to be made to the evidence of reliable witnesses, and failing those, to presumptions derived from certain sources, to rumour, newspaper investigations, etc. In the case sent by 'M. C.', the fact that Joan was accompanied by her child, who very probably is living, should facilitate the investigations and make possible the establishment, with due certainty, of the fact of Joan's death—if she is dead.

[1] Cf. Bouscaren, *Canon Law Digest*, i, pp. 508–9.
[2] Vol. vi, p. 436.
[3] Gasparri, *Fontes*, iv, n. 1002.
[4] i, p. 510.

THE OBJECT OF THE PROMISE OF MARRIAGE IN THE IMPEDIMENT OF CRIME

Does the first species of the impediment of crime arise when the parties guilty of adultery make, at the same time, a mutual promise to contract a civil marriage ?

THEOLOGUS.

Having mislaid our correspondent's letter we have had to state his query from memory. We think that he principally wished us to discuss the question whether the impediment of crime arises from adultery combined with a promise of civil marriage, that is, a promise to contract this marriage notwithstanding the continued existence of the bond against which the adultery has been committed—for example, a promise to contract a civil marriage when a divorce has been obtained. A further question along the same lines occurs to us, and it may well be that our correspondent had it also in mind. This supplementary question is : does the impediment of crime exist if the accomplices in adultery mutually promise to contract *a merely civil marriage* after the first marriage, violated by the adultery, has been duly dissolved—by death or otherwise ? In canon 1075, 1°, we read :

> Valide contrahere nequeunt matrimonium qui, perdurante eodem legitimo matrimonio, adulterium inter se consummarunt et fidem sibi mutuo dederunt de matrimonio ineundo vel ipsum matrimonium per civilem tantum actum attentarunt.

Our quotation covers the first two species of the impediment. The reason for this longer quotation is that later, as an argument for our view, we shall suggest a comparison or contrast between the two species.

We are only directly concerned here with one element of the first species of the impediment—the promise element—and, indeed, only with one aspect of that promise. In particular, our task is to analyse the precise meaning of the words *de matrimonio ineundo* which, in the canon quoted, express the object of the promise—which, in turn, constitutes an essential element of this impediment. And firstly, do these words imply that the object of the promise must be a future marriage after the present bond has been dissolved ? The vast majority of theologians and canonists say that they do and that, consequently, this impediment of crime does not arise if there is merely a promise to marry after a civil divorce has been obtained.[1] The

[1] Cf. De Smet, *De Spons. et Mat.*, n. 659.

pre-Code writers, with very few exceptions, held a similar view regarding the object of the promise. Gasparri, in the earlier editions of his work *De Matrimonio*, wrote :[1]

> Tandem promissio debet esse de matrimonio ineundo *post mortem coniugis* ; quippe per hoc datur ansa captandi illius mortem. Hinc non esset impedimentum si Titius Caiae diceret : promitto nuptias postquam divortium civile obtinueris.

In his post-Code edition, Gasparri, strangely enough, does not formally discuss this point. We do find the following sentence in the paragraph corresponding to that quoted from previous editions :

> Putamus autem impedimentum oriri si partes adulterium commiserunt cum privata promissione matrimonii tantum civilis.[2]

These words, however, seem to refer to the supplementary rather than to the primary question. A few theologians propound the view that, since the promulgation of the Code, a promise to contract marriage after a civil divorce has been obtained suffices, with adultery, to give rise to the impediment of crime. Chelodi, with an assurance which we find difficult to understand, writes :[3]

> Per clarum textum legis nunc quaedam veteres controversiae sublatae sunt . . . certum (est) promissionem non debere esse de contrahendo *post* mortem coniugis, quia lex non distinguit.

Noldin expresses a similar view.[4]

In our opinion all the worthwhile arguments tell against the position of Chelodi and Noldin—which we regard as untenable. Thus our answer to the primary question proposed is a definite negative. Adultery, with a promise to marry after civil divorce will have been obtained, does not constitute the impediment of crime. We have mentioned earlier that in pre-Code times there was very little doubt that the object of the promise was a future marriage—*post mortem coniugis*. We quoted Gasparri to that effect ; we might have quoted very many other authors. The formula used by the Apostolic Dataria in granting dispensations from this impediment explicitly stated that the promise must refer to a marriage to be contracted after the death of the partner.[5] The Code does not clearly indicate (*pace* Chelodi) any break from this pre-Code position. A change of law is not to be presumed. If there is doubt ' a veteri iure non est recedendum.'[6] The wording of canon 1075, quoted above, leads to the conclusion that the first species of crime is

[1] n. 737 (1904 ed.).
[2] n. 674 (1932 ed.).
[3] *Ius Matrimoniale*, n. 93.
[4] *De Sac.*, n. 581.
[5] Cf. De Smet, loc. cit.
[6] Cf. canon 6, 4°.

constituted by adultery with a promise to marry after the dissolution of the existing bond. Otherwise there is singularly little point in specially distinguishing the second species of the impediment—namely, adultery with attempted marriage. In the first part of the paragraph quoted from canon 1075 the words used are *de matrimonio ineundo* not *de matrimonio attentando*—which latter words might reasonably have been expected if the intention of the legislator was to express the teaching supported by Chelodi and Noldin—particularly when we recall what the pre-Code position was.

The published decisions of the Rota provide us with a very strong argument in favour of the view we have adopted. In 1924 a matrimonial case, of great interest to our discussion here, came, on appeal, before the Rota.[1] The validity of the marriage had been impugned on the grounds that the first species of the impediment of crime was present. There was no doubt about the element of adultery. The whole case turned on the promise of marriage and particularly on the precise object of that promise. Was it a promise of civil marriage after divorce—or a promise of a religious marriage after the due dissolution, by death, of the existing bond?[2] Precisely the point we are discussing. The diocesan court had decided that the existence of the impediment of crime and, therefore, of the invalidity of the marriage, was not proved. The parties appealed from this decision to the Rota. As is customary, the points of law governing the case are first set out in the published Rotal decisions. It is stated that both under the pre-Code and Code discipline the promise must have reference to a marriage to be contracted after the death of the present spouse. Authorities, pre-Code and post-code, are quoted. The court then examined the particular facts, which indicated that there had been adultery and a promise of marriage—but that the promise did not fulfil the conditions required for the impediment, in particular, that it was only a promise of civil marriage. Consequently the decision of the court was that the impediment of crime did not exist in the case, and that the invalidity of the marriage was not proved.[3]

At the instance of the Signatura the case was tried again before the Rota in 1928.[4] Once again in the statement of the principles of law it was pointed out that the impediment of

[1] Cf. *S. R. Rotae Dec.*, vol. xvi, pp. 172–82.
[2] Ibid., p. 177.
[3] Ibid., p. 182.
[4] Cf. *S. R. Rotae Dec.*, vol. xx, pp. 27–33.

crime does not arise from adultery with a promise of merely civil marriage. It was added that the object of the promise must for Catholics be true sacramental marriage. But at this hearing of the case it was argued, from the evidence advanced regarding the facts, that the parties had really made a twofold promise—a promise of civil marriage when divorce had been obtained, and also a promise of a true religious marriage when that became possible. Accordingly, the court decided that the impediment of crime was really present, and that the marriage was invalid—and so the former Rotal decision was reversed. These conclusions were reached not, as is very clear even from the synopsis given, because a promise of civil marriage suffices, but because the evidence given seemed to indicate that the parties had made a mutual promise of a true religious marriage *post obitum coniugis*.

The defender of the bond appealed from this decision to the next *turnus*, and the case was heard a third time by the Rota[1] after a very interesting pre-judicial point regarding the right to accuse the marriage had been decided. The familiar principles of law were restated. To quote the apposite sentence:[2]

> Promissio debet esse circa matrimonium et quidem *verum* seu religiosum, contrahendum *post mortem* coniugis innocentis.

The evidence which had led to the preceding sentence in favour of the nullity of the marriage was also considered formally. But it was pointed out that, in the circumstances, the parties at best had only what might be called an interpretative intention of contracting a valid religious marriage. An interpretative intention is one which the parties would have had if they had thought of it but which, *de facto*, they have not and never had. This kind of intention of valid marriage, since it is neither actual or virtual, is of no avail:

> Quibus omnibus in iure et in facto perpensis, Nos . . . definitive sententiamus non constare de matrimoni nullitate.[3]

Finally the case was referred in 1931 to the Signatura which confirmed this last decision of the Rota.[4]

We have referred briefly to the various trials of this particular case because in *every* instance it is evident that the ecclesiastical judges had absolutely no doubt that adultery with a promise of civil marriage, while the present bond remained, did not constitute the impediment of crime. And on this point precisely rested their decisions. Chelodi and Noldin would find food for thought in an examination of such trials.

[1] Cf. *S. R. Rotae Dec.*, vol. xx, pp. 402–13.
[2] Ibid., p. 404.
[3] Ibid., p. 413.
[4] Ibid.

We pass now to our second and supplementary question—which again concerns the object of the promise of marriage. We may state this question by an example. Two accomplices in adultery mutually promise that, after the due dissolution of the present bond, they will go through a civil form of marriage together. We presuppose that they are bound by the canonical form. Do they incur the impediment of crime? Very few writers discuss this question. Cappello does so very briefly. He writes :[1]

> Utrum promissio debeat respicere matrimonium verum seu religiosum an sufficiat promissio matrimonii mere civilis, certo non constat. . . . Quare impedimentum est dubium, practice nullum.

It seems to us that the necessary conditions for the impediment are not verified unless there is a promise of a future valid marriage; in other words that, for those bound by the ecclesiastical form, a promise of merely civil marriage does not suffice. Our reasons are partly contained in what has been written and quoted above. In the Rotal decisions a promise of civil marriage (which is insufficient) is frequently contrasted with a promise of a true and religious marriage. Elsewhere we have reference to the necessity of a promise of valid marriage. The obvious meaning of many of those statements and the general tenor of the decisions indicate that the promise must have for its object a marriage to be contracted in the due form and not merely a civil marriage. The words of the Code *de matrimonio ineundo*, on the face of things, refer to a valid marriage. A merely civil marriage is not, of course, valid in the case of those who are bound by the ecclesiastical form. In fact, for such, a merely civil marriage has not even the *species et figura matrimonii*. It does not come under the phrase *matrimonium invalidum* of canon 1078—as is clear from the reply of the Code Commission in 1929.[2] Nor is it a putative marriage.[3] Thus, in the case of those bound by the form, a promise of merely civil marriage is, in reality and in the eyes of the Church, no more than a promise of legalized concubinage.

We may sum up our discussion by saying that, in our opinion, the first species of the impediment of crime does not arise unless, conjoined with adultery (*perdurante eodem legitimo matrimonio*), there is a mutual promise of a marriage to be contracted when the present bond has been dissolved, and to be contracted in the due form. It may be well to note, however,

[1] *De Sac.*, v, n. 484.
[2] *A.A.S.*, xxi, 170.
[3] Cf. Reply of Code Commission, 26 January, 1949, *A.A.S.*, xxxxi, 158.

that, in the external forum, if the accomplices in adultery make a mutual promise of marriage, the presumption will be that the object of their promise was a future valid marriage.[1]

DIVORCE AND THE IMPEDIMENT OF CRIME. MAY *ANGUSTIA LOCI* BE PLEADED FOR NON-CATHOLICS?

(i) Adultery is a necessary element of some of the species of the matrimonial impediment of crime. It is the accepted teaching that this adultery must be *utrinque formale*. Is this condition verified in the complete sex act of a divorced non-Catholic who honestly believes that the bond of the former marriage was dissolved by the decree of divorce?

(ii) In very many parts of this country non-Catholics are very few in numbers and can find suitable partners of their own class only with very great difficulty. Could it be held that the canonical cause of *angustia loci* is verified in such cases? And may this cause accordingly be pleaded for obtaining a dispensation from mixed religion or disparity of cult?

MAGISTER.

(i) The adultery which forms a constitutive element of some of the species of the impediment of crime must indeed be, as our correspondent recalls, *utrinque formale*. It must be a formal sin of both parties against one and the same marriage bond. That is to say both parties to the act of adultery must be conscious of the fact that at least one of them is really married and that they are sinning against this marriage bond. If both parties are married and each is aware of this, there is a twofold sin of formal adultery. It is not necessary for formal adultery that the parties understand the specific malice of this sin. It is necessary, and it suffices, that both know that they are sinning against one and the same marriage bond.

If, then, either of the parties is ignorant of the existence of the marriage bond or if either of the parties genuinely believes that the bond no longer exists, the act of sexual intercourse is not formal adultery *ex utraque parte*—which is a necessary element of the impediment of crime. This remains true whether the ignorance is inculpable, lightly culpable or gravely culpable.[2] According to many authors, even if the ignorance of the existence

[1] Cf. *S. R. Rotae Dec.*, vol. xx, p. 28.
[2] Cf. Coronata, *De Sac.*, iii, n. 381.

of the marriage bond is crass or supine the element of formal adultery *ex utraque parte* is not fully verified and the impediment would not arise. While this point is disputed,[1] we can say that there is at least a *dubium iuris* and hence that, in practice, the impediment does not arise.[2] Affected ignorance will not excuse from the element of formal adultery and, consequently, will not exclude the impediment. If one of the parties is divorced but is honestly convinced that the divorce has dissolved the bond of the former marriage, it can be said that this party is ignorant of the existence of the marriage bond and does not, by the objectively adulterous act, formally sin against it. We assume that such ignorance, though it may, even in the case of non-Catholics, be culpable, is not *ignorantia affectata*.

While all the authors refer to the influence of ignorance, very few of them expressly mention the position of divorced persons—who believe in the effectiveness of divorce—in relation to the impediment of crime. Most of those who do mention this question agree with the view set out above—namely, that those who believe that a decree of divorce really breaks the bond are not formal adulterers against this marriage. In Bouscaren–Ellis we read:[3] 'If one of the parties, in good faith, holds the heretical opinion that a civil divorce gives the right to remarry, the adultery would not be formal and the impediment would not be incurred.' A similar view is expressed in Jone–Adelman :[4] 'The impediment does not seem to arise if one party is a divorced non-Catholic who does not consider the action adulterous.' On the other hand we find this general statement —much too general, we think—in Davis :[5] 'All who, being still validly married, obtain a civil divorce and attempt a second marriage civilly and consummate it, incur this impediment.'

(ii) In 1877 the Sacred Congregation of Propaganda issued an instruction which contained a list of the *communiores potioresque* causes for dispensations from matrimonial impediments. The first cause listed was :

Angustia loci, sive absoluta sive relativa (ratione tamen oratricis) cum scilicet in loco originis vel etiam domicilii cognatio feminae ita sit propagata, ut alium paris conditionis cui nubat invenire nequeat nisi consanguineum vel affinem ; patriam vero deserere sit ei durum.

If these terms are literally interpreted, the cause *angustia loci* may be pleaded only in favour of a woman and solely for a dispensation from the impediment of consanguinity or affinity.[1] In earlier times this literal interpretation was generally adopted. But it is now accepted that *angustia loci* may be advanced on behalf of a male petitioner and as a ground for obtaining a dispensation from impediments other than consanguinity and affinity—such as mixed religion, for instance. But according to the recognized *stylus* the petition can be made only on behalf of a Catholic who cannot find, within the circumscribed and thinly-populated area in which he or she must live, a suitable partner other than one with whom marriage is precluded by the impediment from which a dispensation is sought.

[1] Cf. Gasparri, *De Matrimonio*, n. 673.
[2] Cf. canon 15.
[3] *Canon Law*, p. 541.
[4] *Moral Theology*, n. 604.
[5] *Moral and Pastoral Theology*, iv, p. 147.

THE IMPEDIMENT OF CRIME; REGISTRATION OF DISPENSATION

At a recent conference on the impediment of crime, there was divergence of opinion on certain points concerning the impediment itself and the manner of registration when a dispensation had been granted.

