

**RESERVED SINS ACCORDING TO THE CCEO
AND *LATAE SENTENTIAE* CENSURES
ACCORDING TO THE CIC IN RELATION TO
THE SACRAMENT OF PENANCE**

A COMPARATIVE JURIDICAL AND PASTORAL ANALYSIS

Vinson JOSEPH

**A Dissertation Submitted to the Chair of Canon Law in the
Faculty of Theology at the University of Fribourg for Obtaining
the Degree of Doctorate under the Direction of
Professor Astrid KAPTIJN**

2015

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ABBREVIATIONS

AAS	<i>Acta Apostolicae Sedis</i>
Acts	Acts of the Apostles
AG	<i>Ad gentes</i>
alloc	<i>Allocutio</i>
Ap. Const.	Apostolic Constitution
Ap. Exhort.	Apostolic Exhortation
art. / arts.	Article / Articles
ASS	<i>Acta Sanctae Sedis</i>
c. /cc.	Canon / Canons
CCC	Catechism of the Catholic Church
CCEO	<i>Codex Canonum Ecclesiarum Orientalium</i>
CD	<i>Christus Dominus</i>
Cf.	Confer
CIC	<i>Codex Iuris Canonici</i>
CIC 1917	<i>Codex Iuris Canonici/ 1917</i>
CIC 1983	<i>Codex Iuris Canonici/ 1983</i>
CICO	<i>Codex Iuris Canonici Orientalis</i>
CLSA	Canon Law Society of America
Comm.	Communicationes
Cor	Letter to the Corinthians
CS	<i>Cleri Sanctitati</i>
e.g.	for example (<i>exempli gratia</i>)
ed. / eds.	Editor / editors
EN	<i>Evangelii nuntiandi</i>
Eph	Letter to the Ephesians
et al.	and others (<i>et alii</i>)
etc.	and others of the same class, and so forth (<i>et cetera</i>)
ff	following
Gal	Galatians
GS	<i>Gaudium et spes</i>

Heb	Hebrews
i.e.	that is to say (<i>id est</i>)
Jas	James
Jn	John
LEF	<i>Lex Ecclesiae Fundamental</i>
LG	<i>Lumen Gentium</i>
Lk	Luke
Mk	Mark
MP	<i>Motu Proprio</i>
Mt	Mathew
n. / nn.	Number / Numbers
NT	New Testament
OE	<i>Orientalium Ecclesiarum</i>
OT	Old Testament
PB	<i>Pastor Bonus</i>
PCCICOR	<i>Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo</i>
PCCICR	<i>Pontificia Commissio Codici Iuris Canonici Recognoscendo</i>
Pet	St. Peter
Phil	Philippians
PO	<i>Presbyterorum Ordinis</i>
Rom	Romans
SC	<i>Sacrosanctum Concilium</i>
SCIC	<i>Schema Codicis Iuris Canonici</i>
SCICO	<i>Schema Codicis Iuris Canonici Orientalis</i>
SST	<i>Sacramentorum Sanctitatis Tutela</i>
Tim	Timothy
Thess	Thessalonians
vol. / vols.	Volume / Volumes

GENERAL INTRODUCTION

Only those who have received the ministerial priesthood possess the power to absolve sins in the sacrament of penance (CIC c.965, CCEO c.722 §1).¹ This power of orders is received by them in the sacrament of sacred ordination, the sacrament that conforms them to Christ, the head of the Church, and it is exercised *in persona Christi*. The Second Vatican Council teaches that “Through that sacrament [of ordination] priests by the anointing of the Holy Spirit are signed with a special character and so are conformed to Christ the priest in such a way that they are able to act in the person of Christ the Lord” (PO 2).

But to be a true and valid minister of the sacrament of penance,² one must have not only the power of order (*munus sacram*) but also the faculty to give absolution. This faculty is not the power to pardon sins (an integrating part of the *munus sacram* received in the sacrament of sacred ordination), but the hierarchical authorization to exercise this power. It is a positive bestowal or a juridical determination given to an ordained minister to exercise validly and licitly the same power. The Catechism of the Catholic Church, in article 1462, speaks of this commissioning as follows:

Since ancient times the bishop, visible head of a particular Church, has thus rightfully been considered to be the one who principally has the power and ministry of reconciliation: he is the moderator of the penitential discipline. Priests, his collaborators, exercise it to the extent that they have received the commission either from their bishop (or religious superior) or the Pope, according to the law of the Church.

From the perspective of juridical precision and internal legal coherence, this new legislation uses the word ‘faculty’ to denote the hierarchical authorization to give absolution. Before this new legislation, the term ‘jurisdiction’ was used in the place of ‘faculty’. The new legislation uses the term ‘jurisdiction’ to identify the power of governance in its strictest sense. At present, ‘absolution’ is not simply an act of the power of governance in the external forum, but also belongs to the internal forum, and

¹ CIC - *The Code of Canon Law*, Latin-English Edition, Washington: Canon Law Society of America, 1999; CCEO - *The Code of Canons of the Eastern Churches*, Latin-English Edition, Translation prepared under the auspices of the Canon Law Society of America, Bangalore: TPI, 2003.

² This sacrament is known by many names, including penance, reconciliation and confession (CCC 1423-1442). The name ‘sacrament of penance’ is made used all throughout this study.

so is a power that refers to the sphere of conscience. Therefore, the Code uses the term ‘faculty’ to denote the hierarchical authorization to absolve sins.

CCEO canon 727 restricts the faculty to absolve from sins and reserves it to a higher authority. CCEO canon 728 reserves three sins, of which two are reserved to the Apostolic See and the other to the eparchial bishops. The faculty to absolve from sins that directly violate the sacramental seal and to absolve an accomplice in a sin against chastity is reserved to the Apostolic See. However, absolution from the sin of procuring an abortion, if completed, is reserved to the eparchial bishop. CCEO canon 729 explains the circumstances in which these reservations would be exempted.

In the Latin Code, no sins are directly reserved, nor is the possibility of such a reservation to ecclesiastical authority foreseen. It was once the case that the absolution of certain sins was reserved to various levels of authority in the Latin Church, such as the local Ordinary or one to whom he specifically gave the faculty. However, the CIC 1983 avoided these norms on reserved sin. Instead, the CIC preserves the *latae sententiae* censures, excommunication, and interdicts and indirectly brings the effect of reserved sins into the context of the sacrament of penance.

Rationale for the Study

The CIC 1983 makes no provision for reservation of the absolution of sins. However, the later promulgation, the CCEO, makes such a provision. What is the rationale behind this? Why does the Eastern Code purposefully accept what the CIC had omitted? How does the alternative system found in the CIC function to give the effect of reservation? What are the merits and demerits of these two systems of reservation? To what extent is each of them practical in the inter-ritual administration of the sacrament of penance? Only a very few sins are reserved. But are there other serious sins which could be reserved to the Apostolic See in our modern situation? How has legislation with regard to the reservation of the faculty to hear confession developed in the Church throughout the centuries? These are the questions that arise when we study the reserved sins in the CCEO. The current research is a scientific attempt to analyze these areas with the hope of arriving at a better canonical and juridical precision and clarity with regard to the matter of reserved sins.

Research Methodology

The methodology followed in this study is historico-theological and juridico-pastoral in nature. This research is primarily doctrinal and pastoral and it employs an empirical method. By surveying Church History and various canonical promulgations, the research attempts to uncover the historical basis of the reservation of the faculty to give absolution to certain ecclesiastical authorities. Based on the Scripture and other documents of the Church, the research also proposes to identify the theological and dogmatic foundation of the sacrament of penance. The current study also focuses on the papal teachings and instructions on this matter that have been issued from the concerned office of the Catholic Church. The codification procedure of the CCEO and CIC (1917 and 1983) are analyzed to find out the reasons for the reservation of sins and their canonical nuances. Finally, a survey has been conducted in connection with this study to determine the extent to which these laws are actually practiced today in the pastoral field.

Literature Review

The sources made use of in this study can be divided into two categories: (i) primary sources include the Holy Bible, the writings of the Fathers of the Church, documents of the Ecumenical Councils and certain regional synods of the early Church and the Church in the middle ages, CIC 1917, CIC 1983, CCEO, *Acta Apostolicae Sedis* (AAS), *Fontes*, *Nuntia*, *Communicationes*, papal encyclical letters, other documents of the Roman Curia, Second Vatican Conciliar and Post-Conciliar documents, and (ii) secondary sources, including commentaries on the Codes of Canon Law and scholarly studies by renowned canonists on the topic. Also, many materials related to this topic collected from many books, reviews, articles and periodicals will be referred to in the course of this study.

Aims and Objectives of the Study

The aims of the study are the following:

- To uncover the theological foundations of the sacrament of penance and reservation of the faculty to hear the confession.
- To trace the historical development of the reservation of sins.

- To explore how the CCEO has formulated the canons for reserving sins.
- To offer a comparative analysis of the CCEO and CIC with regard to the reservation of sins.
- To assess the practical issues and problems in the case of reservation.

The primary objective of the study is to research the system for the reservation of sins in the Eastern Code and explore its canonical and practical nuances in relation to the Latin Code.

Limitations of the Study

The study concentrates exclusively on reserved sins and the various aspects of the canon for reserving sins. This is not a study on the sacrament of penance in general. Though the study deals with *latae sententiae* censures which fall under penalties, it deals with them only insofar as they relate to reserved sins. It is not a study on penalties and therefore offers no detailed description of penal principles. Since the studies on reserved sin have not been widely reviewed or explained, there is currently a lack of literature on this topic. This study aims to fill this gap.

The Plan of the Research Paper

The findings of this doctoral research are presented in four chapters. The first chapter concerns the theological foundations of the sacrament of penance and faculty to administer the sacrament. This chapter is divided into three sections. The first details the fundamental theological aspects of the origin and development of the power to absolve sins. The second examines the history of the faculty to forgive sin, describing how this faculty was exercised by specially ordained people in all the periods of the history, though there were different norms for its administration. The third section considers whether there have ever been restrictions on the faculty to forgive sins and examines the development of the system of reserved sins in the Church.

The second chapter concerns various canons on reserved sins and examines the legal implications of these according to the CCEO. A textual and canonical analysis of canons 727 – 729 is provided.

The third chapter deals with the reserved sins in the legislation of the Latin Church. An analysis is made of the canons on reserved sins of CIC 1917 and the *Latae sententiae censures* of CIC 1983.

The fourth chapter compares the systems of reserved sins presented in the CCEO and CIC. After distinguishing and comparing both systems, the juridical and inter-ritual practical problems and issues are considered. The canonical status of the praxis related to the reserved sins is evaluated on the basis of a survey of a group of priests working in Switzerland, conducted in connection with this study.

The doctrine of the sacrament of penance takes into account two distinct realities: first, the inner renewal of the sinner whose relation to God, severed by sin, is restored by conversion and repentance; second, the ecclesial discipline by which the absolution of the sin and reconciliation of the sinner takes place within the Christian community. This second reality, which is in the ecclesiastical discipline, is controlled by the Canon Law. In fact, the Church imposes certain limitations and controls on the granting of reconciliation with the Church and absolution of sins. A major aim of this research is to identify the canonical nuances of one such discipline, i.e., the reservation of sins, which is found, in a strict sense, only in the CCEO. The study thus offers a historical, theological, canonical, pastoral analysis and synthesis of the canonical concept of reserved sins as found in the CCEO, in comparison with the system of reservation in the CIC.

CHAPTER I

A THEOLOGICAL AND HISTORICAL APPRAISAL OF THE POWER TO ABSOLVE SINS AND ITS REGULATION IN THE CHURCH

Introduction

The power to reserve the absolution of certain sins to the higher authority in the Church is an indication that there is such a power in the Church to control the administration of the sacrament of penance. In the case of the sacrament of penance, this is known as ‘faculty’ according to the new legislation.³ This study is an attempt to discern the historical and theological background and evidence about whether the Church had the power to absolve sins from the beginning of its institution and, if so, how the leaders of the Church, who represented the apostles, controlled and regulated this power for the better administration of the sacrament. Therefore, it is not the intention of this study to outline the entire historical development of the sacrament⁴ of reconciliation, about which there is a great deal of scholarship by eminent authors.⁵ This study’s emphasis is on the theology of the power of the Church to forgive sins, the historical development of the faculty, and the regulations of the faculty, i.e., the reservation of sins.

³ CCEO cc.722-726.

⁴ The Latin word *sacramentum* was frequently employed in ancient Rome. It had two meanings for Romans. A *sacramentum* was, first of all, a pledge of money that the parties in a civil dispute would place in court custody. Second, the term referred to a vow or pledge of allegiance that a Roman soldier took to the Roman emperor, to live and die for him and the empire. This latter connotation was appropriated by the post-resurrection communities of early Christians during the first three centuries. It was the early Christian writer and thinker, Tertullian, who was recorded as first using the word *sacramentum* around the beginning of the third century. Sacrament, thus, replaced *mystery* as the common term for the rites of Christian initiation. *Sacramentum* gradually came to refer to the rituals that celebrated becoming a member of the Body of Christ. We know this term is used today to indicate the seven sacraments in the Church. Cf. Patrick J. Brennan, *Guidelines for Contemporary Catholics: Penance and Reconciliation*. 31.

⁵ Cf. Oscar D. Watkins, *A History of Penance*, vol. 1, 2. London, 1920; Bernhard Poschmann, *La pénitence et l’onction des malades*. Paris, 1966; Galtier Paul, *L’Eglise et la rémission des péchés aux premiers siècles*; Ladislav Örsy, *The Evolving Church and the Sacrament of Penance*. New Jersey, 1978; Paul Anciaux, *The Sacrament of Penance (Le sacrement de la pénitence)*. NY, 1962; Cyrille Vogel, *Le pécheur et la pénitence dans l’Eglise ancienne*. Paris, 1982.

Before delving into history and theology, it should be kept in mind that today, the essential ordinary form⁶ of the sacrament of penance consists of repentance, confession, the imposition of penance, and absolution. Absolution given by a priest with faculty is essential for the validity and liceity of the sacrament.

Part I

The Power of the Church to Absolve Sins

1.1.1. Biblical Foundation

Among the faithful, there is no doubt that Jesus came to this world to reconcile humankind with God. The key message of the New Testament is ‘to repent and believe’ in the Gospel. Hence, our focus is to search the scripture about whether Jesus has given man the power to absolve sins. This study will not seek to determine the precise form of penance found in the bible. It will seek rather to determine the authority by which the apostles and the Church assumed the ministry of forgiving sins, though different forms are found in different eras. David M. Coffey speaks of the biblical foundations and the gradual development of the sacrament of confession in the following terms:

Clearly the sacrament of confession did not come to us from Christ in anything like the form that it has today. However, its scriptural foundations are clear. From Scripture we learn that reconciliation was central to the ministry of Christ. Moreover, on the basis of his resurrection the gospels saw him as possessing the direct power of forgiving sins. It is also clear that he passed on this power to the Church, though for many centuries it interpreted its mandate only in a direct way. Originally it carried it out through presenting the forgiveness of sins as an essential element of the Gospel that it preached. Then it had to deal with occurrence of sin in the evangelized Christian community, and hence there began the development of penance as a distinct sacrament. What we observe in the Church, therefore, is the sacrament’s gradual formation, such that it attained what now appears as its full essence only in the late Middle Ages.⁷

1.1.1.1. Jesus as Founder of the Sacrament of Reconciliation

The Son of God came to earth to make reconciliation possible. He thus became the founder and mediator of this reconciliation. “For the Son of man came to seek and to

⁶ At present, there are other forms in practice, but the eastern code accepts only this form as the ordinary form, though the general absolution on special occasions is stipulated in the Code; CCEO c.720.

⁷ David M. Coffey, *The Sacrament of Reconciliation*. Minnesota: The Liturgical Press, 2001, 48.

save the lost” (Lk 19:10). When the life of Jesus is examined, it becomes evident that He came to reconcile humankind with God the Father. He begins his ministry by stating “The time is fulfilled, and the kingdom of God is at hand; repent and believe in the gospel of God” (Mk 1:15).

Throughout his ministry, Jesus searches for sinners and stands for them. According to the Gospel of Luke, the curing of the paralytic man (Lk 5:20) and the forgiveness granted to the adulterous women (Lk 7:48) are two occasions in which Jesus forgives particular persons. There are also some instances when Jesus eats and drinks with sinners. Jesus, even surrounded by sinners at the table, shows that he wanted to reconcile people with God. There are also instances when Jesus openly says he heals the sick that he has the power to forgive sins.⁸ In the case of the paralytic person in Mk 2:1-12, Jesus declared that his sins were forgiven. In verses ten to eleven the Gospel declares ““But that you may know that the Son of Man has authority on earth to forgive sins’ he said to the paralytic ‘I say to you, take up your pallet and go home.’”

The Gospels tell us that the Scribes and the Pharisees were scandalized by Jesus’ declaration to the paralytic, ‘My son, your sins are forgiven’. “They questioned in their hearts, why does this man speak thus? It is blasphemy! Who can forgive sins but God alone?” (Mk 2:7). Jesus’ own authority to forgive was vindicated by the miraculous healing of the paralytic and the story according to the Gospels of Mark and Luke culminates with a description of the bystanders’ reaction of amazement and praise. But Mathew’s version draws out the wider implications of the story: ‘The crowd glorified God, who had given such authority to men’ (Mt 9:8).⁹

Another important action of Jesus is his endowing of the Last Supper with sacrificial and salvific power by constituting it as a ritual anticipation of his death. In Mt 26:28 we read: “This is my blood of the covenant, which is poured out for many for the forgiveness of sins.” Finally, he died for our sins, for as Paul says in Rom 4:25, “he

⁸ Coffey, *The Sacrament of Reconciliation*, 35.

⁹ John Jeffrey, “Authority Given to Men: The Doctrinal Basis of Ministerial Absolution in the New Testament,” in *Confession and Absolution*. Minnesota: The Liturgical Press, 1990, 15.

himself died for our sins and rose again for our justification.” Thus, Jesus himself is the founder and foundation of the sacrament of penance or reconciliation.

1.1.1.2. Jesus Himself is Sent by God the Father

God the Father in Jesus Christ accomplished the work of the reconciliation of the world to himself. “For God so loved the world that he gave his only Son, that whoever believes in him should not perish but have eternal life” (Jn 3:16). From the very beginning, God the Father had promised that He would send a Savior. Therefore, Jesus, God incarnated, came to fulfill this promise, to be a mediator to reconcile humankind to his creator, God the Father. John Jeffrey compares the Old Testament use of *shaliach*¹⁰ with Jesus and the apostles:

Jesus is himself the *shaliach* of the Father; he is explicitly termed an *apostolos* as well as high priest in the Epistle to the Hebrews (3:1). In John’s Gospel, although the word *apostolos* is not used, the verbs *apostellein* and *pempein* are employed with the same technical significance to define both the relation of Jesus while on earth to his Father: ‘as thou didst send me into the world, so I have sent them into the world’ (17:18). The authority conferred upon the disciples by their ‘sending’ is the same as the authority conferred on Jesus by the Father.¹¹

1.1.1.3. Transmission of the Power of Forgiveness to the Apostles

There is no question or doubt about the power of forgiveness vested in Jesus. There is, however, uncertainty about how and where biblical references are found for the transmission of this power of forgiveness to the apostles. John’s version of the apostle’s commissioning by the resurrected Jesus gives powerful evidence that what they enact on earth, in fulfillment of their mission, will be upheld by Jesus and subsequently ratified in heaven.¹² An analysis of the text itself, of course, from a merely exegetical point of view, substantiates the idea of the transmission of the power of forgiveness to the Church. In Jn 20:22 our Lord uses the following formulation: “As the Father has sent me, I also send you.” This meant an identification of the mission of Christ with the mission of His apostles. It was, furthermore, not only

¹⁰ The term *shaliach* was used, especially in legal and religious contexts, of a man sent out as an authorised, plenipotentiary delegate. The *shaliach* was understood to represent in his own person the person and rights of the sender, a convention summed up in the dictum frequently quoted in the Talmud, ‘The *shaliach* of a man is as the man himself.’ He was a fully empowered representative, and was legally obliged to abide by all words and actions of his *shaliach*, provided that they were within the terms of his commission.

¹¹ Jeffrey, “Authority Given to Men,” 18.

¹² Jeffrey, “Authority Given to Men,” 18.

an identification of work, but also, at least in some manner, of the power given to him. In the following verse, he speaks with more precision about the nature of this work and power: “And when he had said this, he breathed on them and said to them, ‘Receive the Holy Spirit. If you forgive the sins of any, they are forgiven; if you retain the sins of any, they are retained’” (Jn 20:22, 23).

In this passage from the gospel according to John, a twofold possibility is suggested concerning the use of the power given by Christ. It is either to remit sins or to retain them. M.J. Lagrange interprets the passage and maintains that the decision to forgive sins must be based on the disposition of men. It is quite evident that Christ meant for His ministers to make this choice of forgiving or retaining sins according to justice and equity, and that they had to, furthermore, conform themselves to the laws in force within the Kingdom of Jesus Christ, and take into account the degree of culpability and repentance of the sinner.¹³

Mathew’s version of the confession at Caesarea Philippi reports the words of Jesus spoken to Peter: “And I tell you, you are Peter, and on this rock I will build my church, and the powers of death (Hades) shall not prevail against it. I will give you the keys of the Kingdom of Heaven and whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven” (Mt 16:18-19).

In a second passage, also found in Mathew, Jesus makes the same promise to all of the disciples, after instructing them about how to deal with offense within the Church:

If your brother sins against you go and tell him his fault, between you and him alone. If he listens to you, you have gained your brother. But if he does not listen, take one or two others along with you, that every word may be confirmed by evidence of two or three witnesses. If he refuses to listen to them, tell it to the church; and if he refuses to listen even to the church, let him be to you as a Gentile and a tax-collector. Truly I say to you, whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven (Mt 18:15-18).

These words express the convictions of this evangelist and of the New Testament authors that the power not only to preach forgiveness but to pronounce it effectually and authoritatively in God’s name was not and could not have been restricted to the person and time of Jesus Himself. The passages of the Gospels cited above describe

¹³ Cf. M.J. Lagrange, *Evangile selon Saint Jean*. Paris: Gabalda, 1948, 515.

the moment when Jesus transmitted this authority to his immediate successors, the apostles. It was to remain incarnate, available to all sinners at all times and in all places, through the ministry of his continuing Body on earth, the Church.¹⁴

The whole gospel shows the centrality of reconciliation in the mission of Jesus, His handing over of that ministry to the Church that succeeded him, and the fact that within a few years of His death, the Church had begun (at least through the apostle Paul) to exercise that ministry with confidence, though not with the full consciousness that it later attained. The development of this authority in the early Church can be discerned from several passages of the Epistles. It was a ministry that was to remain in the Church up to the present time and beyond, though undergoing major transformations in the course of its history.¹⁵

With respect to sin, Christ endowed his apostles with His own mission and authority, i.e., He came to free men from their sins, to justify sinners, and over the course of his life, to remit sins directly.¹⁶ John Jeffrey uses the same idea contained in the Jewish term *shaliach* and applied it to the case of the apostles and of Jesus:

A number of passages strongly suggest that the *shaliach* concept of the empowered representative is fundamental to the New Testament understanding of the apostle's role. At John 13.16 Jesus addresses his disciples at the Supper: Truly, truly I say to you, a servant is not greater than his master; nor is he who is sent greater than he who sent him. This is expanded at verse 20 with a statement which itself sums up the *shaliach* idea: 'He who receives anyone whom I send receives me and he who receives me receives him who sent me.'

In Mathew's gospel, Jesus uses practically the same words in his commissioning of the twelve, 'He who receives you receives me. And he who receives me receives the one who sent me' (10:40) whereas Luke applies a similar saying in a partly negative form to the sending of the seventy, 'He who hears you hears me, and he who rejects you rejects me, and he who rejects you rejects the one who sent me' (10:16). Probably the very similar sayings applied to children at Mark 9:37 derive from the same original saying or sayings, but have been misplaced in this context because of Jesus' custom of referring to his disciple as children: 'Whoever receives one such child in my name receives me; and whoever receives me receives not me but the one who sent me.'

This weight of evidence argues strongly that Jesus himself sent out his apostles having in mind the particular character of the *shaliach* as empowered representative. The authority of the Kingdom embodied in Jesus is conferred upon them at their

¹⁴ Jeffrey, "Authority Given to Men," 15.

¹⁵ Coffey, *The Sacrament of Reconciliation*, 41.

¹⁶ Paul E. McKeever, *The Necessity of Confession for the Sacrament of Penance*. Washington: The Catholic University of America Press, 1953, 12-13.

commissioning, and in his name they wield to same powers of the Kingdom to preach, heal, cast out demons, to confer or withhold *shalom*, ‘the peace of God’ and to set the limits of the messianic community.¹⁷

1.1.1.4. The Apostolic Period

The apostles, who were commissioned with the power to forgive sins, used it from the very beginning of the Church. In his epistles, Paul places very strong emphasis on conversion and penance (1Cor 5:7; Rom 6:2-12; 8:5-13; Gal 2:19). The Pauline epistles show the practical working of apostolic authority to forgive or retain sins beginning in the apostolic period. Paul, Timothy, and Titus are found to exercise individual authority to excommunicate and reconcile sinners. The episode of the incestuous man in 1Cor 5 shows that, since sin was held to be an offence against the whole Church as well as against God, the whole Church could be regarded as the agent of reconciliation. But at the same time, Paul exercises his own apostolic authority in this case. In a striking passage, he describes how he proceeded to exercise his apostolic commission of binding:

For I verily, being absent in body, but present in spirit, have already, as though I were present, judged him that has wrought this thing, in the name of our Lord Jesus, you being gathered together, and my spirit, with the power of our Lord Jesus, to deliver such a one unto Satan for the destruction of the flesh, that the spirit may be saved in the day of the Lord Jesus (1Cor 5:3-5).

The ‘delivering up to Satan,’ as the general context would appear to indicate, has the traditional meaning of excommunication. It implies that the person excommunicated is subjected to Satan’s dominion more completely than before and is punished by him with bodily and spiritual afflictions. We find the same system in operation in 1Tim 1:20 and 2 Thess 3:6, 14-16. In Titus 3:10, directions are provided for correcting a heretic: “give a heretic one warning, then a second and after that avoid his company.” The excommunication or shunning of a person from the community has spiritual consequences, about which Poschmann rightly states the following:

The effect of the judgement, ‘handing over to Satan’, essentially exceeds the power of any human sentence. The same, then, must also hold good for the act of reconciliation with or reincorporation into the Church. If the Church is not just an external association, but, as the Apostle teaches, the body of Christ, the living instrument of his grace, the indispensably necessary society of salvation, then it

¹⁷ Jeffrey, “Authority Given to Men,” 17; Cf. *PO* 2.

follows the expulsion from the Church, if deserved, and, conversely, readmission to it are of decisive significance.¹⁸

The Epistles of James and John provide a valuable reference to the campaign against the sins of the early community (Jas 1:22f; 2:14f; 1Jn 2:1f; 1Jn 5:16). In the Epistle of James, there is an unmistakable reference to prayer for forgiveness as a formal and effectual act by designated ministers:

Is any among you sick? Let him call for the elders of the Church, and let them pray over him, anointing him in the name of the Lord; and the prayer of faith will save the sick man and the Lord will raise him up; and if he has committed sins, he will be forgiven. Therefore, confess your sins to one another, and pray for one another, that you may be healed (Jas 5:13-16).

The sick person is told to summon ‘the elders (*presbyteroi*) of the Church.’ Their role in this passage evidently attaches to their office as presbyters. There is no mention of lay charismatic healers in the Church, whose ministry was among those listed by Paul in 1Cor 12:28. These presbyters perform the essentially apostolic function of mediating the healing and forgiveness of Christ himself. It is known, of course, from Acts and the Epistles, that missionary apostles left officials termed ‘elders’ or ‘presbyters’ in charge of local Churches, though the precise nature and function of these ministers are disputed and vary, in any case, from church to Church. In the above context, however, the presbyters in particular are to be summoned, and it can be concluded that in James’ Church they were supposed to have inherited the apostolic mission to anoint, heal and forgive as a function of their office.¹⁹ If the intercessory prayer is recommended as a means for this purpose, it is because of the belief that the sin of an individual affects the whole community. These references to the apostolic period prove that the apostles were dealing with the sins of the people with the power they had received from the Lord.

1.1.2. The Theology of the Power of the Keys

As we have already observed, Jesus selected a special group of disciples as apostles and taught them the mysteries of the Kingdom of God. He explained everything to them in private, gave them special powers to bind and to loose, and gave them power

¹⁸ Bernhard Poschmann, *Penance and the Anointing of the Sick*. New York: Herder and Herder, 1964, 12.

¹⁹ Jeffrey, “Authority Given to Men,” 35.

to cast out evil and to perform miracles. Why did he do so? He was well aware of the social existence of humankind. Throughout the course of human history, there always existed a small group of people, or a single person, who led society. Even in democracies there is a group of people assigned to govern. In the same way, the Church, which is divine and human, earthly and heavenly, must be guided by a group of people who are chosen to lead the children of God. The Church of Christ still exists even after twenty centuries have elapsed because of the existence of such a group guided by the Holy Spirit. Thus no one can thus deny the chosen ministers of the Church nor their spiritual power to guide the people. The power given to the chosen people in the spiritual realm is known as ‘the power of the keys’ in theological discourse.

According to Ladislav Örsy, “The small seed, from which a veritable mustard tree sprouted, was the awareness of the early Christian community that full power over the kingdom was given to the apostles.”²⁰ As explained above, the small seed was first entrusted to Peter (Mt 16:19) and then to all the disciples (Mt 18:18). John’s Gospel goes even further, granting the power to forgive sins through the ministry of the apostles who are sent by the Risen Christ (Jn 20:22-23). The power ‘to bind and to loose’ is a typical example of the literary form which expresses the fact that full power was granted to the apostles, including the right to forgive sins.

A brief study will now be made of the power of the keys, as described by various Fathers of the Church and the councils. Belief in the power of the keys undoubtedly belonged to the ancient heritage of the ecclesiastical tradition. Yet at the same time, the nature of this power was both obscure and subject to various interpretations.

1.1.2.1. Early Fathers of the Church on the Theology of the Power of the Keys

The patristic fathers had continued the ministry of the apostles through their teachings, preaching, and leadership. The work of some of the most eminent fathers who spoke about the idea of the authority of the Church over the absolution of sinners is considered below.

²⁰ Ladislav Örsy, *The Evolving Church and the Sacrament of Penance*. New Jersey: Dimension Books, 1978, 28.

1.1.2.1.1. Tertullian: The Power of the Keys Belongs to Peter Alone

Among all the writers during the first three hundred years of the life of the Church, Tertullian (150-230)²¹ holds a place of prominence in the development of the Church's penitential practice. He is the first writer to offer a specific description of an ecclesial process undertaken by those who committed grave post-baptismal sin. He authored *De paenitentia* and *De pudicitia*, two great works on this subject.²² Although he wrote the former while still a 'Catholic' and the latter as a 'Montanist',²³ they together provide important information concerning the early development of the order of penitents.²⁴

In *De Paenitentia*, Tertullian is clear that there are no sins that are objectively excluded from pardon, since there exists a *paenitentia secunda* that allows for the remission of sin after the 'first penance' of baptism. Constantly, in his interpretation of selected parables, he gave expression to God's great mercy and compassion toward sinners.²⁵

The Montanist Tertullian, however, did not accept the Catholic position that the power of binding and loosing conferred to Peter (Mt 16:18ff) had been transmitted to every individual Church beginning with Peter. According to him, this power was personal to Peter and not granted to the Church as such.²⁶ He attributed this power only to the

²¹ Tertullian's birthplace was Carthage; his parents were heathens. According to Jerome, his father was a proconsular centurion. He is believed to have been born between 150 and 160. He was converted to Christianity about the year 192. Of his writings, it may be broadly said that the lesser half represent the days of his Catholicism and the greater half his experience in Montanism. But for the history of Penance, his value lies not in the strength of his convictions, or in the vigour with which he expresses them, but rather in the important witness which he renders to the penitential practices of his day.

²² The *De Paenitentia* was likely composed around 203 and certainly before 207. *De pudicitia* was written after 212/213 when he definitively severed his ties with the Catholics, and perhaps even as late as 217.

²³ Montanus, a Phrygian, with his female disciples Prisca and Maximilla, became conspicuous as the subjects of what appeared to be supernatural manifestations. The Christian community generally instructed their "ecstasies" and about 172 Montanists were condemned by the Church authorities in Asia. Montanism, at least in the beginning, was not connected with any grave error of doctrinal statement. According to them, second marriage was illegitimate and three capital sins were regarded as irremissible.

²⁴ Joseph A. Favazza, *The Order of Penitents Historical Roots and Pastoral Future*. Minnesota: The Liturgical Press, 1988, 187.

²⁵ *De paen* 7, 5; 12, 9.

²⁶ Cf. Poschmann, *Penance and the Anointing of the Sick*, 48; *De pud* 21,10.

‘Church of the Spirit,’ and not to the ‘Church of the bishops.’²⁷ Although he denied the bishops any power of forgiveness by his interpretation of Mt 18:22, he held the position that the bishops could forgive venial sins. Poschmann explicates the ideas of Tertullian thus:

In regard to the part played by the Church in penance Tertullian the Montanist is in agreement with the Catholic opponents except for his restriction of it to lesser sins, *delicta leviora*. It consists, first of all in the assistance given to the penitent by the intercession of the congregation. He teaches in the *De paenitentia* (10, 6) and takes for granted in the *De pudicitia*, that the prayer of the Church is the prayer of Christ, who pleads before the Father – *exorator Patris* – and pronounces forgiveness. By thus identifying it with Christ’s prayer Tertullian attributes to the prayer of the Church which formed part of the *exomologesis* a kind of sacramental efficacy. ... Precisely because Christ’s prayer never goes unheard (*De paen.* 10, 7) the Church can on her side grant forgiveness to a sinner.²⁸

In his *De pudicitia*, Tertullian the Montanist espoused the position that all priests did not possess the power to forgive sins. He spoke about the power of the keys in the following terms:

What, then, does this have to do with the Church, and I mean yours, you sensualist? For this power is Peter’s personally and, after that, it belongs to those who have the Spirit to be an apostle or a prophet. For the Church is itself, properly and principally, the Spirit Himself, in whom there is a Trinity of one divinity, Father, Son and Holy Spirit. He unites in one congregation that Church which the Lord said consists of three persons. And so, from this time on, any number of persons at all, joined in this faith, is recognized as the Church by Him who founded and consecrated it. Therefore it is true that the Church will pardon sins, but this is the Church of the Spirit, through a man who has the Spirit; it is not the Church which consists of a number of bishops. For it is the Lord and not the servant who has this sovereign right. It belongs to God Himself, not to a priest.²⁹

While Tertullian thus denies the power of the keys to all priests and bishops, it is possible to access this power through spiritual persons. According to him, God shows compassion to all sinners without exception. Perhaps, due to later liberal approaches to penance, he held the view that only those who had the Spirit of the Lord possessed the power to absolve grave sins. He sought to enact some restrictions to prevent further sin, thinking that absolution should not be too easily attainable in this world.

²⁷ *Ecclesia quidem delicta donabit, sed ecclesia spiritus, non ecclesia numerus episcoporum; domini enim, non famuli est ius et arbitrium; Dei ipsius, non sacerdotis.* (Tertullian, *De pud* 21,17).

²⁸ Poschmann, *Penance and the Anointing of the Sick*, 48; *Exomologesis* is a Greek word meaning confession, and is used with reference to the process of reconciliation in the Church. This process includes the confession of sins, the satisfaction of wrong doing, as well as the absolution and restoration of repentant people.

²⁹ William, P. Le Saint, (trans.), *Tertullian: Treaties on Penance, On Penitence and on Purity*. New York: New Man Press, 1979, 121-122.

While he did not categorically deny the possibility of reconciliation, he did not want to promote laxity in Christian living either.

1.1.2.1.2. Cyprian of Carthage

Cyprian,³⁰ bishop of Carthage from 248 to 258, had a very strong conviction that the Church had the power to forgive sins. He, therefore, decided to reconcile those who petitioned, no matter how serious their sin; it was necessary, however, to submit entirely to the reconciliation process. In the *exomologesis* of Cyprian, there was a laying of hands at the beginning and another one at the end. It seems that the first imposition of hands was an exorcism. That is, it was the expulsion of the spirit of evil, an expulsion that would be accomplished and made manifest through the performance of the prescribed works of penance. When all had been done to Cyprian's satisfaction, the second imposition of hands would follow, which signified peace with the Church and re-admission to its life, which was life in the Spirit.³¹ Therefore, the analysis of his penitential service proves that he had believed that the Church had the power of forgiveness and it was exercised by the bishops, the immediate successors of the apostles.

Before the Council of Carthage, Cyprian was similarly of the belief that the sin of idolatry could not be forgiven by the Church. It is important to understand Cyprian's doctrine regarding the power of the Church to forgive sin, especially the sin of idolatry committed after baptism. Cyprian's admonition to the *lapsed* in the year 251 clearly encapsulated Cyprian's teachings on this matter. There are four points of commonality found throughout his correspondence and his treatise *De Lapsis*: (1) the Church has the power to forgive sins committed after Baptism; (2) this power extends even to the sin of apostasy; (3) it is exercised by the ministry of priests; and (4) the sinner must confess and satisfy divine justice.³²

³⁰ Cyprian became bishop of Carthage in 248, leading his fellow Christians through the hardships of the Decian persecution before he himself died a martyr death during the persecution of Valerian in 258. There are two main sources for Cyprian's teaching on penance: 1. His letters, both written and received during the persecution and afterward, including the relevant decrees from the Councils of Carthage in 251 and 252, 2. *De Lapsis* written in the spring of 251.

³¹ Coffey, *The Sacrament of Reconciliation*, 42.

³² Cf. John H. Taylor, "St. Cyprian and the Reconciliation of Apostates." *Theological Studies*, 34; *Confiteantur singuli quaeso vos, fratres, delictum suum, dum adhuc qui deliquit in saeculo est, dum*

An attentive reading of all the letters of the period reveals not the slightest doubt about the power of the Church to reconcile idolaters nor the faintest hint that Cyprian intended to exclude them from the Church. Indeed, if he had upheld such rigorist ideas, he would not have been so ready to grant absolution to the dying.³³ A large number of apostates during the Decian persecution must have influenced Cyprian's thought, making allowances for apostates to re-enter the Church. This also shows that he had no doubt about the power of the keys to absolve apostasy nor any hesitation to use that power.

1.1.2.1.3. Origen

Origen (185-254) was a representative of the Eastern tradition. According to Eastern tradition concerning the sacrament of penance which is also developed in Origen's treatises, the role of the Church and priest in the sacrament of penance is not to judge the sinner but to speak on his behalf and to pray for his forgiveness. The priest, exercising his role of petitioner on the sinner's behalf, is also required to play a role similar to that of a doctor, whose function is to diagnose and remedy sickness. Consequently, Eastern Churches understandably reject the notion of confession as a judicial act, the dominant understanding of this sacrament in the West. It is true that certain eastern texts refer to the power that has been granted to the Church, but it is not conceded that actual forgiveness follows from a judicial statement made by the priest.³⁴ The norm is for the Church to pray to God for the sinner's forgiveness and for God himself to forgive the sins that have been committed.

Origen had already said the same when he urged the apostles' successors to accept the role of spiritual doctor and as such to heal people's wounds. Origen counsels the sinner to seek out a 'merciful physician' of souls to whom private confession is made. This may in turn be followed by a public confession:

admitti confessio eius potest, dum satis-factio et remissio [facta] per sacerdotes apud Dominum grata est. Con-vertamur ad Dominum mente tota et paenitentiam criminis veris doloribus exprimentes Dei misericordiam deprecemur. Illi se anima prosternat, illi maestitia satisfaciat, illi spes omnis incumbat. Rogare qualiter debeamus dicit ipse. Revertimini, inquit, ad me ex toto corde vestro simulque et ieiunio et fletu et planctu et discindite corda vestra et non vestimenta vestra. Ad Dominum toto corde redeamus, iram et offensam eius ieiunio, fletibus, planctibus sicut monet ipse placemus (De lapsis. 29).

³³ Taylor, "St. Cyprian and the Reconciliation of Apostates," 37.

³⁴ Edward Schillebeeckx, *Sacramental Reconciliation*. New York: Herder and Herder, 1971, 74.

Look about very carefully for the person to whom you ought to confess your sin. ... Then whatever counsel he gives, you will act on it and follow it. If he has understood and foreseen that your ailment is such as needs to be exposed and cured in the assembly of the whole Church, from which others may be edified and you yourself more easily cured, this must be arranged with much deliberation and the experienced counsel of that physician (*Homilies on Psalms* 37:2, 6).³⁵

In an illuminating passage, Origen speaks of “two ways by which men are delivered from the Church into the power of the devil” (1 Cor. 5:5):

The first way is when his fault is revealed in the Church and he is expelled by the priests of the church, so that “noted” (2 Thess 3:14) by men, he may be ashamed and by conversion come [to salvation]. The second way is when his sin is not revealed to men but when God, “who sees in secret” [Mt 6:6], ... “delivers him to Satan” (*Homilies on Judges* 2. 5).³⁶

This statement with regard to the power exercised in the ministry of binding and loosing is important. The ministers do remit and retain, but the power which they exercise is not theirs but God’s and the very words they say are, like those of the prophets, not their own words, but the words of the Divine will. They merely minister to God.³⁷ Therefore, Origen accepts the power of the keys worked through human hands, though he theologically maintains that sins are forgiven by Divine will.

1.1.2.1.4. Augustine of Hippo

Augustine (354-430) gives three forms of penances while giving two sermons on the usefulness of penance.³⁸ These three forms already have their place in Scripture. The first form of penance is that which brings the new man to birth so that all past sins may be washed away in Baptism. The second form is the daily penance in which the uninterrupted practice of humility in the spirit of prayer is unceasing throughout our life in this world. There is a third form in the Church, required for grave sins, and mortal wounds. It is a service and official penance practised, under the guidance of the Church, by a special category of ‘penitents’ who have a strictly defined status in the Church.

When someone has committed a grave sin, he must first admit so before God. This acceptance before God is an act of reparation and a movement of healing inspired by

³⁵ Everett Ferguson, “Early Church Penance,” *Restoration Quarterly*, 1972, 87.

³⁶ Ferguson, “Early Church Penance,” 88.

³⁷ Watkins, *A History of Penance*, vol. 1, 133.

³⁸ Augustine: *Sermo* 351 and *Sermo* 352.

God. According to Augustine, what has been admitted to God must be publicly acknowledged by expiation. He thus says that there must be an intervention by the Church in order for the sinner's spontaneous acceptance and condemnation to be legitimate in the sight of God. Augustine bases the Church's intervention on the powers given by Christ to the apostles and their successors. In these cases of public penance for grave sins, Augustine thus specifically uses the term 'the power of the keys' to signify the power of the Church to reconcile the penitent:

A man bound by the very dangerous chains of sin must therefore not hesitate to have recourse to the power of the keys in the Church by which he will be delivered on earth in order not to be bound in heaven... Thus having brought sever but a salutary condemnation upon himself, he should come before the bishops to whom the power of the keys in the Church is entrusted. In this way he makes a fresh start as a submissive son and, mindful of the order among the members of the community, he will accept whatever satisfaction is decided on by those who administer the sacrament.³⁹

According to Augustine, the bishop's intervention, in the name of the Church and by virtue of the power of the keys which Christ gave the apostles, is not a judicial act alone but rather constitutes a remedial act of salvation in Christ.⁴⁰

1.1.2.1.5. John Chrysostom

John Chrysostom (347- 407) spent most of his life as a priest and famous preacher in Antioch and finally served as the bishop of Constantinople from the year 398 to 404. He left a repository of volumes of homilies and writings with spiritual values narrating the life of the Christians in Antioch. Among the writings of Chrysostom which emphasise the power given to priests, is his treatise *On the Priesthood* (382). This was written in the form of a dialogue between him and his friend Basil. Here he acknowledges that God has committed greater power to the priesthood than he has to the angels:

For it has not been said to them, 'Whatsoever ye shall bind on earth shall be bound in heaven, and whatsoever ye shall loose on earth shall be loosed in heaven.' They who rule on earth have authority to bind, but only the body: whereas this binding lays hold of the soul, and penetrates the heavens; and what priests do here below God ratifies above, and the Master confirms the sentence of His servants. For indeed what is it but all manner of heavenly authority which He has given them when He

³⁹ Anciaux, *The Sacrament of Penance*, 51.

⁴⁰ Anciaux, *The Sacrament of Penance*, 52.

says, ‘whose sins ye remit, they are remitted, and whose sins ye retain they are retained’? What authority could be greater than this?⁴¹

Another passage from his homilies, known as *Ad Populum Antiochenum* (387), has some bearing on the office of the priest. This passage also demonstrates that he held strong views on the absolving powers of the priesthood. Exhorting that charity should take the place of public humiliation, he says:

Show thy charity towards the sinner. Persuade him that it is from care and anxiety for his welfare, and not from a wish to expose him, that thou puttest him in mind of his sin. ... Show the wound to the priest; that is the part of one who cares for him, and provides for him, and is anxious on his behalf.⁴²

Chrysostom was a lenient and more pastorally minded father of the patristic period and from his works it is comprehensible that he held a very strong stance concerning the absolving powers of the priesthood.

1.1.2.1.6. Ambrose of Milan

The claim that the Church possesses the power of the keys was more emphatically stated by Ambrose (340-397). He has two treatises on penance to his credit: *On Penitence*, in which he attacked the Novatianist⁴³ position, and *De Spiritu Sancto*, in which he stressed the idea that God alone forgives sin.

Ambrose criticised the Novatianist position that the Church could bind the capital offender by a bond which could never be loosed in this world. The sect also maintained that the Church had no power to absolve the sinner who had committed such a grave sin. As Ambrose argued, “The Lord willed that the right of loosing and the right of binding should be equal, who permitted each under a like condition: therefore who has not the right of loosing has not either that of binding.”⁴⁴ In two books of his treatise *On Penitence (De Paenitentia)*, he elaborates three principles of great importance in the theology of Penance. They are: a), If the Church has no power of loosing, she has no power of binding; b), God has conceded to His priests the

⁴¹ Watkins, *A History of Penance*, vol. 1, 332.

⁴² Watkins, *A History of Penance*, vol. 1, 335.

⁴³ A group of people who followed Novatian and who rejected to accept the idolaters into the Church were called novatianists. They named themselves *katharoi* or Puritans. Novatian had refused absolution to idolaters and his followers extended this doctrine to all ‘mortal sins’ (i.e., idolatry, murder, and adultery, or fornication). Most of them forbade second marriage and they made much use of Tertullian’s works.

⁴⁴ *De Penitentia*, I.ii. 7; quoted in Watkins, *A History of Penance*, vol. 1, 431.

liberty of remitting all sins without exception; and c), The remission of sins by Penance is precisely analogous to the human ministration in Baptism or the laying hands upon the sick.