Felix and Hilda, an Anglican couple, validly married, had as guest Bertha, a Catholic, with whom Felix developed a sinful friendship and committed adultery. They agreed to marry after a civil divorce had been obtained. When the divorce was made absolute, they attempted civil marriage. Later, after Hilda's death, Bertha, filled with remorse, came to her parish priest and asked to have her union with Felix put right. It was agreed that the only impediment was that arising from adultery with attempted marriage. Some held that the impediment was public and that the dispensation should be entered in the marriage register. But a number present objected that, since the adultery was occult, the impediment was likewise so. Others held that this could not be maintained after the parties had lived *maritaliter* subsequent to the civil ceremony, and quoted as an analogous argument the presumption of consummation in canon 1015, § 2. A few maintained that as the impediment was defamatory, it could not be entered in the marriage book, even if public. The discussion gave rise to the further question on entering occult dispensations : since the vicar-general has not access to the secret archives, is the parish priest bound to send notification of marriages with occult dispensations to the bishop instead of to the vicar-general ?

LECTOR FIDELIS.

[1] Cf. Gasparri, *De Matrimonio*, n. 304 ; Coronata, op. cit., n. 163.

In canon 1075 we read :

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 tantum actum attentarunt.

There is reference in this paragraph to a twofold source for the impediment of crime. It may arise from adultery combined with the mutual promise of marriage, or from adultery with attempted marriage. At first sight, it might seem that both sources are verified in the case submitted by our correspondent and that, consequently, in the circumstances, there is question of a multiple impediment.[1] We note that it was agreed at our correspondent's conference that there was, in the case, only the single impediment arising from adultery together with attempted marriage. We entirely concur with that opinion. In other words, we hold that the impediment of crime does not arise from adultery combined with a promise to marry after a divorce has been obtained from the existing bond. The object of the promise must be a true and valid marriage—which implies that the existing bond has really ceased.

In our view, the impediment of crime which arises from adultery combined with attempted civil marriage must be regarded as *per se* public.[2] In other words, it is an impediment which can be proved in the external forum. 'Publicum censetur impedimentum quod probari in foro externo potest; secus est occultum.'[3] Proof of civil marriage will be obtainable from the civil register. And the commission of adultery can be presumed along the lines of canon 1015, § 2—as is suggested in the query. Presumption is one of the recognized means of establishing proof in the external forum.[4] We take it for granted that the parties lived together after their civil marriage.

We confess that we have been left very confused by the discussions of authors on this question of public and occult impediments—especially when they come to define what is meant by such terms as 'impedimenta natura sua publica sed facto occulta, impedimenta facto publica.'[5] To explain adequately these qualified terms we believe that one must go beyond canon 1037—which is perfectly clear within its own limited sphere—and invoke also the meaning of public and private as applied to crimes.[6] It is accepted teaching that

[1] Cf. Chelodi, *Ius Matrimoniale*, n. 93.
[2] Cf. Payen, *De Mat.*, i, n. 553.
[3] Canon 1037.
[4] Cf. canons 1825–8.
[5] Cf. Cappello, *De Sac.*, v., n. 200.
[6] Canon 2197.

impediments which are of their nature public may, in particular circumstances, be in fact occult. And here we think occult can be best interpreted as meaning : not generally known and not likely to become generally known. On the same lines, an impediment would be described as public in fact if it were already widely known or were calculated easily to become thus known. Gasparri, having referred to the distinction of public and private impediments as given in canon 1037, continues :[1]

Sed S. Poenitentiaria, etiam post Codicis promulgationem, suam antiquam praxim conservat, quae impedimentum habet publicum vel occultum potius ex facili vel difficili eiusdem divulgatione.

If an impediment is in fact occult, though of its nature public, it comes under the *casus occulti* of canon 1045, § 3. This is clear from a reply of the Code Commission.[2]

If, then, in the particular circumstances, the impediment of crime mentioned in the query is in fact, as well as of its nature, public, a dispensation must be given for the external forum. The fact that this dispensation has been granted should be noted in the ordinary matrimonial register. In the hypothesis made, there can be no question of defamation, as the impediment is public in fact. If the dispensation is given in virtue of canon 1044, by the parish priest or other priest who assists at the marriage (*ad normam* canon 1098, 2°) the local Ordinary is to be informed at once of the grant. All this is clearly stated in canon 1046. If, however, in the particular circumstances of the case, the impediment of crime is in fact occult, if, that is, there is question of a *casus occultus*, a dispensation can be given for the internal non-sacramental forum.[3] An entry of this dispensation is not to be made in the ordinary matrimonial register but in the book kept in the secret archive of the Episcopal Curia.[4] This procedure precludes danger of defamation. If the impediment afterwards becomes public in fact, a new dispensation for the external forum is not necessary. When the dispensation is granted for the occult case in virtue of canon 1045, § 3, the priest who grants it should, as a rule, notify the Episcopal Curia immediately so that the fact can be entered in the appropriate register. There may be exceptional cases in which grave reasons demand that notification should not be made to the Episcopal Curia.[5] In such cases the Sacred Peni-

[1] *De Mat.*, n. 210; cf. Wernz–Vidal, *Ius Mat.*, n. 409.
[2] *A.A.S.*, xx, 61, 28 December, 1927.
[3] Cf. Cappello, op. cit., n. 242.
[4] Canon 1047.
[5] Cf. Gasparri, op. cit., n. 406; Bouscaren, *Canon Law Digest*, i, p. 503.

tentiary should be consulted. And, as is suggested in canon 1047, the Sacred Penitentiary sometimes may spontaneously direct that the grant of a dispensation for the internal non-sacramental forum be noted in its own secret register rather than in the register of the secret episcopal archives. For obvious reasons, no record is to be kept of dispensations given in the internal sacramental forum.

Our correspondent asks finally, whether a parish priest is bound to send notice of the grant of a dispensation in the internal non-sacramental forum to the bishop and not to the vicar-general? It is true that the bishop alone has access to the secret archives.[1] Consequently, it is best to send the notification to the bishop or to the Episcopal Curia. But we are not aware of any absolute regulation demanding that notification be sent directly to the bishop. If it is sent to the vicar-general, he will, in turn, pass it on to the bishop or to the Curia.

PROTESTANT CHURCH OR REGISTRY OFFICE FOR THE MARRIAGE OF BAPTIZED NON-CATHOLICS?

George, a priest, the only Catholic member of his family, was informed by his sister that she had become engaged to an Anglican. She had not decided whether she should marry in the registry office or in the Protestant church, but consulted George, and promised to make her choice in accordance with his decision. George felt bound to decide in favour of a registry office ceremony, and some of his priest friends agreed that this decision was the only one compatible with theological principles. Others have disapproved, as such a ceremony, being really pagan in character, is regarded as altogether unworthy of Christians, for whom marriage is a sacrament. 'It is better,' they argue, 'to surround the ceremony with religious rites (even those of a false religion) than to exclude religion altogether.' Your comments on the case would be greatly appreciated.

A. B.

It is difficult to give an entirely satisfactory or categorical answer to the problem submitted by 'A. B.' We can see good arguments for each of the contradictory opinions expressed by the priest friends of George. Our conclusion, then, must be reached by assessing the relative strength of these arguments.

[1] Canon 379, § 4.

And in making this assessment, there is the difficulty that the opposing arguments have not what could be called an exact common denominator. The arguments which favour the selection of the registry office might be described as having a theological flavour; while those which suggest the selection of the Protestant church are more of a sociological nature. This is not to imply that there is any real opposition between what is theologically and what is socially good. It is simply a question of emphasis. What is meant is that it is difficult accurately to weigh a theological consideration against a social one. The problem of setting down exact principles regarding religious toleration illustrates the point. And perhaps the question submitted by our correspondent could be classed as a particular aspect of that wider problem of religious tolerance. Ultimately, it seems to us, a solution for such problems can best be sought along the lines of selecting the lesser of two inescapable evils.[1]

We may assume that George's sister and her Anglican fiancé are baptized and, therefore, that their valid marriage contract will be, *eo ipso*, a sacrament. By every right and title the essential control of such a marriage is vested exclusively in the Catholic Church:

> Christus igitur cum ad talem ac tantam excellentiam matrimonia renovavisset, totam ipsorum disciplinam Ecclesiae credidit et commendavit. Quae potestatem in coniugia Christianorum omni cum tempore tum loco exercuit atque ita exercuit, ut illam propriam eius esse appareret, nec hominum concessu quaesitam, sed auctoris sui voluntate divinitus adeptam.[2]

That this control should pass to the civil power or to a heretical sect must be regarded as an evil. In relation to the form of celebration of marriage, however, the Church, in certain circumstances, tolerates this situation. When two baptized non-Catholics marry, they are not bound to observe the Catholic form of celebration.[3]

From the theological standpoint, it seems doubly iniquitous that the control of a sacrament should rest with the ministers of a heretical sect. It is wrong that the Catholic Church should be deprived of this control. There is the added wrong that this control should pass to a sect which has cut itself off from the unity of the Church of Christ, to which alone was committed

[1] The selection of the least of inevitable dangers has been suggested as a reflex principle for the solution of practical doubt—cf. McDonald, *The Principles of Moral Science*, p. 240. The principle is not confined to cases of doubt.

[2] Encycl. *Arcanum*, 10 February, 1880 (*Acta Leonis XIII*, ii, p. 25).

[3] Cf. canon 1099, § 2.

the custody and dispensation of His sacraments. Therein lies basically the objection to George's advising his sister to marry in a Protestant church. This advice would imply some acknowledgment of an heretical usurpation, some equiparation of falsity with truth—almost, it might be said, *cooperatio remota cum haereticis in divinis*, an encouragement of heretical ceremonies. All this could only be admitted as the lesser of two unavoidable evils.

There are, however, reasons which suggest that a non-Catholic marriage should take place in a Protestant church rather than in a registry office. It can be argued, as it is in the statement of the query, that it is better to surround a marriage, a sacramental marriage in particular, with some religious rites, than to be satisfied with the cold bare secularism of a merely civil ceremony. Catholic writers vehemently inveigh against the evils of civil marriage. They describe it as harmful to public morality :

> Matrimonium civile, quod dicitur, est religioni maxime iniuriosum, iura et conscientiam catholicorum laedit, atque moralitati publicae noxium existit.[1]

The primary reference in this statement is to compulsory civil marriage for Catholics, but the principle involved has a wider application. In these days, in the face of a widespread secularism, it is particularly necessary to emphasize the sacred character of marriage—a sacredness which it has, even apart from the sacramental aspect.[2] There seems to be no doubt that to surround the celebration of marriage with religious ceremony is one means of correcting the secular outlook on this sacred contract ; a way, too, perhaps, of stemming the tide of divorce. A civil marriage suggests a merely civil or man-made bond. A religious ceremony, with the invocation of God's name and blessing on the contracting parties, will help to focus attention on the unique and indissoluble nature of their union and may recall to the minds of the participants that what God hath joined together no man can break asunder.

Moreover, in all this discussion, we must take account of the mentality of the *bona-fide* Protestant. We live in an age when men and women are born and reared in an atmosphere of long-established heresy, far from the days of first rebellion, the memory of which is for many lost in the years. As Ottaviani notes :[3]

[1] Ottaviani, *Comp. Iuris Publici Eccles.*, n. 236.
[2] Cf. Encycl. *Arcanum* : ' . . . Cum matrimonium sit sua vi, sua natura sua sponte sacrum . . .' Loc. cit., p. 21.
[3] Op. cit., n. 222

> Quando defectio completa est et stabiliter firmata ita ut principes et populi inveniantur ab Ecclesia separati, non vi proditionis ab ipsis peractae, sed ob lugendam haereditatem quae a patrum apostasia originem ducit, tunc prudentiae et caritatis causa, praesertim ne maiora mala sequantur, Ecclesia practice coarctat limites exercitii suorum iurium quantum id sanctitas sui officii permittit et temporum condicio exigit.

It is worth recalling here that the revolutionary teaching of Luther, with its denial of the truly sacramental character of marriage, prepared the way for the introduction of the institution of the purely civil marriage. Thus the coming of the Reformation began a declension of the respect in which Christian marriage had long been held. Following Luther's lead, Protestants generally to-day do not admit that marriage is a sacrament, yet they are anxious to invest its celebration with religious formalities—which, however, have no influence on the validity of the contract. Yet, the omission of these religious ceremonies might easily involve loss of consolation, and even some degree of scandal, for *bona-fide* Protestants.

We have outlined some of the arguments which can be advanced for each of the opposing views proposed to George by his priest friends. By way of conclusion we give our own opinion, which is that George should advise his sister to get married in the Protestant church. Taking all the arguments and circumstances into account, it seems to us to be the lesser evil to opt for the religious celebration. We may add that we would reach the opposite conclusion if the case were that of one who was bound by the Catholic form of marriage. That is to say, if we were asked whether such a one, who is absolutely determined not to observe the canonical form, might be advised to select marriage in a Protestant church as a lesser evil than marriage in a registry office, we would answer in the negative. In the case of a Catholic, bound by the canonical form, marriage in a Protestant church would imply an even grosser and more scandalous betrayal of the Faith than would marriage in a registry office. In support of this conclusion we can point to the fact that the Church has attached a censure to the crime of Catholic parties who go through a religious ceremony of marriage before a non-Catholic minister.[1]

[1] Canon 2319. Cf. *Motu Proprio* of Pius XII, 25 December, 1953, *A.A.S.*, xxxxvi, 88.

THE IMPEDIMENT OF MIXED RELIGION; EXEMPTION FROM THE CANONICAL FORM OF CELEBRATION OF MARRIAGE

(i) The following question was asked, about two years ago, in a Catholic monthly : ' I should be grateful if you would inform me how a Catholic boy might marry a Protestant girl. Also, if there is any particular church for mixed marriages.' The reply given was : 'A Catholic may validly contract marriage with a non-Catholic only after a dispensation has been given by Rome . . .'

(ii) This statement of doctrine appeared very recently in a Catholic weekly paper : ' The sacraments are all subject to the jurisdiction and legislation of the Church so far as their administration is concerned. The Church can define, for instance, that Baptism in milk would be invalid. And similarly she can say that the marriage of Catholics without the presence of a priest and two witnesses is invalid. This law does not apply to non-Catholics ; it does, however, apply to those who were born and brought up as Catholics but who subsequently left the Church.'

Your comments will be appreciated.

TIRO.

(i) In the first statement submitted, the word *validly* in the reply is inaccurate. It should be replaced by the word lawfully —or alternatively, if the statement is to be meticulously accurate and complete, a distinction should be made and both the words validly and lawfully should be included in the reply. The impediment which exists between a Catholic and a baptized non-Catholic (mixed religion) is an impeding, not a diriment obstacle to their marriage.[1] That is to say, they may marry validly but not lawfully—under this head. Presumably the Protestant girl is baptized. But if, in fact, she were not, if, against the presumption, the question had reference to the marriage of a Catholic boy to an unbaptized girl, the word *validly* would stand—since, in this hypothesis, the impediment (disparity of worship) would invalidate the marriage.[2] In fairness to the writer of the reply quoted, it must be noted that he seemed to have primarily in his mind the question of the form of celebration of marriage. The marriage of a Catholic—no matter what the religious denomination of the other party is—must, for validity in ordinary circumstances,[3] be celebrated before a duly authenticated priest and at least two witnesses. This priest, whose presence is necessary for validity, may not and will not assist at the marriage of a Catholic and Protestant

[1] Canon 1060. [2] Canon 1070. [3] Cf. canon 1098.

unless the necessary dispensation has been duly obtained.[1] Accordingly, while this impediment of mixed religion, considered in itself, is only prohibitory, its presence or, better in this context, the failure to obtain a dispensation from it, may indirectly lead to the invalid marriage of a Catholic and Protestant under another head—namely, by reason of the non-observance of the requisite canonical form of celebration. This may have been the situation primarily contemplated by the writer of the reply under discussion.

(ii) Many points in the second statement quoted call for comment. Firstly, there is, indeed, a very true sense in which it can be said that ' the sacraments are all subject to the jurisdiction and legislation of the Church so far as their administration is concerned.' But there are, at the same time, very definite limits to the power of the Church in regard to the sacraments—limits suggested faintly, perhaps, in the phrase ' so far as their administration is concerned.' The Council of Trent has declared :

> hanc potestatem perpetuo in Ecclesia fuisse, ut in sacramentorum dispensatione, *salva eorum substantia*, ea statueret vel mutaret quae suscipientium utilitati seu ipsorum sacramentorum venerationi pro rerum, temporum et locorum varietate magis expedire iudicaret.[2]

The words *salva eorum substantia* are supremely important. The matter and form of some of the sacraments has been *specifically* determined by divine institution.[3] In regard to what has been thus determined the Church is powerless to make any substantial change. Christ has, for instance, appointed water as the matter (*materia remota*) of Baptism. The Church can, indeed, in virtue of her teaching authority, define that Baptism in milk would be an invalid sacrament. But she can do this only as a question of objective fact. That is to say, it is not the definition of the Church which makes Baptism in milk invalid. Entirely apart from any such definition, milk would be, as it always has been, invalid matter for Baptism—and, further, no ecclesiastical decree could so alter the sacramental economy that it would become valid matter. A change of this kind would be substantial and, therefore, *ultra vires*. Thus, there is no exact parallel between a definition of the Church that Baptism in milk would be invalid and an ecclesiastical decree that marriages

[1] It may not be necessary to apply to Rome for this dispensation. The local Ordinary will generally have power to grant it in virtue of special faculties.

[2] Sess. xxi, c. 2 (Denz., n. 931).

[3] It is, of course, *de fide* that Christ instituted all the seven sacraments (cf. Trent, Sess. 7, c. 1)—but the precise manner in which He determined the matter and form of some of them is not clear.

of Catholics without the presence of a priest and two witnesses are invalid. The former is a matter of divine appointment—the latter of ecclesiastical law. The Church could allow—in certain abnormal circumstances she does allow—the validity of Catholic marriages celebrated in the presence of witnesses alone[1]—or even without any witnesses—but, as has been stressed, she could never make Baptism in milk a valid sacrament.

We do not suggest that the writer quoted by 'Tiro' was unaware of all this. We feel very certain that he was not. But his illustration from the doctrine regarding Baptism, while strictly accurate in itself, is unhappy in the context and may be misleading in its innuendo. The reader, especially the lay reader, might wrongly conclude therefrom that the Church has power substantially to change the matter of Baptism. This is particularly true in the context, where the statement regarding Baptism is juxtaposed to and is given to illustrate the power of the Church to determine a valid form of celebration for Christian marriage. It is a well-known fact that this form of celebration has varied substantially in the course of the history of the sacrament of Matrimony. The difficulty[2] is sometimes raised that, in setting up (as she does) diriment matrimonial impediments and in demanding certain other requirements for validity, the Church is really interfering with the substance of the sacrament. This, incidentally, seems to be the main difficulty to which the writer quoted by 'Tiro' is replying in the earlier part of his statement. The difficulty disappears when it is realized that marriage is essentially a contract, and that it is the valid matrimonial contract between baptized persons which has been raised by Christ to the dignity of a sacrament.[3] The valid contract and the sacrament cannot be separated in a Christian marriage. As Leo XIII wrote[4]—and his words are echoed in the Code:[5]

> In matrimonio christiano contractum a sacramento non esse dissociabilem atque ideo non posse contractum verum et legitimum consistere quin sit eo ipso sacramentum.

When, then, the Church, by ecclesiastical law, sets up diriment impediments, or demands a certain form of celebration for a valid sacrament of Matrimony, she simply legislates regarding the capacity of the parties and the manner in which the contract

[1] Canon 1098.
[2] The difficulty was raised at Trent on the occasion of the Decree regarding clandestinity.
[3] Canon 1012, § 1.
[4] Encycl. *Arcanum*, February, 1880.
[5] Canon 1012, § 2.

must, for validity, be entered into. In brief, her legislation affects directly the basic contract: she does not interfere with or alter the substance of the sacrament.

The remainder of the second quotation given by 'Tiro' deals with those who are and who are not bound by the canonical form for the celebration of marriage. Here again the statements are somewhat misleading. The writer has tried hard to summarize the law, but the canons of the Code are, for the most part, averse to summary treatment and important qualifications have been omitted in the statements as given. Taking the matter in order: all who have been baptized in the Catholic Church or converted to it from heresy or schism (though they may have fallen away after Baptism or conversion) are bound to observe the canonical form of marriage—*whether they contract with one another or with non-Catholics*. But the law does not bind non-Catholics, baptized or unbaptized, who have never been converted to the true Church *when they contract marriage with non-Catholics* ('si inter se contrahant'). By a *Motu Proprio*[1] of 1 August, 1948, Pope Pius XII abrogated the provision of canon 1099, § 2, which exempted from the canonical form of marriage children of non-Catholics who, though baptized in the Catholic Church, were brought up from infancy in heresy or schism, or without any religion. Thus the present discipline reverts to that of the *Ne temere*, according to which *all* baptized in the Catholic Church—even though they are born of non-Catholic parents and are brought up as non-Catholics—are bound by the canonical form of marriage. This discipline fits in admirably with the reply of the Code Commission[2] stating that the children of non-Catholic parents, if baptized in the Catholic Church, are bound by the impediment of disparity of cult even though they have been brought up from infancy as non-Catholics.

MORAL CERTAINTY REGARDING THE FULFILMENT OF THE *CAUTIONES*

On our diocesan form for mixed marriage dispensations the following question, to be answered by the parish priest, occurs: 'Esne moraliter certus cautionem impletam iri de Catholica educatione prolis forte nasciturae?' Woywod (*A Practical Commentary on the Code of Canon Law*, 1929, Vol. i, p. 615) has the following: 'Moral

[1] *A.A.S.*, xxxx (1948), p. 305.
[2] *A.A.S.*, xxxii (1940), p. 212.

certainty that the promises will be kept is required by the Code before a dispensation from the impediment of mixed religion is granted. This is both hard to define and hard to obtain. . . . The judgment of the sincerity of the promises and the guarantee of their future fulfilment depend upon the character of both the non-Catholic and the Catholic party.'

Now, a couple come to me to make arrangements for a mixed marriage. The bridegroom is a soldier on leave and wants to be married in a few days' time by special licence. The bride, a non-Catholic, I have never seen before in my life, and I know nothing whatever either about her or her family. How am I to judge with moral certainty—after a short interview with the parties—that the promises will be kept? No doubt the non-Catholic party will sign the promises when asked to do so. Does this justify me in giving the answer 'yes' to the question on the mixed marriage form? If it does not, am I bound in conscience to say that I am not morally certain that the promises will be kept?

PERPLEXED.

If the parish priest is not morally certain that the parties to a mixed marriage will keep the promises demanded by law, it is perfectly clear that he may not answer in the affirmative the question proposed in the diocesan form (mentioned by our correspondent). Is the parish priest bound, in such a case, to answer in the negative? Again, it seems clear that, as a rule, he is; for he is legitimately asked if he has particular positive information. If he has not got it he must normally say so. Such a negative reply is not equivalent to saying that he is morally certain that the promises will not be kept. In other words, it is quite conceivable that a parish priest might be unable to say that he is morally certain that the promises will not be kept, and yet might be able to state that he is not morally certain that they will be kept. In practice, however, failure to answer the proposed question in the affirmative will, we think, be interpreted as a negative reply—unless some further explanation is given. But cases will sometimes arise in regard to which the parish priest may feel unable to decide finally whether the available evidence begets the moral certainty required. When this is so we think that the answer to the question on the form should be deferred, and that all the circumstances should be explained to the Ordinary.

The difficulty, however, does not lie in these general statements which are, indeed, we think, in part, truisms. The difficulty lies in determining how, in practice, moral certainty is to be attained. This, in turn, raises a fundamental question

as to the nature of moral certainty. Speaking generally, certainty is the firm assent of the mind to a judgment. This assent must be based on intrinsic or extrinsic evidence—which sometimes may take the form of a presumption. We have moral certainty when the assent is such that prudent fear of error is excluded. This assent must, therefore, be based on some reliable evidence. But it is by no means necessary that there be no contrary evidence of any kind.[1] Nor is it necessary that error be regarded as impossible, or that all fear of error be excluded. Moral certainty is so called because it is based on the *mores* of men. In other words, the evidence for this certainty is often derived from the customary rules of human conduct, is derived from the presumption based mainly on experience, that normal human beings will act in a generally uniform way in the same particular circumstances. Thus, for instance, we may be morally certain that men of character will honour their formal promises in regard to serious matters.

Coming to the particular matter under discussion: if the parish priest can conclude, without prudent fear of error, that the parties to a mixed marriage will keep the formally given promises, then he has the moral certainty required by law.[2] This conclusion will be based primarily upon the evidence afforded, in the circumstances, by the character of the parties concerned. It is presupposed, therefore, as Woywod implies, that the parties are known to the parish priest. Sometimes it will be comparatively easy to reach the required certainty, as when the parish priest knows the parties well, and knows that they are God-fearing, honourable and reliable in every way. He may easily conclude, without prudent fear of error, that such parties will keep their formal promises. Or, on the other hand, the parish priest may know that the parties are totally unreliable, indifferent to religious issues and to the obligations of their promised word. In these circumstances he could hardly be morally certain that the *cautiones* would be observed. In between these two classes of cases there will be many in regard to which the parish priest will find it difficult to decide, by reason of lack of knowledge of the parties, or by reason of other circumstances, whether there is moral certainty that the promises will be honoured.

[1] Cf. St. Th., *S.T.*, 2, 2, q. 70, a. 2.

[2] Canon 1061, § 1, 3°. The Holy Office (June, 1842) in reply to the request of a German bishop for an accurate and strict description of a *cautio opportuna* said: 'Cautionem opportunam esse talem promissionem, quae in pactum deducta, praebeat morale fundamentum de veritate exsecutionis, ita ut prudenter eiusmodi exsecutio expectari possit.' Coll. i, n. 951, ad 5.

The formal promises are demanded by ecclesiastical law as a means of securing moral certainty that the conditions required by divine law are verified. For it must be remembered that the divine law forbids mixed marriages if there is (proximate) danger of perversion for the Catholic party or for the offspring.[1] Before any ecclesiastical authority can dispense, it must then be morally certain that this prohibition of divine law has ceased. Thus Gasparri writes :[2]

Recolimus Ecclesiam omnino non posse dispensationem in mixto coniugio concedere nisi certa moraliter sit prohibitionem iuris naturalis in casu cessavisse. Haec moralis certitudo plerumque non habetur, nisi ex formali promissione . . . ita ut et de huius promissionis sinceritate in praesenti et de eius exsecutione in futuro dubitari, omnibus perpensis, nequeat.

It is clear that not every kind of promise will satisfy the requirements of law. The promises must be *aptae ad certitudinem gignendam*.[3] It is stated in the general law[4] that, as a rule, the promises should be demanded in writing—but beyond this general rule no specific form is prescribed. Particular law, however, may and often does lay down details in regard to the form. In some countries it is possible so to frame the promises that they will be held to be valid in civil law. Where this is possible it must be done.[5]

The *cautiones* are thus regarded as the normal means of reaching moral certainty that the prohibition of divine law has ceased, though, in particular circumstances, such certainty might be otherwise attained.[6] Yet, on the other hand, the mere fact that the parties are willing to give or actually give these formal promises will not of *itself* establish that there is moral certainty that the promises are sincerely made and will be kept.[7] Some people are prepared, in order to achieve an immediate end, to promise or to sign anything. In every case, therefore, the characters of both the parties who give the promises, and the circumstances, will have to be taken into account. Chelodi, dealing with this point, writes :[8]

Ecclesia exigit ut in tuto ponantur (conditiones iuris divini) per cautiones et quidem non quascunque, sed tales ut, ex personarum qualitate et ceteris adiunctis, moralis habeatur certitudo de earum implemento.

[1] Canon 1060.
[2] *De Matrimonio*, i, n. 450.
[3] Payen, *De Mat.*, n. 865.
[4] Canon 1061, § 2.
[5] Decree of Holy Office, January, 1932. Cf. Bouscaren, *Canon Law Digest*, i, p. 505.
[6] Cf. Payen, op. cit., n. 868.
[7] Canon 1061, § 1, 3°.
[8] *Ius Matrimoniale*, n. 59.

Inasmuch, therefore, as one of the parties is unknown to him, the case outlined by ' Perplexed ' presents a real difficulty. Yet, even in the circumstances described, it may sometimes, we think, be possible for the priest to obtain sufficient evidence to enable him to make up his mind as to whether or not there is moral certainty (as explained) that the promises will be kept, and thus to enable him to answer the question on the diocesan form in the affirmative or negative. The first duty of the parish priest concerned is, as far as is possible, to dissuade the parties from contracting a mixed marriage.[1] He should explain that such a marriage is prohibited by ecclesiastical law—possibly by divine law. If the parties will not be dissuaded he should explain the conditions and promises required before a dispensation can or will be given. In the case described by our correspondent, the character of the man is presumably known. He is the Catholic party. It may be possible, by judicious questioning, to elicit considerable information from him regarding the girl and her family. The question of her family will be of particular importance if the girl has maintained, or proposes to maintain, contact with it. The girl herself should, of course, be questioned also. It may be possible to arrange further interviews. From the parish priest's knowledge of the character of the man, from the reactions and attitude of both parties to his explanation of the nature and necessity of the *cautiones*, from the answers given to his questions and from the manner of answering, from the circumstances in which the parties, when married, propose to live, he may be able to decide that there is, or that there is not, moral certainty that the promises which, it is presumed, the parties are prepared to make, will be fulfilled. If, however, he cannot decide, one way or the other, then he should, as we stated earlier, explain the situation to the Ordinary. The latter may, if he considers such a course helpful to attain moral certainty, demand that the promises be given under oath as a Reply of the Holy Office[2] indicates :

Quando Episcopus, sive ob subiecti qualitates, sive ob alias circumstantias talem certitudinem (moralem) acquirere non valet, iure potest exigere ut iureiurando promissio firmetur.

[1] Canon 1064, § 1.
[2] February, 1875 (apud Gasparri, loc. cit.).

THE RELIGIOUS EDUCATION OF CHILDREN; THE OBLIGATION OF THE GUARANTEES; THE CIVIL LAW AND THIS OBLIGATION

Recent decisions in the Irish Courts raise some interesting points regarding parental rights and obligations in the determination of the religious education of their children. Is a parent who, in accordance with the existing law, is deprived of the right to the custody and education of her children, relieved of all moral obligation in their regard? In a mixed marriage may a Protestant father avail of the civil law to assert his right to determine the education and religion of his children and thus evade the obligation of the guarantees given before the marriage? Can he forgo his right to decide the religion of his minor children?

CURIOUS.

Presumably, the legal decisions to which our correspondent refers are those in the Frost case given in the year 1945 by the High Court and, on appeal, by the Supreme Court. As may be remembered, the Frost case was that of a mixed marriage contracted with the usual guarantees that any children of the union would be baptized and brought up as Catholics.[1] There were six children of the marriage, the first five of whom were baptized in the Catholic Church. The marriage proved unhappy and the parents separated. The Protestant father obtained custody of the children and had five of them sent to a Protestant institution to be educated there as Protestants. He left instructions in his will that after his death their Protestant education was to be continued. Some time subsequent to the father's death the Catholic mother made application to the Courts for the custody of her children. The High Court directed that she should be given the custody of the two youngest children but that the others were to be left in the Protestant institution to complete their education there. An appeal against this direction was lodged with the Supreme Court which, however, decided that *all* the children should be left in the custody of the trustees of the Protestant institution.