In his work *De Spiritu Sancto*, Ambrose explicates the further important principle that God alone forgives sins and man only exercises the ministry of God's forgiveness. This was the official doctrine of Church in the days of Ambrose. However, he emphasises on the power of God and the mediatory role of priests:

But men employ their ministry or the remission of sins: they do not exert the right of a power. For neither do they remit sins in their own name, but in the name of the Father, and of the Son, and of the Holy Ghost. They ask: the Godhead grants. It is a human obedience: but it is the munificence of supernal power.⁴⁵

Therefore, according to Ambrose, priests remit sins without any exception in the name of God. Ambrose had combined the work of God and the role of the Church in the context of absolution by emphasising the role of both God and the power of the keys given to His ministers.

1.1.2.1.7. Leo the Great

Leo the Great, bishop of Rome from 440 to 461, also appears to have believed in the belief of the transmission of the power of the keys through the Church.⁴⁶ In an important letter to Theodore, bishop of Forum Julii (Fréjus), he spoke about penance and the power bestowed upon the Church by Christ. It is worthwhile to provide a passage on this topic in its entirety:

The manifold mercy of God has so come to the rescue of human falls that not only by the grace of Baptism, but also by the medicine of Penance the hope of eternal life is renewed, so that those who had violated the gifts of regeneration, condemning themselves by their own judgment, attained to the remission of their offences: the safeguards of the divine goodness being so ordered that the indulgence of God cannot be obtained save by the supplications of the priests. For the Mediator of God and man, the Man Christ Jesus, delivered this power to the rulers of the Church, both that they should accord the performance of penance to those making confession, and also should admit these persons by the gate of reconciliation to the communion of the sacraments when they had been purged by healthy satisfaction. In this work assuredly the Savior Himself intervenes without cessation, nor is He ever absent from thee which He has committed to His ministers to fulfill, saying: Behold I am with you always even to the end of the world: so that if by our service aught is filled

⁴⁵ *De Spiritu Sancto*, III.xviii.133; quoted in Watkins, *A History of Penance*, vol. 1, 433.

⁴⁶ Watkins, *A History of Penance*, vol. 1, 418.

out with sound order and welcome result, we doubt not but that this was given by the Holy Spirit.⁴⁷

Pope Leo provided a general description of the meaning of ecclesiastical penance without dwelling in detail on the importance of each of its elements or aspects. However, he emphasised the Church's intervention and the necessity to submit to official penance. For this purpose, the intervention of priests is indispensable. According to Leo, our Lord Jesus Christ perpetually intervenes, acting with and through his ministers, whose operations are his, so that he is never absent from these operations. This mission had been committed to his ministers by the Lord. The power of the keys is thus operative through the ministers chosen by the Lord.

1.1.2.1.8. Gregory the Great

Gregory the Great⁴⁸ maintained a remarkable theory of absolution and the working of the power of the keys. Gregory's theory can be stated simply in his own words: *Ecce illum discipuli jam viventem solvunt quem magister resuscitaverat mortem*. Just as the disciples during the unbinding of Lazarus lose one whom the Lord has already made to live, the disciples of the Lord, in absolving a repentant sinner, are similarly absolving one who already lives, because the Master has already raised the dead to life.⁴⁹ Thus, the absolution of the Lord temporally precedes the absolution of the priest, who accordingly plays no part as the Lord's agent in effecting the forgiveness of the sinner, but rather simply declares what is already an accomplished fact. The external binding by the Church is nonetheless removed by the priest.

Therefore, what is distinctive in Gregory's teaching is that absolution is affirmed to merely be a declaration of what has already been effected by the Lord. But at the same time, he speaks of the dignity of the commission of the disciples, while giving a sermon which is narrated in the twentieth chapter of John:

Behold, not only are they rendered secure as regards themselves, but they even receive a power of binding and loosing others; they become invested with the authority of the supernal justice, so that in the stead of God they for some retain

⁴⁷ St. Leo I, *Epistola 108*, quoted in Watkins, *A History of Penance*, vol. 1, 419.

⁴⁸ Gregory the Great was pope from 590 to 604. Due to his relations with the various churches of the Western patriarchate, as well as his part in the initiation of the mission to England, and his protective and constructive work for the church and people of the city of Rome, he well deserves the appellation the honorific *Great*.

⁴⁹ Watkins, *A History of Penance*, vol. 2, 568.

their sins, for others they remit them. ...Now in the Church the bishops assuredly hold the place of these (the Apostles). They who are invested with the grade of government undertake the authority of binding and loosing. The honour is great, but the responsibility of this honour is weighty.⁵⁰

Watkins compares the idea of the efficacy of the sacrament of penance according to Leo and Gregory and states that “St. Leo finds in penance an effectual operation in which the Lord intervenes: Gregory regards it as a declaration of the absolution which the Lord has already effected.”⁵¹ The gradual development of the theology of the power of the keys can be understood through the works of these two great fathers. The concentration had shifted from establishing the power of the Church to reconcile to explaining the role of the power of the keys in the forgiveness of sins.

1.1.2.2. Early Councils on the Power of the Keys

Throughout the history of the Church, from the beginning, several regional and ecumenical councils have been convened to discuss and pronounce on conflicts concerning faith and morals. Certain of these pronouncements concerned the authority of the Church to absolve sins, either directly or indirectly. In the following pages, it is discussed about those councils which directly or indirectly made pronouncements about the Church’s authority concerning the absolution of sin.

1.1.2.2.1. First Council of Carthage

The Council of Carthage took place in 251 and was attended by a good number of bishops. While it dealt with various issues, we here focus our concerns on matters of penance. The main question in the Council of Carthage was how to deal with people who *lapsed* during Decian’s persecution. Watkins puts the questions to be answered thus: “On the one side men ask: Is the vast army of the *lapsed* to be driven to despair? On the other rises the question: Are the *lapsed* by an unholy indulgence to be permitted to enter and corrupt the Church of Christ?”⁵² Another important question that they discussed interests us even more. Is the bishop empowered by the Lord’s commission to reconcile the penitent offender? With courageous and spirited leadership given by Cyprian, the Council arrived at certain conclusions after long

⁵⁰ Watkins, *A History of Penance*, vol. 2, 569.

⁵¹ Watkins, *A History of Penance*, vol. 2, 570.

⁵² Watkins, *A History of Penance*, vol. 1, 197.

discussions and debates. As they decreed, the bishop and the bishop alone, was to deal with the offenders of apostasy. By accepting the apostates back to the Church, the Council proved that the Church was entrusted with the power to pardon the people who had gone astray and subsequently repented.

1.1.2.2.2. The Council of Ancyra

The Council of Ancyra, held in the year 314, was a provincial synod of eighteen bishops. The most significant legacy of the Council of Ancyra was the establishment of the graded and ordered system of penance which had spread from Pontus. Several cases with longer terms of penances under different grades were given in the canons of the Council. The Council fixed the term of years to be spent in each grade. The length of some of these exercises of penance was considerable.⁵³

It appears that sinners who had committed apostasy, impurity, or bloodshed were all admitted to reconciliation in this life by the Council of Ancyra. In the older discipline, by contrast, offenders in any of these three capital sins had been refused reconciliation in this life and reserved for the judgment of the Lord at the Great Day. The Churches of the Asian provinces upheld this position by 314 and continued to do so thereafter. The sixth canon of Ancyra decreed that persons who had readily *lapsed* under persecution might pass through the grades of penance and find reconciliation in less than six years. But in danger of death, they could be admitted immediately to communion on the understanding that if they recovered, they would still perform their penance.⁵⁴ By granting permission to absolve even grave sins, the Council proves that the Church had the power to absolve sins.

1.1.2.2.3. The Great Council of Nicaea

The great Council of Nicaea (325), the first of the general Councils, was convened in response to an imperial summons addressed to the bishops throughout the empire. The number of bishops who attended the Council is traditionally thought to be three hundred and eighteen.

⁵³ Watkins, *A History of Penance*, vol. 1, 286.

⁵⁴ Watkins, *A History of Penance*, vol. 1, 292.

The eighth canon rules as follows:

With regard to those who call themselves *Cathari*, the holy and great synod decides that, if they wish to enter the Catholic and Apostolic Church, they submit to imposition of hand, and they may then remain among the clergy. They must above all promise in writing to conform to and follow the doctrines of the Catholic and Apostolic Church; that is to say, they must communicate with those who have married a second time, and with those who have lapsed under persecution; for whom also a time (of penance) has been fixed, and an occasion (of reconciliation) determined, so that they may follow in all things the teachings of the Catholic Church.⁵⁵

From this it can be understood that the Church at that time was ready to reconcile those who had committed apostasy, a sin which was considered grave in the preceding centuries. Here one may also observe that apostates were reconciled to the Church by the imposition of hands. It will be determined below that the practice of reconciling schismatics and heretics by the laying on of hands was widespread in the early Churches. Canon thirteen states as follows:

As to those who are departing from this life the old canonical law is now to be kept: anyone about to die should not be deprived of the ultimate and most necessary viaticum. ... In general, to anyone who is departing from this life and asks to partake of the Eucharist the bishop after investigation should grant it.⁵⁶

This canon orders that dying persons who exhibit signs of reconciliation are to be nourished with the Eucharist. The canon of the Council clearly proves that there is no sin which falls outside the scope of absolution by the Church, though there were some regulations to safeguard for true and authentic conversions.

1.1.2.2.4. Council of Laodicea

Though the date of the Council of Laodicea is uncertain, it probably took place between 344 and 363. Laodicea is a city in the Asian province of Phrygia. The Council was assembled from various eparchies within the Asian region. The canons of the Council are sixty in number of which two are on the subject of Penance.

The second canon is as follows:

Concerning this; that as regards those who sin in different offences, and who abide in the prayer of *exomologesis* and penance, and who entirely renounce their evil courses, a period of penance having been given to such in proportion to the offence,

⁵⁵ Watkins, *A History of Penance*, vol. 1, 288; The word *Cathari* is meant for Novationist who were considered as the puritans.

⁵⁶ Jacques Dupuis (ed.), *The Christian Faith*. Bangalore: TPI, 1998, 659.

they should on account of the mercies and goodness of God be restored to communion.⁵⁷

This canon shows that the Church had the power to reconcile all sinners without exception. The nineteenth canon of the Council, which outlines the procedure of the Liturgy, provides an indication about the imposition of hands by the bishop over the penitents.

1.1.2.2.5. The Third Council of Toledo

The third Council of Toledo was held in 589 at the command of Reccared I, shortly after his accession to the Spanish throne. He himself was a convert from Arianism⁵⁸ to Catholicism. This Council is a landmark in the ecclesiastical history of Spain, because it effected the reconciliation of the Arian element to the Catholic fold in the Gothic population. The Council first concerned itself with a *tome* on the Arian heresy and in twenty three *anathemas* condemned the chief Arian errors. There followed twenty three canons, chiefly disciplinary, of which the eleventh and twelfth refer to penitents.⁵⁹

The eleventh of twenty three *capitula* goes as follows:

We have learned that, throughout some churches of Spain, the faithful are doing penance not according to the canonical rule but in another detestable way. That is, as many times as it pleases them to sin, they ask a presbyter to grant them pardon.

We want to put an end to such an abominable presumption. Therefore, this sacred council orders that penances be given according to the rite prescribed by the ancient canons: that is, that the person who repents of his evil deeds be excluded temporarily from Eucharistic communion and, along with other penitents, ask for the imposition of hands; and that, when the time of his satisfaction is completed according to the judgement of the bishop, he be readmitted to communion. Those who relapse into their sins, either while doing penance or after they have been reconciled, must be condemned according to the severity of the ancient canons.⁶⁰

From canon twelve it appears that it was typical for persons to ask for penance from a bishop or priest. This implies some kind of confession of the sin as the duration of

⁵⁷ Watkins, *A History of Penance*, vol. 1, 321.

⁵⁸ Arianism is the theological teaching attributed to Arius (250–336), a Christian presbyter from Alexandria, Egypt, concerning the relationship of the persons of the Trinity (God the Father, God the Son and God the Holy Spirit) and the precise nature of the Son of God as a subordinate entity to God the Father. Arius taught that God the Father and the Son did not exist together eternally. He was condemned as a heretic by the First Council of Nicaea of 325.

⁵⁹ Watkins, *A History of Penance*, vol. 1, 566.

⁶⁰ Quoted in Örsy, *The Evolving Church and the Sacrament of Penance*, 38-39.

penance was, according to canon eleven, to be approved by the priest's judgement before the restoration of the person to the communion. By canon eleven, the person was first to be suspended from communion. Then the bishop or priest would grant penance, that is to say, would admit the person into the ranks of the penitents.⁶¹ Therefore, there is a clear indication that in the case of public penance, the ordained ministers who held the power of the keys, played a decisive role in the reconciliation of the penitent.

1.1.2.3. Early Documents on the Power of Keys

1.1.2.3.1. *Apostolic Decree*

In the early days of the Apostolic Church, a burning question arose as to what observances were to be required of Gentile converts. In the Acts of the Apostles (Acts 15:6) it is recorded that "the apostles and elders came together to consider of this matter." This gathering is frequently styled either the *Apostolic Council* or the *Council of Jerusalem*. The conclusions subsequently arrived at were embodied in a canon or decree which is commonly referred to as *Apostolic Decree*. It is to be found in Acts 15:28, 29. Parallel passages are Acts 15:20, in the speech of James proposing the decree, and Acts 21:25, where the elders of the Church in Jerusalem cite the decree.

Watkins characterizes two different groups of manuscripts as expressing the content of the *Apostolic Decree*:

One of these, characteristic of the Eastern text, makes of the decree a ceremonial regulation of diet, with a prohibition of fornication added. The other, found in the Western text, shows the decree as the prohibition of the three great offences of idolatry, fornication, and homicide. As a ceremonial regulation of diet the decree is found either (a) with four items: (1) pollution of idols (2) fornication, (3) things strangled (4) blood. As a prohibition of great offences the decree is found with requirements as follows: To abstain from pollution of idols, and fornication and blood, and as many things as men do not wish to be done to them by others.⁶²

These three offenses are the capital or mortal sins of the early centuries. At the close of second century, Christian communities tended to regard these three sins as beyond the scope of the absolution of the Church in present life, referring to the Divine Judge at the last great day. By this restriction, it is understood that all other sins could be

⁶¹ Watkins, *A History of Penance*, vol. 1, 568.

⁶² Watkins, *A History of Penance*, vol. 1, 11.

forgiven by the Church and that the Church had authority over matters concerning forgiveness and reconciliation.

1.1.2.3.2. *The Shepherd of Hermas*

There is no document more significant for the study of penitential practices in the second-century Church and none more controversial than that of the *Shepherd of Hermas*.⁶³ The work makes it evident that the core of the revelation given to *Hermas* concerns the possibility of repentance (*metanoia*) for those who had sinned after baptism. As Joseph Favazza argues in broad strokes, there have been three basic approaches to explain this proclamation of repentance. The first approach understands the *Shepherd of Hermas* as offering an entirely new revelation about the reconciliation of sins committed after baptism, which until that time were unforgivable. A second approach understands *Hermas* as not proclaiming a first reconciliation but a last one in light of imminent end of the world. A third approach has been proposed, according to which *Hermas* proclaimed a ‘jubilee period’ of reconciliation, beginning with the publication of the first four visions by *Hermas* and ending on ‘a certain day which has been fixed.’⁶⁴

The *Shepherd of Hermas* harmonized the rigorist idea that forgiveness is possible only through baptism with that of the more tolerant idea that post-baptismal forgiveness is possible through penance.⁶⁵ There is no evidence from the work that the Church universally denied the possibility of repentance for post-baptismal sin, even though such a practice might have been a custom within certain local communities. What is new with *Hermas* is a last, rather than a first, possibility of penance after baptism.

Another important point in *Hermas* is the clearest expression of penitential discipline. As in other post-apostolic works, the coercive penance of the community’s isolation of the sinner is present here. According to *Hermas*, even for the three irremissible sins of the *Apostolic Decree*, there is a possibility for penance once. Though *Hermas* does

⁶³ Greek: Ποιμήν του Ερμού; Hebrew: sometimes just called רועה הרמס; *The Shepherd*. This text is a Christian literary work of the second century, considered a valuable book by many Christians, and canonical scripture by some of the early Church Fathers. The Shepherd had great authority in the second and third centuries. Its allegorical form and Roman origin open the way for myriad interpretations on the part of later authors.

⁶⁴ Favazza, *The Order of Penitents: Historical Roots and Pastoral Future*, 97.

⁶⁵ Favazza, *The Order of Penitents: Historical Roots and Pastoral Future*, 98.

not witness to a reconciliation rite, there appears to be a recognition of the possibility of a sinner's readmission into the community after adequate penitential works.

The teaching that penance after baptism is unrepeatable is the most novel aspect of the revelation. What is more important about the revelation contained in the *Shepherd of Hermas* is that penance can be sought only once. The *Shepherd* holds that repeated acts of repentance are ultimately indicative of an unrepentant heart. If true repentance is present, once is enough. The author is concerned with true conversion towards Christ and genuine healing of the soul, rather than the punishment of the sinner.⁶⁶

What evidence does the work provide that there existed the power in the Church had a power to reconcile penitents? Some criticize that such a perspective is not present in *Hermas*, as it does contain no explicit information about the ecclesiastical side of penance. Poschmann understands the role of the Church found in *Hermas* as follows:

In reality, however, the intervention of the Church can be discerned through the whole work, and alone makes it intelligible. It is the idealized figure of the Church which communicates the revelation of penance to *Hermas*. Similarly, it is the Church which is the goal of penance, since readmission into the Tower which is the symbol of the Church is the guarantee of the forgiveness of sins. He who remains outside the Church is lost. Even if the Tower does not represent the visible Church with her sinful members, but the heavenly and spiritual Church, yet these two are connected with each other and cannot be separated. The empirical Church is simply the form in which the heavenly Church is to be reached. If, then, a sinner has to attain by penance, while still in this life, admittance to the Tower, which is the 'Holy Church' it must follow that after appropriate penance readmission to the visible Church is granted to him, in so far as he has been excluded from it on account of grave sin. There must be a reconciliation which corresponds to the excommunication.⁶⁷

1.1.2.3.3. *Didaskalia Apostolorum*

The document, known as the *Didaskalia Apostolorum*,⁶⁸ places heavy emphasis on the bishop's role both in the exclusion of sinners from the Church and in the laying of hands during reconciliation. The work instructs the bishops on the manner in which they should care for those entrusted to their care. The primary task of the bishop is to

⁶⁶ Favazza, *The Order of Penitents: Historical Roots and Pastoral Future*, 105.

⁶⁷ Poschmann, *Penance and the Anointing of the Sick*, 32-33.

⁶⁸ The *Didaskalia* is a liturgical and canonical manual of pastoral theology composed in Syria ca. 220/230. In its penitential material, it disregards the rigorism of the Montanists and perhaps is even anti-Montanist, which is interesting to note since it would have been written in the same era as the greatest Montanist work, Tertullian's *De pudicitia*.

see to it that his people do not fall into sin; if, however, they have sinned, the bishop must be ready to cure them and to restore them to the full unity of the Church. The author rejects the rigorism which would deny mercy to a penitent.⁶⁹

O Bishop, strive to be pure in thy works and know thy place, that thou art appointed in the semblance of God Almighty; thus sit in the Church and teach, as one who hath power to judge those that sin, in the place of the Almighty God; for to you Bishops it is said in the Gospel, that what ye bind on earth shall be bound in Heaven.⁷⁰

The author states that the bishop, the ordinary minister of sacramental penance, should follow the example of God himself who forgives all sinners.

The author of the *Didaskalia* also offers testimony concerning the penitential procedure of his time. This was basically divided into four parts. The first period began when the penitent requested penance from the bishop. This was followed by a type of 'excommunication.' The second period took place when the sinner returned to the bishop and asked for forgiveness. The bishop then placed the penitent into a penitential state. Furthermore, the bishop examined him to determine his disposition and the amount of the penance that he would be required to undergo. Normally this was determined by the nature and the gravity of the sin in question. It was during this period that the penitent would have actually confessed his sins to the bishop. The third period was that during which the penitent carried out the actual penance, a period which lasted for two, three, four or perhaps even seven weeks. During this time, the penitent fasted, prayed, performed other penitential acts and in general withdrew from all social and commercial contact. The fourth and final period occurred when the bishop imposed hands on the penitent, thus reintroducing him into full communion with the liturgical assembly.⁷¹ The examination of penitential procedure confirms the role of the Church in bringing back a sheep who has gone astray into the main fold.

1.1.2.3.4. Three Church Orders

Three various forms of Church Orders, namely, *Canones Hippolyti*, *Egyptian Church Order* and *Testamentum Domini nostri Jesu Christi*, are important for this study on account of the prayers assigned in the consecration of bishops and in the ordination of

⁶⁹ Richard E. Ward, *The Juridical Origins of Penance*. Rome: Pontifical University of Urbana, 1974, 81.

⁷⁰ Watkins, *A History of Penance*, vol. 1, 225.

⁷¹ Ward, *The Juridical Origins of Penance*, 81.

priests which in every case specify the commission to remit sins or to loose bonds as pertaining to the office conferred.

a) *Canones Hippolyti*

The *Canones Hippolyti* is considered to be correctly associated with the name of Hippolytus, as it is understood as a compilation made by him for the use of the schismatic community in Rome, of which he was a bishop. Hippolytus⁷² of Rome (235) remains one of the most fascinating figures in the early Church.

In the *Canones Hippolyti*, the prayer given to be used at the consecration of a bishop was thus:

Grant upon this Thy Servant whom Thou hast chosen for the episcopate...that by the high priestly Spirit he may have authority “to forgive sins” (*facultatem remittendi peccata*) according to Thy command, “to assign lots” according to Thy bidding, to “loose every bond” (*solvendi omne vinculum iniquitatis*) according to the authority Thou gavest to the Apostles.⁷³

Here in this prayer there is thus reference about the ‘power of the keys’ given to the bishops, a power which has no limits. According to this text, the authority to absolve sins has no restriction. If Hippolytus presents this prayer as an apostolic tradition, he must have acknowledged this ecclesiastical power.⁷⁴ When a presbyter was ordained the same prayer was to be used in an unaltered form, except for the word rendered *episcopatum*.

b) *Egyptian Church Order*

The *Egyptian Church Order* is also a lost Church Order, originally written in Greek and only preserved in Coptic and Ethiopic translations. In the *Egyptian Church Order* the prayer goes as follows:

That he, as is fitting, may present the offering of Thy holy Church, and in the holy Spirit of the priestly office be endowed with the power to forgive sins according to

⁷² Hippolytus was an opponent of Pope Callistus who granted reconciliation to adulterers and fornicators. Hippolytus accused Callistus of granting pardon too readily to those who had committed “sins of the flesh”, and he rejected out of hand this laxity and indulgence toward sinners. (See Ward, *The Juridical Origins of Penance*, 61.)

⁷³ Ward, *The Juridical Origins of Penance*, 61.

⁷⁴ Cf. Ward, *The Juridical Origins of Penance*, 63; Henry Charles Lea, *A History of Auricular Confession and Indulgences in the Latin Church*. New York: Greenwood Press, 1968, 111.

Thy command, to perform ordinations after Thine ordinance, and to loose all the bonds of distress by virtue of the power which Thou hast given to Thine Apostles.⁷⁵

c) *Testamentum Domini Nostri Jesu Christi*

While the *Testamentum Domini nostri Jesu Christi* is a later compilation, perhaps as late as the year 400, it appears to be similarly based on a lost Church Order. In the *Testamentum Domini nostri Jesu Christi* the following petition occurs in the prayer at the imposition of hands upon a bishop: “Impart to him that he may have Thy spirit prevailing in power to the loosing of all bonds in like manner as Thou hast granted to Thine Apostles.”⁷⁶

These aforementioned prayers of consecration or ordination all agree in associating a spirit, which has the power for the remission of sins or the loosing of bonds, with the office of a bishop or a priest.

1.1.2.4. Lateran Council IV

The significant changes brought by the Fourth Lateran Council in the realm of the power of the keys is the shifting of the formula effecting reconciliation from a prayer to God to forgive to a formula forgiving sin in the name of God by virtue of the power vested in the Church by Christ and in the confessor by the Church. In addition, the power so vested in the Church was seen as unequivocally linked to priestly ordination.⁷⁷

Although at this period the necessity of confession is partly based on the powers which the priest possesses as minister of the Church and delegate of the bishop, the general explanation remains vague. The powers of the Church and its ministers are indeed clearly stated. But while they are emphatically asserted against objectors, the precise significance and the exact bearing of the priest’s action and of the Church’s part in the sinner’s reconciliation with God are not explicitly defined. God does grant the remission of sins which are expiated in ecclesiastical penance. But at this time the

⁷⁵ Watkins, *A History of Penance*, vol. 1, 130.

⁷⁶ Watkins, *A History of Penance*, vol. 1, 130.

⁷⁷ Monika K. Hellwig, *Sign of Reconciliation and Conversion*. Wilmington: Michael Glazier, inc, 1982, 73-74.

role played by each of these elements in penance as well as its sacramental nature and meaning were far from clear.⁷⁸

1.1.2.5. Scholastic Theologians on Power of Keys

By the twelfth century, penance was accepted as a necessary and obligatory sacrament for the mortal sinner, though the theoretical explanations given for this necessity varied. Thus many theologians tried to explain the theology of penance. Scholastic theologians tried to explain what precisely constituted this sacrament, how absolution took place, the role of absolution by the priest, and the role of the Church as a community in it.

1.1.2.5.1. Peter Abelard

The important work of Peter Abelard on penance and reconciliation is *Ethics*. In this text, he provides an extensive discourse on the nature of sin in which he teaches that sin is consent to evil and contempt of God. Since absolution is focused here, only Abelard's ideas about absolution will be discussed. He speaks about absolution in general, not specific terms. He emphasises on judgment and satisfaction as the reasons for confession to a priest, with no mention of absolution:

Then he is afraid or is ashamed to confess; when first he should have done so, he was not afraid nor was he ashamed. He fears lest by perhaps becoming known through confession he, who did not fear to be punished by God, be punished by men. He is ashamed that men should know what he is not ashamed to commit before God. But he who seeks medicine for a wound, however foul it is, however smelly, must show it to a doctor so that an effective cure may be applied. The priest in fact occupies the place of a doctor and he, as we have said, must establish the satisfaction.⁷⁹

The confession and the imposition of penance by a priest are indispensable, as they are remedies ordained by God (*Ethics* 24). He had formerly espoused the position that although the intervention of the Church was necessary for salvation, its essential scope was limited by the measure of satisfaction done by penitents. Due satisfaction had to be done in order that all could be expiated here on earth and nothing remained for purgatory. Abelard rejected authoritative ecclesiastical forgiveness based on the power

⁷⁸ Anciaux, *The Sacrament of Penance*, 66.

⁷⁹ Martin Dudley, "The Sacrament of Penance in Catholic Teaching and Practice," in *Confession and Absolution*, Minnesota: The Liturgical Press, 1990, 62.

of the keys. He required of those to whom the power to bind and to loose was given a blameless and worthy life; he maintained that this power was not conferred by the Lord on all bishops but only on those who imitated Peter... in the dignity of his merits.⁸⁰ He was condemned at the Synod of Sens in 1140 at the instigation of Bernard on the grounds that his teaching of the denial of the Episcopal power of the keys was unorthodox. Poschmann attempts to understand him better when he says:

The original idea that the formal effect of loosing was peace with the Church-*pax ecclesiae*-had gradually disappeared from the consciousness of the Church. It is, therefore, intelligible that a critical theologian like Abelard no longer found a place for an authoritative priestly power of forgiving sins, and that he demanded personal holiness for the effectiveness of the supplication.⁸¹

1.1.2.5.2. Peter Lombard

According to Martin Dudley, “The Master of the Sentences, Peter Lombard, was not an original thinker, but had all the qualities of an excellent teacher of theology: clearness, order, equilibrium, faithfulness to the tradition of the Church.”⁸² His famous work on penance is *Sentence*.

In the midst of the theology of contrition of his predecessors, he upheld the confession to a priest. Peter Lombard taught that only God and not the priest remits the debt of eternal punishment, just as it is God who quickens the soul. Yet the power of remitting and retaining sins was granted to priests. In treating the power of the keys, Peter Lombard distinguished between the key of knowledge (*clavis scientiae*) and the key of power (*clavis potestatis*). The first qualified the priest to form a correct judgment of the state of the conscience of the penitent, while the second empowered him to impose penance and to grant admission to the sacraments.⁸³ Quite manifestly, the power of the keys thus conceived remains extrinsic and does not extend to the forgiveness of sins. Peter cited the raising of Lazarus, quickened by Christ, loosed by the disciples, and the leper, restored to health by the Lord, but set to the priests for judgment that he

⁸⁰ Cf. *Ethics* 101 quoted in Dudley, “The Sacrament of Penance in Catholic Teaching and Practice,” 62.

⁸¹ Poschmann, *Penance and the Anointing of the Sick*, 158-159.

⁸² Dudley, “The Sacrament of Penance in Catholic Teaching and Practice,” 64.

⁸³ Poschmann, *Penance and the Anointing of the Sick*, 160.

might be shown to be clean, “because even if a person is loosed before God, he is not held to be loosed in the eyes of the Church except by the priest’s judgment.”⁸⁴

1.1.2.5.3. Hugh of St. Victor

Though the popularity of the theory of a merely declarative meaning of absolution was widespread, it was challenged from the very beginning. Hugh of St. Victor was the first to reject such an emptying out of the content of the power of the keys and to look for a real inherent efficacy in absolution. He distinguished a double bond in sin: one is interior, consisting of impiety or obduracy of heart and the other exterior, consisting of liability of future damnation.⁸⁵ Only the first bond is removed by contrition while the second is loosed by absolution.

With this conception Hugh had in effect, even if not formally, introduced into theology the distinction between guilt-*culpa* and punishment-*poena* which was henceforth fundamental for the doctrine of penance.⁸⁶ His theory of the effect of absolution was, however, untenable because as Lombard proved, the forgiveness of eternal punishment could not be separated from the forgiveness of guilt. For this reason, it did not gain acceptance outside the bounds of his school.

1.1.2.5.4. Richard of St. Victor

Richard of St. Victor tried to salvage the position of his master Hugh. Poschmann explains the view of Richard in the following terms:

...by making a further distinction in the bondage of punishment between the bond of damnation - *viniculum damnationis*- which in fact can only be loosed by God, and the bond of expiation - *viniculum expiationis*- where a combined activity of God and the priest takes place. In it the priest in absolution by the power of cooperating grace - *gratia cooperandi* – converts eternal punishment into temporal - *poenam non purgatoriam in purgatoriam*. The bond of damnation - *viniculum damnationis* - is already loosed by God by reason of the preceding contrition, but only provisionally - *conditionaliter* - on condition of the subsequent absolution; while the priest’s absolution looses it entirely-*integraliter*.⁸⁷

This shows that at least the need was felt to establish an intrinsic connection between the forgiveness of sins and the power of the keys. An important step was taken from

⁸⁴ Dudley, “The Sacrament of Penance in Catholic Teaching and Practice,” 65.

⁸⁵ Poschmann, *Penance and the Anointing of the Sick*, 161.

⁸⁶ Dudley, “The Sacrament of Penance in Catholic Teaching and Practice,” 64.

⁸⁷ Poschmann, *Penance and the Anointing of the Sick*, 161-162.

this time onward to understand ‘grace’ as ‘information’ of the soul. This made it easier to conceive how the efficacious divine factor in absolutions could co-operate with the one present in contrition. In agreement with Augustine, it was an already established doctrine that contrition was only possible through grace.

1.1.2.5.5. Thomas Aquinas

The scholastic doctrine of penance reached its theological apex and fullest flowering in the works of Thomas Aquinas. “By the power of his systematic thought he united the personal and the ecclesiastical factors in penance to form an organic unitary principle, with the aim of thereby securing for absolution a causal significance in the remission of guilt.”⁸⁸ According to Thomas Tentler, Thomas Aquinas and those who followed him attempted to combine the contrition of the penitent and the action of the priest in a causal unity that produced grace and thus made the priest logically indispensable.⁸⁹

The predominant opinion before Thomas gave almost all causal effectiveness in the remission of guilt to the contrition of the penitent. According to this perspective, the absolution of the priest did nothing more than declare that God had already forgiven the guilt of the contrite man. While Thomas remained loyal to this basic contritionist position, he explained the priest’s absolution in such a way that it was not just formally necessary but actually indispensable for justification, even for the perfectly contrite sinner. Personal penance, consisting of contrition, confession and satisfaction, was the matter of the sacrament of penance while absolution was the form. “For the priest’s words ‘I absolve you’, were in language of Thomas’ scholasticism, the form of the sacrament. Pronounced in the indicative mood, the absolution works to cause grace just as the words of the baptismal formula produce grace in connection with the water.”⁹⁰ But he insisted, as Peter Lombard had done, that the way to forgiveness was for the penitent to be perfectly sorry for his sins and then confess them. At the same

⁸⁸ Poschmann, *Penance and the Anointing of the Sick*, 168.

⁸⁹ Thomas N. Tentler, *Sin and Confession on the Eve of Reformation*. New Jersey: Princeton University Press, 1977, 22.

⁹⁰ Tentler, *Sin and Confession on the Eve of Reformation*, 23.

time as he stressed this, he insisted on the principle of the authoritative power of the Church to forgive sins.⁹¹

His most important contribution consists in his teaching that contrition does not produce forgiveness apart from the sacramental absolution of the priest, no matter the sequence in which contrition and absolution occur. Thomas treated the efficacy of the Sacrament of penance consistently with his general sacramental theory. As Thomas Tentler explains it in broad strokes:

In scholastic language, the sacraments produced grace not from the work of the person receiving them - as would be the case if the contrition were the efficient cause of forgiveness-but from the actual performance of the sacrament itself. The first way (called *ex opera operantis*, that is, from the work of the worker or the recipient) emphasizes the disposition and effort of the penitent, even when theologians, anxious to avoid Pelagianism, declare love or sorrow to be infused by God. The second way (called *ex opere operato*, that is from the work worked or performed or from the work itself) also requires the proper disposition of the penitent-he could not be drunk, asleep, joking, or in this case, dissimulating sorrow or the intention to stop sinning- but it emphasizes the automatic power of the sacramental sign.⁹²

With the principle of '*ex opere operato*,' Thomas maintained that the absolution of a priest was necessary for the efficacy of the sacrament of penance. "The matter and form do not produce their effect separately, but only in combination as a single cause - *una causa* - so that the personal acts of the penitent as well as the power of keys are the causes of the forgiveness of sins."⁹³

1.1.2.5.6. Duns Scotus

Duns Scotus delineated two different forms of salvation, independent of each other. The first one is extra-sacramental, and maintains that attrition⁹⁴ merits justification *de congruo*. It is perfect attrition, which includes the intention to confess but which obtains the forgiveness of God before confession and not, as in the theory of Aquinas,

⁹¹ Dudley, "The Sacrament of Penance in Catholic Teaching and Practice," 67.

⁹² Tentler, *Sin and Confession on the Eve of Reformation*, 25-26.

⁹³ Poschmann, *Penance and the Anointing of the Sick*, 168.

⁹⁴ Contrition is the sorrow of the soul and a hatred of sin committed, with the firm goal of not sinning in the future. This hatred of sin may arise from various motives, and may be prompted by various causes. When the detestation of sin arises from the love of God, which has been grievously offended, then contrition is termed perfect. If sorrow arises from any other motive, such as loss of heaven, fear of hell, or the heinousness of guilt, then it is termed imperfect contrition or attrition. Attrition can be even a gift of God and an impulse of the Holy Spirit. Cf. <http://www.newadvent.org/cathen/02065a.htm> (10-4-2013).

by virtue of the priest's absolution. Here it is not the sacrament, but the sorrow that operates by its own power, and is truly extra-sacramental. But it is exceptional and, according to Scotus, a way for saints only capable of extraordinary devotion and sorrow.

The second and usual way to forgiveness or justification for Duns Scotus is within the sacrament of Penance. The sacramental way is essentially easier, because it does not demand a high degree of attrition productive of merit *de congruo*. Here attrition (imperfect sorrow that must exclude all intention of sinning but can legitimately begin in fear of punishment) is a sufficient disposition for the penitent. It is the power of the sacrament that makes up for the deficiencies in the sinner who is only attrite and the sacrament works unfailingly as long as the penitent does not place an obstacle to its effectiveness.⁹⁵ As no one can know whether a person has sorrow sufficient for merit, as the way of the sacrament is surer and everyone is obliged to choose the easier and more sure way.

Scotus does not use the category of matter and form to explain the sacrament of penance. As Poschmann states, "This is not, as in Thomas, a combination of personal penitential acts as the matter and of absolution as the form; instead, it consists of the absolution alone."⁹⁶ Sorrow, confession and satisfaction are indeed necessary as a disposition for the reception of the sacrament, but, as is expressly maintained against Thomas, not simply parts thereof. He gave overwhelming emphasis to the power of the words of forgiveness, the external sign, pronounced by the priest. Thus Duns Scotus firmly established the role of the priest and the benefits of his absolution in bold and precise language.

1.1.2.6. Council of Trent

The basic view of reformers consisted in the idea that true penance arises from fear which is anterior to faith or trust in God's goodness and which, in turn, constitutes that penance which is truly justifying. Because of this idea, then, the whole judicial notion of the Sacrament was undermined. Confession was no longer necessary, and, as a

⁹⁵ Tentler, *Sin and Confession on the Eve of Reformation*, 26.

⁹⁶ Poschmann, *Penance and the Anointing of The Sick*, 187.

corollary, an integral confession could no longer be considered obligatory. The priest was not a true judge, exercising his office by virtue of his power of orders and jurisdiction. He was merely minister, declaring and pronouncing that the sins of a penitent were forgiven, if such a penitent actually believed himself absolved. They also held the idea that the power of forgiving sins was not limited to priests alone, nor was the satisfaction imposed in confession of any efficacy in taking away sin or its punishment.⁹⁷

The Council of Trent (1545-1563) was a reaction against the reformers. The main discussions at Trent were in response to the reformers' denial of the sacramental nature of penance and, consequently, underscored its internal capacity to confer the grace of pardon and healing through the ministry of the Church.⁹⁸ In the fourteenth Session of the Council of Trent, which convened in 1551, the Fathers came together to defend and define the teaching of the Catholic Church in relation to the Sacrament of Penance.

The Council of Trent strongly asserted the divine origin and sacramental character of confession. After stating that Penance is a Sacrament, the Council then taught that Our Lord instituted the Sacrament of penance. The Fathers quoted John 20:22 for the institution of the sacrament by Christ and the power to forgive sins given to the apostles and their lawful successors. Ladislav Örsy quotes the fathers of the Council:

Our Lord Jesus Christ, before he ascended from this world into heaven, designated priests as his own vicars, that they should be presidents and judges to whom all mortal sins (criminal), into which the faithful may have fallen, should be submitted. They should judge, in virtue of the power of the keys, if sins should be remitted or retained. Clearly, the priests cannot pronounce such judgment without being properly informed about the cause, nor could they observe equity in imposing penalties if the faithful made a general confession only and did not disclose their sins by their precise names, one by one.⁹⁹

The exact teaching of the Council concerning the confessor as judge and the consequent necessity of an integral confession is found in Chapter 5, canons 6 and 7, of the Fourteenth Session. If a person has defiled himself with sin after baptism, it is not permissible for him to be baptized again; rather Christ willed that these persons be

⁹⁷ McKeever, *The Necessity of Confession for the Sacrament of Penance*, 10.

⁹⁸ Örsy, *The Evolving Church and the Sacrament of Penance*, 47.

⁹⁹ Örsy, *The Evolving Church and the Sacrament of Penance*, 48.

placed before this tribunal as guilty, so that through the sentence of the priest they could be freed.¹⁰⁰ Since the priest is a judge he has the power to enjoin satisfaction. This is clear from the words by which Our Lord granted the general power of binding and loosing and the express power to remit and retain sins to the Apostolic College. In neither case does Christ place any limit upon the power granted to the apostles and their successors.

Since Christ did not place any limit on the power to forgive or retain sins, that power extends to the full and perfect remission of sins. It would not be entirely efficacious in remitting the temporal punishment due to sins, however, unless one of its acts was the imposition of sacramental satisfaction, i.e. the means of remitting that punishment in a normal case. The Council of Trent identifies this as the traditional understanding of the power of the keys. The fathers both believe and teach that the ‘keys of the priests were granted not only to loose, but also to bind.’¹⁰¹

1.1.2.7. Vatican Council II

The role of the priest in the sacrament has changed considerably during the long history of the Church. The general pastoral tradition of the sacrament of penance continued in the Second Vatican Council. The medieval version of the sacrament, which the Church has maintained into the current age, very much emphasised the priest as judge. The Second Vatican Council understands priests as healer, as the conduits of God’s healing love and forgiveness. The focus of the sacrament is no longer on sin, but on experiencing and accepting God’s love. The early Church’s emphasis was on doing penance and the Tridentine emphasis on confession and absolution are held in balance with each other under the broader notion of reconciliation. Contrition, confession, satisfaction and absolution are all steps in the larger process of conversion from sin and reconciliation with the Church.

The Second Vatican Council emphasized the power of the keys vested in the ministers of the Church for shepherding the people of God. Both bishops and presbyters participate in the sanctifying ministry of the ordained priesthood. They impart

¹⁰⁰ Joseph A. Spitzig, *Sacramental Penance in the Twelfth and Thirteenth Centuries*. Washington: The Catholic University of America Press, 1947, 31.

¹⁰¹ Spitzig, *Sacramental Penance in the Twelfth and Thirteenth Centuries*, 91.

salvation by the ministry of the word and through the sacraments which they regulate by their authority. *Lumen Gentium* (LG) declares the divine origin of this office of the ministerial priesthood in articles 28:

Christ, whom the Father hallowed and sent into the world (Jn.10:36), has through his apostles, made their successors, the bishops namely, sharers in his consecration and mission; and these, in their turn, duly entrusted in varying degrees various members of the Church with the office of their ministry. Thus the divinely instituted ecclesiastical ministry is exercised in different degrees by those who even from ancient times have been called bishop, priests and deacons. ... and in virtue of the sacred orders, after the image of Christ, the supreme and the eternal priest (Heb 5:1-10; 7:24; 9:11-28), they are consecrated in order to preach the Gospel and shepherded the faithful as well as to celebrate divine worship as true priests of the New Testament (LG 28).¹⁰²

While speaking about the sacrament of reconciliation, the document considers sins as ailments and the sacrament a medicine to cure it. LG 41, speaking about the priests, says that ordained priests exercise a ministry of reconciliation and comfort to penitents and the sick and present the prayers and needs of the faithful to the Father (LG 41).

God alone is Holy and the Sanctifier. He has chosen others to be his servants in the work of sanctification. *Presbyterorum ordinis* (PO) indicated that presbyters are consecrated through the ministry of the bishop to share in Christ's priesthood in a special way and act as his ministers to exercise his priestly office (PO 5). As PO 6 states, "For the exercise of this ministry, as for the rest of the priests' functions, a spiritual power is given them, a power whose purpose is to build up."¹⁰³ There are many references in the whole Vatican document reaffirming the power entrusted to the ministerial priesthood even though it does not specifically use the terminology 'power of the keys.'

Part II

Development of the Faculty to Forgive Sins in the History of Penance

In an effort to increase the graces given by Christ through the Church, the Church protects all sacraments. She does this by establishing norms regulating the sacraments. Regarding the sacrament of penance, her norms protect the faithful and the priest, safeguard the need for confidentiality, and make the sacrament readily available for

¹⁰² Flannery, *Vatican Council II*, 349-350.

¹⁰³ Flannery, *Vatican Council II*, 767.

the faithful. In order to protect the faithful and the integrity of the sacrament, the Church has established precise norms and protocols by which it must abide. Only a person ordained to the priesthood has the power to absolve sins in the Church. But before absolving sins validly, he also must receive permission to use this power. This permission is called the faculty to absolve.¹⁰⁴ To validly absolve sin, a priest must have the faculty to exercise the power of order. He obtains this faculty either by receiving an office that includes the need to forgive sins or by receiving the faculty directly from lawful authority. Only a lawful authority can grant the faculty to exercise the power to absolve and lawful authority can restrict this power as well. The priest may be limited in his exercise of this power except in danger of death situations.

The intention of this part of the chapter is to determine how the system of faculty¹⁰⁵ functioned within the history of sacramental penance. What was the ancient way of regulating faculty and who had faculty in history to absolve in different stages in the development of the sacrament of penance? All these topics are explored below.

1.2.1. Bishops as Ordinary Ministers in the Early Centuries

In the patristic period, it was invariably the bishop who presided over the public reconciliation of penitents. In the early period, the various Churches in the Western world developed structures through which forgiveness was granted by the bishop in the midst of the community. Such structures were modelled after the ancient procedure, used by the Jews, of excluding a sinner from the synagogue and admitting him again when he repented. A bishop was considered the Ordinary Minister of the sacrament in this public penitential system. As Ladislav Örsy observes, “An important clue to the understanding of this Mediterranean rite of granting forgiveness is found in the rule that, to be a penitent, the sinner had to be admitted into the ‘order of penitents.’ He could be received into this penitential way of life by the bishop and by him alone.”¹⁰⁶ Often, the sins listed were of a general character, such as doing harm to

¹⁰⁴ Au sens large une faculté, c’est le pouvoir de faire quelque chose. En un sens plus étroit, c’est le pouvoir spécialement donné par le supérieur, sans lequel une chose ne pourrait pas être faite valablement, licitement ou en sûreté de conscience. Cf. Naz, *Dictionnaire Droit Canonique*, vol. 5, Paris: Librairie Letouzey et Ané, 1949, 800.

¹⁰⁵ Even though we don’t find the use of the term ‘faculty’ in the ancient period the term is used here in the thesis to mean wherever there is the sense of the term.

¹⁰⁶ Örsy, *The Evolving Church and the Sacrament of Penance*, 31.

one's neighbour, being greedy or jealous, and so forth. In practice, it was left to the bishop to judge how much injury or what degree of jealousy or greed warranted public penance. After the examination of the gravity of each case, it was the bishop who imposed satisfaction on the penitent. The study of the ancient Western pattern proves the unshaken conviction that sinners can be forgiven in community and the bishop was the legitimate instrument of God's pardon.¹⁰⁷

In the African world too it is apparent that at this time the ordinary minister of reconciliation, as in Rome, was the bishop. Watkins gives the reason why, in the African Church, all went to the bishop when seeking penance:

Also it is known that the African churches had a more than ordinary number of bishops, and that not only the great centres of population were Episcopal sees, but that every small city or important village had its bishop no less. In the case of such small communities it would be to the bishop that all requests for reconciliation would naturally come. The canons, however, provide that priests may reconcile when death is imminent, and it may be presumed that an emergency such as a siege by the Vandals would be taken as coming under this provision.¹⁰⁸

Here it is evident that while the ordinary minister of reconciliation was the bishop, there were also priests as extra-ordinary ministers for emergency situations.

The role of the elders (bishops) in the disciplinary process is described in several passages, especially in second-century sources. Polycarp instructed, "And the elders are to be compassionate, showing mercy to all, turning back those who have strayed, looking after all the weak" (*Phili* 6:1). Tertullian's account of public confession mentions bowing at the feet of the elders (*De paenitentia* 9), and that elders preside over the disciplinary activities of the Church is implied in his *Apology* 39. Tertullian is also witness to the bishop's authority in disciplinary matters (*De pudicitia* 1). Other sources from the early third century show the responsibility of the bishop in dealing with sinners. As we noted above, in his model prayer for the ordination of a bishop Hippolytus maintains that the power to loose every bond according to the power God had been given to the apostles. While Origen testified to the use of Mt 16:19, by bishops of his day, to support their right to bind and loose sins, he contended that only those with the way of life of Peter could exercise the privilege. Although Cyprian

¹⁰⁷ Örsy, *The Evolving Church and the Sacrament of Penance*, 34.

¹⁰⁸ Watkins, *A History of Penance*, vol. 1, 439.

included the other clergy in his policies, he was a key figure in locating the power of penance in the bishop.¹⁰⁹ Thus it is an undisputed fact that in the early centuries, the bishop and the bishop alone was the ordinary minister of public penance.

1.2.2. Extra-Ordinary Ministers in the Ancient System

Though the bishop was the ordinary minister of penance in a diocese, there were also certain occasions in which the bishop commissioned priests or deacons to do the same. They were supposed to act according to the prescription of the commissioning. Watkins, quoting from the African code,¹¹⁰ states:

In canon 7 it is provided that if a person is in danger of death, and seeks to be “reconciled at the divine altars,” and if the bishop be absent, the priest is to consult the bishop, presumably by letter, and to reconcile the dying man in accordance with the bishop’s instructions. This canon makes it clear that the bishop was the ordinary minister of reconciliation in Africa as at Rome at the beginning of the fifth century.¹¹¹

This passage presents bishops as ordinary ministers and priests as individuals who may reconcile penitents in extenuating circumstances, especially in danger of death situations. Canon forty three also states that a priest is not to reconcile a penitent without first consulting the bishop, unless compelled by the necessity arising from the absence of the bishop.

In the first chapter of the *Penitential of Theodore*,¹¹² the author briefly summarises the practise both of Rome and the Eastern Churches: “If the bishop has difficulty in officiating, he may accord the power to a priest, to fulfil the function, on the ground of necessity.”¹¹³ This clearly shows that at that time, priests possessed faculty to absolve sins and reconcile penitents to the Church only in extraordinary cases. Evaluating the *Penitential of Theodore*, Watkins observes the following:

It has been seen that in the Western churches the delegation of the bishop’s office in reconciliation had in practice been confined to the sick. In the Eastern churches, or at least in some of them, priests penitentiary acted ordinarily till the abolition of the office at Constantinople by Nectarius: and it would seem that after that date any

¹⁰⁹ Ferguson, “Early Church Penance,” 100.

¹¹⁰ The African Code comprises canons of various councils. The name *Codex Canonum Ecclesiae Africanae* given to this collection by Justellus (1614) is still in use.

¹¹¹ Watkins, *A History of Penance*, vol. 1, 445.

¹¹² The *Penitential of Theodore* is a work by Theodore, the Archbishop of Canterbury, though it was not authored by him; it was mainly recorded by Eoda.

¹¹³ Watkins, *A History of Penance*, vol. 2, 650.

priest could act upon occasion. Theodore briefly sums up the usage of the whole Church as permitting delegation by the bishop to the priest when necessity required.¹¹⁴

According to the testimonies we have from Cyprian of Carthage, there seems to have been confessions to a ‘priest of God’ which in this context meant a bishop, and not a presbyter. Cyprian ordered a private enquiry before deciding whether penance was necessary or not. This system eventually led to the appointment of presbyters, specially commissioned to conduct private interviews and to recommend a suitable length of penance. Though presbyters were often involved in this process, it was ultimately the bishop who decided when the penance would start and when it would end.¹¹⁵ The imposition of hands normally appears to have been the prerogative of the bishop, but at least in the case of deathbed reconciliations, could apparently be done by a presbyter or deacon.¹¹⁶

It is important not to confuse the role of priests in counselling those troubled in conscience, letting them know whether they needed to do penance and sometimes determining the length of penance with the role of the ordained minister in the laying of hands with prayer on penitents and subsequently readmitting them to communion. Priests certainly joined with the bishop in this act of reconciliation but only in emergencies did they act in place of the bishop.¹¹⁷

1.2.3. The Priest Penitentiary in the Eastern Church

In the Church of Constantinople, a priest was appointed as the priest penitentiary, a person to whom penitents could confess their sins. Before the Decian persecution, the ordinary controller of formal penitence on behalf of the Church was the bishop with his clergy. But it was in Constantinople that for the first time a priest penitentiary with full authority in ordinary course was found. Watkins identifies the reason for establishing such a priest penitentiary, referring to historians Socrates and Sozomon as follows:

¹¹⁴ Watkins, *A History of Penance*, vol. 2, 651.

¹¹⁵ John Halliburton, “‘A Godly Discipline’: Penance in the Early Church”, in *Confession and Absolution*, Minnesota: The Liturgical Press, 1990, 46.

¹¹⁶ Watkins, *A History of Penance*, vol. 1, 189-196.

¹¹⁷ Halliburton, “‘A Godly Discipline’: Penance in the Early Church,” 49.

The historic occasion for the establishment of the office is stated by Socrates to have been the Novatianist schism. The Novatianists would not communicate with those who had lapsed in the Decian persecution, and separated themselves. From that time, according to Socrates, the bishops by the ecclesiastical rule appointed the priest who should be over the exercise of Penance in order that those who had fallen after Baptism should make *exomologesis* for their sins in the hands of the presbyter appointed for the purpose.¹¹⁸

Watkins also shows from the study of these two historians that the appointment of a penitentiary had not been confined to Constantinople alone. It had, in fact, been employed by various bishops after the Decian persecution around the year 252, or some eighty years before Constantinople was founded.¹¹⁹ It is important to note that the faculty to reconcile was entrusted to a priest penitentiary with ordinary power by the bishop. Therefore, these penitentiaries could be also abolished by him. Patriarch Nectarius having witnessed certain malpractices thus abolished the office and the related functions of the priest penitentiary, in the year 391.¹²⁰

1.2.4. Twenty Five Priests of *Titles*

It appears that in the annals of the history of the Church of Rome, there never was a priest penitentiary acting on behalf of the bishop for the whole Church. The *Liber Pontificalis*¹²¹ states that Marcellus instituted twenty five priests of *titles*, who dealt with cases of Penance as well as with candidates for Baptism and the sepulchres of the martyrs. Since Marcellus insisted on the penance of the *lapsed*, the *lapsed* being numerous and their status creating a controversy in the Church, he instituted the *titles*. According to Watkins, “it appears probable that, safeguarding the final act of reconciliation to the bishop, the rest of the functions of a priest penitentiary were now ordinarily performed by the priests of the twenty five *titles*.”¹²²

¹¹⁸ Watkins, *A History of Penance*, vol. 1, 352.

¹¹⁹ Watkins, *A History of Penance*, vol. 1, 357.

¹²⁰ Cf. Abigail Firey (ed.), *A New History of Penance*. Boston: Brill, 2008, 125; Watkins, *A History of Penance*, vol. 1, 349; Watkins gives an account of the circumstances given by church historians Socrates and Sozomen (350-352).

¹²¹ *Liber Pontificalis* is a record of the popes, the first compilation of which is assigned to about the year 514.

¹²² Watkins, *A History of Penance*, vol. 1, 275.

It appears from Pope Innocent I (402- 417)¹²³ that confession was made to priests, presumably the priest of the *title* to which the penitent belonged, who were to pay attention to such confessions and to judge in harmony about the gravity of the offences and the feasibility of the penitence. It was the priest, no doubt, who had assigned the penance and it was his duty, when the penitent had performed adequate satisfaction, to approve the discharge of the penitent. He did not, however, absolve the penitent except in cases of sickness. It was the bishop who, in a public service of much solemnity, held on the Thursday before Easter, absolved all penitents whose discharge had thus been sanctioned.¹²⁴

1.2.5. Spiritual Men as Minister of the Sacrament According to Origen

In Origen's treatise *De Oratione*, he makes a classification of sins under three headings. There are minor offences against others, which can all be forgiven. Secondly, there are other sins which are incurable or irremissible, just as Tertullian maintained. The remaining sins could be remitted by spiritual men, who, like the apostles, had been 'breathed upon by Jesus,' and had received the Holy Spirit. In the view of Origen, a man is not in a position to exercise this ministry simply because he is commissioned – he must also be a spiritual man. Origen believed that these men must be known by their fruit. But, at any rate, he who has all the qualifications 'remits the sins which God remits and retains the sins which are incurable.'¹²⁵ Therefore, according to Origen, all bishops should not necessarily possess the power to absolve sins; only a person with spiritual powers should absolve sins.

1.2.6. The System of Private Penance Led the Priest to Be the Ordinary Minister

Both in the East and the West for the first four centuries, public penance was imposed for all grave sins, whether public or occult. Towards the end of the fourth century, around the year 391, it began to disappear in the East when Nectarius, Patriarch of

¹²³ St. Innocent was pope from 402 to 417. He showed leniency in his own day, by admitting capital offenders to restoration.

¹²⁴ Watkins, *A History of Penance*, vol. 1, 425.

¹²⁵ Watkins, *A History of Penance*, vol. 1, 133.

Constantinople, issued a decree abolishing public penance. The disappearance of public penance in the East seems to have become complete around the year 500.¹²⁶

In the West, public penance persisted for a much longer time. The discipline of public penance for both public and occult grave sins, seems to have endured until about 700. About that time, there began the practice of imposing public penance for public grave sins only and private penance for occult sins, a practice which was universal in the Western Church by about 730. This discipline remained almost unchanged for nearly four hundred years and during this period there were still a large number of public penitents. Due to various causes, immediately after the eleventh century, penitential discipline began to relax very rapidly and at some time shortly after the year 1100, public penance disappeared in the West altogether.¹²⁷

Meanwhile it is at any rate obvious that while very few people sought public Penance while alive, a very large proportion sought Penance from the Church at death. This Penance involved 1), confession to the priest, 2), admission to the status of the penitent, and 3), reconciliation by the priest, at last by the administration of the Holy Eucharist as *Viaticum*. The death bed ministrations were thus not significantly different from those which have prevailed in the Catholic Church throughout all the succeeding ages. And doubtless, this general use of death bed penitence, involving confession to a priest and a priestly reconciliation, made it far easier, a little later on, to introduce the modern system of private penance and absolution during one's lifetime.¹²⁸

The pattern of forgiveness that developed in Ireland had no 'order of penitents.' Anyone could ask the bishop or a priest for God's pardon. There is a great influence of monastic traditions of penance in the Church of England and Ireland. Out of this tradition there came many manuals or *penitentials* which deal with penance under the authority of abbots by a wide variety of people. The abbots functioned independently of any bishop in the penance and reconciliation of the people.¹²⁹ The repentant sinner

¹²⁶ Francis E. Moriarty, *The Extraordinary Absolution from Censures*. Washington: The Catholic University of America, 1938, 6-7.

¹²⁷ Moriarty, *The Extraordinary Absolution from Censures*, 7-8.

¹²⁸ Watkins, *A History of Penance*, vol. 2, 560.

¹²⁹ Hellwig, *Sign of Reconciliation and Conversion*, 52.

was not segregated from the community nor was he asked to do penance in public. Once he confessed his sins in private, a satisfaction was imposed on him, often a harsh one, to be performed in private. Thus, during the early middle age, the sacrament was made even more accessible by the fact that absolution was not reserved to the bishop; it could be granted by a priest.¹³⁰

1.2.7. Episcopal Consultation Replaced by *Penitentials*

The *penitentials* indicate a new method of penitential discipline. The *penitentials* were the manuals or the literature developed to guide confessors in the calculation and formulation of penance.¹³¹ In reality, they were dictionaries of all conceivable sins in all imaginable circumstances, indicating the right amount of expiation for each. There were several very well known *penitentials* including the *Penitential of Columbanus*, the *Penitential of Finnian* and the *Penitential of Theodore*.

The Irish priests crossed over to the European continent as pilgrims and missionaries, bringing their own understandings of the administration of forgiveness as well as their penitential books.¹³² The stage was set for them, as most of the Christians on the continent were already alienated from the use of public penance. The Irish offered pardon to them in a new form with no public and permanent humiliation attached to it and the faithful responded positively.

Possession of a *penitential* rendered a priest comparatively independent of his bishop in the administration of penance. These books, however, carried no authority except such as might attach to the names of their authors or alleged authors. They were in disagreement over many details. The compositions and commutations which they sanctioned were already leading to grave abuses. For these reasons, Episcopal opinions were gradually marshalled against the *penitentials*.¹³³ Despite rampant abuse

¹³⁰ Hellwig, *Sign of Reconciliation and Conversion*, 45.

¹³¹ Örsy, *The Evolving Church and the Sacrament of Penance*, 37.

¹³² *Penitentials* were handbooks for confessors or physicians of souls who were to use them in order to steer the faithful away from behavior which was spiritually harmful to heal them from the effects of sin, to instruct them in the virtues which were to be sought after and to indicate a means by which this virtuous state might be achieved. Cf. Hugh Connolly, *The Irish Penitentials*. Dublin: Four Courts Press, 1995, 21.

¹³³ John McNeill & Gamer Helena (ed.), *Medieval Handbooks of Penance*. New York: Columbia University Press, 1990, 27.

and opposition to use of the *penitentials*, it is a fact that for centuries in the early Middle Ages, priests relied on *penitentials* in determining the appropriate penance to individuals who demanded the sacrament of penance in private. As the ordinary minister at this time, priests consulted the *penitentials* instead of consulting with the local bishop.

1.2.8. The Conflict in the Case of Faculty in the Early Middle Ages

Beginning in the seventh century, it is reported that there developed a new system of penance, i.e. of public penance for public sins and private penance and reconciliation by a priest for private sins. Especially in the Irish system, the use of *penitentials* flourished and priests became ordinary ministers. But at the same time, many discussions took place on the matter concerning whether the priest possessed the ordinary faculty to reconcile a sinner or not. From the seventh to the twelfth centuries, prior to Lateran Council IV, there was a substantial difference of opinion on this matter.

According to Watkins, by the beginning of the ninth century, ancient tradition and modern practice co-existed.¹³⁴ The ancient tradition persisted everywhere, especially in the Western ecclesiastical public system. Only death bed confessions were exempted from public penance and reconciliation by the bishop. Other confessions made during times of health would indeed be disclosed privately and to a priest; but they, as a rule, were preliminary to penance publicly endured by the penitents and to public reconciliation accorded by the bishop at a solemn service on Maundy Thursday.

Secondly, alongside this ancient tradition of public or canonical penance, the practice of private penance had grown exponentially in certain parts of Europe, notably in the Frankish lands. The penitent not only made his confession in private to a priest but the penance which followed was in no way brought under public observation or control and the reconciliation was also effected privately by a priest, without any public performance of any sort.

¹³⁴ Watkins, *A History of Penance*, vol. 1, 701.

Private confession followed by private penance and private reconciliation by a priest was admitted generally at Aachen. But if the penitent resorted to the priest, the priest had to be qualified to receive him. In a *Capitulary*¹³⁵ of 802 it was decreed, “that all priests for all who confess to them their sins do with the utmost watchfulness assign to these fitting penances, and that they mercifully deliver the Viaticum and communion of the Body of Christ to all sick people before the close of life.”¹³⁶ In another *Capitulary* of the same year, *On the Examination of Ecclesiastis* (802), it is ordered that inquiry be made, “similarly also in the teaching of the people and in the office of preaching and in the confession of sins, how they teach them to act, how far they know or exercise care to impose upon them a remedy for their sins.”¹³⁷ Thus Charles the Great, in 802, ordered that all priests would be qualified to hear confessions and assign penances. It also proved that by this time priests possessed the ordinary faculty to absolve sins.

There were a series of convened councils which are known as the reform councils of 813. The Council of Arles prescribed public penance in cases of persons guilty of notorious crimes. It seems that in this area of southern Gaul, the Irish system of penance had no influence. The Council of Chalons prescribed that public sins would be punished with public penance. But it appears that they also admitted the confession to a priest. At the Council of Tours, members accepted the modern system of private Penance and the Council recognised that some *penitential* is needed as a guide for the clergy. At the Council of Rhyme, officials proposed that priests give penance according to canonical norms. This northern area of France was strongly influenced by the new system of private penance. Therefore, the fathers suggested that the priests should discriminate in each case. These reform councils of 813 showed that there were differences of opinion over the modern penitential system and about the minister of the sacrament.

The Council of Paris (829) reverted to the current practise of the Church and made the following decisions: 1) to the withholding absolution until penance had been fulfilled,

¹³⁵ *Capitularies* of Charles the Great in the year 802.

¹³⁶ Watkins, *A History of Penance*, vol. 2, 697.

¹³⁷ Watkins, *A History of Penance*, vol. 2, 697.

2) the assignment of penance as indicated by the canons and 3) the reconciliation of only Episcopal authority.¹³⁸

The seventh canon of the Council of Pavia¹³⁹ again reserves the faculty to the bishops:

But the reconciliation of penitents, according to the enactments of the ancient canons, ought to be effected not by presbyters but by bishops: unless it happens that any be in a condition of danger, and earnestly entreat that he may be reconciled. If the bishop be absent, the presbyter ought still to consult him, and so to reconcile the penitent in accordance with his instructions. But in any other case, just as neither the making of chrism nor the dedication of virgins ought to be effected by presbyters, so also the reconciliation of penitents ought in no wise to be effected by them. Because to the bishops alone, who hold the place of the apostles by the imposition of hands, is this conceded in the Church. For it was to the apostles that the concession was made, the Lord saying to them: *Receive the Holy Spirit. Whose sins ye do remit, they are remitted unto them: and whose sins ye do retain, they are retained.*¹⁴⁰

In the *Capitulary of Atto*, bishop of Vercellae, the date of which may be given as about 945, directs his priests to secure permission to reconcile the penitent. Here it can be observed that the priests could reconcile the penitent:

A presbyter ought not to enjoin the laws of penance without any regard to the person or the case: but let him assign the times of penance or reconciliation by the judgement of the bishop. And let not a presbyter reconcile a penitent without consulting the bishop, save with the bishop's permission.¹⁴¹

By examining various councils and documents of the western world during the early Middle Ages, one can see that there was a conflicting situation in granting faculty to the priests. In certain periods and certain areas, especially where there was influence of the Irish system of penance, priests possessed the faculty in ordinary cases of reconciliation. They secured the guidance of the penitential manual for giving penances. Whereas at certain periods and areas this liberal use of faculty was controlled by the bishops, on special occasions, like in danger of death, priests had the faculty of reconciliation.

¹³⁸ Watkins, *A History of Penance*, vol. 2, 707.

¹³⁹ The Council held at Pavia in 850 affords important evidence of the Lombard practice in the matter of penance in the middle of the ninth century. It was held under the joint presidency of Angilbert, archbishop of Milan, Theodemanus, patriarch of Aquileia, and of another bishop named Joseph.

¹⁴⁰ Watkins, *A History of Penance*, vol. 2, 718-719.

¹⁴¹ Watkins, *A History of Penance*, vol. 2, 719.

1.2.9. Lateran Council IV Grants Ordinary Faculty to the Parish Priests

The fourth Council of Lateran (1215)¹⁴² which is considered the twelfth ecumenical council, decreed that “Every *fidelis* of either sex shall after the attainment of years of discretion separately confess his sins with all fidelity to his own priest at least once in the year.”¹⁴³ Hereby it is very clear that from this ecumenical council, the whole Latin Church accepted parish priests as the ordinary minister with faculty for the reconciliation of sinners. The Council further decrees “But if any desire to confess his sins to an outside priest for some just reason, let him first ask and obtain permission from his own priest, since otherwise he (the outside priest) cannot loose or bind him.”¹⁴⁴ In this statement, it is evident that the absence of faculty affected the validity of the reconciliation. The parish priest possesses faculty to absolve and reconcile a sinner under his jurisdiction. However, when he hears the confession of any person other than his parish members, he should get faculty from the parish priest of the person who makes the confession. There is no mention of securing permission from the bishop in these cases.

1.2.10. *Cum ad aures* of Innocent XI

The great theologians like Thomas Aquinas, Scotus, and Suarez had accepted that all priests possessed the power to absolve venial sins; even if they were not granted the faculty by the Church, they had it according to universal custom. But this usage was abolished on 12 February 1679 by Innocent XI when the decree *Cum ad aures* was promulgated.¹⁴⁵ From this time onwards, it was illicit to absolve even venial sins without having faculty. But it is not clear whether this affected their validity or not.

1.2.11. Council of Trent Confirms the Ordinary Faculty of Priests

The sixth chapter of the Council Trent condemns the idea that the faithful have the power to forgive sins and teaches that this power is conferred only on priests and

¹⁴² The Fourth Lateran Council, reckoned in the Latin Church as the twelfth ecumenical, was summoned by Pope Innocent III by means of letters issued in April, 1213. The council assembled in November 1215. It was attended by bishops from every country in Latin Christendom, as well as by the representatives of numerous princes. All 412 bishops, with 800 priors and abbots, besides the deputies of absent bishops and other clergy, were present.

¹⁴³ Decree 21, quoted in Watkins, *A History of Penance*, vol. 2, 748.

¹⁴⁴ Watkins, *A History of Penance*, vol. 2, 749.

¹⁴⁵ Naz, *Dictionnaire de Droit Canonique*, vol. 4, 11.

bishops and that “even priests who are in mortal sin exercise the office of forgiving sins as ministers of Christ through the powers of the Holy Spirit conferred in ordination.”¹⁴⁶ The text goes on to say that during penance the priest pronounces sentence as a judge and that faith without penance effects no remission of sins.¹⁴⁷

The seventh chapter clearly gives expression to the idea of faculty in the modern sense and says that without having the faculty (jurisdiction) absolution is invalid. As the Council explains:

It is the nature and meaning of a judgement that the sentence be pronounced only over one's subjects. Hence the Church of God has always been convinced, and this synod confirms as fully true, that absolution is of no value if it is pronounced by a priest on one over whom he has neither ordinary nor delegated jurisdiction.¹⁴⁸

1.2.12. Current Legislation on the Faculty

The canonical system of the Catholic Church was revised after the Second Vatican Council. At present, the Catholic Church has two different Codes of Canons: *Codex iuris Canonici* (CIC) for the Latin Church and *Codex Canonum Ecclesiarum Orientalium* (CCEO) for all the Eastern Churches. Both of these Codes were formulated based on the spirit of the Vatican Council. In the case of faculty, both Codes are more or less the same. But CCEO differs from CIC in the matter of reservation of faculty.

From the perspective of juridical precision and internal legal coherence, the new legislation uses the word ‘faculty’ to denote the hierarchical authorization to give absolution. Prior to the promulgation of the new legislation, the term ‘jurisdiction’ was used in place of faculty. The new legislation uses the term ‘jurisdiction’ to identify the power of governance in its strictest sense. At present, ‘absolution’ is not an act of the power of governance in an external forum, which is well differentiated from the power that refers to the sphere of conscience.

To be a true and valid minister of the sacrament of penance, the power of order (*munus sacrum*) and the faculty to give absolution are both required. This faculty is not the power to pardon sins (an integrating part of the *munus sacrum* received in the

¹⁴⁶ Dupuis, *The Christian Faith*, 671.

¹⁴⁷ Dudley, “The Sacrament of Penance in Catholic Teaching and Practice,” 73.

¹⁴⁸ Dupuis, *The Christian Faith*, 672.

sacrament of order) but the hierarchical authorization to exercise this power. It is a positive bestowal or a juridical determination given to an ordained minister to validly and lawfully exercise the same power. Therefore, the code uses the term ‘faculty’ to denote the hierarchical authorization to absolve sins.

All bishops can administer the sacrament of reconciliation *ipso iure*. CCEO canon 722 §2 states that “All bishops can by virtue of the law itself administer the sacrament of penance anywhere, unless with regard to the liceity, the eparchial bishop expressly denies this in a special case.” Faculty is entirely without restriction as to place, and the only restriction permitted is that the local eparchial bishop can deny another bishop the right to administer the mystery *licitly*. The parallel canon in CIC canon 967 §1 provides that in addition to the Roman Pontiff, the law itself provides the faculty for cardinals to hear confessions of the Christian faithful everywhere in the world and for bishops to possess this faculty and licitly use it anywhere unless the diocesan bishop denies it in a particular case. The two canons are essentially consistent. The principal difference between them is that the CIC provision includes the Roman Pontiff and the cardinals in the *ipso iure* faculty, whereas the CCEO provision does not mention them.¹⁴⁹

The ordination to the priesthood gives man the power to forgive sins. According to both Codes, “only a priest is the minister of the sacrament of penance” (CCEO c.722; cf. CIC c.965). But, “for the valid absolution of sins, it is required that, in addition to the power of order, the minister has the faculty to exercise that power in respect of the faithful to whom he gives absolution” (CIC c.966 §1). The second paragraph elaborates on how a priest can possess this faculty: “A priest can be given this faculty either by the law itself, or by a concession issued by the competent authority in accordance with canon 969” (CIC c.966 §2; CCEO c.722 §3).¹⁵⁰ Unlike bishops, the faculty to administer the sacrament of penance is not automatically obtained *ipso iure* with ordination by priests; the possession of the faculty likewise speaks to the validity of the administration of the mystery by them.

¹⁴⁹ Francis J. Marini, *Comparative Sacramental Discipline in the CCEO and CIC*. Washington: CLSA 2003, 98-99.

¹⁵⁰ <http://www.trosch.org/law/cl-penan.htm>. (accessed on: 22-10-2012). Faculty in the Eastern Code is addressed in the following chapter.

1.2.13. Why are two Powers needed?

The need for the two powers of order and governance in the ministry of ecclesiastical penance is based on the nature of the sacrament. Ecclesiastical penance has, in fact, always taken a judicial form. It presupposes a judgement of the repentant sinner who wants to expiate his sins. It requires the intervention of the holder of keys. Grace flows through the sacrament in the form and by means of a judicial act, an expiation of an ecclesiastical nature. The priest acts in the name of the Church and Christ when he imposes penance on the penitent and reconciles him. It is a judgment in the strict sense that he utters and the condemnation he pronounces before he acquits the sinner is authentically juridical. Being sacramental, it leads to forgiveness and it is pronounced in the Church's name, with power given by Christ to the apostles. It is, of course, a peculiar kind of judgment as it is in the internal forum. One can only grasp its nature by relating it to the nature of the Church, the institution and community of salvation, endowed by Christ with both a principle of life, the power of 'order' and a principle of unification and authority, the power of governance. Thus in the ministry of penance, it is not only a sacramental power (the power of 'order') that is required, but also an authority to judge and acquit the sinner in the name of the Church.¹⁵¹ The latter is a real power of governance that is a pastoral power or a share in this power in the care of souls. While it is dependent upon the power of governance in *foro externo*, it should not be confused with it.

Therefore, the ministry of ecclesiastical penance is in organic relationship with the powers of 'order' and governance. Its valid exercise occurs in the sphere of pastoral authority or within the limits of juridical delegation. The defined limits of governance determine its range with respect to place and its extension with regard to persons. Some sins may be reserved to the supreme authority of the Church, the authority that regulates the ministry of penance. On the other hand, these restrictions of power of governance in the tribunal of penance cease to count in cases when the spiritual welfare of believers or the social welfare of the Church demands it. Canon law enumerates the conditions according to which the Church's power of governance makes good on what is lacking in the jurisdiction of the minister. It also foresees cases

¹⁵¹ Anciaux, *The Sacrament of Penance*, 128.

in which a priest may exercise the ministry of penance without having received the requisite faculty; for example, in danger of death all restrictions connected with faculty are removed. In such cases, the priest acts in the name of the Church by virtue of this general concession of power.¹⁵²

Part III

Restrictions on the Power to Absolve Sins in the History of Penance

Though Christ had commissioned the apostles with the power to forgive sins, some restrictions or limitations have been in place from the very beginning of the Church's history. These restrictions are due to different theological and pastoral reasons and based on the needs of the time. Since 'reserved sins' are closely examined and analyzed in this study, the research investigate the various types of restrictions and limitations which existed in the Church at different times in the development of sacrament of penance.

1.3.1. Restrictions in the Early Church

1.3.1.1. Sins Reserved to God: Idolatry, Adultery and Murder

Within the first three centuries, there existed two different attitudes toward post-baptismal sin in the Christian community. The first was rigid in the sense that there was normally no restoration in the Church for grave sin after Baptism; the other attitude was lax insofar as it kept open the door for repentance. The rigid non-reconciliation of sinners who had committed grave sins was held as the position of the true Christian community of that time. Though *Shepherd of Hermas* permits once remission for grave sins, this is because, according to Watkins, "in view of the imminence of a grievous persecution, and of the approaching end of the age."¹⁵³

Based on the understanding of the 'Apostolic Decree' of Acts 15:28-29, according to the moral interpretation given in manuscripts of the Western text, sacrifices to idols, fornication and the shedding of blood (murder) were considered as forbidden and many Fathers of the early Church, especially Tertullian, regarded these sins as

¹⁵² Anciaux, *The Sacrament of Penance*, 128.

¹⁵³ Watkins, *A History of Penance*, vol. 1, 48.

unforgivable.¹⁵⁴ These three sins remained unforgivable by man in the first three centuries, notwithstanding the presence of lenient bishops. The great Christian writers of these periods, including Clement of Alexandria, Hippolytus of Rome, Tertullian and Origen, enforced a rigorist discipline. But there were also other fathers, such as Dionysius of Corinth and Pope Callistus, who called for leniency and mercy.

It is important to note that the rigorists regarded the three capital sins as irremissible upon earth and thus reserved to God. All other sins came under the scope of penance and the person who performed penance was reconciled to the community.

1.3.1.2. Remissible and Irremissible Sins According to Tertullian

As a Montanist, Tertullian, in the second chapter of *De Pudicitia*, makes a strong distinction between sins which are remissible in this life and those which are irremissible.¹⁵⁵ As a Catholic, he was in agreement with the *Shepherd of Hermas*, allowing for penance once in this life. Later, however, Tertullian denied penance of the ‘idolatry, murder, adultery’ triad because there was considerable laxity in the practice of penance in these areas. In order to protect the seriousness of sin, he changed his position and went on to say that it was not possible to absolve these sins. In his view, the three greatest or capital sins are irremissible on earth; other offences may however find remission:

We agree that the occasion of penance are sins. These we divide into two issues: some will be remissible, some irremissible. Conformably to this it will be doubtful to none that one set of sins are worthy of chastisement, and the other of condemnation. Every sin is dischargeable by pardon or by penalty: by pardon after chastisement, or by penalty after condemnation.¹⁵⁶

For Tertullian the Montanist, there are other sins of a graver and deadlier character. He elaborated the list of deadly sins as follows:

But in contrast with these there are other sins, which as being graver and of deadly character do not obtain pardon. Such are homicide, idolatry, fraud, denial, blasphemy, and also assuredly adultery, and fornication and any other violation of the temple of God.¹⁵⁷

¹⁵⁴ Ferguson, “Early Church Penance,” 85.

¹⁵⁵ Watkins, *A History of Penance*, vol. 1, 119.

¹⁵⁶ Watkins, *A History of Penance*, vol. 1, 120.

¹⁵⁷ Watkins, *A History of Penance*, vol. 1, 122.

According to Tertullian, for all sins committed before Baptism, there is a place not only for penitence but also for pardon. Sins after Baptism must be distinguished. Some sins are great, grave, deadly or mortal. The former are remissible in this life: the latter are not so remissible. Remissible sins are remitted by the bishop; irremissible sins are reserved to the judgement of God, hereafter.¹⁵⁸ Everett Ferguson rightly concludes that ‘Tertullian the Montanist was an innovator in making certain sins irremissible.’

1.3.1.3. Incurable Sins According to Origen

In *De Oratione*, a treatise which may be assigned to about 230, Origen makes an interesting classification of offences under three headings. There are first those minor offences committed against one another, which can easily be forgiven. At the other end of the scale, there are sins which are incurable. The remaining sins can be remitted by spiritual men, who, like the apostles, have been ‘breathed upon by Jesus,’ and have received the Holy Ghost. Origen adds that these men, like the apostles, have been ‘breathed upon by Jesus and have received the Holy Ghost.’¹⁵⁹

According to Origen, the sins of a Christian which could not find remission upon earth were those wilfully committed i.e. committed with a clear and deliberate intention. Adultery, intended bloodshed, and idolatry all have the character of wilfulness in this sense. According to Origen:

Some there are who, overstepping the bounds of the priestly dignity (how they do it I do not know; perhaps because they do not accurately discern the priestly science), boast themselves as being able also to condone idolatries, and to remit adulteries and fornications, as if through their prayer for those who have dared these things, even the sin unto death is washed away. For they do not read this: ‘There is a sin unto death; I do not say that any should pray for it.’¹⁶⁰

So, it is evident that Origen is in agreement with the other rigorist teachers of the second and third centuries in treating the three capital sins as outside the scope of the loosing office of the Church.

¹⁵⁸ Watkins, *A History of Penance*, vol. 1, 125.

¹⁵⁹ Watkins, *A History of Penance*, vol. 1, 133.

¹⁶⁰ Watkins, *A History of Penance*, vol. 1, 134.

1.3.1.4. Relaxation in the Cases of Irremissible Sins

First, a major relaxation of the Church's teaching on adultery is historically marked by the action of Callistus, the bishop of Rome. His announcement of a more lenient discipline for the fleshly offender may be dated to around approximately 220.¹⁶¹ His courageous action in openly declaring that the reconciliation of the Church would in future be open to offenders of this class after penance was performed proved to be one of the great turning points in the history of penance according to Watkins.¹⁶² Slowly, one by one, the Churches of Christendom followed the lead established by Callistus.

The next question was about the reconciliation of the *lapsed* after the Decian persecution. The old rigoristic spirit had become the spirit of Novationism. Novation's position was that an apostate was to be admitted to penance but denied reconciliation. Cyprian of Carthage worked in concord with the support of Rome. The agreement had the practical effect of thenceforth bringing the capital sins of apostasy and idolatry within the scope of the ecclesiastical penitential system. In light of a second persecution under Decian, the Second Council of Carthage (252) was summoned under the leadership of Cyprian and arrived at the decision that the lapsed penitent had to be reconciled immediately.¹⁶³ The rigorism which reserved capital sins for the Divine tribunal, as they were irremissible on earth, was forever broken.

The Council of Ancyra¹⁶⁴ established an ordered system of graded penances. It fixes the term of years to be spent in each grade; several cases of longer term penances under different grades are elaborated in the canons. The length of some of these exercises of penance has become very considerable.¹⁶⁵ It appears that sinners guilty of apostasy, impurity and bloodshed are, according to the synod of Ancyra, all admitted to reconciliation in this life; under the older discipline, by contrast, offenders in any of these three capital sins had been refused reconciliation in this life and reserved for the judgement of the Lord at the Great Day. According to Watkins, the churches of the Asian provinces had forever attained this position by 314.

¹⁶¹ Watkins, *A History of Penance*, vol. 1, 118.

¹⁶² Watkins, *A History of Penance*, vol. 1, 142.

¹⁶³ Watkins, *A History of Penance*, vol. 1, 206.

¹⁶⁴ Ref. above page, 26.

¹⁶⁵ Watkins, *A History of Penance*, vol. 1, 286.

The sixth canon of Ancyra had established that persons who had readily lapsed under persecution might pass through the grades of penance and find reconciliation in less than six years: but if at any time, death was approaching, they might be admitted to communion on the understanding that if they recovered, they would still perform their penance.¹⁶⁶ All the fathers and literature in the following centuries agree with the theology that the Church has the power to remit all sins.

1.3.1.5. Capital Crimes and Council of Illiberris

Though rigorism faded in the major Churches of Corinth, Rome and elsewhere, it continued to increase in Spain. The canons of the Council of Illiberris¹⁶⁷ are, in fact, the almost authoritative expression of the rigorism which prevailed in the preceding era. These were adumbrated in a considerable Synod of the Catholic Church. Of the Church of Spain, it may be concluded that it was not immediately controlled by any foreign Church at that time.

According to this synod, it appears that a ‘capital crime’ is irremissible on earth: it is inferred that the idolatry of an apostate must be a capital crime, because there is clearly nothing worse. It is thus concluded that offenders may not be reconciled, even at death. The Council enacts that:

Whosoever being of adult age has after (receiving) the faith of saving Baptism be taken himself to the temple of an idol to render idol worship (*idolaturus*), and has committed what is a capital crime because it is of the highest degree of wickedness, it pleased the council that such a one should not receive communion even at the end.¹⁶⁸

Canon 2 similarly maintains that:

Flamines, who after the faith of the laver and of regeneration have sacrificed, the more if they have doubled their offences by the addition of homicide, or tripled the crime by the cohesion of adultery, it pleased the council that these should not receive communion even at the end.¹⁶⁹

¹⁶⁶ Watkins, *A History of Penance*, vol. 1, 292.

¹⁶⁷ The council of Illiberris (Elvira) was an exclusive Spanish Council but the nineteen bishops named in the synodical acts are bishops of sees in widely different parts of Spain, and the council appears to have been a fair representation of the Christian community of the peninsula.

¹⁶⁸ Watkins, *A History of Penance*, vol. 1, 277.

¹⁶⁹ Watkins, *A History of Penance*, vol. 1, 277. *Flamines* are Christian converts who were the holders of hereditary office as *flamines* or priests of particular deities.

This canon again enumerates the three capital sins of idolatry, bloodshed and impurity as well as the ancient rigour of discipline. In this Council, there was a series of sins which were considered irremissible on earth and required significant and exacting penance.

1.3.2. Restriction Based on the Number of Times: Once per Lifetime

A remarkable provision of the early Church in the East and West alike is that though Penance may be admitted once, it may never be admitted again. The concession of remission was singular and no possibility of repetition was permitted according to the *Shepherd of Hermas*. This system of accepting penance only once remained in vigour during the period of canonical penance. Since it was unrepeatable, most of the faithful postponed the reconciliation until the death bed. In the West, it was more persistent and was found still rigorously imposed from Rome in 385 by Pope Siricius (as asserted by Ambrose in Milan and Augustine in Africa). In Spain it was even continued as late as the Third Council of Toledo, which was held in 589.¹⁷⁰

This principle of penance once in life remained rigid as long as canonical penance remained in operation. If a Christian who had already been reconciled fell into sin again, he could be admitted into the order of penitents once more and he was prayed for, but he was never allowed official reconciliation a second time, not even at the moment of death.¹⁷¹ This system of penance once in a life could be seen as a regulation on the sacrament for keeping the repentance more concrete.

1.3.3. Restriction by the Time of Reconciliation: Capital Sins after a Longer Period of Penance or at the Approach of Death

By the end of third century and in the beginning of fourth, all sins came under the possibility of absolution by the Church on earth. Yet the Church wanted to put some restrictions in place for cases of capital sins. During certain occasions, capital sinners could be reconciled only after a long period of penance or even postponed until the approach of death. When Cyprian decided to accept the lapsed in the first Council of Carthage, it was at the time of death that the *lapsi*, who had offered sacrifice, were

¹⁷⁰ Watkins, *A History of Penance*, vol. 1, 253.

¹⁷¹ Edward Schillebeeckx (ed.), *Sacramental Reconciliation*. New York: Herder and Herder, 1971, 80.

reconciled. The principle of reconciliation for capital offenders is on the one hand admitted, but on the other all but withdrawn due to the long extension of the term of penance.

Canon sixteen of the Council of Ancyra rules that persons guilty of lying with beasts, if under twenty years of age, may remain for fifteen years among the *Fallers* and five more years in the fellowship of the *Prayers*, before being admitted into communion. The most serious case of married adults are to spend twenty five years among the *Fallers*, and five more years in the fellowship of the *Prayers*, prior to reconciliation. Such people, if over fifty years of age, were only to be communicated on the approach of death.¹⁷² Canon twenty two rules that a person guilty of wilful murder is to do penance among the *Fallers*, and that he may be communicated at the approach of death. In his *canonical epistles*, Basil prescribes suitable penance for particular cases of offence.¹⁷³ It is here in his canons that the duration of penance is found. Basil states that an apostate may only be communicated on his death bed:

He who has denied Christ and violated the mystery of salvation must be a Mourner for the whole duration of life, and is under obligation to do penance, yet, through faith in the clemency of God, let him be held worthy of the Hallowed Things at the time of his departure from life.¹⁷⁴

It would appear that from the time of the factional struggles under Marcellus and Eusebius, it had been the tradition of the Roman See to require serious penance for serious offences and for the offence of apostasy in particular. In this case, the offender appears only to have been admitted to communion upon the approach of death. In other cases of offence, the period of penance appears to have been for a determinate length of time.

An illuminating feature of the directions of Siricius, who was bishop of Rome from 384 to 398, is his reaffirmation of the position that penance is only available once. The penitent, who upon restoration has refused to accept his disabilities, may not do penance again. He is to be admitted among the faithful for prayer, but restrained from communion. He may, however, be communicated on the approach of death.¹⁷⁵ It can

¹⁷² Watkins, *A History of Penance*, vol. 1, 285.

¹⁷³ Watkins, *A History of Penance*, vol. 1, 322.

¹⁷⁴ Watkins, *A History of Penance*, vol. 1, 325.

¹⁷⁵ Watkins, *A History of Penance*, vol. 1, 413.

be inferred from all of these instances that there developed a new manner of regulation in the administration of penance, bringing long-term penance and prolonging reconciliation until the approach of death.

1.3.4. John Chrysostom on the Liberty of the Penitent

In the case of capital sins, as evidenced above, the Church did not allow the penitent to do more than one course of penance with absolution from the time of the *Shepherd of Hermas*. If someone had fallen again, he had to be referred to the mercy of God at the great day. Here and there a timorous voice might plead for some extension of the prerogative of mercy.

But it is John Chrysostom who made the boldest steps for repeated penitence and forgiveness.¹⁷⁶ Chrysostom was, in the matter of Church discipline on penance, the most modern and relaxed of all teachers. At the time of Chrysostom in Antioch, converts had poured in by thousands under the good graces of the Christian emperors. So it was impossible that a rigid system of penitential discipline could then be imposed. He recognised that the methods of severity were impossible and he insisted that God must have other ways. Watkins describes Chrysostom thus:

He is no scoffer at Penance and no unbeliever in the powers conferred upon the priesthood: but he is entirely opposed to the imposition of long years of discipline, to the “intolerable” publicity involved, and to the infliction of harsh penalties.¹⁷⁷

In his letters to his friend Theodore, Chrysostom declares that the worst capital sins are not outside of God’s mercy, referencing fornication, adultery, effeminacy, theft, drunkenness, sodomy, and detraction.¹⁷⁸

At the age of forty, as the accepted teacher and orator of the Christians of Antioch, Chrysostom had no hesitation in denouncing a public humiliation before the congregation. In his fifth homily against the Anomaens this idea is sounded:

On this account I exhort and beseech and entreat thee to confess to God persistently. I do not take thee into a theatre of thy fellow-servants, or compel thee to disclose thy sins to man. Unroll thy conscience before God, and show Him the wounds, and ask of Him the remedies: show to Him Who upbraids not but heals. And even if thou keep silence, He knows all things. Speak then that thou mayest profit. Speak in order

¹⁷⁶ Patrick J. Brennan, *Penance and Reconciliation*. Chicago: The Thomas More Press, 1986, 44.

¹⁷⁷ Watkins, *A History of Penance*, vol. 1, 330.

¹⁷⁸ Watkins, *A History of Penance*, vol. 1, 331.

that, putting off here all thy sins, thou mayest go forth clean and freed from thy transgressions, and mayest escape that intolerable publication.¹⁷⁹

Chrysostom thus takes up a position on the side of the liberty of the penitent, which in his own day was new and to many frustrating.

1.3.5. Restriction Based on the Gravity of Sins: Public Penance for Capital Sins

From the sixth century onwards, the influence of private confession was strong in the Church. From this time leading up to Lateran Council IV, public penance and private penance coexisted. But there was a time during which public penance was obligatory for capital sins and private penance required for all other sins.

In Sermon 352, Augustine enumerates three sorts of penance: that proper to persons approaching Baptism, the daily penance for minor faults, and the penance for grave post-baptismal sins. He says of the grave sins thus:

It is graver and more mournful penance and those who are concerned in it are the persons properly styled penitents in the Church. Such are withdrawn from participation in the Sacrament of the Altar, lest that by receiving unworthily, they should eat and drink condemnation to themselves. This accordingly is a mournful penance. It is some grave wound: perhaps some deed of sacrilege; but a grave affair, a serious wound, deadly and death bearing. But the Physician is All-Powerful.¹⁸⁰

Thus, from Augustine's time, any person seen performing public penance might be assumed to have caused offense by some very serious or deadly sin. In the *De Fide et Operibus* (399), Augustine repeats the ancient teaching about the three capital sins:

They who consider that other offences can be readily compensated by almsgiving, yet do not doubt that there are three which are deadly, and to be punished by excommunications till they are cured by the more lowly Penance, that is to say, unchastity, idolatry, and homicide.¹⁸¹

Another strong propagator of public penance for the three major sins was Pacian.¹⁸² In his work *Exhortation to Penitence*, he maintains that the three capital sins of idolatry, bloodshed and fornication alone call for the formal penance of the Church. All other sins may be sufficiently met by the exercise of contrary virtues.

¹⁷⁹ Watkins, *A History of Penance*, vol. 1, 333.

¹⁸⁰ Watkins, *A History of Penance*, vol. 1, 440.

¹⁸¹ Watkins, *A History of Penance*, vol. 1, 441.

¹⁸² Pacian is from the Spanish Church. It is understood that he succeeded Praetextatus as bishop of Barcelona in 343 and had occupied the see for nearly half a century. On the subject of penance the important writings of Pacian are his three *Letters to Sympronianus*, and his *Exhortation to Penitence*.

Thus, by the middle of the fifth century, public penance was for the graver offenders, especially for those whose offences had given rise to public scandal.¹⁸³ It would appear that by the year 450, voluntary confessions during times of health tended to be a few, and penances imposed by authorities were confined to notorious public offences. The penance of the dying was gradually becoming more popular in the Western Church.

Public penance was imposed only for capital sins in later periods. Gennadius, a priest of Marseilles (496), said that all who have committed ‘capital and mortal sins’ must make satisfaction by public penance or by monastic life.¹⁸⁴ Caesarius of Arles (470-542) suggests public penance for capital sins. He gives the reason that he who has ruined himself in the destruction of many should redeem himself to the edification of many. According to him, the penitent with capital sins should seek the aid of other people because his sins are so grave that he alone cannot overcome them. This system continued at least until the time of Theodulf, bishop of Orleans from 797 to 821. He espoused the idea that capital and mortal offences, whether public or private, were to be publicly bewailed according to the institution of the canons and of the Holy Fathers.