It is, indeed, true that these decisions raise a number of interesting points. Needless to say, however, it is no part of our function or intention here to comment on the legal decisions as such. Our concern is with the moral issues. Firstly, then, to answer our correspondent's specific questions: Parents have sacred rights and duties regarding the religious, moral and

[1] It seems, however, that subsequently to the marriage, the mother had acquiesced in an agreement that the children be brought up as Protestants.

physical education of their children.[1] The parents' right to educate their offspring is inalienable. Pope Pius XI in his encyclical on *The Christian Education of Youth*, wrote:[2] 'The family holds directly from the Creator the mission and hence the right to educate the offspring, a right inalienable because inseparably joined to the strict obligation, a right anterior to any right whatever of civil society and of the State, and therefore inviolable on the part of any power on earth.' This right is recognized by and is stated explicitly in our Constitution: 'The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.'[3] And later in the same article it is stated that 'the State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.' Only in exceptional cases, when the parents have failed in their duty to their children shall the State 'endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.'[4] The right of the family to educate and the corresponding duty are vested jointly in both parents, but if one of them die or fail in this matter the right and duty devolve upon the other parent. But if, in a particular case, parents are deprived by civil law of the opportunity of determining and providing for the education of their children, they are excused from the obligation because its discharge has become morally impossible for them. If, however, at any subsequent stage, it becomes possible for a parent or parents to intervene to secure a Catholic education for their children, the grave obligation to do so urges. In other words, the moral obligation remains and binds in so far as is possible to discharge it.

As our readers are aware, the parties to a mixed marriage must give promises or guarantees that all the children born of their marriage will be baptized and brought up as Catholics.[5] The non-Catholic party must give a further guarantee not to interfere in any way with the religious beliefs and practices of the Catholic spouse. The guarantees should as a rule be given in writing. In the Appendix to the *Maynooth Statutes*[6] we find the formulae for the guarantees which should be used in Ireland.

[1] Canon 1113.
[2] C.T.S. (London), p. 14.
[3] Art. 42, 1.
[4] Art. 42, 5.
[5] Cf. canon 1061.
[6] pp. 280–1.

The guarantees are to be addressed to the bishop or to his representative and are to be duly dated and signed by the parties in the presence of two credit-worthy witnesses who also affix their signatures. The addresses of the parties and of the witnesses should be given. The guarantees are solemn promises and bind gravely in conscience. A Protestant father may not lawfully avail of the civil law to evade the obligation of this solemn promise. It continues to bind in conscience, whatever the decision of the civil court may be. When the Protestant husband, in a mixed marriage, gives a solemn undertaking that the children of the marriage will be baptized and brought up as Catholics, he does not forgo any inalienable right. He simply undertakes and promises that his right will be discharged in this particular way.

It is unfortunately true that under English law a non-Catholic husband may repudiate his solemn agreement. 'A father has the right to determine the religion in which his minor children shall be brought up, and any contrary contract is void. The promises, therefore, made by a non-Catholic man in a mixed marriage, in respect of the Catholic education of future children, have been held to be legally void, though, of course, they are binding in conscience.'[1] It is commonly thought that the position in Irish law is similar. But we have been told that the legal validity of guarantees, given according to the manner prescribed in the *Maynooth Statutes*, has never been formally tested. As we have pointed out, these guarantees are duly signed and witnessed. They would then seem to have all the requirements for a valid agreement or contract, enforceable in civil law as well as binding in conscience. If, however, the present position in Ireland is that the guarantees, in whatsoever form, must in law be held to be invalid—we may well ask whether this position is based upon precedents of the English Courts or is perfectly clear in the law itself? If the former, we can only hope for the early establishment of an independent legal tradition in Ireland—a tradition unfettered by anti-Catholic prejudices, one which would take due cognizance of the fact that Ireland is a Catholic country with an ancient and glorious Catholic heritage. In this connection we gladly mention that we had in the past few years some notable decisions which promise well for such a tradition. But if the law, as it stands, clearly precludes the possibility of legally valid pre-nuptial promises regarding the Catholic education of the children of a mixed

[1] Davis, *Moral and Pastoral Theology*, ii, p. 77.

marriage, we see every reason why the law should be amended, so that the guarantees should be enforceable as a valid agreement. Such an amendment would accord well with our fundamental law which, as we have noted, acknowledges the primary and natural function of the family as the educator of offspring. The guarantees are surely in the nature of a family agreement, an arrangement between the parents regarding the religious education of their children. We do not know how far the recent decisions, referred to above, may or should be interpreted as an indication of the unwillingness of the Irish Courts to admit the legal validity of the guarantees. We can say that these decisions do not necessarily imply such unwillingness. From the published accounts of the case, it seems quite clear that the courts did not formally consider or give a decision on that particular issue.[1]

We had completed the preparation of this reply when the address of Most Rev. Dr. Gregg to the Protestant General Synod (1946) was delivered. We must regretfully say that this address, as published, reads like a wholly rancorous and to some extent ill-informed attack on Catholic teaching regarding mixed marriages. There is much that could be said and doubtless will be said in reply. We shall only refer here to one section of the address—the matter of which is so apropos that we cannot pass it over. Dr. Gregg speaks of the giving of the guarantees as 'the signing away of the faith of children yet unborn.' The sentimental appeal should not pass unnoticed—*children yet unborn.* Surely, the signing away of the faith of children after they are born should be equally, in fact more, reprehensible, because it would be an actual and not merely a hypothetical signing away. The faith of children once they are born is not and cannot be determined by themselves for a long time. It, too, can be signed away. In the vast majority of cases do not parents decide the

[1] Since the above reply was written, a judgment was delivered in the High Court (27 July, 1950), by the President, in which it was held that the pre-nuptial agreement was a holy undertaking cognizable by the Irish Courts and that the Protestant father (Ernest Tilson) should be held to his pledge and no paternal trust or public policy or common law could be involved to annul this solemn pact. The case was taken on appeal to the Supreme Court where four of the Judges (one dissenting), concurred in holding that 'under the Irish Constitution (1937), the parents (father and mother) have a joint power and duty in respect of the religious education of their children. If they together make a decision and put it into practice, it is not in the power of the father—nor is it within the power of the mother—to revoke such a decision against the will of the other party. Such an exercise of their power may be made after marriage when the occasion arises, but an agreement made before marriage dealing with matters which will arise during the marriage and put into force after marriage is equally effective and of as binding force in law.' The judgment in the High Court and in the Supreme Court is reported in *I. E. Record*, lxxv (1951), pp. 530–52.

religion in which their children shall be brought up? Why cannot they come to an agreement on this before as well as after the birth of their children? How then is the faith of children really signed away *by the guarantees*? And suppose that in a mixed marriage a Catholic father allows the mother to bring up their children as Protestants—would Dr. Gregg agree that this father signs away the faith of his children? Or, perchance, does Dr. Gregg want to have it both ways? Is the suggestion that faith means the Protestant faith and that alone? We had best ignore the gross presumption of such a suggestion. Dr. Gregg, with equal eloquence and sentimental appeal, goes on to describe the guarantees as a 'bargaining counter,' a 'trafficking in immortal souls' (shades of proselytism and souperism) in return for which the mixed 'marriage shall be viewed as ecclesiastically valid.' This suggests an inaccuracy. Mixed religion is not a diriment impediment. Dr. Gregg misunderstands or misrepresents the attitude of the Catholic Church to mixed marriages.[1] We pass over here his very unworthy references to our 'peculiar beliefs' and the even more unworthy suggestion that sincere and honest conversion from Protestantism to Catholicism is practically impossible. There is one final point in Dr. Gregg's address to which we must refer. He suggests that as the consent contained in the guarantees has no validity in civil law, it is something which one may and apparently should repent of and repudiate, even when freely given. We find it hard to believe that this can be the official Protestant attitude to the obligation of a solemn promise. We had thought that Protestantism, despite its continued recession from supernatural standards, had clung to or at least paid lip service to the natural virtues of truth and fidelity to the plighted word. On his principles, if they deserve that name, Dr. Gregg should have no difficulty in pleading the Statute of Limitations to evade obligations covered by this law.

CONVALIDATION OF MARRIAGE IN DANGER OF DEATH

A priest visiting a hospital where he has no powers or jurisdiction of any kind is called to attend a patient in imminent danger of death and finds that this person has been invalidly married (outside the Church) and is anxious to put things right at once. Recourse to the local clergy is impossible in the short time available and the priest wishes to assist at the marriage. Some have said that he can consider himself as the priest referred to in canon 1098, 2°, and that, accordingly, if there are no witnesses who can appropriately be summoned, he can dispense from the form of celebration and marry the parties at once—in accordance with canon 1044. But Bouscaren–Ellis (*Canon Law*, p. 442, ed. 1) seems to regard this as altogether impossible, as there are no witnesses. What is the position of the visiting priest in the case? If the patient's partner is not available could anything be done beyond getting a promise to rectify the marriage when opportune?

M. D. L.

[1] Cf. canons 1060–64.

This query raises a number of interesting and difficult points. We can examine the position and powers of the visiting priest under two heads. Since the patient is in danger of death this priest certainly has, in virtue of canon 882, all the faculties of a confessor. And, as a confessor, confronted with a penitent who is in imminent danger of death—in circumstances in which there is not time to approach even the local Ordinary—the visiting priest can dispense this penitent from the canonical form for the celebration of marriage and from all matrimonial impediments of ecclesiastical law except those which arise from the order of priesthood and from affinity in the direct line when the marriage has been consummated.[1] This power of dispensation, vested by law in the confessor, can be used for the convalidation of a marriage invalidly entered upon as well as in reference to a marriage which is being contracted for the first time.[2] But the confessor can grant the dispensation only for the internal forum and in the act of sacramental confession.[3] This situation is verified, however, if the penitent makes a confession even though it is invalid or even though absolution has to be refused. As Cappello notes,[4] on the authority of the Sacred Penitentiary: 'Fit locus dispensationi etiamsi confessio sit nulla aut absolutio non detur.'

In the case under consideration there is question of convalidating a marriage which, apparently, is invalid solely by reason of failure to observe the canonical form of celebration. In the eyes of the Church this marriage is not even putative and there is no ecclesiastical record that it has taken place. Such a marriage would normally be validated by having the parties renew consent in accordance with the form prescribed by law, that is, in the presence of an authorized priest and at

[1] Canons 1043 and 1044.
[2] Cf. Coronata, *De Sac.*, iii, n. 159.
[3] Canon 1044.
[4] *De Sac.*, v, n. 238.

least two witnesses.[1] But, as has been pointed out, the confessor may, in the circumstances given, dispense his penitent from the obligation of renewing consent in this canonical form. Accordingly the marriage can, in virtue of this dispensation, be convalidated by having the parties renew their consent *privatim et secreto*—that is without the presence of witnesses. The parties must renew consent :

> Dispensatio super forma legitima non secumfert, sicut sanatio in radice, dispensationem a lege de renovando consensu. Si igitur impedimentum sit . . . publicum consensus ab utraque parte renovandus est privatim et secreto.[2]

In the case under consideration the invalidity of the marriage is due to a public defect. Therefore, we think that the correct procedure is that the confessor should get the parties to renew consent in each other's presence in accordance with canon 1088. If one of the parties is not present, then he or she should be sent for. If this is not possible, then we think that the marriage might be convalidated by having each of the parties renew consent separately, provided this can be done at a time when the consent of the other party perseveres. In every case the renewal of consent must be a new act of will in reference to a marriage which is known to have been invalid.[3] Before the confessor approaches the other partner with a view to convalidating the marriage the consent of the penitent to do so should have been obtained.

The procedure outlined above would suffice to solve the immediate conscience problem of the dying patient. But inasmuch as the confessor, as such, can dispense from the canonical form only for the internal sacramental forum, the grant of the dispensation and the convalidation cannot be noted in the matrimonial register—even in the register kept in the secret archive—and, therefore, the marriage would still be regarded as invalid in the external forum. This difficulty might be met by seeking a dispensation in the external forum from one competent to give it. In the circumstances the parish priest would be competent. The confessor could, with the permission of the penitent, ask for this dispensation, having heard the facts outside confession, or the parties themselves might ask for it. The grant of the dispensation *pro foro externo* should be immediately brought to the notice of the local Ordinary and should be noted in the register of marriages.[4] Cappello[5] refers to the view of some

[1] Canon 1137.
[2] Payen, *De Matrimonio*, i, n. 696.
[3] Canon 1134.
[4] Canon 1046.
[5] Loc. cit.

writers who suggest that, in such cases, the confessor should demand, even under pain of refusal of the dispensation, that the penitent give permission to notify the grant of the dispensation in the internal sacramental forum to the local Ordinary or to the Sacred Penitentiary so that the fact of the dispensation can be noted in the secret register. But this procedure would not solve the difficulty even if it were feasible ; and it is not feasible. The confessor could not demand that the penitent give him permission to reveal matter heard in confession. Moreover, the mere revelation or notification that a dispensation was granted in the sacramental forum would not validate this grant in the external forum.[1] Indeed, the revelation of sacramental matter by a confessor, even though he has been released from the seal by the penitent, is not accepted as evidence in an ecclesiastical court.[2]

In all the foregoing discussion we have been considering the powers of the visiting priest merely as a confessor. But the question is raised in the query as to whether, in the circumstances, he may not also be regarded as the priest mentioned in canon 1098, 2°. This priest has power, in face of danger of death if it is not possible to approach the local Ordinary, to dispense, in the external forum, from all impediments of ecclesiastical law (with the exceptions mentioned earlier) and from the canonical form of celebration of marriage.[3] Since, *ex hypothesi*, recourse to the local clergy is impossible, may the visiting priest of the query be regarded as the priest mentioned in canon 1098, 2° ? If there are witnesses present and he assists at the marriage with the witnesses, he certainly may be so regarded ; but if there are no witnesses available he may not, according to some writers. Thus in Bouscaren–Ellis (referred to by our correspondent) we read :[4] 'If two witnesses are not present the priest, in our humble judgment, is not assisting "in accordance with canon 1098, 2°," and hence has not the powers here given (i.e. by canon 1044) to the priest so assisting.' This view, admittedly, conforms to the letter of canon 1098, 2°. Yet it seems to lead to an anomalous situation. In virtue of canon 1044 the priest who assists at the marriage, in the exceptional circumstances of canon 1098, can dispense from the canonical form of celebration and, therefore, can dispense from the requirement that two witnesses be present. But according to the view

[1] A dispensation granted in the internal sacramental forum is valid for this forum alone ; cf. canon 1047.
[2] Canon 1757, § 3, 2°.
[3] Canon 1044.
[4] p. 498 (Second Revised Edition).

given in Bouscaren–Ellis this priest can dispense from this requirement of witnesses only if two witnesses are present. Such a dispensation would not have much meaning. If it be objected that a dispensation from the form of celebration of marriage releases from more than the requirement that at least two witnesses be present, we can ask from what else does it release in the circumstances of canon 1098—and these precisely are the circumstances under consideration here. A dispensation from the form in these circumstances does not relax the requirement that a duly authorized priest assist at the marriage because it is the very hypothesis of canon 1098 that such a priest cannot be present and it is declared in the canon that the marriage can be valid without his presence. A dispensation from a requirement already remitted by the law itself would have no meaning.

No authorities are cited in Bouscaren–Ellis for the view expressed on the question in issue. The question comes to this: has every priest who is called upon to deal with a marriage in face of danger of death the powers not merely of a confessor but also those of the priest mentioned in canon 1098, 2°, if the local Ordinary, parish priest or other duly delegated priest cannot be summoned or approached without grave inconvenience? Many writers do not discuss this question. Some are tantalizingly vague. In Gasparri we read:[1]

> Si poenitens accuset impedimentum natura sua publicum, facto occultum, confessarius non potest dispensationem concedere . . . excepto casu quo confessarius sit parochus aut sacerdos matrimonio assistens ad normam canon 1098, n. 2. . . .

Mahoney writes:[2] 'As confessor, the priest's powers are limited to the internal forum of Penance. In given circumstances, however, a confessor automatically becomes the priest of canon 1098.' On the other hand many writers give a clearly affirmative answer to the question we have posed at the beginning of this paragraph. Thus, in Wernz–Vidal, we read:[3]

> Animadvertendum est quod in articulo mortis potest dispensari a forma et consequenter a praesentia sacerdotis competentis, unde confessarius semper esse poterit sacerdos qui assistat matrimonio ad normam canon 1098, 2° . . . Quare confessarius in periculo mortis semper poterit providere urgentissimae necessitati celebrandi matrimonium aut convalidandi iam contractum per dispensationem quae, ubi id exigat natura impedimenti, detur pro foro externo et adnotari debeat.

[1] *De Mat.*, i, n. 398.
[2] *Questions and Answers—The Sacraments*, p. 320.
[3] *Ius Canonicum*, v, n. 428, nota 91; cf. Cappello, op. cit.; De Smet, *De Sponsalibus et Matrimonio*, n. 794. Cf. Vermeersch–Creusen, *Epitome Iuris Can.*, ii, n. 312; Payen, op. cit., n. 673.

There are, therefore, both strong intrinsic reasons as well as abundant extrinsic authority for the view that the visiting priest of the query can, in dealing with the marriage, regard himself as the priest mentioned in canon 1098, 2°—since in the circumstances it is clear that a duly authorized priest cannot be summoned or approached. This view is, we believe, morally certain. The visiting priest should get, *extra confessionem*, the facts of the case from the patient, and then he can grant a dispensation in the external forum from the canonical form of celebration. The parties must both renew their matrimonial consent in his presence. Though the omission of the canonical form—which omission invalidated the marriage originally—is *per se* a public and provable fact, the renewal of consent can, in virtue of the dispensation, be made *privatim et secreto*.[1] As was pointed out earlier, however, this renewal of consent must be a new act of will in reference to a marriage which is known by both parties to have been initially invalid. The assisting priest must immediately inform the local Ordinary that he has granted the dispensation in the external forum and the marriage and the dispensation should be entered in the matrimonial register.[2] In this way both the problem of conscience and the situation in the external forum will be provided for.

In the light of all this it may be asked whether, in a case of danger of death, there is any point in making a distinction between the powers of dispensation of the confessor and those of the priest mentioned in canon 1098, 2°. There is this point in the distinction: The confessor has faculties to dispense in the internal sacramental forum whenever the local Ordinary cannot be approached,[3] but he cannot regard himself as the priest mentioned in canon 1098, 2°—and cannot grant a dispensation for the external forum—unless the circumstances are that the local Ordinary, parish priest or delegated priest cannot be summoned or approached without grave inconvenience.[4]

THE OBLIGATION OF COHABITATION WHEN ONE OF THE PARTIES HAS HAD AN ATTACK OF INSANITY

A few years ago a young married couple came to live in my parish. They appeared to live a normal and happy life. Last year their first child was born and almost immediately afterwards the man became

[1] Cf. canon 1135.
[2] Canon 1046.
[3] Canon 1044.
[4] Canon 1098.

demented and had to be put in a home. It transpired that he had spent some time there previous to his becoming acquainted with the girl he married. She had no knowledge of his medical history, and would not have married him had she known the facts. He is now out of hospital with the consent and approval of his doctor, and his conduct appears normal. Nevertheless, his wife finds it altogether repugnant to go to live with him and says that she would always fear a recurrence of his rather violent behaviour. I am anxious to know what precisely are her obligations as his wife in the circumstances, and should be grateful for your opinion.

P.P.

In the circumstances of the case as stated, we think that the girl is bound to resume cohabitation with her husband and to try to live with him a normal married life. The mental breakdown and the violent behaviour seem, on the evidence available, to have been an isolated episode in an otherwise happy married life—and, as such, they would constitute grounds for only a temporary separation.[1] The man is now discharged from hospital with the consent and approval of his doctor—which means that he is regarded as cured—and his conduct appears to be normal. Accordingly, the cause for the separation no longer exists and, in the words of canon law:[2] 'causa separationis cessante, vitae consuetudo restauranda est.' Of course, one feels great sympathy for the girl in the case. She married in unawareness of the history of her husband's health and, not unnaturally, she now has certain regrets for the past and some apprehension regarding the future. But there is little point in these useless regrets. The law is not concerned with what she might have done if she had had fuller knowledge, but with what she actually did. And she married the man for better or worse. Moreover, her fears of a recurrence of the mental breakdown and violent behaviour may be unfounded. If there is an early recurrence we think the situation would be considerably altered and a different solution might be given. We realize keenly, and we feel that our correspondent will agree, that it is very difficult to give a solution *in distans* to a case of this kind. It would be possible to decide with much greater confidence if one were personally acquainted with the parties concerned and might learn from them something more of the details of the case. Indeed, it could well be that a fuller knowledge of these details would lead one to the conclusion that the girl is justified in refusing to resume cohabitation. The pith of our contention here is that the occurrence, during an otherwise fairly normal married life, of a single period of *dementia* in one of the parties (even taking into account a similar attack years before) is not, of itself, a sufficient cause for *permanent* discontinuance of cohabitation.[1]

[1] Cf. canon 1131.
[2] Ibid.

INSTRUCTION ON THE STERILE PERIOD; MORALITY OF EXCLUSIVE USE

(i) Is it unlawful for a priest, in private consultation outside confession, to give brief instruction on the sterile period to parties who need it?

(ii) In his address in October 1951 to the Congress of the Catholic Association of Midwives, the Holy Father dealt with the exclusive use by married spouses of the infertile periods for their marital relations. In condemning this exclusive use, apart from cases in which there are sufficiently grave excusing causes, did the Holy Father refer only to the exclusive use of the sterile periods from the very beginning of the married life? Do married couples, with say one or two children, who resolve henceforth to use marriage solely during the sterile periods, act unlawfully? Are they guilty of mortal sin? It is assumed that none of the serious excusing causes mentioned by the Holy Father is present.

INTERESTED.

(i) In our view it would normally be both imprudent and unlawful for a priest to give any instruction, even outside confession, on the details of the use of the sterile period. Our correspondent's question refers expressly to extra-confessional instruction. There is no room for any doubt regarding the unlawfulness and impropriety of a confessor's action who gives, *in tribunali*, the instruction in question here. In 1943 the Holy Office issued certain guiding rules for confessors.[2] In this document we read:

Id vero apprime atque probe meminerit (confessarius) sibi haud corporum sed animarum curationem concreditam esse. Eius igitur per se non est consilia poenitentibus dare quae ad *medicinam vel hygienem spectant* atque omnino devitet quae mirationem moverent vel scandalum gignerent. Si quae vero consilia huiusmodi necessaria, etiam propter conscientiam, censeantur, eadem a perito recto, prudenti atque morali doctrina instructo tradenda erunt, ad quem igitur poenitens remittendus est. Itidem ne audeat

[1] Many writers, of course, mention insanity as a legitimate ground for temporary separation, cf. Cappello, *De Sac.*, v, *De Mat.*, n. 829; Wouters, *Manuale Th. Mor.*, ii, n. 841.
[2] *Normae quaedam de agendi ratione confessariorum circa sextum Decalogi praeceptum*, 16 May, 1943. Cf. Bouscaren, *Canon Law Digest*, iii, pp. 379–83.

confessarius, seu sponte seu rogatus, de natura vel modo actus quo vita transmittitur poenitentes docere atque ad id nullo unquam praetextu adducatur.

This does not mean that a confessor, in cases in which the exclusive use of the sterile period is justifiable, may not suggest prudently that if marital relations are restricted to certain times they may be infertile. In 1880 the Sacred Penitentiary stated that a confessor might cautiously suggest the use of the sterile period (as then known) in certain circumstances :

Posse confessarium sententiam de qua agitur illis coniugibus caute tamen insinuare quos alia ratione a detestabili onanismi crimine abducere frustra tentaverit.[1]

Commenting on this Vermeersch wrote :[2] 'that this practice [of the use of the sterile period] might be insinuated *caute*, that is with prudent discretion. . . . The uncertainty of the result is enough to suggest prudence ; besides the confessor should not be a counsellor of infecundity. The insinuation of this course of action may be appropriate . . . as offering a way out of a critical situation where the danger of incontinence makes intercourse imperative and yet where conception would be perilous for the mother.' It seems clear that the confessor may give the general information we have mentioned in cases in which there are sufficiently grave causes to justify the exclusive use of the sterile periods. A priest may give similar information outside confession. But in no circumstances should a confessor or priest attempt to give details of the technique of the sterile periods. The parties should be recommended to consult a Catholic doctor for the medical details. The exact estimation of the infertile periods is always a difficult matter, and medical calculation, observation and advice seem to be essential.[3] For this reason also it would be unwise for a priest to attempt any detailed instruction. The Holy Father had these points in mind when he said in his address to the Congress of Catholic Midwives :[4] ' It is your office and not that of a priest to instruct married people by private consultation or through serious publications on the medical and biological aspect of the theory [of periods of natural sterility], without at the same time allowing yourselves to be drawn into discussions which are neither right nor becoming.' In very urgent and genuine cases where a Catholic doctor is not easily available a priest might recommend some of the acceptable literature on the use of the sterile periods.

[1] *Analecta Iuris Pont.*, xxii, p. 249.
[2] *What is Marriage ?* (translated by Bouscaren), p. 45.
[3] Cf. Latz, *The Rhythm*, pp. 96–7; Holt, *Marriage and Periodic Abstinence*, passim.
[4] *A.A.S.*, xxxxiii (1951), p. 374.

(ii) In the address referred to, the Holy Father dealt with the morality of the exclusive use in conjugal relations of the periods of natural sterility. ' The moral lawfulness of such conduct would be affirmed or denied according as to whether or not the intention to keep constantly to these periods is based on sufficient and reliable moral grounds.' If, then, the married parties have sufficiently grave causes, this exclusive use will be lawful, otherwise it will be unlawful. It seems clearly to follow from the language used by the Holy Father—though there is no explicit statement of this in his address—that the exclusive use of the sterile periods for the whole duration of married life, without a sufficiently serious cause, is gravely sinful. Marriage, the Pope pointed out, binds to a state of life. Nature and the Creator bind the married couple, who use their state by performing its specific act, to the duty of providing for the conservation of the human race.[1] The characteristic service which gives the married state its peculiar value is the *bonum prolis*. The existence of the individual, of society, of the State, of the Church itself depends upon fruitful marriages. ' Hence,' Pope Pius XII continued, ' to embrace the married state, to make frequent use of the faculty proper to it and lawful only in that state, while, on the other hand, always and deliberately to seek to evade its primary duty without serious reasons, would be to sin against the very meaning of married life.' At the same time the Holy Father clearly stated that serious reasons of a medical, eugenic, economic or social nature would morally justify the exclusive use, in conjugal relations, of the sterile periods, even for the whole period of married life.[2] ' If, however, in the light of a reasonable and fair judgment, there are no such serious personal reasons, or reasons deriving from external circumstances, then the habitual intention to avoid the fruitfulness of the union, while, at the same time, continuing fully to satisfy sensual desire, can only arise from a false appreciation of life and from motives which run counter to true standards of moral conduct.' It is repeatedly insisted in the address that only grave or serious reasons justify the exclusive use of the sterile periods. This insistence indicates that the Holy Father regarded the continued avoidance of offspring, without such reasons, by spouses who use their marriage, as a serious dereliction of duty and a

[1] Cf. G. Kelly, S.J., *Theological Studies*, xi, p. 76 ; xiii, pp. 82–3.
[2] In a subsequent address to the Family Front (26 November, 1951), the Pope said, ' In Our last allocution on conjugal morality We affirmed the lawfulness and at the same time the limits—in truth very wide—of a regulation of offspring. . . . '—*Catholic Documents*, vi, p. 31.

grave defection from right moral conduct.[1] This same conclusion is implied by the emphasis, in this address and elsewhere,[2] on the fact that the procreation and education of offspring is the primary purpose of marriage and that all other ends are essentially subordinated thereto and somehow dependent thereon. When married couples, with the set purpose of avoiding offspring, confine their marital relations exclusively to the sterile periods, for the entire duration of their married life, their deliberate intention is totally to frustrate—and in fact they frustrate—the primary purpose and function of marriage. Such an intention and the consequent manner of action, unless there is a serious excusing cause, must be regarded as gravely sinful—and gravely sinful not by reason of extrinsic considerations but in itself—as an attitude to conjugal life, as a regular system of conjugal relations. This does not mean that the conjugal act duly performed in the sterile period is itself unlawful, even venially unlawful. Of course, it is not.[3] What is meant is that the intention, the attitude of mind which informs the systematized exclusive use, without cause, of the sterile period for the whole duration of marriage is gravely out of order and vitiates the whole system. In other words, the procedure must be considered in its totality, taking account not of the isolated acts but of the system of exclusive use with the deliberate intention or attitude of mind which informs this system. In brief, the Holy Father seems to say that spouses who frequently use their marriage rights but always, of set purpose and without a justifying cause, during the infertile period, are guilty of a grave perversion of the meaning and purpose of marriage. Such spouses interpret and use marriage solely as a means of satisfying sensual desire. We should add that, in our reading of the papal statement, spouses who use marriage only infrequently, even though this infrequent use is without cause, during the infertile period exclusively, cannot be said to be guilty of grave sin.

Our correspondent raises the further point as to whether exclusive use, again without a justifying reason, of the sterile periods is lawful after one or two children have been born of

[1] Cf. F. J. Connell, C.SS.R., *The American Ecclesiastical Review*, cxxvi, pp. 64–7.

[2] Cf. Decree of Holy Office, *A.A.S.*, xxxvi, p. 103; 'The primary function of marriage is to be at the service of life.'—Address to Family Front.

[3] In the Encyclical *Casti Connubii*, Pius XI wrote: 'Nor are they considered as acting against nature who in the married state use their right in the proper manner, although on account of natural reasons either *of time* or of certain defects new life cannot be brought forth.' C.T.S. translation, p. 28. Italics ours.

the marriage union. The general tenor of the papal address leads, we think, to the conclusion that even in such a case the exclusive use, for frequent conjugal relations, of the sterile period is morally wrong. The Holy Father refers in one of the passages quoted to the wrongfulness of an habitual intention to avoid offspring, without a grave cause, if marriage rights are frequently used. An intention would rightly be described as habitual if it continued over a long period, say for several years, even though not for the whole duration of marriage. It should be pointed out, however, that in the case of spouses who already have children, or possibly even one child, causes, such as those mentioned by the Holy Father, may more easily be present to justify subsequent exclusive use of the periods of natural sterility. But, in the terms of our correspondent's query, we must prescind from cases in which sufficiently grave excusing causes are verified. While, in our opinion, deliberately exclusive use of the sterile period, without a sufficient cause, must, in accordance with the tenor of the papal address, be described as unlawful even when the parties have already had one or two children, we should not describe such use, in the circumstances, as gravely wrong in itself—that is apart from extrinsic considerations like the proximate danger of incontinence or of injustice. When children have already been born of their marital union, the spouses cannot be said to have entirely frustrated the purpose or completely perverted the meaning of their marriage. It cannot be held that spouses are gravely bound to intend to have, or to try to have, any definite number of children, or even to have all the children reasonably possible in their circumstances. But it can be said, and we believe that the Holy Father has said it, that married couples who use their marital rights frequently are bound, and gravely bound, not to intend or to try deliberately to avoid making any contribution to the primary purpose of marriage, unless they are excused from this contribution by serious reasons.