1.3.6. Restrictions Based on the Public or Private Nature of Capital Sin

By the ninth century, there came another form of restriction: public penance for capital sins committed publicly or known publicly and private penance for capital sins committed in secret and shrouded in secrecy. At the Synod of Chalons, the bishops sought to reintroduce canonical penance. But they were aware that private penance had come into common use and so they formulated the principle which was to inform penitential practise in the following period. Hence, they decreed that to obtain pardon for hidden faults, private penance would suffice, whereas for public sins there must be severe, public, and canonical penance.¹⁸⁵

In 819, Rabanus in his *De clericorum institutione*, elaborates the same idea:

¹⁸³ Watkins, *A History of Penance*, vol. 1, 443.

¹⁸⁴ Watkins, *A History of Penance*, vol. 2, 545.

¹⁸⁵ Anciaux, *The Sacrament of Penance*, 63.

Those whose sins are secret and have been revealed by them in spontaneous confession to the priest or bishop alone; the penance of these ought to be secret in accordance with the judgement of the priest or bishop to whom they confessed, lest the weak in the Church should be scandalised, seeing their penances, but being entirely ignorant of the grounds of them.¹⁸⁶

Again, the thirty-first canon of the Council of Mainz (847) states:

But a distinction is to be observed between the penitents who ought to do penance publicly and those who may do it privately. For if any sin publicly, it is fitting that he should be punished by public penance, and should be both excommunicated and reconciled as he deserves in accordance with the procedure of the canons.¹⁸⁷

Thus the principle was adopted, a principle which would henceforth find unopposed acceptance; a capital sin does not require public penance unless the sin is itself public or notorious.

1.3.7. The First Reservation of Sin in History

By the eleventh and twelfth centuries, private penance was in practice and even public, capital or serious sins were absolved through private penance. Priests became the ordinary ministers of the sacrament. At the same time, the Church sought to control lax positions in the penitential system and thus another form of restriction was slowly brought into the realm of penance by reserving the absolution of certain sins to the higher authorities like bishops or the Apostolic See. In effect, this restricted the ministers of the sacrament by taking away the faculty to absolve certain sins.

According to Poschmann, the first example of a sin reserved to the bishop (sodomy) occurs in canon twenty of the Synod of London in 1102. The first sin reserved to the pope (i.e., the assault of a cleric or a monk) found expression in canon ten of the Synod of Clermont (1130), which was reiterated in canon fifteen of the second Lateran Council in 1139.¹⁸⁸

As Lateran Council II, canon 15, states:

In the same way we have decided to legislate that if anyone, at the instigation of the devil, incurs the guilt of the following sacrilege, that is, to lay violent hands on a cleric or a monk, he is to be subject to the bond of anathema; and let no bishop

¹⁸⁶ Watkins, *A History of Penance*, vol. 2, 710-711.

¹⁸⁷ Watkins, *A History of Penance*, vol. 2, 711.

¹⁸⁸ Poschmann, *Penance and the Anointing of the Sick*, 146.

presume to absolve such a person unless he is in immediate danger of death, until he has been presented before the Apostolic See and submitted to its decision.¹⁸⁹

1.3.8. Wide Reservations of Sins in the Middle Ages

As public penance gave way to repeated private penance for various reasons, the higher authorities reserved certain sins to themselves. Though absolution of sins reserved to higher authorities is first found only in the twelfth century, the number of sins which were reserved to higher authorities was considerable by the fifteenth century. In this regulation of the sacrament of penance, the increased number of reserved sins caused pastoral problems and sharp criticisms by the scholars of that period.

Thomas N. Tentler presents two authors of the late Middle Ages, Andreas de Escobar (1348-1448)¹⁹⁰ and Jean Charlier de Gerson (1363-1429),¹⁹¹ who provided a list of reserved sins by the fifteenth century. They had given their opinions on the increased number of reserved sins in their period together with this list.¹⁹² Andreas the canonist apparently collected all of the cases he could find and put them in his *Lumen Confessorum*. His list of reservations was printed separately in the fifteenth century under the title *Confessio generalis et casus penitentiales*. Tentler gives twenty cases reserved to the papacy of which some are elaborated below:

Crimes against the persons of clergy and the property and authority of the Church are the oldest and most understandable cases in which the papacy required transgressors to go to Rome or a papal penitentiary. This kind of crime receives a prominent place in Andrea's list: striking clerics, burning down churches, associating with those under papal excommunication, falsifying papal letters, violating religious vows and obligations and failing to protect those who carry letters of ex-communication.¹⁹³

There are forty items in Andrea's list of sins reserved to bishops and we can organize them into five broad categories. Sins under the first category include crimes involving

¹⁸⁹ Tanner, *Decrees of Ecumenical Council*, vol. 1, 200.

¹⁹⁰ Andreas de Escobar was a Portuguese Benedictine theologian. Born at Lisbon, Andreas de Escobar joined the Dominicans and then the Augustinians before becoming a Benedictine monk. He became doctor of theology in Vienna in 1393. He became bishop of Ciudad Rodrigo, and bishop of Ajaccio in 1422 and bishop of Megara in 1428. He was one of the most widely printed authors of the late fifteenth century.

¹⁹¹ Jean Charlier de Gerson, French scholar, educator, reformer, and poet, Chancellor of the University of Paris, a guiding light of the conciliar movement and one of the most prominent theologians at the Council of Constance, was born at the village of Gerson, in the bishopric of Reims in Champagne.

¹⁹² Tentler, *Sin and Confession on the Eve of Reformation*, 305.

¹⁹³ Tentler, *Sin and Confession on the Eve of Reformation*, 306.

ecclesiastical authority, holy objects, obligations and persons, such as theft or misuse of sacred things, simony, various sins committed by clerics, clerical irregularity and so forth. The second category are sexual sins such as carnal relations with a religious, the deflowering of a virgin, sexual intercourse with a Jewish or Saracen woman, sodomy, bestiality and unnatural intercourse, incest and sexual relations by a priest with someone he has baptized or confessed. The third category of offences is related to marriage vows such as leaving a valid consummated marriage to enter the religious life without the consent of the spouse, marrying someone after betrothal to another, and marrying after taking a vow of chastity. The fourth category involves crimes of violence like accidental assault on one's parents, plotting the death of one's spouse, homicide of any sort, and infanticide. The fifth category includes the following sins like public usury and failure to make restitution, notorious slander and blasphemy, perjury, and sorcery. This list includes considerable sins reserved to higher authorities. The list given here is not complete.

In his influential guide for the cure of souls, *Opus tripartitum*, Gerson provides a list of sins which cannot be absolved by a simple priest unless he has received special powers. The extensive list of the sins given in the work are Sorcery committed with holy objects, sacrilegious theft of holy things or in a holy place, assault on a cleric, simony, heresy, transgressions incurring automatic excommunication, homicide, striking one's parents, perjury in a public trial, notorious adultery, rape, deflowering, seducing a nun, incest in the fourth degree, the breaking of vows, infanticide and most predictably, sins against nature.¹⁹⁴

Though Gerson gives the list of reserved sins in *Opus tripartitum*, he criticized the custom of reserving certain sins to higher authorities in many of his speeches and other writings. Gerson's "On the Power of Absolving and how it might be expedient for the Reservations of Sins to be changed," expressly sets out to eliminate inappropriate uses of the reservation of sins. According to him, many sins under episcopal jurisdiction could be granted to simple curates. He speaks very strongly against the reservations of all purely secret sins which elicit no public scandal and

¹⁹⁴ Tentler, *Sin and Confession on the Eve of Reformation*, 312.

sexual sins, especially among adolescents.¹⁹⁵ He was also thinking in a pastoral point of view and said that by sending a penitent to the higher authorities, there would be a danger of publicity.

On the contrary, the authorities were trying to preserve and publicize the cases reserved to them. The papal bull *Inter cucuntas* (1304), promulgated by Benedict XI, defined nine cases universally retained by bishops.¹⁹⁶ They are voluntary homicide or mutilation, forgery and perjury, the violation of ecclesiastical liberty, sacrilegious violations of ecclesiastical immunities, sorcery and divination, sins leading to clerical irregularity, arson and sins incurring solemn penance and major excommunications.

The statutes of the Synod of Lisieux in 1448 make it clear that the full range of disciplinary prerogative of penance, including reservations, must be observed in practice. Pastors are ordered in the statutes to explain mortal sins, their aggravating circumstances, reserved cases, and proper remedies every Sunday during Lent. But there are some scholars like Gerson, Antoninus of Florence, Godescalc Rosemond and Sylvester who criticize the unnecessary reservation of many sins without pastoral considerations. As Sylvester said, “the bishop who reserves sins without reasonable justification commits a serious sin himself.”¹⁹⁷ Hence, by the fifteenth century, there was a large list of reserved sins and such hard and harsh restrictions on many cases elicited considerable criticism.

1.3.9. Reservation of Sins According to the Council of Trent

Luther criticized the reservation of the power of forgiveness to priests and to the higher authorities. “In the sacrament of penance and the remission of guilt, the Pope or the bishop does no more than the lowliest priest; in fact where there is no priest, any Christian can do as much, even a woman or a child.”¹⁹⁸ But the Council of Trent affirmed the theology of the power of the keys and condemned those who said that the Church has no power to forgive and to reserve sins in canon eleven of the sacrament of penance:

¹⁹⁵ Lea, *A History of Auricular Confession and Indulgences*, 317. In 1408, at the council of Reims, John Gerson pleaded earnestly against the extension of the system of reserved cases.

¹⁹⁶ Tentler, *Sin and Confession on the Eve of Reformation*, 313.

¹⁹⁷ Tentler, *Sin and Confession on the Eve of Reformation*, 317.

¹⁹⁸ Dupuis, *The Christian Faith*, 665.

If anyone says that bishops do not have the right to reserve cases to themselves, except such as pertain to external government, and that, therefore, the reservation of cases does not prevent a priest from truly absolving from such reserved sins, *anathema sit*.¹⁹⁹

Chapter seven is concerned with questions of jurisdiction and of reserved sins. As Canon 567 states:

Since the sacrament of penance is a juridical function it requires jurisdiction. Thus for the edification of the people, certain particularly grave sins may be reserved to the Pope or to bishops for absolution. But so that no one shall perish on account of such reservation, all priests may absolve anyone on the point of death from all sins and censures regardless of reservation.²⁰⁰

At the time of Trent, there was a question about whether some impediments of the sinner to get the absolution of reserved sins could grant faculty to the confessor to absolve sins under reservation. The impediments discussed during that time were chiefly that the penitents could not go to the bishop without peril of life or reputation or the danger of creating a scandal. The Council of Trent specified that among them the only exception should be danger of death.

Conclusion

The first part of this study has proven that it was the plan of God to reconcile humankind with Him and for this He sent His only Son. Jesus, who came with a special mission, entrusted His mission to His apostles to continue until the end of the world. His mission and the power to execute this mission were given to Peter and his college of apostles. The Biblical passages John 20:22-23 and Mathew 16:18 prove that Christ gave this power to His apostles. This commissioning, or the power to bind and loose conferred to them, is theologically known as the power of the keys. ‘Power of the Keys,’ is a metaphor later developed and used to indicate the nature of spiritual jurisdiction in the Church and in that context, of confession and absolution. This power has descended from Jesus the head to the Church that is the body now invested with the spiritual power of authority. By the study of various Fathers of the Church, as well as Councils and relevant documents authored over various centuries, it has been proven that at every age, there existed a strong belief that the Church has the power to absolve sins.

¹⁹⁹ Dupuis, *The Christian Faith*, 679.

²⁰⁰ George D. Smith (ed.), *The Teaching of the Catholic Church*. London: Burns & Oates, 1960, 18.

The second part deals with the question of who was exercising the power to bind and loose over the course of centuries. It was the bishop alone, being the representative of the apostle, who administered these mysteries. But as the community developed and the concept of the sacrament underwent transformation, priests were given the faculty to bind and loose. But most of the time, this was directed by the bishop or higher authorities. Slowly, the concept of jurisdiction or faculty developed in the history of penance. The authorization of the priests by the higher authorities became an element for the validity of the sacrament in later periods. At present, although a priest is an ordinary minister, he cannot administer the sacrament validly without having the faculty to administer it.

The third part of this chapter has shown that the Church always sought to protect the integrity of the sacrament of reconciliation through the formulation of regulations. The Church does not want to uphold a loose or lax mentality with respect to sinners. Someone who repents should do it genuinely and should make substantive and authentic changes in his life. So the Church, according to the needs of the time, took some measures to safeguard the integrity of the sacrament by bringing some restrictions on the reception of the sacrament and in the administration of the sacrament by ministers. Current legislation on reservation of the faculty of confessors is differently envisaged in the Eastern and Latin Codes. The present canons of the Eastern Churches bring restrictions to the sacrament of penance by reserving the absolution of certain sins to higher authorities.

It could be concluded from the above study that the commission of our Lord to forgive and to retain sins was a commission with lasting effects. It has left much to the discretion of the Church of each age to exercise this power variously according to the vagaries of country, time, and custom. Therefore, from time to time, there developed the theology of the power of the keys, the various forms of their exercise, and regulations on their use.

CHAPTER II

RESERVED SINS

ACCORDING TO THE CCEO (cc.727-729)

Introduction

The Eastern Code, *Codex Canonum Ecclesiarum Orientalium* (CCEO) gives the general provisions regulating the various aspects of the sacrament of penance in Title XVI, Chapter IV, canons from 718 to 736. Though these nineteen canons are not divided based on the theme they treat, these canons on the sacrament of penance could be arranged according to the following subject matter: the theology of the sacrament of penance (c.718); general provisions (c.719); the form of the sacrament (cc.720 & 721); the minister of the sacrament (c.722, §1); the recipient of the sacrament (c.722 §4); the faculty to administer the sacrament (cc.722-731); general obligations of confessors (c.732); specific obligations of confessors (cc.733, 734 & 735 §2); special duties of any priest to hear confession *in periculo mortis* (c.735, §2); duties to provide or facilitate the sacrament (c.735 §1); and the place of the celebration of the sacrament (c.736).²⁰¹

The belief of the Church is that the sacraments are physical signs instituted by Christ to impart grace to the faithful. But there are differences in approach and understanding of these sacraments in the East and in the West. The Eastern traditions have generally resisted the Scholastic approach of analyzing the sacrament into its component parts of matter and form. However, they preferred simply to acknowledge the reality of divine action in physical acts, by the term, ‘Mystery’.

The Eastern Code (CCEO) canon 718 states the universal Catholic understanding of the Mystery of Penance:

In the Sacrament of Penance, the Christian faithful who, having committed sins after Baptism, led by the Holy Spirit, turn back to God in their hearts, and moved by sorrow for their sins, resolve to lead a new life, through the ministry of the priest, to whom they make confession and from whom they accept a fitting penance, they obtain forgiveness from God and at the same time are reconciled with the Church, which they have wounded through sin. Thus this mystery contributes greatly to the

²⁰¹ Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 91.

fostering of Christian life and disposes the Christian faithful for the reception of the Divine Eucharist (CCEO c.718).

According to Marini, CCEO c.718 seems to accomplish a better synthesis of the Catholic doctrine on penance:

... it focuses directly on three fundamental theological points which are lacking in CIC c.959; namely 1. Conversion (... led by the Holy Spirit, turn back to God in their hearts...) 2. Repentance and justification (moved by sorrow for their sins, resolve to lead a new life, through the ministry of the priest to whom they make confession and from whom they accept a fitting penance) and 3. Explicit acknowledgement of the intimate relationship between Penance and the Eucharist (... disposes the Christian faithful for the reception of the Divine Eucharist).²⁰²

After stating the various divisions of the canons on penance and the canon that defines the sacrament of penance, emphasis shifts to the topic of the minister and the faculty required for the administration of the sacrament. The main concern of this chapter is to analyze various canons on the minister of the sacrament of penance in relation to the reservations of faculties. Reserved sins are analyzed in detail, as that is the core area of study of this thesis.

2.1. The Minister of the Sacrament of Penance in CCEO (c.722)

According to CCEO, only a priest is the minister of the sacrament of penance (c.722 §1). The term priest here includes all those who are in the priestly order including bishops and priests. They have received the power to pardon sins through the sacrament of sacred ordination (c.743) which conforms them to Christ the Head; they are similarly exercised *in persona Christi*. The Second Vatican Council teaches that, “Through that sacrament, priests by the anointing of the Holy Spirit, are signed with a special character and so are configured to Christ the priest in such a way that they are able to act in the person of Christ the head” (PO 2).²⁰³

The Catechism of the Catholic Church also notes the role of a priest in the sacrament of reconciliation. The priest is the minister of the sacrament, the ministry which he carries out as per the mission entrusted to him by the Church and the Lord. This reconciliation of the faithful with God and the Church is the task of only the ministerial priesthood.

²⁰² Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 93.

²⁰³ Angel Marzoa, et al. (eds.). *Exegetical Commentary on the Code of Canon Law*, vol. I-V, Montreal: Wilson & Lafleur, 2004, 771.

Since Christ entrusted to his apostles the ministry of reconciliation, bishops who are their successors, and priests, the bishops' collaborators, continue to exercise this ministry. Indeed bishops and priests, by virtue of the sacrament of Holy Orders, have the power to forgive all sins "in the name of the Father, and of the Son, and of the Holy Spirit" (CCC 1461).

Forgiveness of sins brings reconciliation with God, but also with the Church. Since ancient times the bishop, visible head of a particular Church, has thus rightfully been considered to be the one who principally has the power and ministry of reconciliation: he is the moderator of the penitential discipline. Priests, his collaborators, exercise it to the extent that they have received the commission either from their bishop (or religious superior) or the Pope, according to the law of the Church (CCC 1462).

Pope John Paul II, in his Apostolic Exhortation *Reconciliation and Penance* on the sacrament of reconciliation, gives a very meaningful and compelling explanation on the role of a priest in the sacrament of reconciliation:

Here there is seen in all its grandeur the figure of the minister of the sacrament of penance who by very ancient custom is called the confessor... the priest, as the minister of penance, acts 'in persona Christi.' Christ, who is made present by the priest, accomplishes the mystery of the forgiveness of sins in this way. This undoubtedly the most difficult and sensitive, the most exhausting and demanding ministry of the priest, but also one of the most beautiful and consoling... I will never grow weary of exhorting my brothers, the bishops and priests, to the faithful and diligent performance of ministry.²⁰⁴

2.1.1. Two Roles of the Minister of Penance

The moral and canonical understanding of the role of a priest in the sacrament of penance is as a judge and as a healer (doctor).

a) As judge: he must judge the gravity of the sins; the integrity of the confession; the disposition of the penitent. He must be the judge who condemns the sin and absolves the repentant sinner, keeping in mind the infinite majesty of God, who has been offended. He must also help the repentant sinner to develop an upright, sound and certain conscience.

b) As doctor: inasmuch as any sin constitutes an illness of the soul, the confessor must diagnose this illness and detect its deepest roots and causes; propose a medicinal remedy, which is adequate for the penitent and for the sins; heal the wounds in the soul; he must impose a satisfaction for the sins.²⁰⁵

The aspect of healing is more strongly emphasized in the spirit of the Eastern Code than in the Latin Code. Even penalties are dispensed with a medicinal motive in the

²⁰⁴ Pope John Paul II, Apostolic Exhortation *Reconciliation and Penance*, n.29.

²⁰⁵ Marzoa, *Exegetical Commentary*, vol. III, 801.

Eastern Code. This medicinal character²⁰⁶ is more strongly pronounced in the canons of the Eastern Code rather than in those of the Latin Code.

2.1.2. The Priest as the Minister of the Church

In the first chapter, Christ as the founder of the sacrament of penance is established.²⁰⁷ Jesus came to earth with the mission to forgive sins and entrusted this mission to the Church. The Church administers this ministry through her ministers who are specially chosen and entrusted with the mission. The priest acts not only in the name of Christ (*in persona Christi*) but also in the name of the Church (*nomine Ecclesiae*). The canon which speaks about the meaning of the sacraments stipulates, "...therefore, all the Christian faithful, especially the sacred ministers, are to observe diligently the prescripts of the Church in the conscientious celebration and reception of the sacraments" (CCEO c.667).

While providing the definition of public worship, the category in which all the sacraments are included in the Code makes clear that the priest acts with the authority of the Church and in the name of the Church during sacraments. Such divine worship is public if it fulfills the following requirements: a) if carried out in the name of the Church, b) by persons legitimately appointed for such tasks, and c) through acts approved by the ecclesiastical authority (CCEO c.668).²⁰⁸ This definition explicitly clarifies that the priest is given the authority to administer the sacrament by the Church and he has to fulfill it according to the prescriptions and norms given by the Church. He cannot remove or add any personal teachings or acts in the administration of the sacrament. Therefore, it is evident that the priest has to administer the sacrament as a minister of the Church.

2.1.3. The Absolution by a Priest

Absolution by a priest is one of the constitutive elements of the sacrament of penance. Since he acts in the name of the Church and by the power of God, his absolution is

²⁰⁶ The Eastern Code stresses the medicinal character of the sacrament of penance. It is more as a medicine we apply than a punishment administered to those who have committed mistakes.

²⁰⁷ Give the reference later as the work completes.

²⁰⁸ According to CCEO, there is a provision to approve the liturgical texts, after prior review of the Apostolic See by the Patriarch with the consent of the synod of bishops. Cf. CCEO c.657.

valid even though he himself is a sinner. Hence, the absolution that the priest, the minister of forgiveness, grants to the penitent is the effective sign of the intervention of the heavenly Father who is merciful. Absolution in the sacrament of reconciliation is the sign of the ‘resurrection’ from ‘spiritual death: “Only faith can give us certainty that at that moment every sin is forgiven and blotted out by the mysterious intervention of the Saviour.”²⁰⁹

2.2. Power of Order and Power of Jurisdiction

Since a priest is the minister of God and the minister of the Church, he needs the power of order and the power of jurisdiction to administer the sacrament of penance. It is important to distinguish between these two powers before going into detail about the reservation of sins. There are terminological differences with regard to these powers in the ancient legislation and the present legislation calls for more canonical clarity. The terms of power are used equivocally and as James J. Cuneo states, “sometimes referring to a type of function and other times to the source or quality of the capacity whereby different functions can be exercised or fulfilled by an individual in the Church.”²¹⁰ The source of the power to do this function²¹¹ distinguishes the power of jurisdiction from the power of orders. The source of the power of order is the spiritual power one receives from God through the sacramental grace of ordination. The source of the power of jurisdiction is ecclesiastical and it is given by the authorization of a competent ecclesiastical authority.

The word ‘jurisdiction’ is found with various canonical nuances in various places. It is best to here consider the various meaning of the term ‘jurisdiction’ in canon law. The term ‘jurisdiction’²¹² is a traditional means of expressing and identifying ecclesiastical organization. James J. Cuneo says the following about jurisdiction:

Traditionally jurisdiction has been very much an institute in the constitutional laws of the Church which deal with the structure of official ecclesiastical ministry and

²⁰⁹ Marzoa, *Exegetical Commentary*, vol. III, 807; *Ref.* RP 31, III.

²¹⁰ James J. Cuneo, “The Power of Jurisdiction: Empowerment for Church Functioning and Mission Distinct from the Power of Orders,” *Jurist* (1979) 183-219, 197.

²¹¹ The notion of function (*munus*) used in the text is not simply synonymous with power (*potestas*).

²¹² Jurisdiction is a public power, the capacity to rule or direct members of the society with legislative, executive, and judicial functions. Authority is the right to oblige members to follow the stipulated ends of society. It is the nature of authority to enforce a juridical bond between the means to be used and the end to be achieved as well as to render certain determined secondary ends necessary and obligatory.

mission. Along with the power of orders, the power of jurisdiction is involved in the empowerment of persons to share in the functions and mission given by Christ to the Church.²¹³

According to Cuneo, besides the power of ordination, the power of jurisdiction is necessary for fulfilling the mission of the Church. Someone who is ordained can use the received divine power with a canonical provision (CCEO c.938).²¹⁴

Throughout the centuries, the term ‘jurisdiction’ assumed various meanings and has created some ambiguity. Even now in the legal field it often remains ambiguous. At times it is synonymous with the power of ruling alone. Occasionally it can also refer to a broader reality by which three functions can be exercised, i.e. sanctifying, teaching and governing. Sometimes the term signifies just the power that concerns those matters in the internal forum while on other occasions, it can include the external forum. It could be defined as one of the means by which persons fulfil various types of functions. In summary, therefore, perhaps it could be concluded that the power of jurisdiction is the power of communion, a power to function in the Church which is based on the relationship of individuals to the unity of the Church and to the unity of its mission.²¹⁵

The Second Vatican Council avoids the terminology of *potestas ordinis* and *potestas jurisdictionis*. James J. Cuneo attempts to explain these two concepts in the most persuasive way possible:

...*potestas ordinis* does not simply mean a priestly cultic sanctifying function as opposed to pastoral leadership, teaching functions. If we use the term *potestas ordinis* it would seem to refer rather to any ontological participation in the threefold sacred function conferred in the sacrament of order. It would seem to include the various supernatural charisms and graces of the sacrament of orders whereby an individual is sent and capacitated to fulfil all three types of functions. *Potestas jurisdictionis* would not simply mean ruling function. Rather it too would apply to any of the three types of sacred functions in the Church. It also signifies a means to fulfill these types of functions. But the means are not conferred sacramentally, they are derived instead from a moral relationship established by canonical mission between the individual person and the community.²¹⁶

²¹³ Cuneo, “The Power of Jurisdiction,” 185.

²¹⁴ Canonical mission is a specific, juridical concept referring to a juridical act whereby an individual or group is endowed with rights and obligations to exercise certain functions in the name of the Church.

²¹⁵ Cuneo, “The Power of Jurisdiction,” 217.

²¹⁶ Cuneo, “The Power of Jurisdiction,” 200.

Assuming traditional canonical doctrine, furthermore, James J. Cuneo explains the power of jurisdiction and the power of order as follows:

Power in the Church is twofold: power of orders and power of jurisdiction. The power of orders is received sacramentally in the rites of sacred ordination or consecration. The power of jurisdiction is received through the concession of a canonical mission (except in the case of the pope who receives it by divine right immediately with election). The power of orders is a power for sanctifying through the exercise of divine worship, especially the Eucharist, the administration of sacraments and sacramentals. The power of jurisdiction is for public rule. The power of orders is based on an indelible character received by the person in the sacrament. The power of jurisdiction is based upon a moral relationship established between the person ruling and the other members subject to the rule.²¹⁷

James J. Cuneo gives a clear cut explanation of both of these powers and highlights the ontological difference between them. The power of orders is personal and rests in the person who receives the orders as inherent to the soul and as a mark of indelible character. But the power of jurisdiction is basically a moral relationship between the person who administers the mission and the one who is subject to that mission.

Lumen Gentium teaches that Episcopal ordination sacramentally confers three functions; among these, the functions of ruling and teaching require hierarchical communion to be exercised and fulfilled. In ordination, there is an ontological participation in sacred functions which, however, is not the same as power in the full sense of the term. For power to be present in the fully active sense, it is also necessary to receive a canonical or juridical assignment from hierarchical authority. This determination of power consists in the assignment of an office or community of people.²¹⁸

2.3. The Power of Jurisdiction in the Sacrament of Penance

The power of jurisdiction is required for the execution of any function in the Church, especially the functions of preaching and governance. Though the sacrament of absolution involves mainly the internal forum since it reconciles the penitent with the Church and the community in particular, it also involves an element of the external

²¹⁷ Cuneo, "The Power of Jurisdiction," 189. The power of orders is that power whose function is sanctification and whose source is ordination. The power of jurisdiction in traditional doctrine is that power whose objective function is ruling and teaching authoritatively and whose source is canonical mission.

²¹⁸ Cuneo, "The Power of Jurisdiction," 199.

forum. Reconciliation with the community is made possible by those who have authority over that community. Therefore in the case of the sacrament of reconciliation, it is not only the power of ordination but also the power of jurisdiction which is active.

2.3.1. The Council of Trent on the Jurisdiction of Penance

The Council of Trent maintains that since sacramental absolution is a judicial act, the priest requires either ordinary or delegated jurisdiction. However, it is equally true that the Council leaves open theological question as to whether the power of sacramentally absolving sins intrinsically flows from priestly ordination or whether it represents an essentially distinct addendum. The mind of the Council on the matter can well be perceived in the following statement: “Therefore, since the nature and essence of a judgment require that the sentence be imposed only on subjects, there has always been the conviction in the Church of God, and this Synod confirms it as the most true, that this absolution which the priest pronounces upon one over whom he has no ordinary or delegated jurisdiction has no value.”²¹⁹

2.3.2. Terminological Difference in the New Legislation: Faculty

In the case of the sacrament of penance, the Code does not use ‘jurisdiction’ for the power that a priest should have to validly administer the sacrament. There is a change in terminology from ‘jurisdiction’ to ‘faculty’ in the case of the sacrament. As the Exegetical Commentary explains, “The change is not purely verbal: it underlies and responds to a different theological – canonical concept – in the former and in the current discipline – concerning this sacramental power, as something quite different from the jurisdictional power of government.”²²⁰

Dictionnaire de Droit Canonique by Naz defines faculty as the power to do something in a general sense. In a narrow sense, it is the power specially given by superiors without which a thing cannot be done validly, licitly or in good conscience.²²¹ But the

²¹⁹ Andrew Cuschieri, *The Sacrament of Reconciliation: A Theological and Canonical Treatise*. New York: University Press of America, 1992, 217.

²²⁰ Marzoa, *Exegetical Commentary*, vol. III, 773.

²²¹ R. Naz, (ed.), *Dictionnaire de Droit Canonique*. vol. 1-7, Paris: Librairie Letouzey et Ané, 1949, vol. 5, 800.

faculty in question in the case of penance concerns the internal forum. It is a judicial power to remit or retain sins in the sacrament of penance. In this case, the faculty is transmitted to a priest by an act of will, manifested externally by a competent superior who assigns the priest, giving him the power to absolve in a territory or with respect to subjects, upon whom he could exercise this power.²²²

The argument for changing the terminology ‘jurisdiction’ from the sphere of penance is that the power exercised is not equivalent to the power of governance.²²³ The term ‘jurisdiction’ is used to mean the power of governance, especially in the external forum.²²⁴ In the case of penance, power resides purely in the internal forum. The effect of the sacrament is the reconciliation with God and the absolution of sins seeks the inner healing of the person. Using the same terminology for two different types of powers could create confusion and a lack of legal precision. Therefore, the new codes, both Latin and Eastern, and all subsequent legislation use the term ‘faculty’ for juridical precision and internal legal coherence to refer to the power to absolve sins.²²⁵

The *Exegetical Commentary* gives doctrinal and practical relevance to this terminological change. Accordingly, those norms peculiar to the power of governance (*potestas regiminis*) (cc.979-995) are not applicable to this ‘penitential faculty,’ with the explicit exception that canon 994 mentions the internal forum by which it means ‘faculty’ being supplied in cases of common error and of doubt.²²⁶

Even though a priest has the faculty to hear confessions, his ability to absolve all sins is not absolute. Hence, the penitential faculty could be controlled and regulated by the law itself or by superior authorities. There are two limitations restricting the power to absolve: reserved sins and restrictions on the faculty to absolve.²²⁷ Both forms of limitation demonstrate that the faculty to absolve sins is an exercise of the power of governance and ultimately derives from the conferring authority. As a result,

²²² Ref. Naz, *Dictionnaire de Droit Canonique*, vol. 4, 11.

²²³ *Communicationes*, 10 (1978) 56.

²²⁴ When CCEO defines the power of governance, it does not use the term ‘jurisdiction’ as an equivalent term (CCEO c.797). CIC c.129§1, by contrast, uses power of jurisdiction as an alternative term for the power of governance.

²²⁵ Bruno Dufour, *Le Sacrement de Pénitence et Le Sacrement de L’Onction des Malades*. Paris: Tardy, 1989, 60-61.

²²⁶ Marzoa, *Exegetical Commentary*, vol. III, 774.

²²⁷ Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 112.

absolution attempted in contravention of these limitations is generally invalid. But one must remember that the power of governance concerns the ‘external forum’, the good of the faithful as a society, while faculty concerns only the ‘internal forum’ for the private good of the faithful.²²⁸

2.3.3. The Lack of Faculty Affects the Validity of the Sacrament

In an effort to protect the faithful and the integrity of the sacrament, the Church has certain norms regarding the administration of the sacrament of penance. It has already been observed that only an ordained priest can administer the sacrament of penance. But as has been discussed previously, yet another element required for the validity of the absolution of sins is faculty. Without faculty, a priest cannot provide valid or licit absolution.

The Exegetical Commentary gives the two required and necessary elements for the true and valid minister of the sacrament:

- a) Power of order, *ex iure divino*
- b) Faculty, *ex iure positivo Ecclesiae*

Such a faculty is required and this is granted by the Church by virtue of the power it has received from Christ over the sacraments.²²⁹

It is necessary to make reference to the specific possibility of the faculty in relation to the power of orders, i.e. the *munus sacrum* received in sacred ordination. The conciliar doctrine of *Lumen Gentium* clarifies how these two powers work together:

But for this power to be fully ready to act there must be a further canonical or juridical determination through the hierarchical authority. This determination of power can consist in the granting of a particular office or in the allotment of subjects and it is done according to the norms approved by the supreme authority.

According to this teaching by the Council, it is clear that this ‘faculty’ is not the ‘power to pardon sins’, but rather the hierarchical authorization to exercise this power. It is a positive bestowal, a juridical determination which enables the holder of the ‘power of order’ to validly and lawfully exercise that same power. Thus, sacramental absolution is an exercise of the power of orders (of the *munus sanctificandi*) for the

²²⁸ Dufour, *Le Sacrement de pénitence et le sacrement de l’onction des malades*, 61.

²²⁹ Marzoa, *Exegetical Commentary*, vol. III, 774.

pardon of sins, and for the reconciliation of the penitent with God and the Church. But in order to exercise this power validly and lawfully, the confessor necessarily requires faculty.²³⁰

2.4. The Means to Obtain the Faculty to Absolve Sins (cc.722-725)

All bishops have the faculty by law itself to administer the sacrament all over the world.²³¹ “All bishops can by virtue of the law itself administer the sacrament of penance anywhere, unless with regard to liceity, the eparchial bishop expressly denies this in a special case” (c.722 §2). The valid use of this power by bishops cannot be restricted. They administer the sacrament illicitly if any eparchial bishop expressly denies it in his eparchy. A bishop, in this case, administers the sacrament validly but illicitly.

The faculty to administer the sacrament of penance is granted to a presbyter either by law itself or by a special grant made by a competent authority. “However, for presbyters to act validly, they must also have faculty to administer the sacrament of penance; this faculty is conferred either by the law itself or by a special grant made by competent authority” (c.722 §3). By law itself means by virtue of an office²³² and within the limits of the jurisdiction of a local hierarchy, the pastor or any other official who takes the place of the pastor has the faculty to administer the sacrament of penance (c.723 §1). The only competent authority to confer the faculty on any presbyter by a special concession is the local hierarchy (c.724 §1). Within certain religious institutes and societies of common life in the manner of religious, pontifical, or patriarchal rights, the superior of the institute has the authority to grant the faculty to absolve sin for their members and others living in the house.

According to CCEO c.722 §4, presbyters whose faculty to hear confessions is obtained either by reason of their office or by virtue of a grant of the local hierarchy,

²³⁰ Marzoa, *Exegetical Commentary*, vol. III, 774.

²³¹ The parallel canon CIC c.967 §1 includes the Pope and the cardinals without any restriction: “In addition to the Roman Pontiff, cardinals have the faculty of hearing the confessions of the Christian faithful everywhere in the world by the law itself. Bishops likewise have this faculty and use it licitly everywhere unless the diocesan bishop has denied it in a particular case.”

²³² The term habitual faculty used in the CIC is not found in the CCEO.

either of the place of incardination or of the place in which they have domicile, can exercise that faculty everywhere unless a certain local hierarch has expressly denied it.

Presbyters who have the faculty to administer the sacrament of penance by virtue of their office or by virtue of a concession of the local hierarch of the eparchy in which they are ascribed or in which they have domicile, can validly administer the sacrament of penance anywhere to any of the Christian faithful, unless a certain local hierarch in a special case expressly denies it. They use the faculties licitly observing the norms established by the eparchial bishop and also with at least the presumed permission of the rector of the church or in the case of a house of an institute of consecrated life, of the superior (c.722 §4).

Since the faculty is not automatically obtained with priestly ordination, it can be lost or revoked for three reasons. Revocation of the faculty is largely attributable to grave causes. The first one is an express revocation by the local hierarch, who has granted the faculty (c.726 §1, 2). When he revokes the faculty granted to a priest, that priest loses the faculty everywhere. “If the faculty to administer the sacrament of penance, granted by the hierarch mentioned in canon 744 §4 is revoked, the presbyter loses it everywhere; if it is revoked by another competent authority the presbyter loses it only within the jurisdiction of the one who revokes it” (c.726 §2). The second way of losing the faculty is *ipso iure* revocation by loss of office or by loss of ascription to an eparchy or by loss of domicile in an eparchy (c.726 §3). The third possible way to lose the faculty is through an imposition of penalty for disciplinary reasons. For example, a priest punished with major excommunication is prohibited from administering the sacraments (c.1434 §1). However, upon danger of death, all priests have the faculty and the obligation to hear confessions.

2.5. The Reservation of the Faculty to Absolve Specific Sins

The common law in the Eastern Churches permits the reservation of certain sins to a higher authority. It also provides for certain exceptions to these reservations of sins. The corresponding legislation cannot be found in CIC 1983. There are certain sins which are reserved to the higher authorities by law itself and there is a provision for reserving further sins under particular law. The reason for reserving sins can be found in canon 727, which states “in order to provide for the welfare of souls, in some cases the faculty of absolving from sins can be appropriately restricted and reserved to a determined authority.” As Žužek further underscores, “The purpose of such a provision is of a pedagogical character for the spiritual good of the faithful; indeed,

deferring the absolution of sins to the higher authority is justified for medicinal reasons.”²³³ It is a question of sins reserved on account of their particular gravity.

2.6. The Formation of the Canons on Reserved Sins (cc.727-729)

The task of the codification of Eastern Canons was entrusted to the commission known as the *Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo* (PCCICOR) in 1972.²³⁴ Ten study groups were formed out of the sixty-five members of the commission appointed on 15 September 1973. The eighth study group, *Coetus de Sacramentis*, was entrusted to draft norms regarding the sacrament of penance. The study group started working with the non-promulgated *motu proprio de Sacramentis*, which had been prepared by the former Eastern Code Commission. The study group was summoned to draft provisional norms on penance from 7-19 November, 1977. Based on the guiding principles given to the code commission, the study group reduced the fifty-one canons on penance in the *motu proprio* into fourteen provisional canons.²³⁵

It is important to remember that the 1917 Code had norms concerning the reservation of sins (CIC 1917 cc.893-900). The un-promulgated Eastern norms on sacraments, *motu proprio de Sacramentis*, maintained the institution of reserved sins and its legislation was generally left to the Apostolic See. The draft canon of the unpublished *motu proprio* states that “Only the Apostolic See is competent to reserve sins, by reason of their nature, any contrary law or custom being suppressed” (c.137).²³⁶ But this canon on the reserved sin was not included in the fourteen provisional canons taken from the un-published draft on Sacraments intended to be published as *motu proprio*.

The 1980 schema *de Sacramentis* which contained fifteen canons on penance was submitted before consultative bodies for critical appraisal. A special study group of ten experts of *PICCICOR* was entrusted with the *denua recognitio* of the 1980

²³³ G. Nedungatt (ed.), *A Guide to the Eastern Code*. Rome: PIO, 2002, 524.

²³⁴ *Nuntia* 1 (1975) 23; Ivan Žužek, *Understanding the Eastern Code*. Kanonika 8 (1997) 110. See the letter dated 10 June 1972, constituting PCCICOR, published in *Nuntia* 1 (1975) 11.

²³⁵ Jobe Abbass, “Penance: A Comparative study of the Eastern and Latin Codes,” *Studia Canonica* 45 (2011) 293-328.

²³⁶ *Nuntia* 6 (1978) 70.

Schema. There was general concern to ensure greater conformity with the canons on penance in the Latin Code. However, this study group faced another serious issue based on the removal of *latae sententiae* penalties from the 1981 schema of penalties. At the first preliminary meeting of the commission for the revision of the Eastern Code in 1974, three guiding principles²³⁷ for the revision of the Eastern penal law had been established. The reason for the removal of *latae sententiae* penalties is found in the first guiding principles which states:

It is well-known that the Pontifical Commission for the Latin Code has already operated a reduction of the penalties *latae sententiae* in the draft of canons. In the Oriental Code, all the *poenae latae sententiae* should be abolished, because they do not correspond to the genuine Oriental traditions, unknown to the Orthodox Churches, and do not seem necessary for the purpose of the adaptation of the Oriental Code to the present-day requirements of the discipline of the Oriental Catholic Churches.²³⁸

Therefore, the study group, after the consideration of the consultative bodies formulated another schema, considering the guiding principle adopted by the *PICCICOR* to abolish automatic penalties. The group decided to maintain reservation of absolving the sins of certain delicts. The study group argues thus:

appropriate to maintain for some delicts in CICO the so-called *reservatio absolutionis a peccato* considering it to be essentially consistent with the more genuine Eastern traditions as well as being truly effective in assuring for the Eastern faithful in today's world that 'deterrent' that is hoped to be obtained for the Latin faithful with reserved excommunications *latae sententiae*.²³⁹

As a result, the expert study group proposed canon 58 *bis* to be added to the 1980 Schema on penance. Paragraph 1 of canon 58 *bis* is largely similar to 727 and paragraph 2 contains reserved absolution for three cases.²⁴⁰

The 1986 *Schema Codicis Iuris Canonici Orientalis* (SCICO) contained eighteen canons (714-731) on penance. Further study of the schema was conducted by the members of *PICCICOR* and expert study groups. Though there was a suggestion to

²³⁷ *Nuntia* 4 (1977) 72-78, « 1. Nel Codice Orientale si aboliscano tutte le *poenae latae sententiae*, perché esse non corrispondono alle genuine tradizionali orientali, sono sconosciute alle Chiese Ortodosse, e non sembrano necessarie ad un adattamento del Codice orientale alle esigenze moderne della disciplina della Chiese Orientali Cattoliche. 2. Si dia maggiore rilevanza alla *monitio canonica* prima di poter punire, secondo gli antichi canoni orientali; 3. Si propone di rivedere la nozione della punizione canonica in quanto *privatio alicuius boni*. Sembra che la punizione canonica potrebbe essere anche *impositio actus positivi*... ».

²³⁸ *Nuntia* 3 (1974) 24.

²³⁹ *Nuntia* 20 (1985) 58.

²⁴⁰ *Nuntia* 20 (1985) 58.

remove the canon on the reservation of the faculty to absolve certain sins and to reintroduce the *latae sententiae* penalties,²⁴¹ this part remained in the final draft. Finally, this part of reservation of the faculty to absolve remained in the *Codex Canonum Ecclesiarum Orientalium* as canon 727-729.

2.7. Reservation of Sins under Particular Law (c.727)

A provision for reserving sins under the particular law is given in canon 727:

In some cases, in order to provide for the salvation of souls it may be appropriate to restrict the faculty to absolve from sins and reserve it to a determined authority; this, however, cannot be done without the consent of the synod of bishops of the patriarchal Church, or the council of hierarchs, or the Apostolic See.

The reason behind the provision to give reserved sins under particular law is mainly the good of souls. According to this canon, sins can be reserved by Patriarchs in the Patriarchal Churches, with the consent of the synod of bishops, by Major Archbishops in the Major Archiepiscopal churches, with the consent of its synod of bishops, by Metropolitans in the Metropolitan Churches *sui iuris* with the consent of council of hierarchs and by heads of other Churches *sui iuris* with the consent of the Apostolic See. However, to promulgate laws reserving certain sins by these bodies, canon 727 stipulates certain conditions which must be fulfilled. Marini, based on the canon, specifies the three following conditions to be fulfilled in order to create reserved sins under particular law:

Firstly, the reservations must be positively in the interest of the welfare of souls, that is, the reservations cannot be done for any penal reason or merely to enhance the power of the ‘determined authority’ mentioned in the canon etc. Secondly, the creation of the reserved sins under particular law requires the consent of the body which normally enacts laws for the Churches *sui iuris*; namely, the Synod of Bishops for Patriarchal Churches *sui iuris* and Major Archiepiscopal Churches *sui iuris*; the Council of Hierarchs for Metropolitan Churches *sui iuris* and the Apostolic See for all other *sui iuris*. Finally, the canon permits the reservation of sins to be so reserved only ‘in some cases’ (*in nonnullis casibus*). Thus, particular law cannot completely deprive a priest of the faculty of hearing confessions by reserving all sins to a determined authority.²⁴²

Even the eparchial bishop cannot reserve absolution of any sin for himself without the consent of the Synod of Bishops in a Patriarchal or Major Archiepiscopal Church or

²⁴¹ *Nuntia* 18 (1989) 96-98.

²⁴² Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 113.

the Council of Hierarchs in a Metropolitan Church or the Apostolic See in all other cases.

2.8. Sins Reserved by Law Itself

The Eastern Code reserves certain sins to the Apostolic See and to the Eparchial Bishop by law itself. There are two sins which are reserved by law itself to the Apostolic See and there is a single sin reserved to the Eparchial bishop by law itself.²⁴³ The direct reservation of sin is an act of ecclesiastical authority whereby the sacramental faculty to absolve a specific sin is withheld from the usual confessor by his ecclesiastical superior.²⁴⁴ The three sins reserved to the higher authorities will be dealt with in detail below.

The expert study group, reviewing the 1981 schema on penalties, proposed canon 58 *bis* to be added to the 1980 Schema on penance. Paragraph 2 of canon 58 *bis* reserved absolution for three cases: 1) a direct violation of the sacramental seal, 2) soliciting a penitent by a confessor on the occasion or under the pretext of making a confession to sin against chastity, and 3) the absolution of an accomplice in a sin against chastity.²⁴⁵ The proposed norm also reserved to the eparchial bishop absolving from the sin of procuring a completed abortion. During the review of the 1986 SCICO, a member also proposed not to reserve the sin of solicitation since the 1983 Latin Code contains no such reservation and norms of this kind ought to be uniform throughout the entire Church.

2.9. Sins Reserved to the Apostolic See in CCEO

There are two sins according to the common law whose absolution is reserved to the Apostolic See: the direct violation of the sacramental seal and the absolution of an accomplice in a sin against chastity. “Canon 728 §1 - Absolution from the following sins is reserved to the Apostolic See: 1° direct violation of the sacramental seal; 2°

²⁴³ “Le Code lui-même a prévu trois réserves d’absolution: deux au Siège apostolique, à savoir la violation directe du secret sacramentel et la complicité dans le péché contre la chasteté, et une à l’évêque: l’avortement procuré et suivi d’effet”; Cf. René Metz, *Le Nouveau Droit des Eglises Orientales Catholiques*, Paris: Les Editions du CERF, 1997, 191.

²⁴⁴ Walsh, M.B., “Reserved Sins,” in William J. MacDonald et al., (eds.) *New Catholic Encyclopedia*, vol. XII, New York, 1967, 389.

²⁴⁵ *Nuntia*, 20 (1985) 58.

absolution of an accomplice in a sin against chastity.” Both sins would normally be committed by a priest, though it is possible that others could directly violate the sacramental seal. Thus, both acts would not only be sinful but would also represent a grave abuse of the faculty to absolve by the very minister who chose to abuse the mystery.²⁴⁶

2.9.1. Direct Violation of the Sacramental Seal (c.728 §1, 1°)

The first sin reserved to the Apostolic See is the absolution from the sin of the direct violation of the sacramental seal. In this case, the faculty to give absolution is reserved to the Apostolic See. According to the Eastern Code, if a priest, who violated this sin, confesses to an Eastern priest, the confessor has no faculty to give absolution to such a penitent priest. This is not exactly the case with the Latin rite priests. The difference will be addressed in detail in the third chapter where the legislation of the Latin rite on this matter is considered at length. What is important for the present topic is the reservation of the sin of the direct violation of the sacramental seal. In order to better understand the significance of the law, it is important to ascertain the different aspects of the sacramental seal.

2.9.1.1. Definition of the Sacramental Seal

The Code uses the term ‘sacramental seal’ (*sigillum sacramentale*), also generally known as the ‘Seal of Confession.’ The Code does not provide a definition and it is indeed difficult to discover a correct definition for this term. First of all, the term ‘sacramental seal’ refers exclusively to the internal sacramental forum. It can be defined as an absolute requirement of divine and ecclesiastical law that the confessor keeps the identity of the penitent secret, as well as the sins revealed to the confessor by the penitent and the circumstances of the sinful acts and/or the confession itself.²⁴⁷ In other words, the sacramental seal represents the absolute responsibility of a confessor to keep the knowledge that he received in the context of sacramental confession forever secret. Thus the obligation arises for the confessor to ensure the penitent that whatever his sins or the circumstances surrounding them, the confession

²⁴⁶ Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 115.

²⁴⁷ Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 127.

remains forever sealed. No one on earth has the power or prerogative to reveal the confessional secret. But this seal is applicable only to the sacrament of penance. According to Moriarty “The essential element of sacramental confession, at least as far as the seal is concerned, is the penitent’s intention of receiving absolution. The desire for absolution is sufficient; the individual simply must make a self accusation regarding some sin with the desire to receive absolution.”²⁴⁸ Thus, in this view, if someone has falsely simulated the sacrament, the priest has no responsibility to keep the seal.

2.9.1.2. The Divine Origin of the Sacramental Seal

The absolute inviolability of the sacramental seal ensures that it does not simply arise from an ecclesiastical or natural law. In the first chapter, it has been observed that the sacrament of penance was instituted by Christ. This divine institution of the sacrament entails the absolute obligation of secrecy concerning the sins confessed. Moriarty attempts to provide an explanation for this divine origin of the sacramental seal, saying:

Consequently, in the divine institution of the sacrament of penance as well as in the divine command to confess one’s sins, there must be implied an assurance or pledge that the information revealed by the penitent in sacramental confession will not be converted to his detriment outside the confession. Thus, it can be asserted that Christ’s command establishing the sacrament of penance indirectly and implicitly provides a foundation in the divine law for the sacramental seal of confession.²⁴⁹

The role of a priest in this sacrament is analogous to that of Christ and the penitent who confesses the sin is confessing to Christ, as represented in person by the priest. Whatever the priest hears, knows, judges, and absolves is done as a minister of God ‘in persona Christi.’ “Everything that is confessed to him during a confession is confessed to God and must remain sealed (*sigillum*) forever, irreversibly and irrevocably, in the divine forum.”²⁵⁰ Therefore, one can legitimately conclude that even if Christ did not explicitly command confessors not to reveal knowledge to the extra-sacramental forum, the obligation is a natural consequence of the establishment

²⁴⁸ Robert T. Moriarty, “Violation of the Confessional Seal and the Associated Penalties,” *Jurist* 58 (1998) 159.

²⁴⁹ Moriarty, “Violation of the Confessional Seal and the Associated Penalties,” 154.

²⁵⁰ Marzoa, *Exegetical Commentary*, vol. III, 817.

of the sacrament and is implicitly contained in the Christ's command to the faithful to submit their sins to the power of the keys.²⁵¹

2.9.1.3. *Ratio legis*

The *ratio legis* of the seal of confession is based on natural law, quasi-contract, positive divine law, and ecclesiastical positive law. The Exegetical Commentary explains these four *ratio legis* in detail as follows:

a) natural law, which prohibits illegitimately defaming anyone or betraying the personal intimacy manifested by another b) the quasi-contract establishes tacitly but unmistakably, between the confessor and the penitent, by the act of the former confessing one's own sins to the latter, with the evident implicit condition that these must remain permanently and totally secret; c) positive divine law: given that Christ instituted this sacrament and its necessity for the health of the soul and the spiritual good of the penitent. But this sacrament would be entirely hateful and abhorrent for the faithful if the confessed sins were ever revealed; d) ecclesiastical positive law, which determines and sanctions this canon that which is dictated by divine law-natural and positive-order to safeguard absolutely the "sacramental seal," without any possible exception.²⁵²

These four elements comprise the reason for the strict seal on the confessional secret to remain non-violable. It is natural law which upholds the dignity of the individual and encourages him to faithfully follow through on the contract. This system similarly contributes to the good of the individual and the Church.

2.9.1.4. The Object of the Sacramental Seal

It is important to understand the objects of the sacramental seal. The first object of the sacramental seal centers on the sins confessed by the penitent for the sake of absolution. It is insignificant whether the sin is occult or already publicly known; whether it is objective or subjective; formal or merely material; real or putative.²⁵³ The second object is the given circumstances of the sin such as place, time and accomplice. The third object is the penance imposed, insofar as it illuminates the nature of the sins. The fourth object is the information concerning the granting, denial, or deferral of absolution. The fifth object is the very fact that someone had gone to

²⁵¹ John R. Roos, *The Seal of Confession*. Washington: The Catholic University of America Press, 1960, 2.

²⁵² Marzoa, *Exegetical Commentary*, vol. III, 817.

²⁵³ Roos, *The Seal of Confession*, 27.

confess, especially if such a revelation would raise suspicion about a person's need for confession. The sixth object is the advice given in relation to the matter confessed.²⁵⁴

A. Cushman divides the object of the seal according to direct (*materia essentialis*) and indirect (*materia accidentalis*) factors. All sins, whether grave or venial, are the direct object of the sacramental seal. The indirect objects are the circumstances which are mentioned in connection with the sin confessed. Cushman gives the clarification for these concepts as follows:

By direct object of the sacramental seal is meant:

- 1° the generic mention of grievous sins, regardless as to whether they have been confessed as necessary or free matter;
- 2° the mention of specific venial sins including those which were absolved in a previous confession;
- 3° the mention of any of the above sins which the confessor comes to know only from the sacramental confession, though the sin in question is of public knowledge.

Circumstances, which constitute the indirect object of the sacramental seal, may indicate various matters; thus they refer to:

- 1° occasions, motive, place, time manner, indicated by the penitent to explain the sin especially when it concerns the integrity of confession, unless these circumstances are of public knowledge, as that the penitent is a priest, religious, married, divorced.
- 2° The refusal or deferral of the sacramental absolution, even when it involves a public sinner, or if the penitent divulges this incident.
- 3° The quality of satisfaction imposed.
- 4° Personal defects or qualities which the penitent is embarrassed to divulge, e.g. scrupulosity, illegitimacy, physical or psychological defects.
- 5° An opinion or advice asked by the penitent in relation to matters of conscience.
- 6° Under this heading may be included also the name of the accomplice in sin.²⁵⁵

2.9.1.5. The Subject of the Sacramental Seal

The confessor is the primary subject bound by the obligation of the seal of confession. Normally, sins are revealed only to a priest in confession. John Roos subscribed to the understanding that every confessor who acts as confessor, whether or not he has the faculties to absolve, even one who is excommunicated, suspended, or under interdict, or deprived of office, or degraded, is bound to inviolable secrecy.²⁵⁶ A priest who is suspended or laicised is nonetheless obliged to forever and absolutely keep the seal of confession. There is no moment in the life of a priest when he can reveal the confessional secret.

²⁵⁴ Moriarty, "Violation of the Confessional Seal and the Associated Penalties," 161.

²⁵⁵ Cushman, *The Sacrament of Reconciliation*, 303-304.

²⁵⁶ Roos, *The Seal of Confession*, 54.

According to the interpretation of Marini, the sacramental seal also extends to others as per CCEO c.733 §2. This canon imposes the obligation of observing secrecy on an interpreter and anyone else to whom the knowledge of the sins from confession is disclosed in any fashion. The practice of using an interpreter is merely acknowledged, according to the canon. Therefore, the canons merely bind an interpreter to the seal, if one is employed.²⁵⁷

It is important to note that the penitent is not the subject of the seal. He is the principal beneficiary of the system of the sacramental seal. Thus, the sacramental seal does not bind the penitent to secrecy. The penitent is under no canonical or other obligation to keep secret what was confessed.

2.9.1.6. Direct and Indirect Violations

The canon on the reservation of the sin of the violation of the sacramental seal affects only its direct violation. This assumes that there are two ways in which to violate the sacramental seal. Therefore, the study of the distinction between direct and the indirect violation of the sacramental seal is of paramount importance. Although the nature of the sin is the same, the gravity of the direct and the indirect violation of the seal is considered differently. A. Cuschieri, taking a philosophico-juridical approach, states that they differ from each other by reason of intention on the part of the confessor and by reason of the penitent's identification:

Both direct and indirect violations constitute a wilful act. In direct violation, the confessor wills to reveal both the identity of the penitent as well as the object of the seal directly and explicitly, while in indirect violation, the intention of the confessor is directed explicitly towards the disclosure of the object of the seal, and only indirectly, secondarily, and remotely towards the identification of the penitent.

Direct and indirect violations of the seal ultimately converge into the disclosure of the penitent's identity. However, both crimes differ by reason of the identification of the penitent. In direct violation, the identity of the penitent is directly and explicitly revealed, in indirect violation, only a remote danger exists of such revelation.²⁵⁸

The direct violation of the sacramental seal occurs when a confessor reveals the object of the sacramental seal and the name of the person who committed the sin. The penitent may be identified not only by expressly disclosing his name but also in other

²⁵⁷ Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 129.

²⁵⁸ Cuschieri, *The Sacrament of Reconciliation*, 307.

ways, such as by revealing his personal qualities, social status, vocation, by any other factors by means of which the identity of the person could be easily and correctly ascertained.

In the case of indirect violation, the revelation of the sin or the identity of the person who confessed the sin, are not manifestly evident. A.Cuschieri articulates the following definition: “Indirect violation: revelation of the object of the seal and data given which can lead with probability to the identification of the person of the penitent.”²⁵⁹ There is only a remote chance that a third party could correctly guess or detect the penitent and the sin from the revelation of the information received from the confessor. But if the confessor elects to make some remarks in the context of a small society, where people are well acquainted with one another, the chance of revelation is greater. In June of 1915, the Instruction of the Sacred Congregation for the Holy Office offered guidance to those confessors who, while not betraying penitents, made imprudent references in sermons or in private conversations about matters heard in confession. Even if this is done with the intention of edifying the people, the instruction condemns the practice because of its harmful effects on the Christian Community; listeners might become uneasy and lose confidence in the inviolability of the seal.²⁶⁰

2.9.1.7. The Sacramental Seal and Secrecy (c.733 §1, 2)

Canon 733 distinguishes the sacramental seal (§1) from the obligation to observe secrecy (§2).²⁶¹ This terminological difference is evident in the new legislation. “The obligation of the seal refers only to the confessor and concerns the subject matter of the confession. This is an absolute obligation because it affects the knowledge that the confessor has received in *foro Dei*.”²⁶² Therefore, the sacramental seal categorically dismisses any exception to its inviolability (c.733 §1). As has been observed above, it

²⁵⁹ Cuschieri, *The Sacrament of Reconciliation*, 316.

²⁶⁰ June 9, 1915 instruction (Sacred Congregation for the Holy office, Instruction, June 1915: *Periodica* 13 (1925) 183-184; English translation in CLD 1: 413-414; Moriarty, “Violation of the Confessional Seal and the Associated Penalties,” 156.

²⁶¹ Canon 733 §1, “The sacramental seal is inviolable; therefore, the confessor must diligently refrain either by word, sign or any other manner betraying the penitent for any cause.

§2. The obligation of observing secrecy also binds an interpreter if one is present, and also all others to whom knowledge of the sins from confession comes in any way.”

²⁶² Marzoa, *Exegetical Commentary*, vol. IV, 525.

can never be revealed to anyone for any reason, whether it be spiritual or materialistic; indeed, not even to the penitent outside the sacrament, without his or her permission. “A confessor is absolutely prohibited the use of knowledge acquired from confession when it might harm the penitent even if every danger of revelation is excluded” (c.734 §1). The Church thus upholds the absolute inviolability of matters disclosed in the confessional. In order to illuminate the special nature of the secret, the Code uses the exclusive term ‘sacramental seal’ to refer to the obligation of the minister of penance.

The secret (c.733 §2), on the other hand, refers to interpreters or other persons who may come to know the subject matter of the confession.²⁶³ According to Cuschieri’s interpretation, “one to whom the object of the sacramental seal is disclosed is bound to secrecy by natural law in the same manner as the confessor.”²⁶⁴ There are others who are obliged to maintain secrecy, such as the one who finds the written list of sins forgotten by the penitent; the theologian who is approached by the confessor on a confessional matter with or without the permission of the penitent; the competent hierarch who gives the necessary faculty to the confessor in order to absolve him from a reserved censure; one to whom the confessor irresponsibly discloses the object of the seal; and the bystanders who intentionally or unintentionally hear what is being said by the penitent or by the confessor to the penitent. Here in the case of the sacrament of penance, the material of the secret and the seal are the same and only the subject changes. “The confessor acts in the forum of God (sacramental seal) while others act in the human forum (sacramental secret).”²⁶⁵

The obligation to keep the secret is absolute and grave as it is also considered to be a ‘natural secret,’ meaning that it expresses the natural law requirement to respect any confidential communications. The object of natural secrecy is that which one acquires about another person, which cannot be communicated without causing harm or reasonable displeasure to others. It is also the responsibility of the faithful to safeguard the dignity of the sacrament. Finally, the canon positively forbids any revelation of secrets known to someone else. Since this constitutes penitential secrecy, as per the canon, any ‘other’ subjects who ‘in whatever way’, have knowledge of the sins

²⁶³ Marzoa, *Exegetical Commentary*, vol. IV, 525.

²⁶⁴ Cuschieri, *The Sacrament of Reconciliation*, 312.

²⁶⁵ Moriarty, “Violation of the Confessional Seal and the Associated Penalties,” 157.

confessed, also remain obliged to keep such knowledge an absolute secret.²⁶⁶ It is also termed penitential secrecy because the origin and foundation of the obligation is precisely the knowledge of the confession in the sacrament of penance.

2.9.1.8. Penalties for the Delict of the Violation of Seal (c.1456)

Though the Eastern Code by law itself reserves the absolution of the direct violation of the sacramental seal to the Apostolic See, it cannot be considered a penalty. Penal law gives a separate canon stipulating the penalty for the violation of the sacramental seal. Similar to the distinction made between direct and indirect²⁶⁷ violations of the sacramental seal, in the case of penalty, the Code considers direct and indirect violation as two distinct crimes. The canon similarly distinguishes the violation by a confessor and others, and thereby introduces a difference in the gravity of the crime committed and its penalty depending on the person who committed it.

It is evident that the direct violation of the sacramental seal is committed by a priest and the canon applies the penalty of major excommunication²⁶⁸ to a priest who commits it. In speaking of direct violation as a crime, Cuschieri states that²⁶⁹ ‘direct violation of the seal is always a grave sin against justice and a grave sacrilege.’²⁷⁰ Canon 1456 §1 states, “A confessor who has directly violated the sacramental seal is to be punished with a major excommunication, with due regard for canon 728 §1, 1°; however, if he broke this seal in another manner, he is to be punished with an

²⁶⁶ Marzoa, *Exegetical Commentary*, vol. III, 821.

²⁶⁷ For direct and indirect violation see pages 95-96.

²⁶⁸ CCEO c.1434 §1 “In addition to all things mentioned in can.1431, §1, a major excommunication forbids one to receive other sacraments, to administer sacraments and sacramentals, to exercise any offices, ministries and functions, to place acts of governance, which if they are nonetheless placed, are null by law itself.”

§2. One punished with a major excommunication is to be turned away from participating in the Divine Liturgy and in other public celebrations of divine worship.

§3. One punished with a major excommunication is forbidden to make use of privileges previously granted. He cannot validly obtain dignities, offices, ministries, or any other function in the Church or a pension, and he cannot acquire the revenues attached to them. Moreover, he is deprived of active and passive voice.

CCEO c.1431 §1- Those punished with a minor excommunication are deprived of the reception of the Divine Eucharist. In addition they can be excluded from participation in the Divine Liturgy, and even from entering the church while divine worship is publicly celebrated there.

§2. The sentence or the decree by which this penalty is imposed must determine its extent and, as the case may be, its duration.

²⁶⁹ Crime in Canon Law is essentially a grave sin caused either by due deliberation, serious negligence, or gravely culpable ignorance.

²⁷⁰ Cuschieri, *The Sacrament of Reconciliation*, 308.

appropriate penalty.” The seriousness is due to the sin itself and also to the grave abuse of the faculty to absolve by the minister of the sacrament.

Although a direct or an indirect violation of the sacramental seal is possible mainly by a priest, the Code also envisages the possibility of its violation by others. Hence, in light of the possibility for the sacramental seal to be violated by anyone other than the confessor, either directly or indirectly, the Code makes the offender liable to the imposition of the lesser penalties of minor excommunication or suspension. Thus canon 1456 §2 states that, “A person who has attempted in any way to gain information from confession or has given such information to others, is to be punished with a minor excommunication or a suspension.”

2.9.2. The Attempted Absolution of an Accomplice in a Sin against Chastity (c.728 §1, 2°)

The attempted absolution of an accomplice in a sin against chastity is the second sin reserved to the Apostolic See. For the better comprehension of the canon, it is important to understand the legal nuances of the sin of absolution of an accomplice. The sin of complicity is not to be confused with the sin of absolving an accomplice. Therefore, it is better to analyze primarily the meaning of the sin of complicity. It is remarkable that the Eastern Code uses the term ‘chastity’ and Latin code uses ‘the sixth commandment of Decalogue.’

2.9.2.1. The Confessor and the State of Complicity

In order to understand the sin reserved to the Apostolic See, one must understand the sin involved in it. Complicity in general is present when there is a collaborative perpetration of the same sin against chastity. The questionable situation of the accomplice arises when the penitent and the confessor chose to enter into an illicit sexual relationship. The Exegetical Commentary gives the following definition: “The sin of complicity occurs when two or more persons, whether or not of the same sex, each conscious of the gravity of the sin, consents to an external sin – also grave in the

external dimension – that is in itself libidinous.”²⁷¹ The Exegetical Commentary gives the following explanation:

It exclusively affects the absolution of sin against the sixth precept of the Decalogue that has not already been pardoned; however, since the absolution is indivisible, if it is invalid in the case of this sin, in virtue of the law, then it is also invalid in the rest of the sins which were mentioned in that confession, if such sin is still necessary matter. This sin must be serious and external: in word or in deed; committed at any time: even before the priest received sacred ordination.²⁷²

The complicity in the given canon is a sin of the confessor with the penitent who confesses the same sin against chastity which he or she had committed with the confessor. The same sin could have happened while the confessor was not even a priest. The confessor has no faculty to give absolution for the same sin against chastity in which he himself was a participant and which was committed externally, with the consent of both parties.

2.9.2.2. The Invalidity of the Absolution of an Accomplice (c.730)

Canon 730 states that the absolution of an accomplice in a sin against chastity is invalid except in danger of death. Although the canon has a positive sense with regard to this validity, it also implies that this sin is absolved invalidly. It is the ‘a iure’ revocation of the penitential faculty of a priest over a penitent with respect to the sin against chastity.²⁷³ It is important to recognize that this restriction is not a mere prohibition, but rather goes to the validity of the act. Thus, the absolution of an accomplice under conditions other than the danger of death is invalid and ineffective.

It should be emphasized that only the sin against chastity committed by both the confessor and the penitent is under restriction. There can be other kinds of sins, such as murder, in which the confessor is an accomplice with the penitent, but the possibility of absolution is not restricted. This means that a priest lacks faculty to absolve an accomplice only in the context of a sin against chastity. This does not mean that he has permanently lost the faculty with that particular penitent.²⁷⁴ He loses it only until the sin of the accomplice has been validly absolved. Once the sin of the

²⁷¹ Marzoa, *Exegetical Commentary*, vol. IV, 496.

²⁷² Marzoa, *Exegetical Commentary*, vol. IV, 496.

²⁷³ Marzoa, *Exegetical Commentary*, vol. III, 798.

²⁷⁴ Marzoa, *Exegetical Commentary*, vol. IV, 496.

accomplice is absolved by another priest, the invalidating prohibition no longer exists between the particular penitent and the confessor.

Secondly, the time at which the sin was committed is irrelevant. As the Exegetical Commentary states:

This means that the priest is deprived of the faculty of absolving his accomplice even if he was not a priest at the time of the sin, even though decades may have passed and neither one had the least thought of becoming a priest. What matters is that the sin that the penitent confesses must be a sin of complicity with the person hearing his confession, even if the person hearing it was not a priest at the time the sin was committed. However, the prohibition against absolving an accomplice applies only to sins that have not yet been subjected to the power of the keys.²⁷⁵

The seriousness of the matter lies not simply in the sin against chastity, but also in the sinful relationship between a confessor and a penitent. Here the confessor himself is a partner in the sin and tries to absolve the sin for which he is also responsible. The Code gives no provision for a special grant of faculty to absolve the accomplice in a sin against chastity.

The one and only exception to grant the faculty of absolution is when the penitent is in actual danger of death.²⁷⁶ Upon interpreting the canon, Marini describes certain occasions other than a danger of death situation in which the confessor can validly absolve the accomplice:

Among these is the ignorance of the identity of the confessor by the penitent or the penitent by the confessor, the hearing of the confession without pretence of absolution, etc. *Epikeia* may be also available to permit the valid absolution of an accomplice under certain circumstances of extreme necessity which do not amount to danger of death.²⁷⁷

Simply hearing a confession or pretending to give absolution or inducing one directly or indirectly to confess the sin of complicity does not create an invalid confession.²⁷⁸ The solicitation²⁷⁹ by a priest or the penitent to commit a sin against chastity is not included in this category of sin.

²⁷⁵ Marzoa, *Exegetical Commentary*, vol. IV, 496.

²⁷⁶ Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 117.

²⁷⁷ Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 118.

²⁷⁸ Marzoa, *Exegetical Commentary*, vol. IV, 499.

²⁷⁹ In canon law the crime of making use of the Sacrament of Penance, directly or indirectly, for the purpose of drawing others into sins of lust, is known as the crime of solicitation. As CCEO c. 1458 states, "A priest, who in the act, on the occasion, or under the pretext of confession, has solicited a penitent to sin against chastity, is to be punished with an appropriate penalty, not excluding deposition."

2.9.2.3. The Sin of Attempting the Absolution of an Accomplice

If a confessor absolves an accomplice of a sin against chastity with his knowledge and against canonical prescriptions, that becomes a grave sin for the confessor. The offense of absolving an accomplice occurs when (attempted) absolution is given to an accomplice who confesses the sin of complicity. Canonically, this represents an ‘attempt’ to grant absolution rather than absolution in itself. The Exegetical Commentary gives the following explanation for such an ‘attempt’:

No one who has not received the power of order can give absolution under divine law. Anyone who has not received the faculty, on the other hand, is not qualified under ecclesiastical law. However, in both cases, absolution is invalid; an action performed contrary to the norm can have absolutely of no effect. In canon law, it is called an ‘attempt’ because what the subject can carry out is only an attempted act, not the act itself. The offense consists in the attempt; it is consummated when it meets the legal terms stipulated.²⁸⁰

For instance, a confessor, who knows that the person who confesses a sin of adultery is his accomplice, cannot validly absolve the penitent. It is canonically prohibited to give absolution to such an accomplice. As Canon 730 stipulates, the “Absolution of an accomplice in sin against chastity is invalid except in danger of death.” If the confessor deliberately absolves the penitent, knowing that it is his accomplice who confesses, the act is an attempted absolution because such an absolution is an invalid action according to the law itself. The priest commits a grave sin of attempted absolution of an accomplice in a sin against chastity.

When the priest who made an attempt to give absolution repents on his grave sin and confesses his sin to another priest for absolution, the confessor has no faculty to absolve the priest who committed a reserved sin. What the Code reserves is the absolution of the sin of the confessor who has committed the grave sin of attempting to absolve his accomplice. The Code, by law itself, has reserved the faculty to absolve the sin of the attempted absolution of an accomplice to the Apostolic See.

2.9.2.4. The Offense of Hearing Confessions

As the state of complicity was discussed above, one must now understand the offense of hearing confession. Hearing confession makes sense only in relation to pardon and

²⁸⁰ Marzoa, *Exegetical Commentary*, vol. IV, 501.

reconciliation through sacramental absolution. It makes sense only in relation to the fact that the penitent, in order to be absolved of his sins, must confess them to a minister who is competent to give an absolution. Confession of sins is made to a sacred minister who acts as a representative of God and the Church and is done for the purpose of absolution. Therefore, hearing confessions is only possible for someone who is qualified to give absolution, since he has both the power of order and the faculty to hear confessions. Although they are two different realities, the absence of either in the administration of the sacrament profanes the same sacrament. The offense of improperly hearing confession signifies that a person, who cannot give absolution, hears the confession.²⁸¹ In case of the state of complicity, if a confessor knows that it is his accomplice who makes the confession, he commits an offence by hearing the confession. The confessor commits no offence when he hears the confession without knowing that it is his accomplice who confesses. A lay person or a deacon who hears the confession also commits the offence because he lacks the power of order.

2.9.2.5. Penalties for Violating the Delict of Absolving an Accomplice (c.1457)

The maximum penalty in the Eastern Code is major excommunication. As in the direct violation of the sacramental seal, in the case of the delict of absolution of an accomplice in a sin against chastity, such a person incurs the penalty of major excommunication. This reveals the gravity of the delict. As canon 1457 insists, “A priest who has absolved an accomplice in a sin against chastity is to be punished with a major excommunication with due regard for canon 728 §1, 2°.”²⁸²

Here, the subject of the offence can only be a priest who attempts absolution. A priest who simulates the sacrament or a priest who only hears the confession without absolution is not a subject of the delict.²⁸³ Since the Code forbids giving absolution to an accomplice in a sin against chastity except in danger of death situation (c.730), the offense takes on a double configuration: attempting to absolve and hearing confessions. The canon, however, gives penalty only for the delict of attempted absolution.

²⁸¹ Marzoa, *Exegetical Commentary*, vol. IV, 501.

²⁸² CIC c.1378 §1 sanctions anyone who except in danger of death, attempts the absolution of such a partner: “incurs a *latae sententiae* excommunication reserved to the Apostolic See.”

²⁸³ Marzoa, *Exegetical Commentary*, vol. III, 799.

2.10. The Purpose of the Reservation of Both Sins to the Apostolic See

Both of the sins reserved to the Apostolic See are those sins which affect the dignity of the sacrament of penance itself. The direct violation of the seal is a breach of the penitent's confidence and trust in the sacrament. The second sin is a grave manipulation of the authority given by God and the Church. The confessor absolves the same sin to which he had been partner. This creates an atmosphere of misuse and anomaly. In the *Liber Gomorrhianus*, Peter Damiani protests against the making of confessions to a partner in guilt. Such confessions are synonymous with a leper showing his wounds to another leper, rather than to a priest. Or, otherwise stated, such actions demonstrate nothing to one who already knows everything.²⁸⁴

The Code does not provide a direct answer to these questions about the purposes of reservation. Commenting about reserved sin in the 1917 Code, Edward Vincent Dargin concludes that the Code furnishes ample evidence that one of the important purposes of reservation is not to punish the delinquent but to bring more serious cases before those best qualified to give them the judgement and prudent consideration they require.²⁸⁵ This is the purpose of the reservation in general and not only of the two sins under consideration here.

Reserved sin in general, from the point of a negative argument, is not a penalty due to the fact that it is not listed among the canonical penalties. The limitation of faculty, which it describes as reservation, does not inflict an incapacity directly on the penitent, which would be the case if there were questions about punishment. The restriction is rather directly placed on the confessor's power to absolve. This proves that the purpose of the establishment of reserved sins is to bring the penitent before a superior authority for better guidance. This delay of going to the superior does not mean that the purpose of reservation is punitive. The primary purpose of the reservation could thus be disciplinary in order to safeguard the integrity of the sacrament.

²⁸⁴ Watkins, *A History of Penance*, vol. 2, 738.

²⁸⁵ Edward Vincent Dargin, *Reserved Cases According to the Code of Canon Law*. Washington: Catholic University of America, 1924, 10.

The Exegetical Commentary states the precise purpose of the reservation of faculty while explaining the sin of absolving an accomplice: “The *ratio legis* is multiple: a) the sacrosanct respect and the peculiar juridical protection that this sacrament requires; b) the common ecclesiastical good; c) the spiritual good of the very subjects (priest-penitent).”²⁸⁶ The confessor who attempts to absolve, irrespective of the invalidating law (c.730), commits a grave sin for which absolution is solely reserved to the Apostolic See. This in turn highlights the seriousness of his fault and helps him to avoid such an abominable profanation of this sacrament. If some serious norms are not formed, the abuse of the sacrament of penance would be promoted. Marini gives another demerit suggesting that “the penitent might be prevented from receiving the proper spiritual counsel and guidance which normally is the right of any penitent to receive from a confessor.”²⁸⁷ Pastoral sensitivity leads the Church to take all the necessary precautions to ensure that the sacrament is truly an encounter with our Lord who pardons and reconciles and not an occasion to commit further sins. It is especially dependent upon the minister who celebrates the sacrament to ensure that these conditions are met.

2.11. The Manner of the Absolution of Sins Reserved to the Apostolic See in an Ordinary Situation

The two sins reserved by law itself to the Apostolic See are dealt with by the Apostolic Penitentiary.²⁸⁸ The Supreme Tribunal of the Apostolic Penitentiary is one of the three tribunals of the Roman Curia. It is a papal tribunal whose origin dates to the twelfth century and is delegated by the Pope to grant absolution from reserved sins, censures, and certain dispensations that are reserved to the Apostolic See. The Apostolic Penitentiary has jurisdiction over all matters in the internal forum, even in non-sacramental matters (PB art.117).²⁸⁹ The head of the Apostolic Penitentiary is called the Major Penitentiary.

²⁸⁶ Marzoa, *Exegetical Commentary*, vol. III, 798.

²⁸⁷ Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 117.

²⁸⁸ *Dictionnaire de Théologie Catholique*, 1150.

²⁸⁹ The competence of the Penitentiary is elaborated in articles 117-120 of the Apostolic Constitution Pastor Bonus (28 June 1988):

Art. 117 - The competence of the Apostolic Penitentiary regards the internal forum and indulgences.

Art. 118 - For the internal forum, whether sacramental or non-sacramental, it grants absolutions, dispensations, commutations, validations, condonations, and other favours.

People who wish to receive absolution or dispensation reserved to the Apostolic See must write a petition to the Penitentiary. As is generally the case with other dicasteries of the Apostolic See, each one of the faithful has the right to approach the Apostolic Penitentiary, either in person or in writing.²⁹⁰ However, experience dictates that recourse to the Apostolic Penitentiary is ordinarily through one's confessor if the material is related to sin, or through a priest who is one's spiritual director if the matter resides in the internal forum but outside the sacrament of penance. The correspondence should be addressed by name to the Cardinal Major Penitentiary or simply to the Apostolic Penitentiary.²⁹¹ The petition must use pseudonyms when explaining the situation to avoid revealing the identity of the persons involved; the tribunal itself acts in complete secrecy and with complete discretion.

As the petition reaches the tribunal, the Major Penitentiary considers the matter by himself, unless it is particularly important, in which case the entirety of the tribunal considers the petition. The members of the tribunal only give advice regarding the petition. The Major Penitentiary has the ultimate authority about whether to grant absolution. The cases referred to the Apostolic Penitentiary, particularly those in the internal forum, receive a judgment, when possible, within 24 hours of the receipt of the petition.²⁹²

2.12. The Sin Reserved to the Eparchial Bishop in CCEO (c.728 §2)

Only one sin is reserved to the Eparchial Bishop by law itself, according to CCEO c.728 §2. This norm dictates that 'it is reserved to the Eparchial Bishop to absolve

Art. 119 - The Apostolic Penitentiary sees to it that in the patriarchal basilicas of Rome there be a sufficient number of penitentiaries supplied with the appropriate faculties.

Art. 120 - This dicastery is charged with the granting and use of indulgences, without prejudice to the right of the Congregation for the Doctrine of the Faith to review what concerns dogmatic teaching about them

²⁹⁰ http://en.wikipedia.org/wiki/Apostolic_Penitentiary (05-04-2012).

²⁹¹ <http://www.penitenzieria.va/pages.php?pag=prae.htm&lng=en> (10-05-2012). The address of the offices of the Apostolic Penitentiary is as follows: *Palazzo della Cancelleria, Piazza della Cancelleria*, 1, 00186, Rome, Italy.

²⁹² Joel-Benoît d'Onorio, *Le Pape et le Gouvernement de l'Eglise*. Paris: Fleurus-Tardy, 1992, 390; "On peut recourir à la Pénitencerie soit directement en personne ou par correspondance, soit par l'intermédiaire d'un prêtre confesseur ou conseiller spirituel. Vu leur gravité, les cas de for interne qui y sont déferés sont résolus dans les 24 heures sous forme de rescrits particuliers mais anonymes sous expédition discrète par respect pour le secret des consciences."

from the sin of procuring a completed abortion.’ The expert study group who reviewed the 1981 Schema on penalties in the Church decided to maintain the reservation of completed abortion as sin reserved to the bishop. Together with the other two sins reserved to the Apostolic See, the sin of procuring a completed abortion was added to the Schema of 1980 and promulgated only later.²⁹³

In the case of the sin of abortion, an ordinary confessor has no faculty to give an absolution. The absolution of this sin is reserved to the eparchial bishop by law itself. It is important to remember that the sin is the procurement of a completed abortion. It is also necessary to understand how and when an abortion can turn into a grave sin.

2.12.1. Abortion as a Sin

The Code does not define the concept underlying the sin of abortion. Based on the biblical idea of sin, abortion is a grave or mortal sin against the fifth commandment of God: “You shall not kill” (Exodus 20:13). “God alone is the Lord of life from the beginning until its end: no one can under any circumstances claim for himself the right directly to destroy an innocent human being.”²⁹⁴ In the history of the sacrament of penance, one may observe that abortion was considered a grave sin from the time of the early Church. According to the *Catechism of the Catholic Church*, the Church had affirmed the moral evil of every procured abortion since the first century.²⁹⁵ This document elaborates on the moral and juridical dimension of abortion: “Human life should be totally respected and protected from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person - among which are the inviolable right of every innocent being to life.”²⁹⁶

In his *Abortion and the Ways We Value Human Life*, Jeffrey Reiman defines abortion as follows, “By ‘abortion’, I mean the intentional termination of pregnancy either by killing the fetus directly or by removing the fetus from the womb with the result that it dies. Surgical removal of a viable fetus that lives on is then not an abortion. It

²⁹³ *Nuntia*, 20 (1985) 58 (c.85 bis, §2).

²⁹⁴ *Donum Vitae*, n.5.

²⁹⁵ CCC art.2271.

²⁹⁶ CCC art.2270.

terminates pregnancy, but it does not result in the death of the fetus.”²⁹⁷ Commenting on abortion, Pope John Paul II states that “If a person’s right to life is violated at the moment in which he is first conceived in his mother’s womb, an indirect blow is struck also at the whole of the moral order.”²⁹⁸ The person murdered through abortion has precisely the same right to life as the one who is directly or indirectly involved in the abortion. A pregnant woman is not one body, but two; she is not one person, but two. The fetus in her womb possesses an equal right to life. The Church thus calls abortion an “unspeakable crime.”²⁹⁹ As a mortal sin, it carries with it the frightful sanction of eternal death, absent repentance. Abortion kills the body of the victim and the soul of the killer, but not the soul of the victim.³⁰⁰ It is true that through repentance and God’s mercy, the delinquent can be granted complete forgiveness and even a renewed life.

2.12.2. The Church on Abortion from the Apostolic Period

A general condemnation of abortion is found in the *Didache* (The Teaching of the Twelve Apostles), an important early Christian text. The *Didache* explicitly declares, ‘thou shalt not murder a child by abortion/destruction.’³⁰¹ The *Epistle of the Pseudo-Barnabas*, another early Church document, condemns all abortion as homicide. The *Epistle of Barnabas*, in its practical section on the *Way of Light*, exactly repeats the words found in the *Didache*’s list of prohibitions.³⁰² Commenting on these documents’ stances on abortion, Michael J Gorman explains:

The significance of these two writings lies both in their firm position on abortion as murder and in their development of an ethical context within which abortion should be viewed. “thou shalt not abort” becomes a sub commandment of the commandment not to murder. It has a status, in this document, almost on par with the Decalogue itself. ... Abortion is presented also as an offense against humanity, a defiance of the second great commandment- “love thy neighbour”- which the Epistle of Barnabas has expanded to say, “more than thyself.” Furthermore, abortion is

²⁹⁷ Jeffrey Reiman, *Abortion and the Ways we Value Human life*. Maryland: Rowman & Littlefield Publishers, 1999, 8.

²⁹⁸ Pope John Paul II, *Homily at the Capitol Mall in Washington, D.C.* quoted in Reiman, Jeffrey, *Abortion and the Ways we Value Human life*, 15.

²⁹⁹ *Gaudium et Spes*, n.51.

³⁰⁰ http://www.catholicsagainstcontraception.com/contraception_vs_abortion.htm (21-03-2013).

³⁰¹ Michael J. Gorman, *Abortion and the Early Church*. Illionis: Inter Varsity Press, 1982, 49.

³⁰² The *Didache* combines a code of Christian morality with a manual of Church life, while the *Epistle of Barnabas* is a more theological tract focusing on Christian life and thought. While both of these texts probably date from the early second century, they most likely drew on Christian sources which had their origins in the late first century.

depicted not only as a sin like sexual immorality, but as an evil no less severe and social in scope than oppression of the poor and needy and no less dishonourable than the use of poisons.³⁰³

In his *Prophetic Eclogues*, Clement of Alexandria quotes an anonymous writer of the mid second century, perhaps a Christian Platonist, who argues that the fetus has a soul and is a living person. His argument is based on the unusual idea that angels place the soul in the womb at the time of conception and the new embryo has a soul immediately.³⁰⁴ In his work *Tutor*, Clement develops one of the main themes of the Christian community, namely that the act of abortion is the killing of human life which is under God's care, design, and providence.

In the late second-century, Athenagoras explicitly gives three important elements in the Christian position on the matter of abortion: 1) abortion is considered murder; 2) the guilty must give account to God; 3) the fetus is a living being, the object of God's care.³⁰⁵

The early regional councils such as the Council of Illiberris (Elvira) in Spain (305) and the Council of Ancyra in Galatia (314) all condemned abortion. The council of Elvira was the first Christian body to enact punishment for abortion. Canon 63 of that council declares the following norms about abortion: "If a woman becomes pregnant by committing adultery, while her husband is absent, and after the act she destroys the child, it is proper to keep her from communion until death, because she has doubled her crime, the former prescribing permanent excommunication, the latter allowing for penance and eventual reconciliation with the sinner."³⁰⁶ The council of Ancyra wrote in canon 21 concerning infanticide and abortion that "Women who prostitute themselves, and who kill the children thus begotten, or who try to destroy them when in their wombs, are by ancient law excommunicated to the end of their lives. We, however, have softened their punishment, and condemned them to the various appointed degrees of penance for ten years."³⁰⁷

³⁰³ Gorman, *Abortion and the Early Church*, 50.

³⁰⁴ Gorman, *Abortion and the Early Church*, 52.

³⁰⁵ Gorman, *Abortion and the Early Church*, 54.

³⁰⁶ Gorman, *Abortion and the Early Church*, 65.

³⁰⁷ Gorman, *Abortion and the Early Church*, 65.

After the period of the Christianization of the Roman Empire under Constantine (c.313 AD), the practice of abortion undoubtedly increased in the Church. According to Epiphanius of Cyprus (315-403), pagan influence was directly responsible for the increased use of contraception by Christians and when that failed, abortion was taken as the next step. During the fourth and fifth centuries, the first ecclesiastical laws against abortion were passed and five major Church fathers – Basil, Jerome, Ambrose, Augustine and Chrysostom – commented on the practice.

The wholesale prohibition of abortion was somewhat moderated under the influence of Augustine (354-430) and Jerome (340-420). Augustine distinguished the abortion of an embryo in *formatus* (a fetus prior to ensoulment) from that of an embryo *formatus* (an ensouled fetus).³⁰⁸ He maintained that the former should be punished by a fine and the latter by death. Jerome thought that abortion was not murder until the fetus has developed into a recognizable human form; he nonetheless regarded abortion, performed at any point, as a grave sin.

Augustine the theologian and Chrysostom the preacher approached abortion from very different perspectives. For Augustine, it was a case of moral and theological ambiguity. For Chrysostom, it was a clear-cut moral evil. Both, however, envisaged the marvellous grace of God in creation and redemption, a vision which compelled each of them to affirm God's care for human life even prior to birth.³⁰⁹ Ambrose of Milan also spoke about abortion. He focused on the common Christian understanding of the care and providence of God in forming the fetus in the womb and on utter disrespect to God expressed through the act of abortion.

Motives for procuring an abortion were no less different in antiquity than they are today. By far, the most frequent reason was to conceal illicit sexual activity. Rich women did not want to share their wealth with lower-class children who were fathered illegitimately. Another reason was to reserve "sex appeal," for many women, especially among the wealthy, did not enjoy the effects that pregnancy had on their physical appearance, and preferred not to "get big and trouble the womb with bouncing babes." As Chrysostom said of prostitutes, they had "a view of drawing

³⁰⁸ Reiman, *Abortion and the Ways we Value Human life*, 20.

³⁰⁹ Gorman, *Abortion and the Early Church*, 73.

more money by being agreeable and an object of longing to lovers.” Both Plato and Aristotle recommended family planning by means of abortion. The decline in population of the Roman Empire at the time of Augustus and after Hadrian was probably due to abortion, performed by both the rich and the poor. The wealthy did not want to share their estates with many offspring, while the poor felt unable to support large families. Justinian’s *Digest* mentions a woman who aborted after a divorce in order not to have a child by the man she had come to loathe. Abortion was also used as a corrective measure to many inefficient means of contraception. Finally, abortions for therapeutic reasons were performed.³¹⁰

2.12.3. The ‘Pro-choice’ and ‘Pro-life’ Movements

Though there are different opinions about abortion, two dominant perspectives shape the thinking of contemporary Christian and non-Christian communities. These have come to be known as the ‘pro-choice’ and ‘pro-life’ movements. The fundamental contention of ‘pro-choice’ advocates is that abortion is a matter of individual conscience and decision. The paramount concern is the woman’s welfare and her right to choose; all other issues are subordinated to this. Ethical or legal attempts to restrict women’s rights are considered unfair. For ‘pro-life’ advocates, abortion is the taking of innocent human life. All other questions are subordinated to the following primary ethical issue: the unborn child’s welfare and right to live. Ethical and legal restrictions of abortion are therefore seen as both right and good.³¹¹

2.12.4. The Reason Underlying the Reservation of the Sin of Abortion

The Church seeks to respect and protect human life from the moment of conception to natural death. This respect for human life urges the Church to introduce norms that prevent the destruction of life, especially by abortion. The Church wants to show the gravity of the sin or crime committed by introducing reserved sins or bestowing the great penalty of major excommunication. *The Catechism of the Catholic Church* explains the concern of the Church about abortion while simultaneously explaining its penalty as follows:

³¹⁰ Gorman, *Abortion and the Early Church*, 15.

³¹¹ Gorman, *Abortion and the Early Church*, 95.

Formal cooperation in an abortion constitutes a grave offense. The Church attaches the canonical penalty of excommunication to this crime against human life... The Church does not thereby intend to restrict the scope of mercy. Rather, she makes clear the gravity of the crime committed, the irreparable harm done to the innocent who is put to death, as well as to the parents and the whole of society (CCC 2272).

The purpose of the Church in reserving absolution is to give the faithful the clear message that by performing abortion, they are committing great offense against life and the will of God. Explaining abortion and the sacrament of penance, John McAreavey elucidates the purpose of the law on abortion as follows: “The canonical angle is also a pastoral one, since the purpose of the Church’s discipline is to protect unborn life and to reconcile with God and the Church those who have had abortions.”³¹² Thus, the Church is also merciful towards the one who has committed this serious sin by granting her absolution and proper guidance to overcome post-abortion trauma.

2.12.5. Penalties for the Violation of the Delict of Abortion

The penalty envisaged for the delict of procuring a completed abortion is same as the penalty for homicide.³¹³ Both homicide and abortion are included in one canon to show that abortion is of the same category and also as serious as homicide. The act referred to in this canon is that of completed abortion. An attempted offense is not punishable for it must be certain that an abortion has been committed to impose penalties, according to the canon. Procuring an abortion means to effectively perform or cooperate in the performance of the act. Eastern canon 1450 §2 specifies a penalty of a *ferendae sententiae* major excommunication. Since abortion is not a reserved penal delict, as in the case of all ordinary penal delicts, it is the local hierarch who possesses the ordinary power of governance to conduct the penal trial. If the penal sanction has been imposed, it is the eparchial bishop who has the power to remit the penalty by virtue of CCEO c.1420.³¹⁴ A procured abortion is a reserved sin according

³¹² John McAreavey, “Abortion and the Sacrament of Penance.” *The Furrow*, vol. 44, No. 4, 1993, 230.

³¹³ CCEO c.1450 §1 – A person who has committed a homicide, is to be punished with a major excommunication; a cleric is to be punished in addition with other penalties, not excluding deposition. §2 A person who has procured a completed abortion is to be punished in the same manner with due regard for can.728 §2.

³¹⁴ Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 115.

to canon 728 §2; the same act is furthermore a delict that can be punished by major excommunication.