SOME PROBLEMS REGARDING THE USE OF THE STERILE PERIODS

In a reply on the use of the sterile period you stated, in the last paragraph: 'While, in our opinion, deliberately exclusive use of the sterile period, without a sufficient cause, must be described as unlawful even when the parties have one or two children, we should not describe

such use, in the circumstances, as gravely wrong in itself—that is, apart from extrinsic considerations like the proximate danger of incontinence or of injustice.'

In practice very, very few couples set out to have no child unless there is some grave reason. Quite a number set out to limit the number of children to a few. The practical question is : how far may the exclusive use of the sterile period be justified when one of the married partners—generally the man—is none too reliable in the matter of continence ? Of course, if the wife has a grave health reason for refusing during the fertile period, she is always justified in doing so regardless of the difficulties of her husband. But suppose there is economic difficulty in supporting further children or *angustia loci* in the house and the partners agree to abstain during the fertile period although the husband knows that he will likely be guilty of solitary sin ; are the agreement and its observance lawful in these circumstances ? In other words, the first really practical question is : how far may exclusive use be made of the sterile period when there are present at the same time serious economic reasons for family limitation and danger of incontinence on the part of the husband ?

The second practical question may be stated thus. A married woman is excused from rendering the debt by reason of grave danger to her health. Must this danger be certain ? I do not mean must it be certain that serious harm would result from the use of marriage, but must the danger of serious harm be certain ? Must there be a definitely serious danger ? Who is the judge ? Is it the wife herself ?

The third question is this : is a wife ever bound to make use of the safe period and to find out the details from a doctor in order to avoid refusing at all times for grave health reasons ?

IN PRAXI.

In recent times there has been considerable discussion regarding the moral implications of the exclusive use, in marital relations, of the sterile period. This discussion was, to no small extent, occasioned by the Address of the Holy Father to the Congress of the Catholic Association of Midwives on 29 October, 1951. From this address and from the subsequent discussion two main points emerge clearly and are now universally accepted. Married couples who frequently use their marital rights but who, deliberately and without a serious excusing cause, exclusively confine this use to the sterile periods are guilty of sin. On the other hand, married couples may, without sin, exclusively use the sterile periods for a considerable length of time, or even for the whole duration of their married life, if they have a serious cause for acting in this way. The serious cause may be of many kinds—medical, eugenic, economic or social.

Over and above these two main points there are corollary questions on which the writers are not fully agreed. It has been asked what is the nature and the gravity of the sin committed by those couples who frequently use their marriage but who deliberately and without a sufficient excusing cause exclusively confine this use to the sterile periods. In the earlier reply to which our correspondent refers we contended, and we gave several arguments for our contention, that such exclusive use of the sterile periods, for the whole duration of the married life, is a mortal sin—and is so not because of any extrinsic considerations but because this manner of action and the intention which informs it are intrinsically opposed to the meaning and purpose of the marriage contract and the married state. We further expressed the view that exclusive use of the sterile periods, without a justifying cause, for frequent conjugal relations is sinful even though one or two children have already been born of the marriage. But we hesitated to describe the exclusive use of the sterile periods, in these circumstances, as gravely sinful in itself—apart, that is, from extrinsic considerations like the danger of incontinence or injustice.

Our correspondent seems to imply that the matters covered in the foregoing discussion are not of practical interest. Yet the Holy Father thought it worth while to devote a considerable portion of a practical address to them. And we have cogent and tangible evidence, in a file of correspondence, of how eminently practical they are. The questions which our correspondent considers really practical (and we do not deny that they also are practical) raise issues which go somewhat outside the problem of the exclusive use of the sterile periods. It is well recognized that certain causes excuse from the obligation of rendering the marriage debt. Many theologians[1] list among these causes the grave economic difficulty of rearing a larger family—in the case of couples who already have a number of children. But it is added, by way of qualification, that this economic stress excuses only when the parties would not be placed, as a consequence of the abstinence, in danger of incontinence :

> Si coniuges numerosa prole iam donati adeo pauperes sunt ut ulteriorem prolem alere nequeant, excluso incontinentiae periculo utriusque partis, a reddendo debito probabiliter excusantur ob grave damnum quod uxori et proli iam natae timendum est.[2]

A cause which excuses from the obligation of rendering the marriage debt will obviously be, *pro tanto*, a sufficient reason for

[1] Cf. Cappello, *De Sac.*, v, n. 811 ; Noldin, *De Sexto Praecepto*, n. 92.
[2] Noldin, loc. cit.

restricting the use of marriage exclusively to the sterile periods. Indeed, this restricted use of marriage may well prove to be a means of preventing incontinence in cases in which the parties are excused from rendering the marriage debt by reason of danger from a pregnancy to the life or health of the mother or by reason of grave economic difficulties. Hence it is that, in such cases, the exclusive use of the sterile periods for marital relations may be cautiously insinuated as offering a way out of a difficult situation. But if we suppose, as our correspondent does in his first question, that the exclusive use of the sterile periods is not a sufficient guarantee against incontinence, we have to ask further : are the parties bound, in this supposition, to use their marriage outside the sterile periods? The answer to this question will depend upon the nature of the cause which is advanced in justification of the exclusive use of the sterile period. If the cause is that a future pregnancy would be a grave danger to the life or health of the mother, then she is not bound to render the marriage debt outside the sterile periods, even though her husband may commit sin as a consequence of her refusal.[1] Or if the situation is such that the husband entirely neglects to provide for the family, a wife is justified in refusing him the *debitum*, outside the sterile periods, even though he is in danger of incontinence :

Vir qui nullam familiae curam habet et onus alendae prolis uxori unice relinquit, ius petendi amittit; quare debitum sine peccato ei negare potest, licet in periculo incontinentiae versetur.[2]

But if the reason for resorting to the exclusive use of the sterile periods be only the economic difficulty of rearing a larger family, we would say that the marriage debt must be rendered even outside these periods, insofar as this is necessary to prevent grave danger of incontinence.

We are not sure that we understand all the implications of our correspondent's second practical question. A distinction which we cannot see appears to be suggested. However, the main point emerges clearly enough. All the writers mention grave danger to health or life as a cause which excuses from the obligation of conjugal intercourse. The grave danger may arise from the performance of the act of intercourse—say in a case in which one of the parties suffers from a very serious and highly contagious disease. Or the danger might be that a further pregnancy would entail for the woman grave risk to life or health. In every case the danger must be certain or

[1] Cf. Lehmkuhl, *Th. Mor.*, ii, n. 1088.
[2] Cappello, loc. cit.

highly probable. Normally the judgment of a competent and conscientious doctor is necessary. Mere doubt or suspicion, or even a probable judgment, in the mind of one or both of the parties, that the grave danger exists, are not sufficient in themselves to justify refusal of the marriage debt, except for a very short time until medical advice can be obtained. Of course, when the danger is alleged to arise from a future pregnancy a medical judgment can be given only on the contingent fact. In other words, all a doctor can say is that if this woman becomes pregnant she will run serious risk to life or health. This is the matter on which there must be certainty or a high degree of probability. Oftentimes the extent of the risk may be exaggerated. As Vermeersch writes :[1]

Cum ipsa conceptio dubia sit nec ortum nec proximum periculum esse videtur. De his autem medicum simul peritum et timoratum adire oportet. Non desunt enim qui propter modica indicia personas parum continentes honesto coniugii usu inconsiderate prohibent.

Medical experts point out that the fact that a woman has had very serious difficulty in a former pregnancy, especially in her first pregnancy, is not, of itself, any proof that future pregnancies will be seriously dangerous. It is hardly necessary to add that the usual discomforts and processes of pregnancy and birth are not a disease or a danger to maternal life or health and, therefore, they are not a sufficient cause to justify refusal of the *debitum*.

Our reply to the third question can be very brief. A wife may, if she wishes, run the risks to health or life which she is told are involved for her in a future pregnancy.[2] These risks, however certain, are not proximate. But the wife is not bound to undergo the risks. Hence she may, in these circumstances, refuse the *debitum*. If the husband is unwilling to abstain completely or if complete abstinence would imply a grave risk of incontinence for one or both of the parties, inquiries should be made into the possibility of the exclusive use of the sterile period in the case. But it must be remembered that when a future pregnancy is adjudged by medical experts to be seriously dangerous for the mother, she is not obliged to render the marriage debt even during the sterile periods unless she is fully assured that pregnancy will not follow. And, as yet, it is not possible, in many cases, to have this full assurance. 'One may hope,' the Holy Father said some little time ago,[3] 'that

[1] *De Castitate*, n. 225.
[2] Cf. St. Thomas, *Suppl.*, 64, 2.
[3] Address to The Family Front, 26 November, 1951, *Catholic Documents*, vi, p. 31.

science will succeed in providing this lawful method with a sufficiently secure basis. The most recent information seems to confirm such a hope.'

'CO-OPERATION' IN ONANISM

At a recent conference a practical discussion arose about the morality of co-operation (*ex parte uxoris*) when instruments are persistently used (*ex parte viri*) during intercourse. Some members, recalling a reply of the Sacred Penitentiary, were alarmed at the use of the word 'co-operation.' Others quoted Father Noldin (i, n. 74, 3) as speaking of 'material co-operation,' and a few of the younger brethren mentioned Father Cappello as writing in the same sense (*De Sacramentis*, iii, n. 817, 2°). Both these writers mention material co-operation as permissible *solum ex metu gravissimi mali*. The examples given by Father Cappello are not of great practical value, viz., danger of death or serious wounding. The clergy were more interested in the cases where another type of evil would follow, e.g., desertion, adultery, misery in the home, sending of children to non-Catholic schools or Protestant church. Is continuous and active assistance obligatory in all such cases? Also what is meant by 'material co-operation' and 'passive co-operation' in these cases? What value have the cases given as causes for non-resistance in the examples quoted of the non-offending partner?

F. X. W.

In a little more than a hundred years many decisions *de usu et abusu matrimonii* have been given by the Holy See.[1] It is necessary to recall some of them here. It has always been recognized, in the words of the Papal Encyclical on marriage, 'that not infrequently one of the partners [in marriage] is sinned against rather than sinning.'[2] The obvious question arose: what should be the attitude of the innocent party to the abuse of marriage by the other party? From the decisions given there emerges a clear distinction between the two kinds of onanism, viz., natural (quando actus copulae rite incohatur sed ante seminis effusionem abrumpitur ita ut semen virile extra vas debitum effundatur) and artificial (quando in actu copulae instrumenta adhibentur ad impediendum seminis ingressum in uterum mulieris). Now, while both forms of onanism are opposed to the natural law it is clear that natural onanism is not

[1] The decisions have been collected by Rev. P. Hartmann Batzill, O.S.A., under the title: *Decisiones Sanctae Sedis—De Usu et Abusu Matrimonii*.
[2] C.T.S. translation, p. 28.

as serious a crime as artificial onanism. Natural onanism is not wrong from the beginning—the act is begun properly and naturally, whereas in artificial onanism the marital act is vitiated from the beginning. The earlier decisions have reference to natural onanism, and in many of them a close verbal similarity is to be noted. In all, the point is made that in natural onanism the innocent party *dat operam actioni licitae*; and even though the act is vitiated later by the other party the innocent partner may for a grave cause have intercourse. We quote the first part of a reply of the Sacred Penitentiary, dated April 3, 1916, which deals with this matter and repeats, almost verbatim, earlier replies. The following doubt was proposed:

Utrum mulier actioni mariti, qui ut voluptati indulgeat, crimen Onan aut Sodomitarum committere vult, illique sub mortis poena aut gravium molestiarum minatur, nisi obtemperet, *cooperari licite potest?*

The reply is in two parts: the first part refers to natural onanism, the second, which we shall have occasion to quote later, refers to sodomy. The first part of the reply says:

Si maritus in usu coniugii committere velit crimen Onan, effundendo scilicet semen extra vas post inceptam copulam, idemque minetur uxori aut mortem aut graves molestias, nisi perversae eius voluntati sese accommodet, uxor ex probatorum theologorum sententia *licite potest hoc in casu sic cum marito suo coire*: quippe cum ipsa ex parte sua det operam rei et actioni licitae, peccatum autem mariti permittat ex gravi causa quae eam excusat: quoniam caritas, qua illud impedire tenetur, cum tanto incommodo non obligat.[1]

In June, 1916, the Sacred Penitentiary was asked three questions.

1°. Utrum mulier, casu quo vir ad onanismum exercendum uti velit instrumento, ad *positivam* resistentiam teneatur? 2°. Si negative, utrum sufficient ad resistentiam passivam ex parte mulieris cohonestandam rationes aeque graves ac pro onanismo naturali (sine instrumento), vel potius omnino necessariae sint rationes pergravissimae? 3°. Utrum, ut tutiori tramite tota haec materia evolvatur et edoceatur, vir talibus utens instrumentis, *oppressori* vere debeat aequiparari: cui proinde mulier eam resistentiam opponere debeat, quam *virgo invasori?*

The decisions were:

Ad primum: *Affirmative*; ad secundum: *Provisum in primum*; ad tertium: *Affirmative.*[2]

From these replies it seems to us to follow that continuous and active resistance to artificial onanism—as set forth—is obligatory. The wife must resist as a virgin should resist one who attacks her virtue. A virgin, when attacked, may not remain passive. She must resist force by force. Theologians

[1] Batzill, op. cit., p. 29. Cf. Encycl. *Casti Connubii*, loc. cit.
[2] Batzill, op. cit., p. 30.

say, however, that for a very grave cause, like danger of death, a virgin may discontinue external positive resistance.[1] The same principles are applied to the resistance of a wife to artificial onanism (*ex parte viri*). She must positively resist, and may discontinue positive resistance only in the face of gravest actual danger. Merkelbach writes thus :[2]

Cooperatio etiam mere passiva est omnino illicita ; et ideo uxor tenetur pro viribus positive resistere et non potest cedere nisi praevalenti vi (ad instar mulieris oppressae) quo casu, ex tali *gravissima* causa relate ad id quod impedire nequit, mere passive se habere potest, dummodo omnem consensum in delectationem excludat.

The cases instanced by ' F. X. W.' are, indeed, grave causes, and are sufficient to permit passivity in regard to natural onanism, but grave though they are, they are not sufficient, we think, to excuse from positive resistance to artificial onanism. This is a hard saying, but to us it seems to be the only one consistent with the teaching of the decisions we have quoted. The second part of the reply of the Sacred Penitentiary in April, 1916—mentioned earlier—is very interesting and, though it refers directly to sodomistic marital intercourse, it sheds further light on the question we are discussing here. The reply runs thus :[3]

Si maritus committere cum ea (uxore) velit Sodomitarum crimen, cum hic sodomiticus coitus actus sit contra naturam ex parte utriusque coniugis sic coeuntis, isque Doctorum omnium iudicio graviter malus : hinc *nulla plane de causa, ne mortis quidem vitandae licite potest uxor hac in re impudico suo marito morem gerere.* Miraturque vehementer S. Poenitentiaria, quod opposita sententia, cum humanae naturae dedecore, in quorumdam sacerdotum animis (ut refertur) insidere potuerit.

Many authors[4] use the term ' co-operation ' in this context. We are of opinion that this use may easily lead to a confusion of the issue. It is worthy of note that the term has not been similarly used in the decisions. Indeed we think its use has been avoided. In the question submitted to the Sacred Penitentiary in April, 1916, the formula ' utrum . . . *co-operari licite possit* ' was used. The term co-operation is not found in the reply. This seems a significant omission.