2.12.6. The Manner of Absolution in Ordinary Situations

The reservation of faculty to the Eparchial Bishop means that an ordinary confessor does not possess faculty to absolve the sin of abortion. The confessor must either arrange for the penitent to receive absolution directly from the Eparchial Bishop in the internal forum or request the penitent to return to the confessor at a later time to obtain faculty from the Eparchial Bishop. If there is no danger whatsoever that the superior from whom the faculties are sought will come to know about the identity of the penitent involved in the case, the confessor does not need the penitent's permission to seek such faculties. In cases of reserved sins, as distinguished from reserved censures, the reservation ceases if there is a danger that the petition for faculties might result in revealing the identity of the penitent (c.729, 2°). Under such circumstances, it is not required to seek additional faculties.³¹⁵

Since instances of abortions are numerous in today's world, bishop in certain eparchies grants the faculty to all protopresbyters³¹⁶ or to all pastors or to all confessors in a retreat centre. It depends on the eparchial bishops to decide to whom the faculty to absolve the sin by special grant should be given. This creates ample opportunities for the faithful to secure absolution for the sin of abortion. An alternative approach has been adopted by many Bishops due to pastoral concern. For example, the Bishop of Kalyan, the Syro-Malabar diocese in Mumbai, India, has granted to those priests working in the diocese the faculty to give absolution for abortion without recourse to him. Every priest who receives an office by canonical provision in the diocese obtains this faculty.

2.13. Occasions in Which Reservation Lacks Force (c.729)

The common law identifies certain exceptions to the reservation of sins. CCEO canon 729 provides that any reservation of the absolution from sin lacks all force in certain

³¹⁵ Roos, *The Seal of Confession*, 70-71.

³¹⁶ The protopresbyter is a presbyter who is placed in charge of a district consisting of several parishes to discharge the functions determined by law in the name of the eparchial bishop.. Cf. CCEO c.276.

situations. As detailed above, an expert study group decided to introduce canon 58 *bis* into the 1980 Schema's section on penance which contained the drafts of CCEO canons 727 and 728. However, that canon did not refer to a norm which could establish when such reservation lacked force. A norm similar to CCEO canon 729, which had been expressed in the present abrogated CIC 1917 canon 900, was also formulated by the previous Eastern Code Commission, but never promulgated. The initial draft of CCEO canon 729, which actually resembled CIC 1917 canon 900, first appeared as SCICO canon 724. In number 2 of the draft, there was a clause that foresaw that a reservation would lack all force if 'the competent authority denied the requested faculty to absolve.' During a review of the 1986 SCICO, a member of PCCICOR proposed that this clause be omitted since such a request is always granted.³¹⁷ The proposal, together with the positive response of the *Coetus de expensione observationum*, stated that "The clause *auctoritas competens petitam absolventi facultatem denegavit* ought to be omitted, since the competent authority always grants the faculty *si debite petitur*."³¹⁸

The Eastern Code commission had always been conscientious about maintaining the medicinal character of the Eastern Code. This is well manifested in the formation of canon 729:

Response: It is accepted and to be noted that this seems congruent with the Eastern discipline that allows for the deferral of the absolution of sins for medicinal reasons (compare can. 727 [now CCEO c.732 §1] with CIC c. 980). Therefore, number 2 of the canon begins as follows: *si prudenti confessorii iudicio absolvendi facultas ab auctoritate competenti...*etc.³¹⁹

In the redactional changes made before the second plenary assembly of PCCICOR, the wording *prudenti confessorii iudicio* (judgement of a prudent confessor) was changed to *de prudenti iudicio confessori* (in the prudent judgement of the confessor). No further amendments were made to SCICO canon 724 before it was promulgated as CCEO canon 729.³²⁰

³¹⁷ Job Abbass, "Penance: A Comparative Study of the Eastern and Latin Codes." *Studia Canonica* 45, (2011) 293-328, 305.

³¹⁸ *Nuntia* 28 (1989) 98.

³¹⁹ *Nuntia* 28 (1989) 98.

³²⁰ Abbass, "Penance: A Comparative Study of the Eastern and Latin Codes," 305.

2.13.1. Sick Person (c.729, 1°)

When a sick person, who cannot leave home, makes a confession, the reservations lack force.³²¹ Whether the sin is reserved to the Apostolic See or to the Eparchial bishop, the reservation of faculty is not active with the priest who hears the confession of such a sick person. But it must be remembered that the reservation of the faculty to absolve a sin of absolution of an accomplice lacks force only in danger of death situations (Ref. CCEO c.730).

2.13.2. Spouses before Marriage (c.729, 1°)

A second situation in which reservations lack force is when a spouse who is engaged and about to celebrate marriage makes a confession in preparation to marriage. The canon stresses on this point that the confession is made in view of marriage. During the marriage preparation course conducted by a diocese, the faculty to absolve reserved sins is generally given to the confessors.

2.13.3. Grave Inconvenience to the Penitent (c.729, 2°)

The canon states that “In the prudent judgment of the confessor, the faculty cannot be requested from the competent authority without grave inconvenience to the penitent...” This situation foresees two distinct possibilities in the ‘prudent judgment’ of the confessor. The first possibility exists when there is a grave inconvenience to the penitent. Grave inconvenience to the penitent includes situations in which the penitent is bedridden or seriously ill and cannot travel to the authority to whom the sins are reserved or whose condition may worsen before recourse can be made to a competent authority or who cannot or ought not remain in the state of sin while recourse is pending.

2.13.4. Danger of Violating the Sacramental Seal (c.729, 2°)

There is a second situation in which the confessor, with his prudent judgement, can decide whether or not acquire the faculty: “In the prudent judgment of the confessor, the faculty cannot be requested from the competent authority ... without danger of violation of the sacramental seal.” The danger of violating the sacramental seal could

³²¹ Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 116.

exist when using a messenger, sending a telegram, fax message or e-mail to obtain the faculty from the competent authority, or in any other circumstances that could betray the identity of the penitent and the nature of the sin.³²² As per law, when a penitent or confessor requests the faculty to absolve from a higher authority, the identity of the penitent is shielded. The request is made without mentioning the name or any other identifying information about the penitent. But it is possible that even when the petition is made without such identity, the superior authority may infer the identity by the aforementioned means. During such occasions, the confessor, with his prudent judgement, can give absolution without going to the higher authority to acquiring faculty.

2.13.5. Outside the Territorial Boundary of the Authority who Makes Reservation (c.729, 3°)

There is another situation when reserved sins under a particular law lack force. This canon merely means that the reservation of sins has no force outside the proper territory of the authority that enacted the law reserving the sin.³²³ For instance, if the Synod of Bishops of the Syro-Malabar Church enacted a particular law reserving the sin of pedophilia to the Major Archbishop, this reservation would not be in effect outside the proper territory of the Syro-Malabar Major Archiepiscopal Church. All these exceptions by the canon are justified by the salvation of souls and the ‘medicinal’ concept underlying the institution of the reservation of the absolution of sins.³²⁴

2.14. Reservation Lacks all Force in Danger of Death (c.725)

While conducting a study on reserved sins, there was a canon on the danger of death situation that cannot be omitted from this study. The canon that deals with the danger of death is an exception in general: “In a danger of death situation, any priest, even if he has no confessional faculty, may validly and licitly absolve all sins no matter how reserved its nature be, even if an approved confessor is present” (c.725). It should be also noted that *ex parte paenitentis*, a penalty like major or minor excommunication

³²² Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 116.

³²³ Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 116.

³²⁴ Nedungatt, *A Guide to the Eastern Code*, 525.

prohibiting the reception of the sacraments, is *suspended* for as long as the person is in danger of death: “If the penalty forbids the reception of sacraments or sacramentals, the prohibition is suspended while the guilty party is in danger of death” (c.1435 §1). Thus even if the remission of the penalty is not sought, the dying penitent would still be absolved of his sins. If the person recovers, he is still bound by the prohibition until the remission is sought.³²⁵

The reason to grant such a faculty in the case of danger of death situation is based on the supreme law of *salus animarum*. Thus, the Code focuses on this aim and dedicates itself to facilitating the salvation of the penitent. According to present norms, in danger of death, all priests are granted the penitential faculty necessary to validly and lawfully absolve any penitent from any sins.

The terms and scope of the canon can be explained in a more practical way. The minister could be all priests who have validly received the sacrament of orders. No matter what the canonical status or situation, i.e. even if the faculty is not possessed, or the clerical state is lost or under suspension, interdiction or excommunication, when a priest with valid ordination administers the sacrament of penance in circumstances involving the risk of death, the absolution granted is valid. “If the penalty forbids the administration of sacraments or sacramentals or the placing of an act of governance, the prohibition is suspended whenever this is necessary to provide for the needs of the Christian faithful who are in danger of death” (c.1435 §2). Even a non-Catholic priest (c.671 §2) who has been validly ordained can administer the sacrament in such a situation.

It is to be noted that the norm does not state *in articulo mortis* but rather uses the term *in periculo mortis*. Thus, it does not require that death be imminent; it is sufficient that there is a positive and probable danger of death. Absolution is possible from any reserved sins without any limitation or restriction.³²⁶ It is important to note that even the sin of complicity can be absolved. All penitents, whether Catholic or not, who have validly received baptism and have some belief in the sacrament of penance, can receive absolution.

³²⁵ Alex Stenson, “Penalties in the New Code: The Role of the Confessor.” *The Jurist* 43 (1983) 12.

³²⁶ Marzoa, *Exegetical Commentary*, vol. III, 796.

The final clause of the canon is very important: ‘even if a priest is present who has the faculty.’ The Code respects the liberty of all penitents to choose a confessor. Even in the case of an accomplice, the absolution of a partner is possible, even if another priest with faculty is present on the occasion. In danger of death, the freedom of the person is respected and the Code foresees no danger of sacramental abuse on such occasion. Therefore, in the current discipline, the faculty of all priests regarding all penitents in danger of death situation and all sins is absolute, total, valid and lawful.³²⁷

Conclusion

This chapter has examined the norms on reserved sins contained in the *Codex Canonum Ecclesiarum Orientalium*. The canons on the sacrament of penance in the present Eastern Code were not thoroughly surveyed as to do so is not the aim of the present work. After explaining the theology of the sacrament of penance expressed in the Eastern Code, the role of the minister in the sacrament of penance was briefly analyzed. The study affirms that to be a confessor, one must not only possess the power of order but also the faculty to absolve. The system of faculty is the hierarchical authorization given to a minister of the sacrament to administer it to a person or a group of persons in the Church. Indeed, it is trying to regulate the sanctifying power given to a minister in the ordination for the betterment of the whole community and for the good of the sacrament itself. In the Eastern Code, this faculty is regulated by reserving the absolution of sins to the higher authorities, i.e. to the Apostolic See or the Eparchial bishops. Particular Churches have the right to promulgate norms, if ever they require further reservation of sins which are not already reserved by law itself. But this should be done by fulfilling the requirements of the Law.

During the codification process, the experts suggested to retain the reserved sins and to avoid the *latae sententiae* penalties in the Eastern Code. The code commission, in harmony with the Second Vatican Council, adhered to the spirit of the Eastern Churches by avoiding automatic penalties (*latae sententiae*) and kept the system of reserved sins, in order to highlight the gravity of certain sins.

³²⁷ Marzoa, *Exegetical Commentary*, vol. III, 797.

Two sins, namely the sacramental seal and the absolution of an accomplice in a sin against chastity, are reserved to the Apostolic See and the sin of procuring a complete abortion is reserved to the eparchial bishop. These three sins, which are reserved by law itself are studied in detail along with an interpretation of norms. The Code envisages certain occasions when all reservations would lack force, especially in danger of death situations, in which the only concern should be the salvation of the soul. The Code is more concerned about the faithful and mentions certain occasions when these reservations lack force, like in the case of a sick person who cannot leave home, when there is danger of the violation of the seal, when spouses make confession in view of marriage and at the prudent judgement of the confessor if the faculty cannot be requested from a competent authority without grave inconvenience to the penitent. The whole system of reserved sins has been omitted from the present *Code of Canon Law* (CIC), and thus further research on the Latin Code is required to discern parallels between these systems and their conceptions of the manner of absolving these sins.

CHAPTER III

RESERVED SINS AND CORRESPONDING CANONICAL SYSTEMS IN CIC 1917 AND CIC 1983

Introduction

Having discussed in detail the system of reserved sins in the Code of Canons of the Eastern Churches (CCEO) it is now necessary to study the systems parallel to this in the Code of Canon Law (CIC). The intention of this chapter is to explain in detail the reservation of sins in the Latin Church. Both CIC 1917 and the current legislation CIC 1983 are examined. As it is clear that there is no directly reserved sin in the present Code, it is exigent to go to the 1917 Code to understand the system that existed before CIC 1983.

This chapter consists of two sections. The first deals with the Code of Canon Law of 1917 and the reserved sins contained there; the second deals with the present Code of Canon Law and its parallel legal system in relation to the reserved sins in the Code of Canons of the Eastern Churches.

3.1. Reserved Sins in CIC 1917

The Code of Canon Law promulgated on 27 May 1917 was the first comprehensive codification of laws in the Catholic Church, though it was specifically for Latin Catholics. Pope St. Pius X had ordered the creation of a single volume of clearly stated laws on March 19, 1904 by his Motu Proprio “*Arduum sane munus*.” But the codification of Canon Law was completed under Pope Benedict XV and it was he who promulgated the Code. The work having been begun by Pius X and promulgated by Benedict XV, it is sometimes called the “Pio-Benedictine Code,” but more often the CIC 1917.³²⁸ This Code was in force till being replaced by the new Code of Canon Law of 1983.

³²⁸ Pope Benedict XV, *Codex Iuris Canonici*. Pii X Pontificis Maximi Issu Digestus Benedicti Pape XV Auctoritate Promulgatus. AAS 9 pars II (1917) 5-521; Quoted from Edward N. Peters, *The 1917 Pio-Benedictine Code of Canon Law*, English Translation with Extensive Scholarly Apparatus, San Francisco: Ignatius, 2001.

The first Code of Canon Law had separate canons on reserved sins in the same way as is given in the Eastern Code. This part of reserved sins was given in the section where the canons on the sacrament of penance are treated. The chapter on *reservationem peccatorum* in CIC 1917 includes canons 893 to 900.³²⁹ The title ‘reserved sin’ in CIC 1917 deals only with sins which are themselves *ratione sui* reserved and excludes the censures. The canons on the censures are avoided in this section of CIC 1917 and are dealt with in the part on penalties. Therefore, the canons which immediately follow canon 893 refer, generally, only to reserved sins. They refer to reserved censures only when the latter are expressly mentioned or included by the nature of the case. The general norms governing reserved censures and sins reserved *ratione censurae* are dealt with in canons 2246 to 2254 of CIC 1917.³³⁰

The eight canons in CIC 1917 explain the different aspects of the reserved sins *ratione sui*. It is good to state briefly what these canons speak about before examining them in detail: canon 893 describes a reserved case and determines who possesses the power to establish reservations; canon 894 indicates the only sin reserved *ratione sui* to the Apostolic See; canon 895 outlines the procedure to be observed by Local Ordinaries when establishing reservations, and canon 896 outlines the procedure to be observed by religious superiors for creating reservations; canon 897 states in a positive way the type of sins that may be reserved; canon 898 states the same in a negative way; canon 899 states the obligation of the Ordinaries after making reservations and determines to whom faculties to absolve from Episcopal reservations should be granted or are granted *ipso iure*; and finally canon 900 indicates when the reservation of sin ceases.

3.1.1. Definition of Reserved Sins in CIC 1917

The first canon in the chapter on the reservation of sins, canon 893, gives a definition of reserved cases. It reads:

§1. Whoever by ordinary law can grant the power to hear confessions or to pass censures can also, excepting the Vicar Capitulary and the Vicar General without a

³²⁹ E. Jombart, “Confesseur,” in R. Naz, (ed), *Dictionnaire de Droit Canonique*, vol 4. Paris, Librairie Letouzey et Ané, 1949, 23; «Sous ce titre « péché réservés » nous ne traiterons que des péchés réservés en eux-mêmes, *ratione sui*, et non des censures, qui seront examinées à part. Ce sera suivre le code: dans le chapitre *de reservationem peccatorum*, can 893-900, il évite de parler de la réserve des censures, pour laquelle il renvoie aux canons 2246, 2247».

³³⁰ Dargin, *Reserved Cases According to The Code of Canon Law*, 6.

special mandate, call other cases to himself for judgement, limiting for inferiors the power of absolving.

§2. This calling (of cases to oneself) is called reservation of cases.

§3. As for what applies to the reservation of censures, the prescription of Canons 2246-2247 is observed.³³¹

According to the canon 893, the reservation of sins is primarily a limitation of the faculty of ordinary confessors, referring cases of such sins to their own competence. The superior, i.e. the Ordinary or the Apostolic See, removes the power to absolve from the inferior and makes such an absolution by the inferior not only illicit but invalid.³³² These reservations cannot be done by the Vicar General or Vicar Capitulary.³³³ They could make reservation provided they have received the mandate to do so from the Bishop. So, by reserved sins is to be understood those sins whose absolution has been reserved by an ecclesiastical Superior.³³⁴ In other words, the reservation is accomplished by a limitation of the confessor's faculty to give absolution to a penitent in reference to the sin under consideration (c.893 §1, 2).

The reserved sin has force only in the territory of the Superior who promulgates the law. It is not a question of the place of the penitent or of where he has committed the sin, but of where he seeks the absolution of the sin.³³⁵ For example, if a particular sin is reserved in one's own diocese, the penitent can go to another diocese where there is a possibility for the sin to be absolved.

³³¹ Edward N. Peters, *The 1917 Pio-Benedictine Code of Canon Law*; "*Qui ordinario iure possunt audiendi confessiones potestatem concedere aut ferre censuras, possunt quoque, excepto Vicario Capitulari et Vicario Generali sine mandato speciali, nonnullos casus ad suum advocare iudicium, inferioribus absolvendi potestatem limitantes.*"

³³² Jombart, "Confesseur," in R. Naz, (ed.), *Dictionnaire de Droit Canonique*, vol. 4, 24; D'après le canon 893, la réserve des péchés est avant tout une limitation de la juridiction des simples confesseurs (et parfois même des évêques): en évoquant à son propre tribunal telle espèce de péchés, le supérieur (Saint Siège ou Ordinaire) ôte à ses inférieurs le pouvoir d'en absoudre; il rend une telle absolution non seulement illicite mais invalide.

³³³ "On nomme vicaire capitulaire, le prêtre élu par le chapitre cathédral pour administrer le diocèse, soit que le siège épiscopal se trouve vacant, soit que l'évêque en charge se trouve empêché d'exercer sa juridiction, au moins par correspondance". cf. Naz, (ed.), *Dictionnaire de Droit Canonique*, vol. 7, 1488 ; cf. CIC 1917 c.427.

³³⁴ J. Simon, *Faculties of Pastors and Confessors*. New York: Joseph F. Wagner, Inc., 1922, 21.

³³⁵ Jombart, "Confesseur," in R. Naz, (ed.), *Dictionnaire de Droit Canonique*, vol. 4, 24.

3.1.2. The Purpose of Reservation

The reservation of sin is not intended to punish the delinquent but rather is of a more disciplinary and medicinal character. The Code gives ample evidence that the primary purpose of reservation is not to punish the delinquent but to bring more serious cases before those best qualified to give them the judgement and prudent consideration they require.³³⁶ The system of reserved sin affects the confessor directly by taking away his faculty to absolve the sin under reservation. So, in effect the reservation affects the penitent only indirectly. The purpose of such reservation is to give more seriousness to the absolution of certain grave sins. The penitent is made aware that the sin he has committed is grave and serious in the sight of the Church and that he needs to take special care and attention to avoid those sins.

3.1.3. The Effect of the Ignorance on Reservation

It was a serious question whether ignorance of a reservation excuses one from the reservation. If the purpose of reservation is disciplinary, ignorance of the reservation does not excuse one from it. The person's ignorance that his sin needs the judgement and consideration of an expert confessor does not take away that need, because it is independent of the penitent's ignorance and arises from the serious character of the sin. But it is clearly stated in the Code that the Ordinaries should publish reserved sins by appropriate means of communication to the faithful (c.899). So the faithful also have a duty to know the norms and regulations of their life in the Church.

In the case of censures or other penalties, the purpose of reservation is penal and thus ignorance of the reservation does excuse it, for it is unjust to punish a delinquent with a penalty he in no way expected.³³⁷ However, in the case of reserved sin, the ignorance of reservation does not excuse one from it unless the superior has indicated that his object in imposing the reservation is to punish the delinquent or expressly states that knowledge of the reservation is required in order to be affected by it.³³⁸

³³⁶ Jombart, "Confesseur," in R. Naz, (ed.), *Dictionnaire de Droit Canonique*, vol. 4, 25.

³³⁷ Dargin, *Reserved Cases According to the Code of Canon Law*, 13.

³³⁸ Jombart, "Confesseur," in R. Naz, (ed.), *Dictionnaire de Droit Canonique*, vol. 4, 25.

3.1.4. The Authority that can Reserve the Sin (CIC 1917 c.893 §1)

Canon 893 §1 identifies the authority that can reserve sins to itself for their absolution. The general rule is that a person who by ordinary power can grant the faculty to hear confessions can also reserve sins. Ordinary power signifies the power attached by law to an office to grant jurisdiction³³⁹ (faculty) to hear confession. Persons with ordinary power in the places where confessions are heard are the Ordinaries. Canon 198 of CIC 1917 provides a list of the Ordinaries:

§1. In law by the name of Ordinaries are understood, unless they are expressly excepted, in addition to the Roman Pontiff, a residential Bishop in his own territory, an Abbot or Prelate of no one and his Vicar General Administrator, Vicar or Prefect Apostolic and likewise those who, in the absence of above-mentioned, temporarily take their place in governance by prescript of law or by approved constitution and, for their subjects, major Superiors of exempt clerical religious [institute].

§2. By the name of Local Ordinaries come all those just mentioned with the exception of religious Superiors.

In canon 893, two exceptions are given: namely the Vicar Capitulary and the Vicar General, neither of whom can reserve sins. But this could be possible once they are given a special mandate to reserve sins by the Superior authority (c.893 §1). Yet another exception to the persons on the above list with ordinary power who cannot reserve sins are the major superiors of the religious congregations and monasteries other than the Superior General of an exempt clerical religious institute or Abbot of an independent monastery. In other words, canon 896 restricts the power to reserve sins only to the Superior General of the exempt clerical religious institutes and to the Abbot of an independent monastery.

Precisely, the list of the persons with Ordinary power who can reserve sins according to the CIC 1917 are the following: the Pope for the whole Church, the residential Bishop, Prelate Nullius,³⁴⁰ the Apostolic Administrator, the Vicar and Prefect Apostolic, in their respective territories and, in exempt clerical orders, the Superior General and Abbot of an independent monastery, for their respective subjects. The

³³⁹ The term jurisdiction is used, as this was the term used in CIC 1917 in place of faculty in the context of confession.

³⁴⁰ A *prelate nullius* is usually a titular bishop, who has jurisdiction over a territory not in a diocese but subject directly to the Apostolic See. The rights of prelates nullius are quasi-Episcopal and these dignitaries are supposed to have any power that a bishop has, unless it is expressly denied to them by canonical law.

provincial council of bishops can reserve sins for the territory they represent.³⁴¹ It is now certain that a pastor cannot reserve sins because he cannot, by ordinary power, grant jurisdiction to others to hear confession.

3.1.4.1. Papal Reservation (CIC 1917 c.894)

Reserved sins in CIC 1917 are divided into Papal, Episcopal and those of Regular organizations according to the author of the reservation. Canon 894 states concerning the Papal reservation: “The only sin reserved to the Holy See by reason what it is, is false denunciation by which an innocent priest is accused of the crime of solicitation, before ecclesiastical judges.”³⁴² Thus there is only one sin reserved to the Holy See *ratione sui* according to CIC 1917, i.e. falsely accusing an innocent priest before an ecclesiastical judge of the crime of solicitation.³⁴³ The term *ratione sui* in this canon indicates that it is the sin which is directly and immediately reserved.

The sin reserved in the canon is false denunciation (*falsa delatio*) and consequently, to incur the reservation, the accusation must be false according to the conscience of the delinquent and must be truly calumnious. To have the effect of such a reserved sin, the false accusation must satisfy all the legal requirements for a real denunciation. It must be addressed to the Ordinary of the place or to the Apostolic See and confirmed in the manner prescribed by them so that it should lead to a procedure against the accused priest.³⁴⁴ Anonymous accusations are not to be considered. False accusations could be made against any priest, not necessarily against a confessor as the canon does not speak about it, but the accusation of solicitation must be related to the context of confession.³⁴⁵ This sin is at the same time conjoined to an excommunication reserved to the Pope *speciali modo* (CIC 1917 c.2363), and consequently it is also reserved *ratione censurae*.³⁴⁶

³⁴¹ Dargin, *Reserved Cases According to The Code of Canon Law*, 19.

³⁴² *The 1917 Pio-Benedictine Code of Canon Law*, 316: « *Unicum ratione sui reservatum Sanctae Sedi est falsa delatio, qua sacerdos innocens accusatur de crimine sollicitationis apud iudices ecclesiasticos* ».

³⁴³ Simon, *Faculties of Pastors and Confessors*, 21.

³⁴⁴ R. Naz, *Traité de Droit Canonique*, vol. I. Paris: Lettouzey et Ané, 1947, 166.

³⁴⁵ Abbass, “Penance: A Comparative Study of the Eastern and Latin Codes,” 299.

³⁴⁶ Solicitation is not a reserved sin *ratione sui* in either the CCEO or CIC 1983.

3.1.4.2. Reservation by Local Ordinaries

According to Canon 895, the Local Ordinaries may reserve certain sins if they find it necessary and beneficial for the faithful.

c.895: Local Ordinaries are not to reserve sins to themselves unless, having discussed the matter in the diocesan synod, or outside of Synod having heard the Cathedral Chapter and some of the more prudent and proven (ones) among those in the diocese having care of souls, the reservation seems truly necessary or is shown to be useful.³⁴⁷

The canon includes no specific *ratione sui* reservation to the Local Ordinaries. It is left to the discretion of the Local Ordinaries to decide according to the norms set forth by the universal law. To do this, they are to follow one of the two alternatives prescribed in the Code, i.e. either discuss the matter in diocesan synod or consult the Cathedral Chapter and some of the more prudent and qualified priests of the diocese. The Ordinary is free to select either of these two methods. Reservation by Local Ordinaries is also binding upon persons without a definite domicile or travellers and strangers who happen to be within the territory.³⁴⁸

After the promulgation of the 1917 Code, many diocesan bishops used this provision. In some dioceses in the United States, for example, they reserved the sin of sending children to a non-Catholic school without the permission of the Local Ordinary. This sin is no longer to be considered reserved once the penitent withdraws the child from the non-Catholic school or seriously promises either to withdraw the child or to obtain the requisite permission.³⁴⁹ Another example of sin reserved to the Bishop occurred in the diocese of Trenton in 1946, concerning the sin of attempted civil divorce without proper permission from the Church. This reservation was based on the Third Plenary Council of Baltimore, which states, “With reference to all those who are bound in matrimony, we command that they do not have recourse to civil tribunals for the purpose of obtaining a separation from bed and board. Should anyone attempt this, let

³⁴⁷ *The 1917 Pio-Benedictine Code of Canon Law*, 316: *Locorum Ordinarii peccata ne reservent, nisi, re in Synodo diocesana discussa, vel extra Synodum auditis Capitulo cathedrali et aliquot ex prudentioribus ac probatioribus suae dioecesis animarum curatoribus, vera reservationis necessitas aut utilitas comprobata fuerit.*

³⁴⁸ Naz, *Traité de Droit Canonique*, vol. I, 167-168.

³⁴⁹ Joseph M. Snee, “Diocesan Censures *latae sententiae* and Reserved Sins in the United States.” *Theological Studies*, (1950) 365-403, 366.

it be known that thereby he or she incurs grave guilt and can be punished according to the judgment of the Bishop.”³⁵⁰

3.1.4.3. Reservations of Regular Organizations (Religious Superiors)

Besides the Pope and Local Ordinaries, the Superior General of an exempt clerical organization and Abbot of an autonomous monastery may reserve sins affecting the souls under their care (cc.893 §1, 896).³⁵¹ Canon 896 states:

Among religious Superiors of clerical exempt [institutes] only the superior general or, in monasteries of their own right, the Abbot, with the [support] of his own Council, can reserve the sins of his subjects as above with due regard for the prescription of Canon 518 §1 and 519.³⁵²

It has been noted already that not all major superiors but only the Superior General in exempt clerical religious congregations and the Abbot of an independent monastery can legislate on reserved sins. These superiors are obliged to do so with the support of their respective Councils. The subjects of a religious superior include not only the novices and professed members of the community, but also all others who live in the religious house day and night, such as students, servants or visitors.³⁵³

The clause in canon 896 referring to the canons 518 §1 and 519, effectively reduces the force of reservation in a religious community. Canon 518 prescribes that in every clerical order or congregation confessors should be appointed for each house, with the power, if there is question of exempt religious, to absolve from the cases reserved by the religious superior. Canon 519 allows a religious, for the peace of his conscience, to go for confession to a priest who is not specifically designated to hear confessions in the religious house but has been approved by the Local Ordinary, and this priest can absolve from sins and censures reserved by the religious superior. Therefore, these two canons in a way reduce the force of the reserved sin in a religious house.

³⁵⁰ Snee, “Diocesan censures *latae sententiae* and reserved sins in the United States”, 384.

³⁵¹ Simon, *Faculties of Pastors and Confessors*, 20.

³⁵² *The 1917 Pio-Benedictine Code of Canon Law*, 316: *Inter Superiores religionis clericalis exemptae unus Superior generalis, et in monasteriis sui iuris Abbas, cum proprio cuiusque Consilio, peccata, ut supra, subditorum reservare possunt, firmo praescripto canon 518, §1, 519.*

³⁵³ Dargin, *Reserved Cases According to the Code of Canon Law*, 22.

3.1.5. Norms to Be Kept by the Ordinaries for the Reservation

The Code put forward certain norms to be kept by the Ordinaries who legislate new reserved sin in their own respective territory. Canon 897 states:

Cases of reservation should be very few, namely three, or at most four, of the gravest and most atrocious external crimes specially determined; and the reservation should remain in force for no more than is necessary for the public extraction of some ingrown evil and the restoration of a perhaps collapsed Christian discipline.³⁵⁴

Based on the canon, the following points are to be observed by an Ordinary for the promulgation of reserved sins.

3.1.5.1. Consultation with Respective Bodies

First of all, Ordinaries should observe the general laws of reservation. This should be in conformity with the prescriptions of canons 894-899, that the new reserved sins are to be created in their own respective areas. The Ordinaries should consult with the two bodies mentioned above, i.e. the Diocesan Synod or Cathedral Chapter and a prudent and known pastor, before reserving any sin.³⁵⁵

3.1.5.2. The Limited Number of Sins to be Reserved

The Code incorporates legislation on both the number and quality of the sins which may be reserved. Since it is always envisaged that the reserved sins be as few as possible, the law expressly determines that the maximum number of the reservation by these ordinaries should not exceed four. This applies not only to the reservation by the Ordinaries but also to that by the Abbots and Superiors General, because the canon in general is meant for both.³⁵⁶

The question is raised: if a Local Ordinary or Religious Superior reserves more than four sins, are the added reservations valid? They indeed might be ‘valid’, because the

³⁵⁴ *The 1917 Pio-Benedictine Code of Canon Law*, 316: *Casus reservandi sint pauci omnino, tres scilicet vel, ad summum, quatuor ex gravioribus tantum et atrocioribus criminibus externis specificè determinatis; ipsa vero reservatio ne ultra in vigore maneat, quam necesse sit ad publicum aliquod inolitum vitium exstirpandum et collapsam forte christianam disciplinam instaurandam.*

³⁵⁵ See the point concerning reservation by Ordinaries on page 127, above.

³⁵⁶ Naz, *Traité de Droit Canonique*, vol. I, 168.

canon contains no express or equivalent invalidating clause. If they reserve more than four sins, therefore, they would be acting validly but illicitly.³⁵⁷

3.1.5.3. Only Very Grave Sins are to be Reserved

The sins thus reserved must be particularly grave offenses and clearly determined in their ultimate species. The sin must be mortal by reason both of its matter and malice.

These can be both public and private sins. But sins that create serious public scandals to the other faithful are to be considered for the reservation.

3.1.5.4. For the Good of the Faithful

Reservations should be made by the Ordinary only when they appear to be called for by necessity or utility. The reservation is not a means to punish the faithful but is for the good of the faithful. The promulgating authority should examine and evaluate the necessity of the reservation, especially in the case of offences that cause scandal and serious setback to the faithful.

3.1.5.5. The Sin Reserved should be External

In order to be affected by the reservation, the sin must be grave as well as external. If the external act is only objectively a venial sin, even if the person had a grave malice inside, no reservation would be incurred.³⁵⁸ For example, if the murder of a bishop is a reserved sin and a person who attempted to kill him only succeeded in striking him lightly, this person's act would not come under reservation. Though he had internal grave malice, it did not become an external reality. The Church has always opposed the reservation of internal sins, as this might even be contrary to the purpose of reservation.

3.1.5.6. The Prohibition on Reserving a Sin Already Reserved

Ordinaries should refrain from reserving to themselves sins which have already been reserved by the Apostolic See, though reserved *ratione censurae*.³⁵⁹ Canon 898 states this prohibition as follows, "Everyone should entirely stay away from reserving sins to

³⁵⁷ Dargin, *Reserved Cases According to the Code of Canon Law*, 24.

³⁵⁸ Naz, *Traité de Droit Canonique*, vol. I, 169.

³⁵⁹ Dargin, *Reserved Cases according to the Code of Canon Law*, 26.

himself that are already reserved to the Apostolic See by reason of censure, and [likewise] normally from [reserving] those to which a censure, even though not reserved, is imposed by law.”³⁶⁰ Sins already joined by general law with some reserved or non-reserved censures are not within the power of Ordinaries to reserve. Therefore Ordinaries should take care to avoid such legal confrontations.

3.1.5.7. Ordinaries Should Publish Reserved Sins

Reserved sins are to be brought to the knowledge of the faithful in a suitable manner. Canon 899 §1 requires that: “When they have decided on reservations that truly seem necessary or useful, Local Ordinaries shall take care to give notice of these to their subjects in whatever way seems best to them, and conduct things so that the faculty of absolving from reserved sins is not given out everywhere.”³⁶¹

Pastors and confessors are obliged to remain informed of these special reservations with which they may have to deal.³⁶² It is sure that people are often unaware of the reservation and the way in which they could receive absolution. After promulgating reservations, Ordinaries should uphold these reservations. The Ordinaries should not too freely and indiscriminately grant the faculty to absolve without communicating about the reservation in a clear and adequate way.

3.1.6. Directly or Indirectly Reserved Sins

Reserved sins are divided into those with and those without censure, according to the fact that the reserved sin is at the same time connected with a censure impending *ipso facto* or not. Reservation of a sin without censure is called simple reservation or a directly reserved sin. Indirectly reserved sins are those which are indirectly reserved due to the reserved censure attached to them. There are also cases where both sin and censure are reserved. The concern of the present study is mainly the simple or directly reserved sin. In CIC 1983, there are no simple or directly reserved sins, whereas in CIC 1917, both directly and indirectly reserved sins are included. As noted above,

³⁶⁰ *The 1917 Pio-Benedictine Code of Canon Law* 317: *Prossus ab iis peccatis sibi reservandis omnes abstineant quae iam sint Sedi Apostolicae etiam ratione censurae reservata, et regulariter ab iis quoque quibus censura, etsi nemini reservata, a iure imposita sit.*

³⁶¹ *The 1917 Pio-Benedictine Code of Canon Law*, 317.

³⁶² Simon, *Faculties of Pastors and Confessors*, 22.

both reserved sins and censures are treated, though in different areas of the code. Simple or directly reserved sins are treated in canons on the sacrament of penance, in a chapter on the different norm on the reservation (cc.893-900). Indirectly reserved or reserved censures are treated in section II of the fifth book of the Code (2245-2254).

One of the better explanations of the system of direct and indirect reservation of sin is found in the work of Edward Vincent Dargin:

Suppose the censure is one which not only impedes the reception of the sacraments but is also reserved, what is its effect on absolution from the connected sin? In this case the sin to which the reserved censure is connected is also reserved and consequently a reserved censure which impedes the reception of the sacraments, not only impedes the licit, but also the valid absolution of the sin to which it attached. In other words, there is really a twofold reservation in this case, one of the censure, the other of the sin; the censure is directly reserved, the sin to which it is attached is indirectly reserved and is therefore said to be reserved *ratione censurae*, in contradiction to a sin which is directly reserved *ratione sui*.³⁶³

According to Dargin, then, there is an indirect reserved sin hidden in every reserved censure. Though he says here that there is a twofold reservation, in fact there is only one reservation which might appear as a reservation of the sin, at least in the context of the sacrament of penance.

3.1.7. Exceptions to Reservation (CIC 1917 c.900)

According to the canon 900, there are certain occasions when the reservation of a sin lacks its force, such that any ordinary confessor may absolve the sin. In other words, these occasions constitute an exception.

Canon 900: Any kind of reservation lacks all force:

1°. When it occurs in the confessions of the sick who cannot leave their house and spouses for the sake of entering marriage;

2°. Whenever a legitimate Superior denies a faculty petitioned for a specific case of absolving or, in the prudent judgment of the confessor, the faculty of absolving cannot be sought from the Superior without grave inconvenience to the penitent or without danger of violation of the sacramental seal.

3°. Outside the territory of the one reserving, even if the penitent has gone out of it only to obtain the absolution.³⁶⁴

³⁶³ Dargin, *Reserved Cases according to the Code of Canon Law*, 68.

³⁶⁴ *The 1917 Pio Benedictine Code of Canon Law*, 317.

So, there are occasions in which ordinary confessors are granted the faculty by law itself. More precisely, based on the canon, the following occasions are ones in which an ordinary confessor can absolve all reserved sins:

1. A sick person, when he cannot leave his place of residence (c.900, 1°).
2. Bride and groom, when they go to confession in preparation for marriage.
3. Whenever the proper superior refuses to grant the necessary faculty for an individual definite case for which it has been requested (c.900, 2°).
4. Whenever, according to the prudent judgement of the confessor, the proper superior cannot be approached for the necessary faculty without serious disadvantage to the penitent. For example, when the penitent cannot omit attending Communion or Mass without injury to his good name, or when he would otherwise have to remain long in the state of mortal sin and bear this ill.
5. When a confessor cannot receive the faculty without violating the seal of confession. In cases of reserved sins, the reservation ceases if there is the danger that the petition for faculties might result in a revelation of the penitent's identity. In order to safeguard the confessional seal, the confessor can absolve the sin.
6. Penitents who are outside the territory of the superior making a reservation, even when they have left it with the specific intention of evading the reservation (c.900, 3°), unless the Ordinary of the territory they happen to be in has himself likewise reserved the same sin.

The exception would include also the Papal reservation *falsae denuntiationis*, though in that case the conjoined reserved censure must also be taken into consideration.³⁶⁵

3.1.8. Different Ways of Receiving Absolution from Sins Reserved “*ratione sui*”

Absolution from reserved sin was possible through different ways according to CIC 1917. The above mentioned canon gives the confessor the faculty by law itself. They were the exceptional occasions, but here in this section the concern is only about the directly reserved or ‘*ratione sui*’ reserved sins in normal situations.

³⁶⁵ Simon, *Faculties of Pastors and Confessors*, 25.

A person with reserved sin can receive absolution in the following ways:

1. By confessing the reserved sin in the sacrament of penance to a priest authorized to absolve reserved sin.
2. By confessing the reserved sin in the sacrament of penance to a priest who is given the faculty to absolve the reserved sin on a special occasion.
3. If the priest without the faculty to whom the sin is confessed can receive the faculty for the particular case from the Apostolic See or other superior authorities who have reserved it. If there is no danger whatsoever that the superior from whom the faculties are sought will come to know the identity of the penitent involved in the reserved sin, then the confessor does not need the penitent's permission to seek such faculties.³⁶⁶
4. When a penitent, by forgetfulness, does not confess the reserved sin in confession to an ordinary confessor. In that case, the sin unconsciously omitted remains *materia necessaria* but the reservation ceases, and so thereafter any confessor may absolve the sins directly.³⁶⁷
5. The reserved sins of Regulars in their own organizations can be absolved by any confessor approved by the Local Ordinary.
6. At stopping points on sea-voyages, according to the dispositions of canon 883 §2.³⁶⁸
7. In case of doubt about the fact concerning the reservation itself, or concerning the conditions necessary for its actual incurrence or practical questions as to whether one has jurisdiction or not. In these cases the Church supplies jurisdiction hypothetically even though the confessor has no faculty to absolve the sin.

³⁶⁶ Roos, *The Seal of Confession*, 72.

³⁶⁷ Simon, *Faculties of Pastors and Confessors*, 23.

³⁶⁸ Every priest travelling by sea who has received penitential jurisdiction from his own Ordinary, or from the Ordinary of the port of departure, or from the Ordinary of the port touched by the vessel during its voyage, can during the whole period of the voyage hear the confessions of all his fellow voyagers, even if the ship passes through the territories of different Ordinaries or halts therein (883:1). The same holds good for the hearing of all persons who for any reason whatever come on board at harbour stops (883:2). Should the priest who is making a sea voyage (and is authorized as stated above) go ashore for a while at some stop, he may and can there hear all persons who wish to confess to him and absolve them even from sins reserved to the local Ordinary of the place (883:2).

8. If the penitent is in danger of death, any priest, even one not approved, can validly and licitly absolve all reserved sins of whatever kind (CIC 1917 c.882).

3.1.9. Extension of the Faculty to the Canon Penitentiary

The Canon Penitentiary possesses by law the faculty to absolve Episcopal reserved sins.

899 §2: But the faculty of absolving from this sort [of matter] belongs by law to a canon penitentiary according to the norm of Canon 401 §1, and it should be given habitually to vicars forane, adding, especially in places of the diocese more remote from the Episcopal See, the faculty of sub-delegating confessors in their area as often as it is needed for some of the more urgent determined cases that come to them.³⁶⁹

The CIC 1917 extends the faculty to the Canon Penitentiary, whether of a Cathedral or a collegiate Church, who possessed by law itself the power to absolve the sins reserved by the bishop.

Though the Code granted this faculty to the Canon Penitentiary, it does not make such an extension to the deans or vicars forane. They do not possess the power *ipso iure*, as in the case of the Canon Penitentiary. Therefore, in order to absolve reserved sins, they must receive the habitual faculties from the Ordinary.³⁷⁰ They cannot sub-delegate this power to others. It seems even in this case that some exceptions are made for forane vicars who were far away from the Episcopal See and in whose district the confessors could not easily approach the Ordinary. To such vicars, the sub-delegatory power could be given.

3.1.10. Faculties Granted by the Code to Pastors and Missionaries (c. 899 §3)

Canon 899 §3 gives another opportunity to receive absolution from sins, in addition to receiving it from the Canon Penitentiary and deans:

§3. By the law itself, pastors and others who are included in law under the name of pastors can absolve from whatever [sins] are reserved to the Ordinary for the entire

³⁶⁹ *The 1917 Pio-Benedictine Code of Canon Law*, 317: *At huiusmodi absolvendi facultas ipso iure competit canonico poenitentiario ad normam can 401 §1 et habitualiter impertitur saltem vicariis foraneis, addita, praesertim in locis dioecesis a sede episcopali remotioribus, facultate subdelegandi toties quoties confessarios sui districtus, si et quando pro urgentiore aliquot determinate casu ad eos recurrant.*

³⁷⁰ Simon, *Faculties of Pastors and Confessors*, 25.

time given for the satisfaction of the paschal precept, as [can] individual missionaries for the entire time they are in touch with people for a mission.³⁷¹

All those sins reserved to Ordinaries can be absolved *ipso iure* by pastors and quasi-pastors and by all regarded in Canon Law as equivalent to pastors during the whole time available to the penitent for making his Easter duty. It is not necessary that the confession be made for the purpose of fulfilling the Easter duty. The entire Lenten time was privileged so that, during this time, one who has already made his Easter duty could receive absolution of diocesan reserved sins committed later.³⁷²

Canon 899 also grants Missionaries the power to absolve sins reserved to Ordinaries during the time they are engaged in mission. Since this was a favourable law, retreat masters may also be included, as missions and retreats were practically identical.

3.2. CIC 1983 and Reserved Sins

Having examined the legislation on reserved sin in CIC 1917, which was the source Code for CIC 1983, the new legislation regarding reserved sins in the Latin Church may now be studied. The title on the sacrament of penance in the Code of Canon Law consists of thirty eight canons. The major difference between this section of CIC 1983 and CIC 1917, which had sixty six canons on this section, is the elimination of the canons on the reserved sins. So, one must from the very beginning note that there is no concept of direct reserved sin in CIC 1983. The same effect of reserved sin is brought into the Latin Code by the reserved *latae sententiae* censures. According to this system in CIC 1983, it is not the sin which is reserved but the penalty. Hence, in the following pages, the corresponding system existing in Latin rite is considered.

Since the Code commission decided not to include a section on reserved sins, it is important to study the formation of the parallel system of reserved *Latae sententiae* censures, remission of which is reserved to authorities higher than an ordinary priest or confessor. Of the two types of penalties, i.e. censures and expiatory penalties, only the censures will be considered, as the censures of excommunication and interdict prohibit one from receiving the sacraments. Specifically, only the *latae sententiae* censures are under this study, as they have the indirect effect of reservation. Only in

³⁷¹ *The 1917 Pio-Benedictine Code of Canon Law*, 317.

³⁷² Simon, *Faculties of Pastors and Confessors*, 31.

case of non-declared *latae sententiae* censures, the confessor may remit the penalty in the internal forum with or without receiving the faculty from the competent authority. The reserved sins and non-declared *latae sententiae* censures prevent the occult grave violations of offences. So in order to understand the parallel system of reserved sins, the formation of the canons on penalties and study of the codification of these canons must be examined. However, it must be recalled that this study does not emphasise penalties, but tries only to determine the extent to which penalties function as a parallel system of reserved sins in the Eastern Code.

3.2.1. The Removal of Reserved Sins

The system of reserved sin found in CIC 1917 is removed from the new Code. The reasons behind the removal were their uselessness in the pastoral life in the Latin Church and the strong recommendation of the Apostolic Penitentiary to abrogate the institute of reserved sins. McManus states, “The institute of reservation of sins, which had been rigorously limited by the code to ‘very grave and atrocious’ cases hemmed in by restraints against excessive or abusive reservations, was pastorally obsolescent or obsolete.”³⁷³

3.2.2. Renewal of Penal Law in CIC

Together with the announcement of the Second Vatican Council, Pope John XXIII had called for the renewal and reformation of the Latin Code. Though Pope John had established a Commission for Revision, the process of the codification started only after the Second Vatican Council based on the changes and renewed ideas brought into the theology and life of the Church by the Council. The Commission started to work in 1965, primarily with the task of forming a set of guiding principles to renew the Code. In 1967, the Synod of Bishops approved such a set of guiding principles.³⁷⁴

³⁷³ Abbass, “Penance: A Comparative Study of the Eastern and Latin Codes,” 299; *Comm.* XV n.1, 209: “4. Affirmetur principium reservationis peccatorum. R. Reservatio peccatorum suppressa fuit, rogante praesertim Sacra Poenitentiaria, cum minus utilis videatur et sufficiens provideri possit per censuras. Huiusmodi suppressio amplius invenit favorem in consultatione. Reservatio non debet proinde iterum introduci.” In order to review the codification of the sacramental law of the CIC 1983, the following sources are to be studied: The 1975 schema on sacramental law and the 1977 schema on sacred times and places of divine worship. Another important source is the 1981 *Relatio* of the Secretariat of the Code Commission, reporting on comments on the so-called 1980 schema by members of the Commission.

³⁷⁴ James A. Coriden, *An Introduction to Canon Law* (revised), New York: Paulist Press, 2004, 39.

These principles included suggestions for a more effective coordination of the internal and external forums, for fewer and simpler penalties, and for fewer reservations of canonical faculties.³⁷⁵ In 1968, the commission organized various working groups to review various sections of canons. The guiding principles were always a main concern for these study groups.

In December 1973, the draft of a proposed revision of penal law was sent to the bishops around the world for their comments. The cover letter of Cardinal Felici noted the Code commission's effort to revise penal law in light of Vatican II, especially by emphasizing pastoral care rather than penal power measures. While the draft reaffirmed the propriety of the Church's penal power, it stressed the use of penalties only as a last resort. Penalties should be employed only if they were absolutely necessary for the spiritual well-being of the community and the individual. This seems particularly fitting in light of the reconciling character of the Church.³⁷⁶

3.2.3. The Need for Penalties in the Church

"An ecclesiastical punishment is the privation of some good, inflicted by legitimate authority, to correct the delinquent and to punish the delict."³⁷⁷ The goods which the Church may take from her delinquent subjects are those whose possession and use depend upon her, including temporal as well as spiritual goods. They consist of rights instituted by Christ and committed by Him to the care of the Church, for example the sacraments or goods which the Church herself procures or grants, such as benefices or patronage or goods which the Church guards by her laws, for example reputation, liberty and temporal goods.³⁷⁸ Since grace or merit or the sacramental character do not directly depend upon the disposal of the Church, she cannot take them away by her punishments.

The penal power of the Church proceeds from its very nature and end. The Church is both a spiritual and a juridical society having as its end the sanctification of its

³⁷⁵ John P. Beal, James A. Coriden & Thomas J. Green, (eds.). *New Commentary on the Code of Canon Law*. New York: Paulist Press, 2000, 12.

³⁷⁶ Thomas J. Green, "The Future of Penal Law in the Church." *Jurist* 31 (1971) 212.

³⁷⁷ Dargin, *Reserved Cases According to the Code of Canon Law*, 40; The terminology used in the Church law for offences are different like delict (*delictum*), crime (*crimen*). Delict is used more often in CIC than other terminologies. So in this thesis, the term delict is preferred.

³⁷⁸ Dargin, *Reserved Cases According to The Code of Canon Law*, 40.

members in order to lead them to eternal salvation. So it is native and proper right of the Church to reach its goal, independent of any human authority, to punish her delinquent subjects with penalties both spiritual and temporal. The ultimate and intrinsic end of ecclesiastical penalties is the conservation and protection of social order in the Church in order to attain this goal. It is to be remembered that the spiritual life and integrity both of the whole community and of the individual offender are pre-eminent ends of ecclesiastical penalties. The punitive measures used by the Church are of three kinds according to the CIC: medicinal penalties or censures, expiatory or vindictive penalties, and penal remedies and penances.³⁷⁹

3.2.4. Penalties Affect only the External Forum

Only an external violation of a delict can justify the imposition of a penalty. Canon 1321 §1³⁸⁰ indicates the external nature of the delict. There must be an effective and external violation of a penal norm that is in effect. The canon clarifies that the delict must be a violation of a law or precept. That it is external means that it is opposite to what is internal. It does not mean private or occult.³⁸¹ Penalties have no relevance to purely internal acts. Strictly from the moral point of view, an internal violation can constitute a sin but not a delict.

In the same way an offence is external, the external character of penalties can be seen to imply the following points. Only those with public power in the external forum can and ought to determine penalties. The effects of penalties are to remain only in the external forum. Thus there should be a clearer distinction of *fora* in the penalties so that they are implemented in a more humane fashion. That is the reason why, already in the guiding principles for revision of the CIC, there was a proposal for a clearer distinction between the two *fora*.³⁸² A serious debate occurred in the code commission over whether to abolish or to modify the norms forbidding the sacramental absolution prior to the remission of a penalty.

³⁷⁹ Dargin, *Reserved Cases According to The Code of Canon Law*, 41.

³⁸⁰ “No one can be punished for the commission of an external violation of a law or precept unless it is gravely imputable by reason of malice or of culpability” (c.1321 §1).

³⁸¹ A. Borrás, *Les Sanctions Dans L'Eglise*. Paris: Edition Tardy, 1990, 15.

³⁸² *Comm.* (1969) 79.

There could be delicts which are externally violated but remain occult or not known to anyone. Foreseeing such a situation, the new Code made provision to penalise the person with automatic penalties. Thus it is not necessary that the delict be of a public character, but only that it be external.

3.2.5. Penalties as a Last Resort

The final goal of all Church law is the salvation of souls. If someone can be corrected and converted other than by imposing hard penalties, the Church should try her level best to do it. There have always existed in the Church various ways, juridical or non-juridical, to foster the conversion of the offender. This mentality is another important characteristic of the new penal law: ‘the importance of seeing penalties as a last resort when all other pastoral remedies have failed.’³⁸³

3.2.6. *A iure* and *ab homine* Penalties

The division of penalties, which plays an important role in the legislation on reserved censures, is as follows: penalties *a iure* and penalties *ab homine*. If a determinate penalty, whether *latae* or *ferendae sententiae*, is established in the law itself, it is *a iure*; but if the penalty is imposed by a particular precept or a condemnatory sentence, it is *ab homine*. All *latae sententiae* penalties are therefore *a iure*. It is immediately evident that a *ferendae sententiae* penalty may be both *a iure* and *ab homine* because it may be established in the law itself and inflicted by a condemnatory sentence. A penalty *a iure* is imposed either after the manner of a true law, whether universal or particular, or through a general precept; a penalty *ab homine*, on the other hand, is imposed through a particular precept or a judicial sentence.³⁸⁴

3.2.7. Reserved and Non-Reserved Penalties

Certain penalties are reserved to the higher authorities by law itself. Sometimes the whole process of the case is reserved, while in other cases only the remission of the penalty is reserved to the higher authority. As in the case of reserved sins, penalties also are reserved due to their seriousness and the public scandal caused to the whole

³⁸³ Green, “The Future of Penal Law in the Church,” 222.

³⁸⁴ Dargin, *Reserved Cases According to the Code of Canon Law*, 43.

community. According to the Code only five *latae sententiae* excommunications are reserved to the Apostolic See, i.e. canon 1367 (violation of the sacred species), canon 1378 §1 (a physical attack on the pope); canon 1378 §1 (absolution of an accomplice); canon 1382 (unauthorized episcopal consecration); and canon 1388 §1 (direct violation of the confessional seal by confessor).³⁸⁵ After the promulgation of the Code, however, various cases are reserved to various dicasteries of the Apostolic See. This will be seen in following points and in the next chapter.

3.2.8. *Ferendae sententiae* and *Latae sententiae* Penalties

Penalties can be divided on the basis of the process by which an offender is penalized. There are basically two processes by which one is penalized, i.e. *ferendae sententiae* and *latae sententiae*. Examining the purpose of these two types of penalty is important in order to understand the present equivalent system of the indirect reservation of sins. So, it is important to understand these two types of penalties and their consequences.

3.2.8.1. *Ferendae sententiae* Penalties

The Latin expression *ferendae sententiae* means ‘sentence to be passed.’ A *ferendae sententiae* penalty is thus one applied by a sentence from a judge or a decree from a superior, following a penal procedure. The procedure may be judicial or administrative depending on the nature of the case. It is the best means in the canon law to obtain juridical certainty that there was an offense and to ascertain the actor’s guilt. In order to avoid unjust penalties, the Code always affirms the juridical certainty to impose the penalty. This means that it is obviously the ‘*favor iuris*’ (cf. cc.1341-1342 & cc.1717-1728) and indeed canonical penalties are generally in *ferendae sententiae*.³⁸⁶

Canon 1314³⁸⁷ clearly states that a penalty is always *ferendae sententiae* unless it is expressly indicated that it is *latae sententiae*. According to this, when there is doubt as to whether a penalty is *latae* or *ferendae sententiae*, one should always regard it as

³⁸⁵ Beal, (ed.), *New Commentary on the Code of Canon Law*, 1568.

³⁸⁶ Marzola, *Exegetical Commentary*, vol. IV, 238.

³⁸⁷ Canon 1314, “Generally, a penalty is *ferendae sententiae*, so that it does not bind the guilty party until after it has been imposed; if the law or precept expressly establishes it, however, a penalty is *latae sententiae*, so that it is incurred ipso facto when the delict is committed.”

ferendae.³⁸⁸ Since the *ferendae sententiae* penalty does not require much attention in this study, the topic is not dealt with in detail.

3.2.8.2. *Latae sententiae* Penalties

Latae sententiae is a Latin phrase, meaning ‘sentence already passed,’ used perhaps only in the Canon Law. A penalty is *latae sententiae* if it is added to a law or precept in such a way that it is incurred by the very fact of the commission of the delict (*ipso facto commissi delicti*, automatically), without any further action on the part of the superior.³⁸⁹ In other words, ‘a *latae sententiae* penalty is one that follows *ipso facto* or automatically by force of the law itself’ (c.1314).³⁹⁰ A delinquent is bound by a *latae sententiae* penalty in both the internal and external forums as soon as the delict is committed. This is a special kind of penal process which is found only in the Church due to its jurisdictional power in the conscience of the faithful. However, because of the nature of the expiatory penalties, except those penalties referred to in c.1336 §2,³⁹¹ *latae sententiae* cannot be applied. So it is possible that *latae sententiae* expiatory penalties may be imposed to prohibit a power, office, function, right, privilege, faculty, favour, title, or insignia. There can be *latae sententiae* prohibition of these things inside a certain territory or outside a certain territory.

3.2.8.3. Declaratory or Non-Declaratory *Latae sententiae* Penalties

Though the penalty of *latae sententiae* is imposed automatically at the very moment of the commission of a delict, a declaratory sentence of *latae sententiae* penalty may

³⁸⁸ Dargin, *Reserved Cases According to the Code of Canon Law*, 42.

Ce canon fait référence à la classification des peines selon la façon dont on les encourt: on dit que la peine est « *ferendae sententiae* » lorsque le juge ou le supérieur l'impose en suivant la procédure judiciaire ou administrative correspondante. (Lamberto de Echeverria, *Code de Droit Canonique annoté*. Paris: Les Editions du Cerf, (French translation by A. Soria Vasco, H. Laplane & R.P.M.A Chueca), 1989, 717)

³⁸⁹ Dargin, *Reserved Cases According to The Code of Canon Law*, 42; Elle est « *latae sententiae* » lorsqu'elle est encourue par le délinquant dès qu'il commet le délit.

³⁹⁰ Marzoa, *Exegetical Commentary*, vol. IV, 238; CIC c.1314 “A penalty is for the most part *ferendae sententiae*, that is not binding upon the offender until it has been imposed. It is, however, *latae sententiae*, so that it is incurred automatically upon the commission of an offence, if the law or precept expressly lays this down.”

³⁹¹ C.1336 §2 “Only those expiatory penalties listed in §1, 3° can be *latae sententiae*”; 1336 §1, 2°, 3° “2° privation of a power, office, function, right, privilege, faculty, favour, title, or insignia, even merely honorary; 3° a prohibition against exercising those things listed under n.2, or prohibition against exercising them in a certain place or outside a certain place; these prohibitions are never under pain of nullity.”

also be given by a Superior. All that a declaratory sentence does is make judicially manifest the delict committed and its penalty, which carries with it certain canonical effects. In such a declared case, the penalty will become fully effective from that moment. Before a declaratory sentence, the delinquent is excused from observing the punishment in the external forum if he cannot do so without infamy (c.1352 §2). Until a declaratory sentence is given, no one can demand the observance of the penalty in the external forum unless the delict is public and notorious.

It is generally left to the prudent judgment of the superior whether or not to issue a declaratory sentence, although he is obliged to do so upon the request of an interested party or when the common good demands it. When such a sentence is given it is retroactive in its canonical effects, back to the moment the crime was committed.³⁹²

3.2.8.4. Reduced Number of *Latae sententiae* in the New Code

The number of penalties incurred automatically (*latae sententiae*) have been greatly reduced in the new Code. Number nine of the Directive Principles for the Reform of the Code of Canon Law reads as follows, “Penalties are sometimes necessary, but they are to be imposed in the external forum and after judgement; those imposed by the law itself are to be reduced to a minimum.”³⁹³ Even in the study group, some argued for the total abolition of automatic penalties.³⁹⁴ But considering the occult and grave nature of some delicts, it was felt that this would not be advisable and the decision was made rather to limit the number of such penalties.³⁹⁵

3.2.8.5. The Purpose of *Latae sententiae* Penalties

In order to find out the purpose of the *latae sententiae* penalties, one must go back to their origin. This origin is related to the ancient penitential discipline and specifically the ecclesial sanction of crimes committed in secret and not known in the Christian community. Since the delict was occult this penalty is incurred automatically in the internal forum, but the penalty also remained hidden and at least many of its effects were suspended in the external forum so that the Christian community would not

³⁹² Dargin, *Reserved Cases According to the Code of Canon Law*, 42.

³⁹³ Corriden, *An Introduction to Canon Law*, 40; Comm. 1 (1969) 82-85 n.9.

³⁹⁴ Comm. 1 (1969) 82.

³⁹⁵ Alex Stenson, “Penalties in the New Code: The Role of the Confessor,” *Jurist*, 43 (1983) 409.

necessarily recognize the effect of it. In the middle ages of Christianity, a *latae sententiae* penalty seemed to be an effective way to punish occult crimes.³⁹⁶ The author of the offense could not escape from the penalty, as the *latae sententiae* penalty obliges in conscience, in the internal forum. So, one of the purposes of the *latae sententiae* penalty is to penalize grave delicts and those committed in secret.

Latae sententiae penalties remain in the new Code due to their pedagogical and dissuasive function. By appealing to the conscience of the faithful, they warn them of the gravity of the offense and of its consequence.³⁹⁷ Hence, by imposing automatic penalties for a few serious offences, the Church seeks to convey the seriousness of those offences. In a way, Church is trying to dissuade the people from committing such occult and grave offences.

3.2.9. The Exemptions to All Penalties

According to the canon 1323, there are seven circumstances in which the delinquent is exempted from all penalties.³⁹⁸ Stenson, in his article “Penalties in the New Code”, lists these circumstances in abbreviated form for easier comprehension.

1. under sixteen
2. inculpable ignorance or inadvertence or error
3. physical force or unforeseeable or unpreventable accident
4. grave fear, necessity or grave inconvenience (unless the act is intrinsically evil or tends to damage souls)
5. moderate and lawful defence against an unjust aggressor

³⁹⁶ Borras, *Les Sanctions Dans L'Église*, 52.

³⁹⁷ Marzoa, *Exegetical Commentary*, vol. IV, 240.

³⁹⁸ c.1323 The following are not subject to a penalty when they have violated a law or precept:

1° a person who has not yet completed the sixteenth year of age;

2° a person who without negligence was ignorant that he or she violated a law or precept; inadvertence and error are equivalent to ignorance;

3° a person who acted due to physical force or a chance occurrence which the person could not foresee or, if foreseen, avoid;

4° a person who acted coerced by grave fear, even if only relatively grave, or due to necessity or grave inconvenience unless the act is intrinsically evil or tends to the harm of souls;

5° a person who acted with due moderation against an unjust aggressor for the sake of legitimate self defense or defense of another;

6° a person who lacked the use of reason, without prejudice to the prescripts of cann. 1324, §1, n. 2 and 1325;

7° a person who without negligence thought that one of the circumstances mentioned in nn. 4 or 5 was present.

6. lack of use of reason other than culpable drunkenness or deliberately fostered lack of reason
7. inculpable conviction that conditions 4 or 5 were verified³⁹⁹

When a judge or a superior or even a confessor examines a person who has committed a delict, he must bear in mind all these circumstances whereby a person would be completely exempted from all ecclesiastical penalties. Though a person has committed the crime or delict under any of the above mentioned excepting reasons he is not liable to the penalties.

3.2.10. Circumstances where *Latae sententiae* is Exempted (c.1324 §3)

The working of the law expressly demands full knowledge and deliberation. So, any cause diminishing responsibility, whether bearing upon the intellect or upon the will, may excuse one from the law. In ten other stated circumstances, the delinquent is exempted from *latae sententiae* penalties (c.1324 §3) and merits a mitigation of other penalties (c.1324 §1). In the above mentioned cases the penalty was totally avoided where as in these circumstances the lesser penalties are to be given. Canon 1324 §1 explains that “the perpetrator of a violation is not exempted from penalty, but the penalty described in the law or precept must be diminished, or a penance substituted in its place, if the offences committed by” someone who is in the following circumstances:

1. imperfect use of reason
2. lack of use of reason for culpable drunkenness, etc.
3. heat of passion
4. under eighteen
5. fear, necessity, grave inconvenience where crime was intrinsically evil etc.
6. lawful defence which exceeded due moderation
7. provocation
8. culpable error with regard to presence of fear, necessity, lawful defence
9. inculpable ignorance that there was a penalty attached to a law or precept
10. a lack of full imputability⁴⁰⁰

³⁹⁹ Stenson, “Penalties in the New Code: The Role of the Confessor,” 413.

⁴⁰⁰ Stenson, “Penalties in the New Code: The Role of the Confessor,” 414.

It must be noted, however, that canon 1325⁴⁰¹ gives a more specific account of what is meant by ignorance and drunkenness. This canon says that where ignorance is crass, supine or affected, or where drunkenness or mental disturbance is deliberately cultivated to commit or excuse the crime, or where passion is voluntarily aroused or nourished, they do not diminish liability or exempt one from penalties. Intentional ignorance of either the law or the punishment or sanction never excuses one from the incursion of censures. Thus, although canon 1323 gives the circumstance where one is exempted from penalties and canon 1324 gives the circumstances that could avoid *latae sententiae* penalties or where the penalties could be reduced, the following factors do not make it effective:

- a) peculiarly grave ignorance: *affected* (deliberately sought so as not to be caught by knowledge or the law); *crass* and *supine* (nothing was done to learn about the law).
- b) drunkenness or other mental disturbances (drugs, hypnosis, somnambulism, etc.), deliberately sought to commit the offense, or trying to produce a circumstance to excuse it.
- c) passion that has been deliberately stimulated or nourished.⁴⁰²

In the external forum, the ecclesiastical authority that imposes a *ferendae sententiae* penalty or declares the automatic contraction of a *latae sententiae* penalty must take account of all these exempting or mitigating factors. In a confessor's area, in the internal forum, he need be concerned only with *latae sententiae* penalties which have not been declared, so any of the above lists of excuses will exempt one from penalty. Penalties, it must be remembered, may be imposed only in cases of full deliberation and knowledge.⁴⁰³

3.2.11. Suspension of *Latae sententiae* Penalties (c.1352)

The suspension of a penalty is distinguished from its cessation. Suspending a penalty means suspending its effects, or more precisely, suspending the obligation of the penalty in all its effects or only in part according to the provisions of the penal law

⁴⁰¹ Can. 1325: "Crass, supine, or affected ignorance can never be considered in applying the prescripts of cann. 1323 and 1324; likewise drunkenness or other disturbances of mind cannot be considered if they are sought deliberately in order to commit or excuse a delict, nor can passion which is voluntarily stimulated or fostered."

⁴⁰² Marzoa, *Exegetical Commentary*, vol. IV, 295.

⁴⁰³ Stenson, "Penalties in the New Code: The Role of the Confessor," 414.

and provided that the causes that the law established still exist.⁴⁰⁴ The obligation to observe the penalty returns in full force when the causes for suspension disappear.

The Code provides for the suspension of a prohibition on the reception of sacraments and sacramentals by certain censures when the offender is in danger of death. The law also suspends the observation of *latae sententiae* penalties on certain other occasions as per the following canon:

c.1352 §1 If a penalty prohibits the reception of the sacraments or sacramentals, the prohibition is suspended for as long as the offender is in danger of death.

§2 The obligation of observing a *latae sententiae* penalty which has not been declared and is not notorious in the place where the offender actually is, is suspended either in whole or in part to the extent that the offender cannot observe it without the danger of grave scandal or loss of good name.

Since excommunication and interdicts exclude a person from the reception of the sacrament of penance and anointing of the sick, this canon removes such prohibitions on the offender in the case that he or she is in danger of death. This canon shows the medicinal character of penalties and the ultimate goal of canon law, i.e. the salvation of the soul. The problem of suspending a penalty was added to the canon towards the end of codification based on a recognition that excommunication and interdicts may include a prohibition against the sacraments of reconciliation and anointing of the sick.⁴⁰⁵

In *latae sententiae* penalties, there can be occult offenses and occult penalties, known only to the offender and a few other people. Obligating a member of the faithful to observe the penalty might bring this to public attention (c.1351). These situations of the offender may imply exposing him to a loss of reputation or creating a scandalous situation in the Church. The present canon provides for a suspension of the obligation to observe the penalties in case doing so would cause either a loss of reputation or a scandalous situation.

Canon 1335 presents other two occasions in which a *latae sententiae* penalty could be suspended:

⁴⁰⁴ Marzoa, *Exegetical Commentary*, vol. IV, 395.

⁴⁰⁵ Marzoa, *Exegetical Commentary*, vol. IV, 395; Cf. A. Borrás, *L'excommunication dans le nouveau Code de Droit Canonique*. Paris: Desclée, 1987, 161.

If a censure prohibits the celebration of sacraments or sacramentals or the placing of an act of governance, the prohibition is suspended whenever it is necessary to care for the faithful in danger of death. If a *latae sententiae* censure has not been declared, the prohibition is also suspended whenever a member of the faithful requests a sacrament or sacramental or an act of governance; a person is permitted to request this for any just cause.

José Bernal in the Exegetical Commentary writes the following of these two situations of suspension:

a) establishing suspension of the prohibition against celebrating the sacraments or sacramentals or performing acts of governance derived from any type of censure insofar as necessary to attend to the faithful in danger of death; b) establishing the same suspension, but only in the case of undeclared *latae sententiae* censures, for a reasonable request (*qualibet iusta causa*) from a member of the faithful who is not in danger of death.⁴⁰⁶

In these situations the minister is under penalty and the canon suspends the prohibition on the celebration of sacraments or sacramentals or some administrative acts under some special pastoral situation. In the second situation, the minister is under an undeclared *latae sententiae* penalty. These suspensions are foreseen again as a result of the ultimate goal of the salvation of souls. For the care of the souls, the penalty is suspended. The medicinal character of the penalties in the Church is thus upheld by this provision for suspending *latae sententiae* penalties on certain occasions, giving priority to the individual faithful over the penalties.

3.2.12. Conditions to Establish New *Latae sententiae* Penalties

With regard to *latae sententiae* penalties, the general principle is not to establish them (*ne comminetur*), as this method of applying canonical penalties should be considered exceptional.

A legislator is not to threaten *latae sententiae* penalties, except possibly for certain singularly malicious delicts which either can result in grave scandal or cannot be punished effectively by *ferendae sententiae* penalties; he is not, however, to establish censures, especially excommunication, except with the greatest moderation and only for graver delicts (c.1318).

The canon shows that it should be limited to very few, very concrete, specifically determined offences (*singularia quaedam delicta*). Thus in the overall canonical penal system, they are not the normal way to apply penalties. Threatening a *latae sententiae* penalty is justified only if it simultaneously meets the conditions of the assumption

⁴⁰⁶ Marzoa, *Exegetical Commentary*. vol. IV, 339-340.

and at least one of the two circumstances stated in the canon.⁴⁰⁷ The assumption is that it must be an outstanding and malicious offense, meaning a deliberate violation of a penal norm (cf. 1321 §1). This assumption must be understood to mean that *latae sententiae* penalties cannot be threatened against culpable offences, just as *latae sententiae* penalties are not incurred when an offense is committed by omission of due diligence, that is to say with culpability.

Only after verifying the two important elements, i.e. that the offense may cause a greater scandal or that it cannot be effectively punished with *ferendae sententiae* penalties, is a *latae sententiae* penalty to be established. This is explained in the Exegetical Commentary as follows:

The first of these circumstances implies that the ecclesiastical authority with timely and prudent care for the good of souls, should foresee the offenses that may cause greater scandal among the faithful. These are the offenses that, because of their objective gravity and the circumstances and social sensitivity of the environment in which occur, may cause discredit to the Church or its teachings and means of salvation (the sacraments) or create among the faithful an attitude that might induce offensive behaviour.⁴⁰⁸

The second circumstance that may justify threatening a *latae sententiae* penalty is that the offense cannot be effectively punished with a *ferendae sententiae* penalty. The only offenses that cannot be punished with *ferendae sententiae* penalties are those that in principle cannot be proved in the external forum except by confession of the author, and even then it is not possible to initiate a penal procedure. Nevertheless, it seems that the determining element in choosing between the modes of applying the penalty is the hypothetical ineffectiveness of the *ferendae sententiae* penalty, not the real possibility of applying it by sentence or decree. But it is uncertain whether a *latae sententiae* penalty is more effective than a *ferendae sententiae* penalty unless, for some offenses, the *latae sententiae* penalty is more effective in practice, from the point of view of prevention, because if it were *ferendae sententiae*, it would, in fact, not be applied. In sum, this is an attempt to find the most appropriate and effective means to combat certain delinquent actions.

⁴⁰⁷ Marzoa, *Exegetical Commentary*, vol. IV, 248.

⁴⁰⁸ Marzoa, *Exegetical Commentary*, vol. IV, 249.

The canon states that the ecclesiastical authority theoretically shall not establish penalties except with the greatest moderation – a criterion of maximum restriction for the gravest of censures, namely excommunication. Censures, in the final analysis, should be reserved only for the gravest offenses.⁴⁰⁹

3.2.13. Censures in the CIC

As noted already, there are strictly two main types of sanctions or penalties; censures and expiatory penalties.⁴¹⁰ Penal remedies and penances are used to prevent certain offences or remove some scandal or voluntary occasion of sin (c.1312). The present Code does not give a definition for censures. The first chapter of title IV on ‘penalties and other punishments’ (cc.1331-1335), deals with various censures, i.e., medicinal penalties, depriving obstinate offenders from access to various ecclesiastical goods, such as the sacraments or Church offices, until they are restored to full ecclesial communion. Such a restoration is a basic Christian obligation. In fact, the censures have as their primary, proximate purpose the correction of the delinquent.

Since the censures focus squarely on the offender’s reform and reintegration into the community, a *ferendae sententiae* censure requires a formal warning by a competent penal authority, usually an Ordinary, before it can be validly imposed (c.1347).⁴¹¹ However, for *latae sententiae* censures the warning is presumably given by the law itself.

Censures are always indefinite in duration, since they must be remitted when the offender ceases being contumacious and is willing to be reintegrated within the communion. Such censures include excommunication, interdict, and suspension; the first two can be incurred by any believer, while the last is reserved to clerics. Unlike the illustrative listing of expiatory penalties, the listing of censures is comprehensive.⁴¹²

⁴⁰⁹ Marzoa, *Exegetical Commentary*, vol. IV, 249.

⁴¹⁰ Philippe Toxè, “Approche canonique de cas de conscience particuliers et traitement des délits au for interne sacramentel.” in Hélène Bricout & Patrick Prétot (eds.). *Faire pénitence, se laisser réconcilier*. Paris: Cerf, 2013, 154.

⁴¹¹ c.1347 §1; A censure cannot validly be imposed unless the offender has beforehand received at least one warning to purge the contempt, and has been allowed suitable time to do so.

⁴¹² Beal, (ed.), *New Commentary on The Code of Canon Law*, 1549.

3.2.14. The Manner in which a Censure is Incurred

It may be helpful to recall the fundamental principles regarding penalties. The first principle is that ‘no one can be punished for the commission of an external violation of a law or concept unless it is gravely imputable by reason of malice or of culpability’ (c.1321 §1). Another way of putting this would be: ‘no grave sin, no censure.’ In order for a delict to be grave, the persons must act with full knowledge of what is involved and give their true consent to it. If these conditions are not present, there is subjectively no grave delict and therefore no censure is incurred. By ‘full knowledge’ is meant that a person must be aware that a censure is attached to the commission of the particular delict. It is not necessary for them to know this in a detailed or technical way. The true consent must be free: if a person was coerced into committing the delict or was so emotionally disturbed that he was unable to reason out the true nature of what he was doing, then his act did not have the deliberate quality necessary to constitute a grave delict and he does not incur a censure.⁴¹³

3.2.15. Reservation of Censures

A censure itself is a punishment, while the reservation of censure by itself is not a punishment but a disciplinary measure. By restricting the power to remit a censure, the superior forces the delinquent to come to him, or to the one to whom he has reserved the censures, in order to obtain remission. The reservation of censure thus has nearly the same effect and purpose as the reservation of sin. It limits an inferior’s jurisdiction and forces the delinquent to seek remission from one who is specially qualified to handle the case in the best interests of ecclesiastical discipline.⁴¹⁴ It is evident from the very nature of censure that the primary purpose of reservation is not to render its remission more difficult, for once the delinquent has repented and made compensation he has a right to remission. The reservation of the censure does not take away this right. But the proper regulation of ecclesiastical discipline urges that more serious crimes should receive the special consideration of competent superiors. The delict committed may be of such character as to warrant the infliction of a vindictive

⁴¹³ John McAreevey, “Abortion and the Sacrament of Penance,” *The Furrow*, vol. 44, No.4 (1993), 230-235, 232.

⁴¹⁴ Dargin, *Reserved Cases According to the Code of Canon Law*, 64.

punishment or other special remedies. The ordinary confessor does not have the power to inflict vindictive punishments, nor is he as qualified as the superior to prescribe the best remedies. Through reservation, the qualified superior can take all these measures. One must remember that the reservation of censure is not itself a penalty but is only connected with a penalty.

3.2.16. Various Types of Censures

The censures that the Code of Canon Law envisages are excommunication, interdict, and suspension. Only excommunication and interdict will be considered here, as these two prohibit the reception of sacraments.

3.2.16.1. Excommunication

The present Code does not define excommunication, which prohibits the exercise of certain subjective spiritual rights rooted primarily in the Church (c.96).⁴¹⁵ Excommunication is a censure by which one is excluded from the communion of the faithful, with the effect listed in the Code.⁴¹⁶ Alphonse Borras gives a good definition in his book on sanctions (*Les Sanctions*).⁴¹⁷ According to him, excommunication is censure by a positive ecclesiastical law with a medicinal purpose for the conversion and rehabilitation of the offender. This is established against very grave offenses; in other words, against very grave sins. When someone commits such an offence, he is prohibited to exercise rights and obligations as per the canons of prohibition. Through

⁴¹⁵ c.96. "By baptism one is incorporated into the Church of Christ and is constituted a person in it with the duties and rights which are proper to Christians in keeping with their condition, insofar as they are in ecclesiastical communion and unless a legitimately issued sanction stands in the way."

⁴¹⁶ L'excommunication est une censure par laquelle quelqu'un est exclu de la communion des fidèles, avec les effets « énumérés dans le Code, effet aussi ne peuvent pas en être séparé » (c.2257 CIC 1917) et dont la nature est juridique. Les effets spirituels produits par l'acte ou les comportements ayant motivé l'excommunication ne sont évidemment pas envisagés ici. Il est interdit à l'excommunié : a) d'être ministre de la messe, b) de célébrer les sacrements et les sacramentaux et de recevoir les sacrements, c) de remplir des offices ou ministères ecclésiastiques et de poser des actes de gouvernement. Si l'excommunication est *ferendae sententiae*, le coupable: a) doit être écarté de la messe s'il veut célébrer ou alors il faut interrompre la célébration; b) pose invalablement les actes de gouvernement; c) ne peut jouir des privilèges obtenus précédemment; d) ne peut obtenir valablement un office, une charge ou une dignité dans l'Eglise; e) ni s'en approprier les fruits, même d'une pension (c1331); Dominique Le Tourneau, *Manuel de droit canonique*, 462-463.

⁴¹⁷ Borras, *Les Sanctions dans l'Eglise*, 80 ; "L'excommunication est une sanction pénale du droit positif ecclésial à la finalité spécifiquement médicinale, établie à l'encontre de délits très graves, dont les effets indivisibles consistent en une interdiction d'exercice de droits et de devoirs en conformité avec les prescriptions du Code (cc.1311; 171, §1,3°; 316; 915; 996 §1; and 1109), de telle sorte qu'ils constituent une exclusion (presque) totale des biens spirituels de l'Eglise».

this act, a person is sometimes wholly or partially excluded from the spiritual goods of the Church.

However, the excommunicated person remains a member of the Church and subject to its legislation unless the delict prompting the penalty entails a formal separation with the Church, e.g. Schism.⁴¹⁸ Every society has the right to expel a member who attacks the fundamental good of the community or the rights of others. From its very beginnings, the Church has made use of this right, bequeathed to it by Jesus Christ.

Excommunication, especially *a jure*, is either *latae* or *ferendae sententiae*. The *latae sententiae* excommunication, as seen above, is incurred as soon as the offence is committed by reason of the offence itself, without intervention of any ecclesiastical judge. In this case one is excommunicated at once by the fact itself. In effect, it could be said that a person excommunicates himself by committing the act. The clearest and best established example of such an act is heresy. In case of the *ferendae sententiae* excommunication, the penalty is indeed foreseen by the law, but is imposed on the delinquent only by a judicial sentence. A person who knowingly and openly espouses a belief the Church had declared to be heretical could without too much exaggeration be said to have put himself outside the communion of the faithful.⁴¹⁹ In this study, as in the discussion of reserved sins above, only the *latae sententiae* excommunication will be considered as it is only this kind that requires absolution by a higher authority.

3.2.16.2. Effects of Excommunication

In order to understand how a *latae sententiae* excommunication has the effect of indirect reservation of sins, the effects of the excommunication are to be studied. Canon 1331 §1 states the various prohibitions imposed on an excommunicated person:

1331 §1, An excommunicated person is forbidden:

- 1° to have any ministerial part in the celebration of the Sacrifice of the Eucharist or in any other ceremonies of public worship
- 2° to celebrate the sacraments or sacramentals and to receive the sacraments
- 3° to exercise any ecclesiastical offices, ministries, functions or acts of governance

⁴¹⁸ Beal, (ed.), *New Commentary on the Code of Canon Law*, 1549.

⁴¹⁹ R.H. Helmholz, *The Spirit of Classical Canon Law*. London: The University of Georgia Press, 1996, 384.

§2, If the excommunication has been imposed or declared, the offender:

1° proposing to act in defiance of the provisions of §1 n.1 is to be removed, or else the liturgical action to be suspended, unless there is a grave reason to the contrary.

2° invalidly exercise any acts of governance which, in accordance with §1 n.3 unlawful.

3° is forbidden to benefit from privileges already granted;

4° cannot validly assume any dignity, office or other function in the Church

5° does not enjoy the benefits of any dignity, office, function or pension held in the Church.

As per canon 1331, there are differences in the effects of non-declared *latae sententiae* excommunication and declared *latae* and *ferendae sententiae* excommunication. Paragraph one concerns mainly general prohibitions for all types of excommunication. The second paragraph indicates further prohibitions in the case of imposed or declared excommunication, with more extensive legal restrictions for the excommunicated person. For example, the confessor may not remit a declared *latae sententiae* excommunication in certain situations of pastoral urgency, aside from danger of death (c.1357).

In the first paragraph of canon 1331, the general prohibition includes certain liturgical effects. The idea behind the prohibition is the communitarian aspect of liturgy. The liturgy is always the worship of the people who are in union with God and each other. If someone has broken this communion with God and with the fellow worshipers by a grave sin or crime, he is not eligible to be in the group of worship in an active manner until he is reconciled with both. Understanding the spirit of the liturgy, the canon prohibits an excommunicated person in different ways, i.e. prohibits active ministerial participation in the Eucharist and other acts of public worship (§1, 1°) and prohibits celebrating the sacraments or sacramentals or receiving the sacraments (§1, 2°).

According to §1, such liturgical prohibition affects the liceity but not the validity of such acts.⁴²⁰ Woestman, however, in interpreting this, states that “the reception of the Eucharist and the Sacrament of Penance would ordinarily be invalid, not because of the canonical penalty, but because the person would not be properly disposed to

⁴²⁰ Beal, (ed.), *New Commentary on The Code of Canon Law*, 1550.

receive these two sacraments validly.”⁴²¹ In the case of an imposed or declared excommunication, however, this affects the validity of the act itself. Paragraph 2, 1° even prohibits a person from performing liturgical acts or even completing such acts. However, the penalty does not prevent such persons from attending the Eucharist or other liturgical services. It also does not prohibit such a person from private prayers or devotions. Though it is a passive participation, it can actually prompt a conversion of heart and lead one to full reintegration into the ecclesial communion.

Another effect of excommunication is that the excommunicated person is prohibited from participating in Church governance (§1, 3°). In this case also there is a difference between non-declared and declared penalties. In case of non-declared penalties, such a person is not deprived of any ecclesiastical offices, ministries, or functions (c.1336 §1, 2°), but they cannot licitly exercise them and cannot licitly commit acts of legislative, executive or judicial power, ordinary or delegated. But in the case of a *ferendae sententiae* or declared *latae sententiae* excommunication, canon (§2, 2°) states that such acts of governance are invalid and not simply illicit.

Another set of prohibitions affects only imposed or declared excommunications. These restrictions concern the eligibility of the excommunicated individual to receive certain ecclesiastical benefits.⁴²² Such persons are prohibited from enjoying privileges already acquired (§2, 3°), acquiring any ecclesiastical dignity, office, or function (§2, 4°), and receiving income from any ecclesiastical dignity, office function, or pension (§2, 5°). For a declared *ferendae* or *latae sententiae* excommunication, the effects are substantially increased.

3.2.16.3. Interdict

Interdict⁴²³ is the second type of censure in the present Code of Canon Law, CIC 1983. It is unknown exactly when, historically, interdicts came into being and were applied as a distinct penalty. Prior to the eleventh century the term *interdictum* was used with the meaning of prohibition in the canonical texts, but without designating a

⁴²¹ Willian H. Woestman, *Ecclesiastical Sanctions and the Penal Process, A Commentary on the Code of Canon Law*. Ottawa: Saint Paul University, 2000, 43.

⁴²² Beal, (ed.), *New Commentary on The Code of Canon Law*, 1550.

⁴²³ L’interdict est une censure par laquelle certains biens sacrés sont prohibés, selon les termes de la loi. Cf. Le Tourneau, *Manuel de droit canonique*, 463.

specific penalty.⁴²⁴ The 1917 Code gives a definition of ‘interdict’; “a censure by which the faithful, though remaining in communion with the Church, are barred from the sacred goods enumerated in the following canons” (CIC 1917 c.2268). It is to be noticed here that the offenders are not out of the communion but they are barred from certain sacred goods. Interdict is also considered a medicinal penalty, which implies that it has to be personal and it cannot be imposed in perpetuity or for an indefinite period of time. The general principle is that such a penalty must be remitted once the delinquent ceases in his obstinacy.⁴²⁵ As in the case of excommunication there are *latae sententiae* interdicts and *ferendae sententiae* interdicts. In the same way, as in the case of excommunication, an interdict *latae sententiae* but not declared must be distinguished from a declared *latae sententiae* interdict and imposed *ferendae sententiae* interdict.

3.2.16.4. The Effects of Interdict

An interdict shares some of the effects of excommunication, to which this canon expressly refers. Unlike excommunication, the effects of the interdict are limited more specifically to spiritual aspects.⁴²⁶ “According to the present Code, an interdict is a kind of mini or restricted excommunication without all the effects of the former.”⁴²⁷ Therefore, interdict involves the same liturgical restrictions as excommunication, but does not affect participation in Church governance. Canon 1332 states the prohibitions connected to the penalty of interdict as follows: “One who is under interdict is obliged by the prohibition of can.1331 §1 nn.1 and 2; if the interdict was imposed or declared, the provision of can.1331 §2 n.1 is to be observed.” As per this canon, for a case of a *latae sententiae* interdict that has not been declared: any ministerial participation in celebrating the Sacrifice of the Eucharist or any other rite of worship is prohibited; secondly, celebrating the sacraments or sacramentals and receiving the sacraments are prohibited. If an interdict has been imposed or declared, the delinquent cannot actively participate in the Holy Mass or other liturgical rites. It is clear, as per canon 1109, that

⁴²⁴ Marzoa, *Exegetical Commentary*, vol. IV, 330.

⁴²⁵ Marzoa, *Exegetical Commentary*, vol. IV, 331.

⁴²⁶ CCEO removes the penalty of interdict. It has the penalty of minor excommunication in c.1431 to give penalties with prohibitions on the Holy Eucharist and the Divine Liturgy.

⁴²⁷ Woestman, *Ecclesiastical Sanctions and the Penal Process*, 48.

he may not validly assist at a marriage.⁴²⁸ So it is important to note that an interdicted person suffers only the first part of the penalties applied under excommunication. He does not suffer in the areas of offices, privileges, pensions and similar administrative matters.

3.2.16.5. Suspension

The third type of censure is suspension, which is not incurred by all the faithful but only by clerics. Suspension is a prohibition that affects the total or partial restrictions on the liturgical and governmental functioning of clerics. When in suspension, the cleric is not deprived of his office, as in the expiatory penalties. Since the suspension does not prevent the reception of any sacrament, it does not fall within the purview of this study. Canon 1333 gives the prohibition attached to the suspension:

Can. 1333 §1. Suspension, which can affect only clerics, prohibits:

- 1° either all or some acts of the power of orders;
- 2° either all or some acts of the power of governance;
- 3° the exercise of either all or some of the rights or functions attached to an office.

§2. A law or precept can establish that a suspended person cannot place acts of governance validly after a condemnatory or declaratory sentence.

§3. A prohibition never affects:

- 1° the offices or the power of governance which are not under the power of the superior who establishes the penalty;
- 2° the right of residence which the offender may have by reason of office;
- 3° the right to administer goods which may pertain to the office of the person suspended if the penalty is *latae sententiae*.

§4. A suspension prohibiting a person from receiving benefits, a stipend, pensions, or any other such thing entails the obligation of making restitution for whatever has been received illegitimately, even if in good faith.

The above canon states the scope of the prohibition brought by suspension. Since the effects of suspension can vary, its exact scope must be determined in the sentence or the decree imposing it (c.1334).⁴²⁹

⁴²⁸ Marzoa, *Exegetical Commentary*, vol. IV, 332.

⁴²⁹ “Can. 1334 §1: Within the limits established by the preceding canon, either the law or precept itself or the sentence or decree which imposes the penalty defines the extent of a suspension.

3.2.17. The Delicts under *Latae sententiae* Excommunication Reserved to Apostolic See

As the concern of this chapter is to examine indirectly reserved sins according to the Code of Canon Law, the delicts that carry some kind of reservation are dealt with in it. Only a few delicts are punished with a penalty of *latae sententiae* excommunication with reservation of its remission to the higher authorities, and it is necessary to find out which these are. There are nine delicts with *latae sententiae* excommunication,⁴³⁰ yet only in the case of the following six is remission reserved to the Apostolic See.

3.2.17.1. Desecration of the Sacred Species (c.1367)

“A person who throws away the consecrated species or takes or retains them for a sacrilegious purpose incurs a *latae sententiae* excommunication reserved to the Apostolic See; moreover, a cleric can be punished with another penalty, not excluding dismissal from the clerical state” (c.1367). “The canon refers to species consecrated during the Eucharistic synaxis that remain on the altar, as well as to those in the tabernacle or on display for Eucharistic adoration.”⁴³¹ What is profaned here is the consecrated Eucharistic species of bread or wine, not the celebration of the Sacrament itself. Three varieties of such profanation are specified in the canon. The first is to scornfully throw away the Consecrated Hosts or scornfully pour the Sacred Blood on the ground or the altar. The other two are the removal of the consecrated species and preservation of them for a sacrilegious purpose. It is the sacrilegious purpose or intention that determines the gravity of the act. The act of keeping or taking away the species to one’s home, though prohibited, does not constitute the offence so long as it is undertaken with a good purpose.

§2. A law, but not a precept, can establish a *latae sententiae* suspension without additional determination or limitation; such a penalty has all the effects listed in can.1333 §1.”

⁴³⁰ “D’une part, nous relevons un ensemble de délits qui sont expressément sanctionnés par l’excommunication: l’apostasie, l’hérésie et le schisme (c.1364 §1), la profanation des saintes espèces (c.1367), les voies de fait sur la personne du Pape (c.1370 §1), l’absolution du complice dans un péché contre le sixième commandement (c.1378 §1), la consécration épiscopale sans mandat pontifical (c.1382), la violation directe par le confesseur du sceau sacramentel (c.1388 §1), l’avortement (c.1398). Il s’agit, sans conteste, de délits très graves.”; Borras, *L’excommunication dans le nouveau code de droit canonique*, 23.

⁴³¹ Marzoa, *Exegetical Commentary*, vol. IV, 458.

3.2.17.2. Physically Assaulting the Pope (c.1370 §1)

“A person who uses physical force against the Roman Pontiff incurs a *latae sententiae* excommunication reserved to the Apostolic See” (c.1370 §1). A physical attack on the Pope is punished with *latae sententiae* excommunication reserved to the Apostolic See. The canon concerns an offence in which one uses physical, external force against the Pope. But this need not be an offence in public; it is not necessary that it be known publicly. Since the canon uses the term ‘physical attack’ it means that it does not concern verbal attacks.

Two reasons for such a severe penalty are given by Alphonse Borras: firstly, the physical force stems from a contempt for the faith, the Church or the ministerial powers. Secondly, it affects the public good of the Church.⁴³² So the delict here is not simply an attack on the integrity of an individual, but an attack on what he represents. “The reservation emphasises the gravity of the offense because of what the Bishop of Rome represents in the College of Bishops and in his ministry in the service of the universal Church.”⁴³³ So the offence of physical force against the Pope is punished with *latae sententiae* excommunication reserved to the Apostolic See.

3.2.17.3. Absolution of an Accomplice (c.1378 §1)

“A priest who acts against the prescript of canon 977 incurs a *latae sententiae* excommunication reserved to the Apostolic See” (c.1378 §1). The various aspects of the offence of the absolution of an accomplice are dealt with in the second chapter.⁴³⁴ What is reserved in the canon is the delict committed by a priest by absolving the accomplice in a grave and external sin against sixth commandment. Canon 977 clearly states that except in danger of death the absolution of an accomplice is invalid.⁴³⁵ When a confessor absolves an accomplice in a sin against chastity he commits an invalid action, against prescripts of the Church. Such a priest is to be punished with a *latae sententiae* excommunication reserved to the Apostolic See. Merely hearing the confession without granting absolution to the accomplice does not constitute the

⁴³² A. Borras, “The Cessation of Penalties,” in Marzoa, *Exegetical Commentary*, vol. IV, 466.

⁴³³ Marzoa, *Exegetical Commentary*, vol. IV, 467.