Co-operation means the giving of help to another for the performance of an act. Strictly speaking, therefore, ' passive co-operation ' is a contradiction in terms. Yet it is used by

[1] Cf. Wouters, *De Castitate*, p. 38 ; Noldin, *De Sexto Praecepto*, p. 25 ; Merkelbach, *Quaestiones de Castitate*, p. 45.
[2] Op. cit., p. 115. Cf. Payen, *De Mat.*, iii, n. 2101.
[3] Batzill, op. cit., p. 29.
[4] Noldin, Cappello, Payen.

authors to signify ' passivity,' ' remaining passive,' ' the omission of positive resistance.' In this context ' material co-operation ' means positively and physically helping another to do a sinful act without approving of the sin or, better, of the act *qua* sin—helping, therefore, to the *esse physicum* of the act, not to the *esse morale*. It is clear, however, that when the authors speak of ' material co-operation ' in artificial onanism being lawful for a very grave cause they mean by ' material co-operation ' not positive help but ' passivity,' ' the omission of positive resistance.' In other words, ' material co-operation ' has the same meaning as ' passive co-operation.' This is clear in the context of the passages from Noldin and Cappello referred to by ' F. X. W.'

THE EXCUSING CAUSE FOR ' PASSIVITY ' IN ONANISM ; COUNSELLING THE LESSER SIN OF ONANISM

At an interesting Conference *De abusu Matrimonii*, there was a discussion on the obligation of a wife to offer resistance when the husband uses instruments. The Conference welcomed extensive quotations from your earlier reply, especially on the distinction between ' co-operation ' and ' passivity.' Two points, however, arose, about which there was a difference of opinion.

(i) If the man threatens to send the children to a Protestant school, is there not here (in view of the grave danger of their faith and salvation) a *causa gravissima* justifying passivity on the part of the woman ?

(ii) Following the teaching of certain theologians, e.g. Noldin, ii, n. 113, could a confessor approve of the suggestion made by the woman that she urge the husband to practise withdrawal as a lesser evil than the use of instruments ? It is understood that she strongly disapproves of both sinful practices which are abhorrent to her. Some members of the Conference would allow her to do so, on the principle that a lesser evil may be encouraged ; others disagreed in view of the replies of the Holy Office to the Bishop of Haarlem (1 December, 1922), on *copula dimidiata*. When these replies were read at the Conference, expression was given to a third view, viz. : that the confessor could not make the suggestion on his own initiative but could sanction it, if the woman made the suggestion.

A. B.

There is no need to delay over the ground covered in our previous reply. We can pass, almost immediately, to the points

on which there was divergence of opinion at the Conference. The first point refers to the nature of the cause which justifies a wife's passivity in relation to the condomistic intercourse of her husband.

From the replies of the Holy Office and the Sacred Penitentiary[1] it is perfectly clear that a woman is bound positively to resist her husband who attempts condomistic intercourse. She may not remain passive—*daret enim operam rei intrinsece illicitae*. The manner and extent of the resistance demanded is indicated, in a general way, in a reply of the Sacred Penitentiary of 3 June, 1916. A wife must resist the intercourse of a husband who uses a condom, as a virgin must resist a man who attacks her virtue. In the accepted teaching of the theologians,[2] this means active, forceful resistance which may be discontinued only in the face of the gravest actual danger—and provided there is no proximate fear of consent to the illicit intercourse. In this context, as examples of *causae gravissimae* which justify a wife's passivity, the theologians generally mention, in addition to the incapacity to offer further resistance, danger of death or of serious wounding. Some writers almost suggest that this list is taxative:

Nec in hac lege est ulla exceptio nisi cogites casum quemdam rarissimum, id est timor gravissimi mali, qualis est mors et quale est morti iure aequiparandum.[3]

(i) There is no denying that the threat of sending her children to a Protestant school is a very serious consideration for a Catholic wife and mother—who, in such circumstances, would deserve our deepest sympathy. Yet, in our opinion, this threat is not a sufficiently grave cause to justify the wife's passivity in relation to the condomistic intercourse of her husband. Though the threat implies a very serious danger, it is not perfectly parallel to the causes envisaged by the theologians as allowing the omission of positive resistance. As we have remarked, these causes relate to grave actual danger. We have to take into account, also, the practical consequences of allowing passivity for any particular cause. Vermeersch has something similar to this in mind when he writes of a threat to divorce (which, of course, is a very serious matter for a wife):

[1] Cf. Batzill, op. cit.
[2] Davis, *Moral and Pastoral Theology*, ii, p. 241; De Smet, *De Sponsalibus et Matrimonio*, n. 243.
[3] Payen, *De Mat.*, n. 2102. Many of the Continental writers quote a decree from the Fourth Council of Mechlin which reads: 'ob timorem gravissimi mali, puta mortis vel alius aequiparandi, ipsi (uxori) licet non resistere oppressori.'

Quare minae adulterii nequeunt sufficere ut uxor in hoc casu (copulae condomisticae) accessum mariti passive toleret. Accedit haec gravis ratio. Si propter huiusmodi causam permittamus cooperationem ad actum intrinsece illicitum, commodum medium suppetit maritis obtinendi a piis uxoribus quaecumque velint.[1]

The replies of the Holy Office and Sacred Penitentiary to which we have referred are uncompromising and unconditional in their insistence on the obligation of a wife positively to resist condomistic intercourse. The reason for this attitude is that condomistic intercourse is an act which is vitiated and intrinsically wrong from its very beginnings. In this respect condomistic onanism is parallel to sodomistic intercourse. These replies seem to leave no alternative to the view that the threat of sending their children to a Protestant school is not, of itself, a sufficiently grave cause to justify a wife's passivity in regard to the condomistic intercourse of her husband.

(ii) In our view, a confessor may not advise withdrawal (*cum seminatione extra vas*, i.e. natural onanism) as a lesser evil than condomistic intercourse; nor may he suggest to a wife that she give this advice to her husband; nor, finally, may a confessor acquiesce in a wife's spontaneous proposal that she give this advice to her husband.

Our principal argument for this view is derived from the replies of the Holy Office to the Bishop of Haarlem—the replies to which reference is made in the query. The Holy Office dealt formally only with the question whether a confessor might, in certain circumstances, advise or approve of *copula dimidiata* as a lesser evil. But it seems to us that the decision of the Holy Office has an *a fortiori* application regarding the similar advice or approval, by a confessor, of natural onanism. The relevant questions submitted to the Holy Office were:[2]

(*a*) An carpendus sit confessarius qui, omnibus remediis ad poenitentem matrimonio abutentem ab hoc malo avertendum frustra tentatis, docet exercere copulam dimidiatam ad peccata mortalia praecavenda? (*b*) An carpendus sit confessarius, qui in circumstantiis sub (*a*) copulam dimidiatam poenitenti aliunde notam suadet, vel poenitenti interroganti num hic modus licitus sit, respondet simpliciter licere, absque ulla restrictione seu explicatione.

The reply given to each of these questions was 'Affirmative.' It has been suggested, in our correspondent's covering letter, that the questions refer to cases in which both of the parties to the marriage were addicted to onanism. We do not see any such restriction in the statement of the questions. Nor, we think,

[1] *Th. Mor.*, iv, *De Castitate*, etc., n. 76.
[2] Cf. Batzill, op. cit., pp. 36–9.

would this restriction, even if it were present, alter the force of the replies for our purposes.

At first sight, these replies, in part at least, seem unduly strict. Moral theologians admit the liceity, in certain circumstances, of *copula dimidiata*; and, in itself, that is apart from a seriously sinful intention, it is only a venial sin. De Smet writes :[1]

> Copula dimidiata . . . (quae non potest dici onanistica) . . . ex eo quod foecundationi, si non impediatur, equidem noceatur eaque difficilior reddatur, sibi adnexam habet aliquam inordinationem, saltem venialem, nisi haec proportionata causa abstergatur et sic actio ipsa cohonestetur : aliis verbis non est actio intrinsece mala sed male sonans.

Yet the replies of the Holy Office leave no doubt that a confessor acts wrongly in advising the use of or in admitting, without qualification, the liceity of *copula dimidiata*, even as a means of avoiding the *grievously sinful* abuse of marriage. We can only speculate as to what particular arguments lay behind these replies. It seems to us, however, that Vermeersch has rightly interpreted the mind of the Holy Office when he suggests[2] that the danger of scandal was a paramount consideration. If it was felt by the Holy Office that there would be a danger of scandal in suggesting or in condoning *copula dimidiata*, as a last resort, for the correction of the abuse of marriage, there is surely an *a fortiori* reason for fearing scandal in advising or condoning withdrawal (*cum deliberata seminatione extra vas*) as a last remedy against condomistic onanism. For this withdrawal, unlike *copula dimidiata*, is intrinsically wrong.

As our correspondent indicates in the statement of his query, a difficulty against our reply to the particular question submitted arises from the theological teaching on the wider issue of the morality of advising a lesser evil. We must, then, for completeness, refer, at least briefly, to this wider question. It is a fairly generally accepted principle of moral teaching that we may advise a person to do a lesser evil to prevent this person from doing a greater evil of the same order. That is to say, a person who is absolutely determined to commit a certain sin, in the hypothesis that he cannot be diverted from sinning, may be advised to commit, instead, a lesser sin of the same particular species. Such advice, it is held, is not really a counsel to commit sin. What is really counselled and approved is the diminution of evil which will result when the lesser sin, in contradistinction to the greater, is committed. It is one thing to advise this lesser sin. It is another to help the sinner to commit it. Yet some

[1] Op. cit., n. 239.
[2] *Th. Mor.*, ii, n. 128.

theologians say that one may co-operate, by an indifferent act, in the doing of the lesser evil :

> Non solum minus malum suadere, sed ad minus malum actione indifferenti etiam cooperari licet ad maius malum impediendum, quod alias impediri non potest.[1]

If this teaching were applied to the particular case we have been discussing, it would be concluded, we think, that a wife might advise and even ' co-operate ' in the natural onanism of her husband to avoid condomistic intercourse. This conclusion would, however, conflict with the teaching clearly implied in the replies of the Holy Office. We suggest, then, that in the statement of principles, as outlined, insufficient cognizance is taken of the factor of scandal. In other words, the principle that a lesser evil may be advised to one determined on a greater evil of the same order is only valid when the lesser evil is completely contained in and confined within the sphere of the greater evil. A comprehensive estimate of the two evils must be made—an estimate in which account is taken of possible extrinsic factors, like scandal and co-operation. We have in mind, of course, the possible scandal caused to the person advised, but, more particularly, the danger of scandal in a wider sphere. If this danger is present, a new element, a new species of sin, may enter, so that it would no longer be simply a case of counselling a lesser sin of the same particular kind. It need hardly be pointed out that the advising of a less reprehensible species of unlawful conjugal intercourse is, by reason of the lubricity of the subject, peculiarly liable to cause scandal. In De Smet we read :[2]

> Obstat nimirum quominus illud principium de minori suadendo malo in casu (copulae dimidiatae) universim applicetur, obstat, inquam, scandalum ex huiusmodi promiscua applicatione oriundum, obstat quoque detrimentum boni publici.

These obstacles would seem to inhibit, even more clearly and with greater reason, the counselling or approval of natural onanism as a lesser evil.

[1] Noldin, *Th. Mor.*, ii, n. 113. This is the passage referred to by our correspondent.
[2] Op. cit., n. 245.

MAY PENITENTS BE LEFT IN GOOD FAITH REGARDING THE MALICE OF ONANISM?

Is it ever lawful to leave in good faith a penitent from whose confession it is quite clear that he or she is addicted to the practice of onanism? Some authors seem to hold that in rare cases such good faith may be allowed to remain. Merkelbach (*De Castitate*, p. 122), for instance, holds that, as a rule (*regulariter*), penitents are not to be left in good faith in regard to the malice of this serious crime. And he invokes a decree of the Sacred Penitentiary. Later he writes: 'Extraordinarie solum, in casu raro si ista absint incommoda et periculum scandali atque nimii abusus, poenitentem poterit relinquere in bona fide, quæ facilius existere potest in uxore dum est in gravi morbo, aut totam rem reliquit marito.'

Your comments on this matter will be welcomed by

JOANNES.

In our opinion penitents may not be left in good faith regarding the practice of onanism and regarding the serious nature of this crime. To this general principle we would admit only one exception, in favour of penitents who are dying. There is little point in disturbing good faith at the last moments of life. But no other penitents should be allowed to retain an erroneous conscience in regard to the serious malice of the crime of onanism.

The circumstances in which penitents may be left in good faith are well recognized.[1] The broad principle is that the good faith of penitents, regarding the malice or the gravity of any sinful action, is not to be disturbed when there is no fair hope that the penitents will, on being informed of the truth, amend their lives in regard to this particular matter. If there is no hope of amendment, the result of the correction of the erroneous conscience will be that acts which heretofore were only materially sinful will henceforth be formally or subjectively sinful. But to that broad principle there are a few exceptions, all of which, on consideration, are as reasonable as the principle itself. If the circumstances are such that the penitent will soon begin to have doubts regarding the morality of his sinful actions —considered up to the present as lawful or at most as venially sinful—then it is best to tell the penitent the truth at once. Again, if leaving a penitent in good faith would lead to the formation of sinful habits difficult to eradicate and hence a source of future difficulty—this will often be the case when a penitent is in a proximate occasion of sin—then the erroneous

[1] Cf. Noldin, *De Sac.*, n. 387; Prümmer, *Th. Mor.*, iii, n. 436.

conscience should be immediately corrected. Finally—and this exception is most relevant to our question—if the common good is endangered by the false conscience of the penitent, the good faith must be dissipated—even though individuals may suffer as a consequence.

The crime of onanism endangers the common good.[1] Nobody will question that statement and, therefore, we need not elaborate upon it. It follows that penitents—apart from the dying—may not be left in good faith in regard to this crime—even though the dissipation of good faith may involve that many hitherto material sins will henceforth be formal; even though many penitents may be deterred from frequenting the sacraments. These very points are brought out in replies of the Sacred Penitentiary in 1886—replies to which Merkelbach refers, as our correspondent notes. The replies are so relevant that it will be well to quote them in full with the questions submitted.[2] The first question was:

Quando adest fundata suspicio, poenitentem, qui de onanismo omnino silet, huic crimini esse addictum, num confessario liceat a prudenti et discreta interrogatione abstinere, eo quod praevideat, plures a bona fide exturbandos, multosque sacramenta deserturos esse? Annon potius teneatur confessarius prudenter et discrete interrogare?

The reply given was:

Regulariter negative ad primam partem, affirmative ad secundum.

The second question asked was:

An confessarius, qui sive ex spontanea confessione sive ex prudenti interrogatione cognoscit poenitentem onanistam, teneatur illum de huius peccati gravitate, aeque ac de aliorum peccatorum mortalium, monere eumque paterna caritate reprehendere eique absolutionem tunc solum impertiri, cum sufficientibus signis constet eundem dolere de praeterito et habere propositum non amplius onanistice agendi?

The reply to this question was:

Affirmative iuxta doctrinas probatorum auctorum.

It is arguable whether or not the first of these replies, by its use of the term *regulariter*, leaves room for the statement of Merkelbach quoted by our correspondent. But this first question seems to refer primarily to the liceity of questioning a penitent when there is a well-founded suspicion that onanism has been committed—even though there has been no mention of it in confession. In the course of history, the Church has issued many warnings against the dangers of imprudent questioning

[1] Cf. Jorio, *Th. Mor.*, iii, n. 671.
[2] Cf. Noldin, *De Sexto Praecepto*, n. 76.

of penitents, especially regarding the matter of the sixth commandment.[1] The second question and reply seem to pertain more nearly to the issue under discussion here. But perhaps in these, too, there is a loophole for the exception proposed by Merkelbach. More recently, however, we have an official pronouncement which seems to us to clear up any doubts as to the procedure with penitents who have false consciences regarding the malice of onanism. Of this very matter Pope Pius XI, in his Encyclical, *Casti Connubii*, wrote :[2] ' Priests who hear confessions and others who have the care of souls are admonished by Us, in the exercise of Our sovereign authority and Our care for the salvation of the souls of all, that they must not allow the souls committed to their charge to be in error concerning this most serious law of God and, what is even more important, that they must themselves be on their guard against these false doctrines and in no way connive at them. Should any confessor or pastor of souls—which God forbid—lead into error the faithful committed to his care, or at least by his approval or by a misleading silence, confirm them in holding such doctrines, then let him know that he will have to render to God the sovereign Judge a strict account of this betrayal of his trust; and he must consider as addressed to himself the words of Christ : " They are blind and leaders of the blind; and if the blind lead the blind, both fall into the pit." ' It is our submission that this statement leaves no room for the exception which Merkelbach, with some few others,[3] seems to envisage. In fairness to Merkelbach it should be pointed out that his work was written before the promulgation of the Encyclical *Casti Connubii*. Moreover, Merkelbach's exception is restricted by many conditions. If it be asked why we ourselves, without any express warrant from the text of the Encyclical, have admitted an exception in the case of the dying, we can reply that the whole background of the teaching here is that onanism is a crime which injures the common good. In the case of dying penitents, who, *ex hypothesi*, will not sin or lead others to sin again, the danger to the common good is not in issue—whereas, in regard to all other penitents guilty of onanism, this danger may always arise. Briefly, there is nothing to be gained for the common good by disturbing the good faith of the dying.

[1] Cf. canon 888, § 2. Cf. also Instruction of Holy Office, *Normae quaedam de agendi ratione confessariorum circa sextum Decalogi praeceptum*.
[2] English translation, C.T.S., London, p. 26, n. 57.
[3] Cf. Vermeersch, *What is Marriage ?* (translated by Bouscaren), n. 95.

THE *MONITUM* OF THE HOLY OFFICE ON THE *AMPLEXUS RESERVATUS*

I have read the text of a *Monitum* of the Holy Office on the *amplexus reservatus*. Would you kindly give a brief explanation of the nature of this *amplexus* and of the meaning of the *Monitum* ? I should particularly like to know if this document implies that the *amplexus reservatus* is gravely sinful ?

SENEX.

The *amplexus reservatus* referred to in the *Monitum* : ' Gravi cum sollicitudine,' issued by the Holy Office on 30 June, 1952,[1] is ' actus incohatae copulae qui fit penetratione penis in vaginam mulieris sed in quo, e deliberato proposito, cohibetur seminatio'. In recent years a number of writers,[2] mainly French, have discussed this *amplexus reservatus*, and the technique of accomplishing it, in great detail and have recommended the practice of it as a means of securing the secondary ends of marriage in cases in which further pregnancies would constitute a grave danger to the mother and where, perhaps, the exclusive use of the sterile periods does not afford a sufficient safeguard. Indeed, these writers have gone further and extolled the *amplexus reservatus* as a most laudable and excellent means, for those properly versed in its technique, of allaying the instinctive sexual urge of the married pair. At the same time, it is argued, the *amplexus* demands a high degree of discipline, particularly *ex parte viri*, inasmuch as he must resist and control the onset of the orgasm which results in *effusio seminis*.

In several recent addresses[3] the Holy Father has pleaded for reserve and reticence in the treatment of delicate conjugal problems. Following the lines of this plea, and on the express mandate of the Pope, the Holy Office issued the *Monitum* referred to by our correspondent. In the opening paragraph it is stated that the Apostolic See is gravely concerned to note that a number of present-day writers have, in an unreserved and shamelessly detailed manner, dealt with matters relating to conjugal life and that a few of these writers have described, praised and recommended the act known as the *amplexus reservatus*. Consequently, the Holy Office, in fulfilment of its important duty of safeguarding the sanctity of marriage and the salvation of souls, gravely warns these writers that they must desist from this manner of writing and exposition. The Holy

[1] *A.A.S.*, xxxxiv (1952), p. 546.
[2] Cf. Chanson, *L'Art d'Aimer ; L'Art d'Aimer et la Continence Conjugale*.
[3] Cf. Address to Congress of Italian Catholic Midwives, 29 October, 1951.

Office earnestly exhorts bishops to exercise strict vigilance in this matter and to appoint suitable remedies. The final paragraph of the *Monitum* is addressed to priests. In their work of the care of souls and the direction of consciences they should never, either spontaneously or in reply to a question, presume so to speak of the *amplexus reservatus* as if there were no objection to it from the standpoint of the Christian law.

The foregoing is, in the main, a translation of the *Monitum*. Some further brief analysis of its contents may be helpful. Firstly, writers are forbidden to indulge in closely detailed descriptions of matters concerning conjugal life, in particular, of course, of such matters as the intimacies of the conjugal act. Such descriptions are an offence against Christian modesty and may easily cause grave scandal. They also imply a violation of the reverence due to the marriage state and the marital act. In such matters reticence or great reserve are necessary elements of reverence. Secondly, writers may not describe, praise or recommend the *amplexus reservatus*. This prohibition, however, does not preclude the moral theologian from giving a general description of the *amplexus* for the purposes of considering its morality. The background and the context clearly indicate that what is forbidden, at this point in the *Monitum*, is any sort of detailed description of the technique of the *amplexus*. Nor is it lawful to make any laudatory reference to the *amplexus* or to recommend the practice of it. Writers who indulge in any of these activities are again guilty of a violation of Christian modesty and will probably cause grave scandal in the matter of chastity. Bishops are exhorted to exercise vigilance and to prescribe remedies. Perhaps the most obvious way in which they can fulfil this exhortation is by refusing an *Imprimatur* for any works which contravene the foregoing provisions and by prohibiting and delating books in which the proscribed teaching appears.

Thus far the content of the *Monitum* is perfectly clear. The final paragraph may give rise to some questions. In it, as has been noted, it is pointed out that priests may never presume, in their direction of souls, to suggest spontaneously or when asked, that the *amplexus reservatus* is unimpeachable from the moral standpoint. But does this mean that this *amplexus* is always and *in se* a violation of the moral law[1]—a mortal or, at the least, a

[1] H. Hering, O.P., writing before the *Monitum* was published, maintained this thesis: 'Inchoare copulam cum intentione cohibendi seminationem, licet sine periculo pollutionis est illicitum et quidem sub gravi.' *Angelicum*, xxviii (1951), pp. 313–45. Since the publication of the *Monitum* the same

venial sin? The text of the paragraph is very guarded. It may be well to quote it verbatim:

> 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 obiiciendum.

Obviously, there is no express assertion here that the *amplexus reservatus* is, *in se*, immoral. Nor, in our view, is this assertion implied in the text. May we not say that if the Holy Office wished it to be understood that the *amplexus reservatus* is intrinsically immoral it would have said so clearly and would not have used such guarded language? It seems to us, then, that this question is left open to theological discussion. Considerations of space preclude us from giving any detailed analysis of the question here. But we may say that it does not appear possible to prove, by theological arguments, the intrinsic immorality of the *amplexus reservatus*. This is but another way of saying that, under certain conditions, it may be lawful as an *actus usus incompleti coniugii*.[1] We hasten to add that it would be difficult in practice to verify these conditions. Consequently, as the Holy Office implies, it would be completely wrong for a priest to suggest that there are no moral difficulties in or objections to the *amplexus*.

There are, in fact, very many such difficulties and objections. While it is possible to make a distinction between an isolated act and the habitual practice of the *amplexus*—there are moral objections to both elements of the distinction. The *amplexus reservatus* must be described as an *actus libidinosus de se graviter et proxime in pollutionem influens*. Only the gravest causes could justify such an act in circumstances in which the parties are not willing to complete it *modo naturali*. There is the obvious difficulty of preventing the act reaching its normal term. This act, almost inevitably, will oftentimes be vitiated by the sinful motive which inspires it. The practice of the *amplexus reservatus* as a regular system of conjugal relations is fraught with further moral dangers and, indeed, might imperil the whole institution of Christian marriage. This practice would easily imply a perversion of the true order of the ends of marriage and a false sense of values. The emphasis would be unduly laid upon the 'personal values.'[2] The Christian moral

author has returned to the question and argues 'ex ratione, iuxta principia sancti Thomae' that the practice of the *amplexus reservatus* is intrinsically immoral. *Monitor Eccles.*, lxxix (1954), pp. 455–78.

[1] Cf. Vermeersch, *Th. Mor.*, iv, n. 73.

[2] Cf. Address of Pope Pius XII to the Congress of Italian Catholic Midwives—*Catholic Documents*, vi, p. 11.

law does not allow, even in marriage, the unrestrained satisfaction of the sexual instinct or indulgence in complete or incomplete acts *ob solam voluptatem*.[1] Every use of the sex faculty must be orientated, at least mediately, towards the primary purpose of procreation. The pleasure associated with this use is not an end in itself but is appointed by the Creator for the service of life. Indulgence in the *amplexus reservatus* indicates and develops a hedonistic outlook which is foreign to the Christian way of life. Pope Pius XII reminded the Catholic midwives that in performing the duties of their profession they should 'do their utmost to repel the attack of refined hedonism which is spiritually an empty thing and therefore unworthy of Christian spouses.'[2] It would surely, then, ill become the office of a priest that he should say anything which might encourage this spirit of unChristian hedonism. While, therefore, we hold, *salvo semper iudicio Ecclesiae*, that the *amplexus reservatus* is not intrinsically immoral, it is clear from what has been written above that, in practice, this act, being *materia lubrica*, is open to very serious moral objections from many points of view, in particular by reason of the proximate danger of pollution, of bad motives, a wrong attitude to marriage, an unChristian philosophy of life. Hence, again, it is not surprising that the Holy Office forbids priests from ever suggesting that there are no moral objections to the *amplexus*. In an earlier Instruction,[3] this same Sacred Congregation pointed out that confessors should exercise great care and reserve in dealing with matters concerning the sixth commandment and the following explicit warning was given :

Ne audeat confessarius, seu sponte seu rogatus, de natura vel modo actus quo vita transmittitur poenitentes docere, atque ad id nullo umquam praetextu adducatur.

A LAWFUL METHOD OF PROCURING SEMINAL SPECIMENS FOR STERILITY TESTS

A doctor friend maintains that it is lawful to use a perforated condom for the purpose of collecting semen for sterility tests. He claims that the use of this type of condom does not frustrate full intercourse or conception and that the semen retained for the test would not, in any case, reach the uterus.

Your opinion on this question will be appreciated by

J. B.

[1] Ibid., p. 14. [2] Ibid., p. 15.
[3] *Normae quaedam de agendi ratione confessariorum circa sextum Decalogi praeceptum*, 16 May, 1943.

Many methods of procuring specimens of semen are mentioned by the writers—theological and medical.[1] There is no doubt that condomistic intercourse, if the condom is intact and undamaged, is an intrinsically unlawful method. 'The act of wedlock is of its very nature designed for the procreation of offspring; and, therefore, those who, in performing it, deliberately deprive it of its natural power and efficacy, act against nature and do something which is shameful and intrinsically immoral. . . . Any use of matrimony whatsoever in the exercise of which the act is deprived, by human interference, of its natural power to procreate life, is an offence against the law of God and of nature, and those who commit it are guilty of grave sin.'[2]

The morality of using a punctured condom to obtain seminal specimens is not discussed in the text-books. In recent years, however, there has been some discussion of the problem in periodical articles, and divergent opinions have been expounded. In the normal male ejaculate there is a vast number of spermatozoa—far beyond what is necessary for fecundation. Consequently, the use in intercourse of a condom, which is sufficiently perforated to allow the deposition of a considerable portion of the ejaculate *in vase mulieris*, cannot be said to make the act inept for generation. In other words, in this hypothesis of sufficient perforation, intercourse with a punctured condom is an *actus per se aptus ad prolis generationem*. The intercourse is substantially undistorted and natural. The procreation of offspring is not artificially prevented. It does not follow, of course, that intercourse with a perforated condom is always lawful. The procedure does involve some degree of interference with the natural act and, perhaps, some slight lessening of the chances of subsequent fecundation. All this would clearly be somehow unlawful if there is no justifying cause. But, in our opinion, it would be lawful for a grave cause. If the seminal specimens obtained by using a punctured condom are really useful for sterility tests and may thus be helpful towards curing sterile conditions—then there is present, we think, a sufficiently grave cause to justify the method. We have made this hypothetical statement, because we are not at all sure regarding the value, for test purposes, of these specimens. Though this is properly a matter for medical estimation we may say that many reasons

[1] Cf. Palmieri, *Medicina Legale Can.*, pp. 185–6. Direct masturbation to secure semen for detection of disease was condemned by the Holy Office, 2 August, 1929—*A.A.S.*, xxi, n. 490.
[2] Encycl. *Casti Connubii*, English translation (C.T.S., London), pp. 25, 26.

occur to us which seem to indicate that specimens obtained in this way are unsatisfactory. We understand that several factors have to be estimated in male sterility tests. Among these factors are the quantity of the ejaculate, the number, viability, motility and morphology of the spermatozoa.[1] It is difficult to appreciate how any adequate estimate of some of these factors can be made when, as will happen, only a fractional portion of the ejaculate remains in the punctured condom. Moreover, the material of the condom is thought to have an injurious effect on the motility of the retained spermatozoa.[2] But, notwithstanding these difficulties, it may be possible for medical experts to obtain useful information and helpful results from the examination of the fractional ejaculate. This possibility would constitute a sufficient cause for the use of a punctured condom in marital intercourse, provided always, we repeat, that the puncture is large enough to allow ample semen for generation to pass into the vagina and uterus.

We mentioned earlier that divergent views have been expressed on this question. Father Clifford[3] takes the view that it is lawful to use a perforated condom to obtain seminal specimens for sterility tests. He makes a parallel between this technique and studied *copula dimidiata*. In both cases generation is hampered, not prevented. Father Clifford recalls that studied *copula dimidiata* is described by the moralists as only venially sinful and hence would be lawful for a sufficient cause. Similarly, he thinks, the use of a perforated condom would be justified by a sufficient cause—and a cure for sterility is such a cause. He seems to have no doubt that the seminal specimen obtained from the perforated condom is adequate for helpful testing and possible therapy. On that point we are unsure and hesitant. And it is, we believe, a material point. That is to say, the use of a perforated condom would be allowable only in the hypothesis that thereby a useful test specimen is provided. Father Clifford makes an interesting reference to the possibility of correcting hypospadias by using a perforated condom. If this technique is accepted as licit—and we think it should be—a certain prejudice against the use of a perforated condom is allayed. Dr. Connell,[4] on the other hand, holds that it is unlawful to use a punctured condom to obtain test specimens

[1] Cf. Palmieri, op. cit., pp. 186–206.
[2] Ibid., p. 187.
[3] 'Sterility Tests and their Morality,' *American Ecclesiastical Review*, November, 1942, pp. 364–5.
[4] 'The Catholic Doctor,' *American Ecclesiastical Review*, December, 1944, p. 446.

of semen. Here are his own words :[1] 'Others recommend the use of a perforated condom by the man in having relations with his wife, which will result in a small portion of the semen remaining in the condom for the purpose of examination. But the objection to this method is that it involves a direct purpose of ejecting some of the semen into a place not intended by nature—and the morality of the action is not changed by the fact that it is only a small amount.' We see the force of Dr. Connell's objection. But we think that the morality of the action may well be changed by the fact that only a small portion of the total ejaculate will remain in the condom. We must consider the act as a whole, and not merely or isolatedly that part of it which terminates in leaving a small portion of the semen in the condom. The act, as a whole, is substantially correct and adequate for its natural purpose. The primary direct purpose of the agent will be the performance of an act of conjugal intercourse—in an unusual manner it is true, but nevertheless not in a manner which distorts the nature of the act. Dr. Connell would, we feel, reject the parallel suggested between the use of a perforated condom to obtain specimens and studied *copula dimidiata*. He would probably say that in the latter case there is no question of a direct purpose of placing semen in a place not intended by nature. The parallel may not be perfect, but it is not without value and point in the context. Dr. Connell does not refer to the morality of the use of perforated condoms to correct hypospadias. But we think he would admit the liceity of this procedure. At any rate, his objection that portion of the semen would, of direct purpose, be ejected into a place not intended by nature, does not apply here.

[1] Loc. cit.