⁴³⁴ See second chapter, 99-103.

⁴³⁵ c.977 “The absolution of an accomplice in a sin against the sixth commandment of the Decalogue is invalid except in danger of death.”

offence. The canon clearly specifies the absolution of an accomplice. The decastery that deals with such cases is the Congregation for Doctrine of Faith (CDF).

With respect to the prior legislation, canon 884 of CIC 1917, the source of the new canon 977, presents two cases: normal instances or instances in which the penitent is in danger of death. In the second case, a further distinction is presented between necessity and other situations. In general, a priest is prohibited from absolving his accomplice under pain of the nullity of the absolution, and this nullity occurs when there was no jurisdiction, according to the terms used in the old Code. The prohibition was also valid in cases in which the accomplice is in danger of death, provided that there is no need to exercise sacerdotal ministry because it was possible to find another priest. Even in that latter case, however, any absolution given was merely illicit. The meaning of the case of necessity can be better understood in reference to canon 2367 §1 (CIC 1917), which states that a priest who absolves or tries to absolve an accomplice in danger of death also incurs the penalty.⁴³⁶

3.2.17.4. The Unlawful Consecration of a Bishop and Reception of Such an Ordination (c.1382)

“A bishop who consecrates someone a bishop without a pontifical mandate and the person who receives the consecration from him incur a *latae sententiae* excommunication reserved to the Apostolic See” (c.1382). The traditions of apostolic succession and hierarchical communion among the bishops are firmly maintained in the Church. Thus, the law prescribes that the ordination of a bishop can be undertaken only with a pontifical mandate (c.1013). This is not an invalidating law that would make the action illicit. “It is established that the Church did not, and would not, recognize the ordination of anyone who had received or might receive Episcopal ordination without a pontifical mandate.”⁴³⁷ This pontifical mandate could be obtained either by a document or through an oral confirmation. But it is always advisable to have the document in writing as proof of the pontifical confirmation of the mandate. The canon punishes both the consecrating bishop and the consecrated bishop with a penalty of *latae sententiae* excommunication reserved to the Apostolic See. The

⁴³⁶ Marzoa, *Exegetical Commentary*, vol. IV, 496.

⁴³⁷ Marzoa, *Exegetical Commentary*, vol. IV, 512.

penalty does not extend to the co-consecrating bishops, as the canon says nothing about them.

3.2.17.5. Direct Violation of Sacramental Seal (c.1388 §1)

“A confessor who directly violates the sacramental seal incurs a *latae sententiae* excommunication reserved to the Apostolic See; one who does so only indirectly is to be punished according to the gravity of the delict” (c.1388 §1). The sacramental seal⁴³⁸ is inviolable, according both to divine law and ecclesiastical law.⁴³⁹ It is to be observed always, in every case, with no exceptions. No cause, however great, excuses one from its observance. This obligation does not expire with the passing of time, but continues even after the death of the penitent. It demands silence from the confessor with respect to everyone, including the penitent himself outside confession.

This serious and inviolable sacramental seal is protected with the *latae sententiae* excommunication reserved to the Apostolic See for commission of this delict. Canon 1388 §1, distinguishes between direct and indirect violations, and only a direct violation is sanctioned with *latae sententiae* excommunication. A direct violation occurs when the confessor reveals the sins and the name of the person who committed them.⁴⁴⁰ Only a priest is subject to the sacramental seal. A direct violation of this seal is sanctioned with the penalty of *latae sententiae* excommunication reserved to Apostolic See, and an indirect violation is sanctioned with an obligatory indeterminate *ferendae sententiae* penalty. The specific penalty must be determined according to the gravity of the offense.

3.2.17.6. Attempt to Confer Sacred Ordination on a Woman or the Reception of Ordination by a Woman

Both the one who attempts to confer sacred ordination on a woman, and she who attempts to receive sacred ordination incur a *latae sententiae* excommunication reserved to the Apostolic See. This *latae sententiae* censure was decreed by The Congregation for the Doctrine of the Faith in virtue of the special faculty granted to it

⁴³⁸ More detailed explanation of the offence is dealt in the previous chapter. Ref.

⁴³⁹ Roos, *The Seal of Confession*, 67.

⁴⁴⁰ Beal, (ed.), *The New Commentary on the Code of Canon Law*, 1592.

by the Supreme Authority of the Church in order to safeguard the nature and validity of the sacrament of Holy Orders on the Ordinary Session of 19 December 2007.⁴⁴¹ The 1983 Code does not sanction the excommunication of those who merely simulate the conferral and reception of holy orders on women. Canon 1378 excommunicates non-priests who simulate the Eucharist and confession and canon 1379 imposes ‘a just penalty’ on those who simulate the other sacraments. Yet no canon in the CIC directly excommunicates those who simulate holy Orders.

3.2.18. *Latae sententiae* Excommunications and Interdicts without Reservation

There are two *latae sententiae* excommunications and four *latae sententiae* interdicts in the new Code, none of which mentions any reservation. Though these are not reserved as per the canon, in effect they are reserved to the Ordinary (cc.1355, 1356). If a delict is declared or imposed, it can be remitted by the Ordinary who initiated the judicial procedure, or else the Ordinary who imposed or declared the delict, or else the Ordinary of the territory where the offender actually resides in consultation with the Ordinary who initiated the process (c.1355 §1).⁴⁴² So all the delicts which are not reserved or declared can be remitted only by Ordinaries who have the jurisdiction to do so, as per the canons. Canon 1355 §2 states about the remission of *latae sententiae* penalties which are not reserved to the Apostolic See that such penalties, “established by law but not declared can be remitted by the Ordinary in respect of his subjects and of those actually in his territory or of those who committed the offence in his territory. Moreover any bishop can do this, but only in course of sacramental confession.” All other ministers, like any ordinary confessor or parish priest, lack the power to remit the *latae sententiae* penalties not reserved to the Apostolic See. In effect, it can be said

⁴⁴¹ “The Congregation for the Doctrine of the Faith, in virtue of the special faculty granted to it by the Supreme Authority of the Church (cf. Can. 30, Code of Canon Law), in order to safeguard the nature and validity of the sacrament of Holy Orders, decreed, in the Ordinary Session of December 19, 2007:

In accordance with what is disposed by Can. 1378 of the Code of Canon Law, he who shall have attempted to confer holy orders on a woman, as well as the woman who may have attempted to receive Holy Orders, incurs in a *latae sententiae* excommunication, reserved to the Apostolic See.

If he who shall have attempted to confer Holy Orders on a woman or if the woman who shall have attempted to received Holy Orders is a faithful bound to the Code of Canons of the Oriental Churches, he is to be punished with the major excommunication, whose remission remains reserved to the Apostolic See, in accordance with can. 1443 of the same Code (cf. can. 1423, Code of Canons of the Oriental Churches).” Published in *L’Osservatore Romano*. May 29, 2008, 1.

⁴⁴² Marzoa, *Exegetical Commentary*, vol. IV, 407.

that the remission of such a penalty is reserved to the Local Ordinary, Bishop or Canon Penitentiary.

3.2.18.1. Apostasy, Heresy and Schism (c.1364 §1)

“Without prejudice to the prescript of can.194 §1, 2° an apostate from the faith, a heretic, or a schismatic incurs a *latae sententiae* excommunication; in addition, a cleric can be punished with the penalties mentioned in can.1336 §1, 1°, 2° and 3°” (c.1364 §1).⁴⁴³ Since the above canon contains three offences, i.e. heresy, apostasy and schism, these are to be distinguished doctrinally. “Apostasy is understood exclusively as a total rejection of Christian faith.”⁴⁴⁴ In order to be an offence, apostasy must be perceived externally by one who is baptised in the Catholic Church or received in the Church. The apostasy held internally as a desire or an attitude constitutes a sin but not an offence. “Heresy is the obstinate denial or doubt after baptism, of a truth that must be believed by divine and Catholic faith.”⁴⁴⁵ As in the case of apostasy, the delict should be external and committed by a Catholic. “Schism means the withdrawal of submission to the Supreme Pontiff or from the communion with the members of the Church subject to him.”⁴⁴⁶ The offense is thus constituted by the external violations of refusing to submit to the authority of the Pope as the visible head of the Church and refusing communion with the faithful subject to Pope.

All the above three delicts are sanctioned with a censure of excommunication *latae sententiae*. Reference to the canon 194 §1, 2 means that the *ipso iure* removal from the ecclesiastical office mentioned in this canon is still in effect. This is not attached to the penalty. Even in a non-declarative excommunication, the removal of a person from the ecclesiastical office remains in force in accordance with canon 194.⁴⁴⁷

⁴⁴³ “c.194 §1: The following are removed from an ecclesiastical office by the law itself: 2° a person who has publicly defected from the Catholic faith or from the communion of the Church.”

⁴⁴⁴ Marzoa, *Exegetical Commentary*, vol. IV, 444.

⁴⁴⁵ Marzoa, *Exegetical Commentary*, vol. IV, 444.

⁴⁴⁶ Marzoa, *Exegetical Commentary*, vol. IV, 445.

⁴⁴⁷ c.194 §1. The following are removed from an ecclesiastical office by the law itself:

1° a person who has lost the clerical state;

2° a person who has publicly defected from the Catholic faith or from the communion of the Church;

3° a cleric who has attempted marriage even if only civilly.

3.2.18.2. Abortion (c.1398)

“A person who procures a completed abortion incurs a *latae sententiae* excommunication” (c.1398). According to this canon, a person who knowingly and freely procures a completed abortion⁴⁴⁸ incurs a *latae sententiae* excommunication. “A proposed *ferendae sententiae* penalty was rejected as possibly undercutting the canon’s effectiveness, especially if the abortion was occult, or non-public.”⁴⁴⁹ In this offence there are many complicities, since numerous persons may be involved in procuring the abortion, e.g. the parents of the aborted *fetus*, their families, doctors, nurses, etc. Those whose assistance is indispensable for the abortion presumably incur excommunication, as they are necessary accomplices (c.1329 §2). Others involved before or after the abortion may be subject to unspecified *ferendae sententiae* penalties. Each abortion is a separate offence and thus the penalty is multiplied for someone who commits several abortions.⁴⁵⁰ In sanctioning or declaring a delict, the penal authority must consider various factors such as the age, ignorance, and fear of the persons involved, as all of this may affect the wilful act.

3.2.19.3. Using Physical force Against a Bishop (c.1370)

“A person who does this against a bishop incurs a *latae sententiae* interdict and, if he is a cleric, also a *latae sententiae* suspension” (c.1370 §2). The use of physical force against the Pope is punished with excommunication, whereas physical force against a bishop, whether diocesan or titular, is punished with a *latae sententiae* interdict. The nature of the offence is as the same as that of the offence against pope, yet the relative dignity and importance of the position of these two categories of personality make for the difference in the seriousness of the act.

3.2.18.4. Attempting to Preside at a Eucharistic Celebration (c.1378 §2, 1°)

“The following incur a *latae sententiae* penalty of interdict or, if a cleric, a *latae sententiae* penalty of suspension: 1° a person who attempts the liturgical action of the

§2. The removal mentioned in nn.2 and 3 can be enforced only if is established by the declaration of a competent authority.

⁴⁴⁸ A more detailed account of Catholic teaching on abortion is provided in the second chapter. Ref.107-122.

⁴⁴⁹ Beal, (ed.), *New Commentary on The Code of Canon Law*, 1603.

⁴⁵⁰ Marzoa, *Exegetical Commentary*, vol. IV, 557.

Eucharistic sacrifice though not promoted to the sacerdotal order” (c.1378 §2). In the Catholic faith, the Eucharistic celebration is of great importance and the faithful are expected to approach it with due veneration (cc.897, 898). The Church clearly and firmly states that only a validly ordained priest is qualified to celebrate the Mass (c.900).⁴⁵¹ This means that it excludes the deacons, lay men or consecrated religious without ordination. Even in the case of a grave necessity, the Church does not allow for the Eucharist to be celebrated by a member of the faithful who is not a priest. So, if a person who is not a priest attempts to celebrate mass, he or she commits an offence. This delict is punished with a *latae sententiae* interdict without reservation to the Apostolic See. But since it is *latae sententiae*, the person is under the consequences of an interdict. This means that the person who has committed such an offence cannot receive any sacrament or sacramental. In a way, the sin of such a person is indirectly reserved to the Local Ordinary who can give absolution to the interdict.

3.2.18.5. The Offences of Attempting to Give Absolution or Hear Confessions (c.1378 §2, 2°)

According to this canon, there are two offenses to be punished with *latae sententiae* interdicts. Canon 1378 §2, 2° states: “apart from the case mentioned in §1, a person who, though unable to give sacramental absolution validly, attempts to impart it or who hears sacramental confession.”

According to Canon Law, only an ordained priest (c.965) with the faculty (c.966 §1) is able to impart a valid absolution in the sacrament of penance. In both cases, i.e. absolution by a non-ordained person and absolution by a priest without the necessary faculty, the sacramental absolution is invalid. Someone who acts contrary to the law commits the offence of attempting to give an absolution. “In canon law, it is called an ‘attempt’ because what the subject can carry out is only an attempted act, not the act itself.”⁴⁵²

The second offence that is under the *latae sententiae* interdict is the offence of hearing confession by a person ineligible to hear confessions and grant absolutions. It is

⁴⁵¹ CIC c.900 §1; The minister who is able to confer the sacrament of the Eucharist in the person of Christ is a validly ordained priest alone.

⁴⁵² Marzoa, *Exegetical Commentary*, vol. IV, 501.

evident that the sin is confessed to a sacred minister as a representative of God and the Church and for the purpose of absolution.⁴⁵³ Hence, as in the first case, only a priest with the faculty required to give a valid absolution can hear the confession. These two offences very often go together. A person who cannot absolve the sins hearing the confession is enough to commit this offence.

3.2.18.6. False Denunciation of Solicitation (c.1390 §1)

“A person who falsely denounces before an ecclesiastical superior a confessor for the delict mentioned in canon 1387 incurs a *latae sententiae* interdict and, if he is a cleric, also a suspension” (c.1390 §1). Canon 1387 states the penalty for the violation of the offence of solicitation. Solicitation is here an offence by a priest, during or under the pretext of confession, who solicits a penitent to commit a sin against the sixth commandment. Yet canon 1390 §1 punishes the false denunciation of a confessor for committing the delict of solicitation to a superior authority. The denunciation made to a competent ecclesiastical superior may be made orally, in which case a record is signed or may be made by a written document with signature. “The essential element of a false denunciation is malice on the part of the person making the denunciation if he is aware that the confessor is innocent and still makes the accusation.”⁴⁵⁴ Assuming that the confessor is innocent, if one denounces him for the offence of solicitation one commits the offence of false denunciation and is punished with a *latae sententiae* interdict.

3.2.18.7. Attempted Marriage by a Perpetually Professed Religious who is not a Priest (c.1394)

“A perpetually professed religious who is not a cleric and who attempts marriage, even if only civilly, incurs a *latae sententiae* interdict, without prejudice to the prescript of canon 694” (c.1394 §2). This is an offence of attempted marriage by a perpetually professed religious. In Canon Law, a religious is prohibited from entering into marriage and thus his or her religious vows are an impediment to entering legally

⁴⁵³ Marzoa, *Exegetical Commentary*, vol. IV, 501.

⁴⁵⁴ Marzoa, *Exegetical Commentary*, vol. IV, 532.

into a marriage.⁴⁵⁵ Having this impediment, if a person makes a conscious and voluntary attempt to marry it is an offence and has no juridical value. As per the canon 694 §1, 2°, a religious who attempts a marriage is *ipso facto* dismissed from the religious institute, and canon 1394 §2 punishes the offender with a *latae sententiae* interdict.

3.2.18.8. Recording and Publishing in the Public Media Whatever is said by a Confessor or a Penitent

For the protection of the sacrament of penance, a new possibility of *latae sententiae* excommunication was established in 1988. The decree states, “With due regard to c.1388, whoever by any technical instrument records or publishes in the mass media what was said in sacramental confession by the confessor or the penitent, real or feigned, by him/herself or another person, incurs a *latae sententiae* excommunication.”⁴⁵⁶ Canon 1388 allows for a penalty, not excluding excommunication, to be imposed upon others than a confessor who violate the secret of confession.⁴⁵⁷ The purpose is clearly stated in the decree so as to protect the sanctity of the sacrament of penance and defend the rights of its ministers and the Christian faithful in those things which belong to the sacramental seal and other secrets connected with confession. These cases are under the jurisdiction of the Congregation for the Doctrine of the Faith in virtue of a special faculty granted it by the supreme authority of the Church.

3.2.19. Different Ways of Remitting *Latae sententiae* Censures

The Code gives the provisions for the remission of penalties. In the following points various possibilities to remit penalties, and especially censures, are explained.

3.2.19.1. The General Principles of the Remission of Censures

The basic principle relevant to the cessation of censure is that when a censure has once been contracted, it can be removed only by legitimate remission. A censure is not

⁴⁵⁵ Marzoa, *Exegetical Commentary*, vol. IV, 543.

⁴⁵⁶ Congregation for the Doctrine of Faith, decree, Congregation pro Doctrina fidei, (n.d.), in AAS, 80 (1988), 1367. Cf. Woestman, *Ecclesiastical Sanctions and the Penal Process*, 225; Cf. http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19880923_scomunica-confessioni_en.html (12-10-2013).

⁴⁵⁷ c.1388 §2: An interpreter and the others mentioned in c.983 §2 who violate the secret are to be punished with just penalty, not excluding excommunication.

ipso facto removed by the repentance and satisfaction of the delinquent. Since it is imposed by a superior, it can be removed only by a legitimate authority. This is why the superior must remit censure and it cannot be automatically removed.

Another general principle is that censures are medicinal and imposed precisely in order to correct the delinquent. It has already been seen that the purpose of censures is primordially and specifically medicinal or corrective, without excluding the goal of reparation of the offense. Application of the penalty obligates the offender to amend himself and repair the offense, in the sense that a bond is established and an obligation is created; an obligation between the offence and remission of the penal sanction.⁴⁵⁸ When the delinquent corrects himself and consequently has accomplished the end, the censures should be removed. In other words a censure, by its very nature, tends to remission.

Since the fundamental principle is that the censure is to be remitted, a censure actually incurred continues to bind the delinquent even after the death of the superior who imposed it. The positive disposition of the law renders the delict binding in a way that is reliant not on the superior, but on the conduct of the offender. The removal of censure is possible only by remission from a superior; not necessarily the same superior, but one who has the competence to remove it.

Yet another fact to be remembered is that a law or precept imposing a censure can cease to be in effect, like any other law or precept, but that this has no effect on a censure already incurred. Censures imposed bind even after the cessation of the law or precept inflicting it and can only be removed by remission.

With regard to remission, it is to be considered that in order to remit validly from a censure, it is not required that the delinquent have the same subjective disposition as would be necessary to validly absolve him or her from sin. For sacramental absolution from sin, at least supernatural attrition is necessary. Yet for remission from censure, all that is required is that the delinquent recede from his contumacy and repair or at least promise to repair the injury and scandal caused by the delict. Even if this disposition of the delinquent is prompted by merely natural motives, the remission

⁴⁵⁸ Marzoa, *Exegetical Commentary*, vol. IV, 400.

from censure would still be valid. So, absolution from sin and remission from censure are to be distinguished, as the same conditions are not necessary to absolve validly from censure as to absolve validly from sin. It is quite possible, therefore, to absolve one from censure without absolving one from the connected sin.

Another important distinction between the absolution of sin and remission of censure is that no one mortal sin can be forgiven independently of others, because forgiveness of sin is affected by the infusion of Sanctifying Grace, which will not take place so long as a single mortal sin remains on the soul. But it is possible for one censure to be remitted even when others may still bind the delinquent, so it is not necessary to remit all in order to remit one.⁴⁵⁹

3.2.19.2. The Authorities that Give Remission of Penalties

Having considered certain general principles on the remission of censures, it is important to understand who is qualified to give remission. Canon 1354 articulates the general principle regarding the authority that can impart remission of all types of penalties. It does not distinguish between censures and expiatory penalties, but speaks in general about who can remit penalties.

Penalties may be remitted by absolution or by dispensation. Absolution is an act of justice that a superior has no right to deny, which is applicable in the case of censures. On the other hand, dispensation is an act of grace, a favour, the relaxation of a merely ecclesiastical law in a particular case, which depends on the will of the superior. Dispensation is applicable in the case of expiatory penalties. In both of these cases, cessation of penalties depends mainly on the amendment of the offender.

c.1354 §1 In addition to the persons listed in cann. 1355 – 1356 all who can dispense from a law which includes a penalty or who can exempt a precept which threatens a penalty can also remit that penalty.

§2 Moreover, a law or precept which establishes a penalty can also give the power of remission to others.

§3 If the Apostolic See has reserved the remission of a penalty to itself or to others, the reservation must be interpreted strictly.

⁴⁵⁹ Dargin, *Reserved Cases according to the Code of Canon Law*, 58.

The Exegetical Commentary on this canon identifies four general rules pertaining to persons who are qualified to remit a penalty, as follows:

- a) Anyone with legislative power to establish penal laws (c.1315 §1) that is, the universal legislator and particular legislators (c.135 §2); and anyone who can dispense from those laws. This means, of course, each legislator with respect to his own laws, keeping in mind that the universal legislator may dispense from particular laws but particular legislators do not have the power to dispense from universal penal laws (c.87 §1, cf. §2).
- b) Anyone with executive power in the external forum to issue a precept that bears a penalty (c.1319 §1).
- c) Anyone qualified to execute a judgment or decree, that is, an ordinary (c.134 §1; cf. cc 1341, 1348)
- d) The superior of the person who imposed the penalty (cf. cc.620, 622 etc.).

To this list, we must add the successors in office of the persons mentioned above. All those persons have *ordinary* power of remission, since that goes with the office by virtue of the law itself (c.131 §1).⁴⁶⁰

These are authorities in general for the remission of various types of penalties. But the above canon also mentions canons 1355 and 1356, which include certain other norms regarding the remission of penalties.

3.2.19.3. Remission of Reserved and Declared *Latae sententiae* Censures

The general principles of the remission of penalties are seen in the above point. Yet provision for the remission of reserved *latae sententiae* penalties is different. As noted already, reservation is the act by which a person in a superior position retains for himself a power that corresponds to or could correspond to a subordinate position.⁴⁶¹

As in the case of reserved sins, in the penal law the reservation affects the remission of penalties, and especially of censures. The purpose of the system of reservation is to ensure better handling of the damage and scandal caused by the delict. A superior authority is more competent to give exhortation and pastoral care. This also persuades the offender to undergo certain disciplines to ensure that the demands of justice are met.

Canon 1355 §1 provides for the remission of declared *latae sententiae* penalties. Though it also affects the imposed *ferendae sententiae* penalties, the only concern of

⁴⁶⁰ Marzoa, *Exegetical Commentary*, vol. IV, 402-403.

⁴⁶¹ Marzoa, *Exegetical Commentary*, vol. IV, 403.

the present discussion will be *latae sententiae* censures, especially excommunication and interdict.

can.1355 §1. Provided that the penalty has not been reserved to the Apostolic See, the following can remit an imposed or declared penalty established by law:

1° the Ordinary who initiated the trial to impose or declare a penalty, or who personally or through another imposed or declared it by decree;

2° the Ordinary of the place where the offender is present, after the ordinary mentioned under n.1 has been consulted unless this is impossible because of extraordinary circumstances.

According to the canon, a *latae sententiae* censure which is reserved to the Apostolic See and declared can be remitted only by the Apostolic See. It is seen already that the number of penalties whose remission is reserved to the Apostolic See is limited to a few in the new Code. Ordinaries cannot remit such reserved penalties “because of the particular seriousness of the delict, the exigencies of ecclesiastical discipline, and the need to foster more effectively the spiritual welfare of offenders.”⁴⁶²

The remission of a *latae sententiae* censure imposed by the Ordinary can be absolved by the same Ordinary or by the delegated person. According to CIC 1917 canon 2245 §2, an *ab homine* censure is reserved to the one who has imposed it or handed down the decision, or else to his qualified superior, successor or delegate. Certainly, CIC 1983 c.1355 §1, 1° includes attribution of the remission of a penalty to the person who has inflicted or declared it, himself or through another, but in that case it speaks of an Ordinary, thus designating all persons who may be so called (CIC 1983 c.134 §1).⁴⁶³

A censure may also be remitted by an Ordinary, where the offender is present and after the Ordinary of the place has consulted with the Ordinary who imposed the *latae sententiae* censure. Number two of the canon adds that the Ordinary of the place (c.134 §2) where the offender actually is, may also remit *ferendae sententiae* or *latae sententiae* penalties that have been declared, established by law and not reserved to

⁴⁶² Beal, (ed.), *New Commentary on The Code of Canon Law*, 1567.

⁴⁶³ c.134 §1. “In addition to the Roman Pontiff, by the title of ordinary are understood in the law diocesan bishops and others who, even if only temporarily, are placed over some particular church or a community equivalent to it according to the norm of can.368 as well as those who possess general ordinary executive power in them, namely, vicars general and episcopal vicars; likewise, for their own members, major superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right who at least possess ordinary executive power.”

the Apostolic See. The Ordinary of the place where the offender actually is, should, however, consult the Ordinary mentioned in number one. This consultation does not affect the validity of the act,⁴⁶⁴ but serves only to help deter possible abuses.⁴⁶⁵ It is justified by the respect and sensitivity due to the authority who initiated the judicial proceedings or who executed the judgment. It is also justified by the need to know the reasons why the penalty was imposed or declared so as to make the best possible assessment of the advisability and opportunity of remission.

The *Coetus* reworked norms 39 and 40 of the original schema to indicate a parity of approach in dealing with *ferendae sententiae* and declared *latae sententiae* penalties, presumably because of the intervention of the appropriate Church authority in both instances. The *coetus* rejected efforts to restrict the remitting power of the Ordinary of the place where the delinquent is living in situations where such an Ordinary has not himself inflicted or declared the penalty. This is an effort to protect the rights of delinquents in an increasingly mobile world; one thinks in this connection of recent developments enlarging the options for the competent forum in marriage cases. Yet still there is a concern that the original Ordinary should be somehow involved in the remission process, and thus provision is made for consultation with him unless extraordinary circumstances make it impossible.⁴⁶⁶

The request for the remission of censures is to be accepted when the guilty party is properly disposed (c.1358 §1). But the law distinguishes between declared and undeclared censures reserved to the Apostolic See. In fact, there are other possibilities of remission, which will be dealt with in the next points, for the cases of undeclared *latae sententiae* penalties reserved to Apostolic See and other types of undeclared *latae sententiae* censures.

Normally, one will seek an external forum remission from the competent Ordinary or Apostolic See. The confessor himself must have recourse to these authorities for the sake of anonymity in *latae sententiae* cases. There is no anonymity in other cases, since the penalty will have been inflicted or declared in the external forum and can be

⁴⁶⁴ Marzoa, *Exegetical Commentary*, vol. IV, 407.

⁴⁶⁵ *Comm.* 9 (1977) 169.

⁴⁶⁶ Thomas J. Green, "Penal Law Revisited. The Revision of the Penal Law Schema," *Studia Canonica*, 15 (1981) 135-198, 170.

sent directly to the named delinquent. There is nothing to stop the competent Ordinary or Apostolic See from delegating power to remit the penalty to someone, e.g., to the confessor or Local Ordinary or other specified person.⁴⁶⁷ A confessor must know all these norms regarding the remission of penalties in order to avoid illegal and invalid absolutions.

The absolution of sin reserved *ratione sui* and *ratione censurae* to the Apostolic See is dealt with by the Apostolic Penitentiary. Article 118 of *Pastor Bonus* states: “For the internal forum, whether sacramental or non-sacramental, it grants absolutions, dispensations, commutations, validations, condonations and other favours.”⁴⁶⁸ Thus, a *latae sententiae* censure reserved to the Apostolic See, whether declared or non-declared, could be addressed to this Apostolic Tribunal. Any individual can directly address the Apostolic Penitentiary, even without revealing his or her identity.

3.2.19.4. Remission of Undeclared *Latae sententiae* Censures

Special provisions are made for the remission of penalties in view of the spiritual needs of the faithful, in cases when there has been no formal penal intervention by an ecclesiastical authority. There are several ways to remit the penalties of undeclared censures:

3.2.19.4.1. The Power of Confessors to Remit *Latae sententiae* Censures (c. 1357)

In the codification process of CIC, in May 1977, the plenary session of the Cardinals decided to return to the Code’s notion of excommunication as barring one from all sacraments. This prompted the *coetus* to consider whether to reintroduce provisions in the Code for confessors’ absolution of subjects of penalties who find it hard to be deprived of the grace of the sacraments prior to being remitted in the external forum. The *coetus* agreed in principle to articulate such a norm, but disagreed concerning the scope of the confessor’s absolving power. However, there was an opinion that this could not be done in light of the directive principles for the revision of the Code and the strong external forum thrust of the schema. In other words, it planned to restrict

⁴⁶⁷ Marzoa, *Exegetical Commentary*, vol. IV, 416.

⁴⁶⁸ *Pastor Bonus* art.118: Taken from Code of Canons of the Eastern Churches, Latin-English Edition, Canon Law Society of America, 2001, 812.

the confessor's absolving power as much as possible and confine it to a relatively circumscribed area. Most members of the *coetus* agreed with this position and limited the absolving power of the confessor to non-declared *latae sententiae* excommunications or interdicts. The reformulated norm specifies this limitation of the confessor's absolving power and indicates the confessor's authority to impose certain cautions to repair any scandal as well as to prescribe a certain penance even under threat of reincidence of the penalty.⁴⁶⁹

Canon 1357 §1 gives the confessor the faculty to remit a non-declared *latae sententiae* censure. Most *latae sententiae* excommunications would not be formally declared, as they are not publicly known. A confessor in most undeclared situations might remit a censure in the internal forum with the provision of canon 1357. This provision of law creates a kind of parallel systems to the system of reserved sins and reserved censures. Canon 1357 presents the various aspects of the remission of a censure in the *forum interna*:

c.1357 §1 - Without prejudice to the prescripts of cann.508 and 976, a confessor can remit in the internal sacramental forum an undeclared *latae sententiae* censure of excommunication or interdict if it is burdensome for the penitent to remain in the state of grave sin during the time necessary for the competent superior to make provision.

The general principle is that excommunicated or interdicted persons are not permitted to receive the sacrament of penance or the anointing of the sick before remission of the censure. However, for pressing pastoral reasons limited provisions are made by canon 1357 for the remission of certain censures in the internal sacramental forum. Absolution granted by virtue of canon 1357 can be given only '*in foro sacramentali*,' meaning only in connection with the act of sacramental confession. The penitent confesses his sins and censures in the context of the sacrament of penance for the purpose of absolution. Hence, the confessor has no authority to grant remission outside the context of confession.

Canon 1357 §1 also emphasizes that it deals only with excommunication and interdict in the case of persons who incurred it *latae sententiae* and in an undeclared way. The confessor may remit undeclared *latae sententiae* excommunications or interdicts, even

⁴⁶⁹ Green, "Penal Law Revisited," 170.

if they are reserved to the Apostolic See. The canon concerns only the remission from excommunication and interdict and excludes suspension, as suspension does not entail any prohibition from receiving the sacraments, in particular the sacrament of penance. As per the canon, therefore, the confessor may not remit undeclared *latae sententiae* suspensions, *ferende sententiae* censures, or expiatory penalties.⁴⁷⁰ The canon thus excludes declared excommunication and interdict, which are consistent with the principle of the remission of penalties in the external forum.⁴⁷¹ The remission of a declared *latae sententiae* penalty can be done only in external forum because one is obligated to observe it in the external forum. Yet it does not follow that this canon can be used only in the case of occult censures.⁴⁷² If it is an undeclared *latae sententiae* penalty but the delict is not of an occult nature, a penitent is thus absolved and must refrain from performing such actions in the external forum in order to avoid scandal.

Provision for the remission of censures in the internal forum is given on condition that it cannot be observed in the external forum due to the danger of grave scandal or infamy or to one who desires absolution from the censure because of the hardship of remaining in the state of grave sin during the time necessary for obtaining faculties from a competent superior to provide remission in the external forum (1357 §1). When a member of the faithful requests absolution from sin, stating that it is very hard for him to remain in serious sin until a competent superior remits the penalty, then the absolution should be granted. The time period is not specified, so even a short period of hardship could be a reason to grant remission from censures in the internal forum in order to impart sacramental absolution. The ‘competent superior’ refers to those authorized to remit the penalties indicated above and the competent dicastery of the Apostolic See.⁴⁷³

Any confessor (presbyter or bishop) can use this provision for the benefit of those, but only those, over whom he possesses sacramental jurisdiction. The penitent intended in this canon is any one of the faithful who has contracted a *latae sententiae* censure.⁴⁷⁴

⁴⁷⁰ Beal, (ed.), *New Commentary on The Code of Canon Law*, 1570.

⁴⁷¹ Marzoa, *Exegetical Commentary*, vol. IV, 413.

⁴⁷² Francis E. Moriarty, *The Extraordinary Absolution from Censure*. Washington: The Catholic University of America, 1938, 160.

⁴⁷³ Beal, (ed.), *New Commentary on The Code of Canon Law*, 1570.

⁴⁷⁴ Moriarty, *The Extraordinary Absolution from Censures*, 156.

Provisions for intervention by the confessor indicate a pastoral concern to minimize situations in which an individual's full reintegration into the life of the community would be unduly delayed.

3.2.19.4.2. Obligation of the Confessor to Oblige the Penitent to Make Recourse

In the above provision of remitting the censures, the confessor should observe certain conditions which are presented in the second paragraph of canon 1357:

§2. In granting the remission, the confessor is to impose on the penitent, under the penalty of reincidence, the obligation of making recourse within a month to the competent superior or to a priest endowed with the faculty and the obligation of obeying his mandates; in the meantime he is to impose a suitable penance and, insofar as it is demanded, reparation of any scandal and damage; however, recourse can also be made through the confessor, without mention of the name.

According to A. Borras, there are four obligations on a confessor with respect to the penitent.⁴⁷⁵ Primarily, the confessor must impose on the penitent the burden of having recourse within a month to the competent penal superior or an authorized priest and observing the mandates or instructions of such an authority (§2). If the penitent does not have recourse to the superior authority within the given period, the censure recurs technically. The second obligation is to impose upon a penitent the duty to obey the instructions of whoever is going to grant absolution in the external forum. The censure may not recur if the penitent has recourse to the authority yet refuses to obey the mandates given by the superior.⁴⁷⁶ The third obligation of the confessor is to impose a suitable penance to enable the penitent to demonstrate that he is ready and willing to amend. Fourthly, it requires that any damage or scandal be repaired, if necessary, as an integral part of the remission of the censure. The acceptance of these conditions by the penitent signifies the cessation of his contumacy and acceptance of the obligation to observe these four conditions imposed by the confessor to ensure the remission of the censure.

⁴⁷⁵ A. Borras, "The Cessation Penalties," in Marzoa, *Exegetical Commentary*, vol. IV, 414.

⁴⁷⁶ Beal, (ed.), *New Commentary on The Code of Canon Law*, 1570.

3.2.19.4.3. The Authority of the Canon Penitentiary to Remit a Censure (c.508 §1)

There is another authority by law itself in the context of confession (*fora interna*) who can remit any unreserved and undeclared *latae sententiae* censures. Canon 1357 also mentions the authority of the Canon Penitentiary. The canon 508 §1 establishes thus:

By virtue of office, the canon penitentiary of a cathedral church and of a collegial church has the ordinary faculty, which he cannot delegate to others, of absolving in the sacramental forum outsiders within the diocese and members of the diocese even outside the territory of the diocese from undeclared *latae sententiae* censures not reserved to the Apostolic See (508 §1).

The Canon Penitentiary⁴⁷⁷ has the ordinary faculty to remit *latae sententiae* excommunication and interdicts not reserved and not declared. But this canon denies that the Canon Penitentiary can delegate this power to others. There are two possibilities for remission by the Canon Penitentiary in the diocese, i.e. to give remission to those who are present in the diocese and to any member of the diocese wherever he or she may be.

3.2.19.4.4. Power of the Ordinaries in the External Forum and all Bishops in the Sacramental Forum (c.1355 §2)

Paragraph two of canon 1355 deals with *latae sententiae* penalties established by law which are neither declared nor reserved. This canon states two different possibilities of remission:

Provided it is not reserved to the Apostolic See, a *latae sententiae* penalty established by law but not yet declared can be remitted by the Ordinary in respect of his subjects and of those actually in his territory or of those who committed the offence in his territory. Moreover, any bishop can do this, but only in the course of sacramental confession (1355 §2).

The first part of the canon specifies three ways in which the Ordinary⁴⁷⁸ can remit penalties in the external forum, i.e. of his own subjects, of those who are actually present, and of those who have committed an offence in his territory. Here, anyone who has committed an offence in the territory is treated like the ordinary's subjects proper.

⁴⁷⁷ This official functions only in dioceses with chapters of canons (cc 503-510). Yet technically, a comparable internal forum official must be appointed even by bishops without such chapters (c.508 §2).

⁴⁷⁸ CIC c.134 §1 explains who are the Ordinaries.

However, as a second provision, this canon includes any bishop, which means that even the titular bishop can remit a *latae sententiae* penalty not reserved to the Apostolic See and not yet declared. Yet another condition is that the bishop can do so only in the context of sacramental confession (in the internal forum). The power given to the bishop in this canon is quite different from the power given in canon 1357 to a confessor. Canon 1357 puts certain conditions on the confessor, whereas canon 1355 §2 puts no such conditions. The possibility of remission is foreseen in 1357, in case the penitent finds it burdensome to remain in a state of grave sin. Canon 1355 §2 avoids the remission of *latae sententiae* reserved to the Apostolic See, but canon 1357 includes no mention of the Apostolic reservation, meaning that it includes even *latae sententiae* censures reserved to the Apostolic See but not declared.

3.2.19.5. Any Confessor can Remit any Censure if the Penitent is in Danger of Death

It is seen in the second chapter that the danger of death situation is an exception given in the area of the sacrament of penance in the case of reserved sins. Also in the case of censures, any censure can be remitted by any confessor in danger of death situations.⁴⁷⁹ The canons on danger of death situations are by no means norm, but rather exceptions. In such situations, any priest, even if he has no confessional faculties and even if he is laicized, may validly and licitly absolve all censures and sins no matter how reserved, even if an approved confessor is present (c.976). Thus we find here yet another means for the remission of *latae sententiae* excommunication and interdict reserved to the Apostolic See.

In the section on penalties of censure, it must also be noted that, *ex parte paenitentis*, a penalty like excommunication or interdict prohibiting reception of the sacraments is *suspended* so long as the person is in danger of death (c.1352 §1). Because penalties are suspended even those relevant censures are not remitted, the sacrament of penance may be given and the penitent may be absolved from sin.⁴⁸⁰ However, in case of

⁴⁷⁹ CIC c.976: Even though a priest lacks the faculty to hear confessions, he absolves validly and licitly any penitents whatsoever in danger of death from any censures and sins, even if an approved priest is present.

⁴⁸⁰ Stenson, "Penalties in the New Code: The Role of the Confessor," 412.

recovery, the suspension ends and the penitent remains bound by censure until remission is sought.

The exception included in canon 976 is further described in the canons related to penalties. Canon 1357 §3 thus states:

After they have recovered, those for whom an imposed or declared censure or one reserved to the Apostolic See has been remitted according to the norm of canon 976 are also obliged to make recourse.

By this canon, another different recourse obligation binds those for whom censures are remitted in danger of death situations. Only those who are subject to unreserved, undeclared *latae sententiae* censures are exempt from such a recourse obligation after recovering from the danger of death situation. Pastoral need imparts broader faculties for any priest in a danger of death situation. However, the confessor has the obligation to oblige the penitent to have recourse to the relevant authorities, in case of recovery, for remission of censures which are imposed or declared or which are reserved to the Apostolic See. The external forum thrust of penal discipline is highlighted by the inclusion of this obligation.⁴⁸¹

3.2.19.6. The Absolution of Sins Connected with *Latae sententiae* Excommunication or Interdict

The system of *latae sententiae* excommunication or interdict in the Code of Canon Law functions as an indirect sacramental principle of reservation. It is necessary to examine how a confessor can deal with such a censure in the context of an actual confession. If one has incurred a censure that prohibits one from receiving the Sacraments, one cannot be validly absolved from the sins that occasioned this unless one has already been freed from the censure. When a penitent confesses a sin that has a reserved censure attached to it, the confessor must first of all assure himself that the person has actually incurred the censure; that is, he must determine whether all the conditions required by law for the coming into effect of the censure are fulfilled, both on the part of the delinquent himself and on the part of the offense. Moreover, he must examine whether there are subjective grounds for excuse, such as ignorance of the law and, particularly, of the punishment.

⁴⁸¹ Beal, (ed.), *New Commentary on the Code of Canon Law*, 1571.

When a confessor comes to the conclusion that the penalty was in fact incurred, the next step is to determine whether he can deal with the penalty so as to remove it and absolve the penitent from the sin connected with the penalty. Stenson states certain points to be remembered by the confessor, which he cannot do:

1. the confessor has no powers for the external forum;
2. only in 'danger of death' cases has he the power in the internal forum for cases where there has been already an intervention by an ecclesiastical authority to inflict a *ferendae sententiae* or to declare a *Latae sententiae* penalty;
3. the confessor has no power to remove expiatory penalties (listed in c.1336 - prohibition or prescription to live in particular place, deprivation of powers, etc.; prohibition of exercising powers, etc.; penal transfer, dismissal from clerical state);
4. the confessor has no power to lift a suspension.⁴⁸²

What an ordinary confessor can do in the confessional concerns the *latae sententiae* censure of excommunication and interdict which have been contracted automatically on commission of the delict, but not declared by the ecclesiastical authority. These two types of censures forbid the penitent from receiving all sacraments. The situation created is complicated by the fact that this person, who cannot receive a sacrament legally and validly, demands that the confessor grant him absolution from the sins. An ordinary confessor can deal the situation either based on the canon 1357 or based on the danger of death situation (c.976).

Stenson gives the role of a confessor in a systematic way based on the canons on the remission of penalties and sacramental principles:

1. He must first judge that a grave sin was committed and further that this external violation carried with it a penalty;
2. He must then ask if the penalty was in fact incurred or did some of the exempting causes arise.
3. Assuming that the penalty was in fact contracted, he instructs the penitent to go to the proper authority for an external forum remission or to get authorization to apply on his behalf.
4. If the case is urgent, i.e. difficult for the penitent to remain in a state of grave sin, then he may remit the censure and the sins while pointing out the obligation to make recourse within a month.
5. Recourse is made to the nearest authority having the faculty to absolve from the censure, i.e., the Ordinary or Sacred Penitentiary. The priest may do this on behalf

⁴⁸² Stenson, "Penalties in the New Code: The Role of the Confessor," 415.

of the penitent and if a letter is required, it can be written in English, although fictitious names are used. It should be noted that the purpose of the recourse is not to have the censure remitted but solely to obtain the *mandata* or instruction.⁴⁸³

So, when it is clear that the penitent has actually incurred the censure, then in turn the confessor must determine whether he himself is authorized under any title to grant absolution in the case. If he himself can absolve without obliging to the penitent to have recourse to superior authorities, then the absolution is to be preceded by proper warnings and a proportionate penance is to be imposed. If he can absolve only by, at the same time, imposing the obligation of recourse, the penitent is to be instructed in this regard. Practically, the confessor will generally have to offer himself as mediator for the recourse.⁴⁸⁴ If he can not absolve under the circumstances, he must either direct the penitent to some attainable person who has the requisite authority or must ask him to wait until such time as proper faculties can be obtained from the authority.

3.2.19.7. The case of Abortion, which incurs a *Latae sententiae* Excommunication

Abortion is probably the most common situation in which a confessor might remit a penalty, since this *latae sententiae* excommunication is most often not formally declared (c.1357).⁴⁸⁵ In an ordinary situation when a penitent confesses an abortion, therefore, and has incurred the censure of excommunication, the confessor is obliged to ask the penitent to return, say a week later, when he will have had the opportunity to have recourse to the Ordinary in order to obtain the necessary authority.

The excommunication attached to abortion can be remitted by the Ordinary in the case of his subjects and those actually in his territory or those who have committed the offence in his territory. Moreover, any Bishop can remove this censure in the course of sacramental confession (c.1355 §2). The Canon Penitentiary of a Cathedral Chapter also has faculties to absolve from this censure in the sacrament of penance. Within the diocese he can absolve not only diocesans but outsiders also; outside the diocese, he can absolve diocesans only (c.508 §1). He cannot delegate this authority to others. Many religious priests and priests who give parish missions also have the authority to absolve the censure attached to abortion without any obligation to have recourse to the

⁴⁸³ Stenson, "Penalties in the New Code: The Role of the Confessor," 416.

⁴⁸⁴ Toxè, "Approche canonique de cas de conscience particuliers et traitement des délits au for interne sacramental," 164.

⁴⁸⁵ Borras, *L'excommunication dans le nouveau Code de Droit Canonique*, 69.

Ordinary. With the exception of the danger of death situation (c.976), other clergy do not have the authority to remove the censure attached to abortion.

Canon 1357 §1 outlines the procedure to be used in difficult circumstances. It states: “Without prejudice to the provisions of cann. 508 and 976, a confessor can in the internal sacramental forum remit an automatic censure of excommunication ... if it is difficult for the penitent to remain in a state of grave sin for the time necessary for the competent Superior to provide.”

The Sacred Penitentiary in 1990 advised confessors that in these circumstances they should grant absolution. The obligation of recourse to the competent authority remains (c.1357 §2), but this should usually be done through the confessor. In practice, this means that the confessor must inform the Local Ordinary that he has removed the censure in the internal sacramental forum. In the case of abortion, he should state how many times the offence has been committed, what kind of cooperation was involved – persuasion, financial help, physical participation – or if the penitent was the father of the child.⁴⁸⁶ This is a strict obligation on the confessor, since he must inform the penitent of the penance recommended by the Local Ordinary. In having recourse, he should not give the name of the penitent nor any detail that could identify him or her.

Since abortion is a grave matter from the nature of the case, it is for the confessor to decide if the person had full knowledge of what was involved and gave true consent to it. If these are not present, there is subjectively no grave sin and therefore no censure is incurred. Full knowledge in abortion implies that in order to incur the censure in the case of abortion, a person must be aware that a censure is attached to the commission of the sin. It is not necessary for them to know this in a detailed, technical way. Their consent must be free; if a person was coerced into procuring an abortion or was so emotionally disturbed that he/she was unable to properly appreciate the true nature of what they were doing, then his/her act did not have the deliberate quality necessary to constitute a grave sin and the person does not incur a censure. The law also makes clear that a person under sixteen cannot incur a censure (c.1323, 1°).⁴⁸⁷ There are some situations where the penalty is not incurred as per the canon discussed above.

⁴⁸⁶ McAreavey, “Abortion and the Sacrament of Penance,” 233.

⁴⁸⁷ McAreavey, “Abortion and the Sacrament of Penance,” 232.

So, in counselling the penitent about the moral evil of abortion, the confessor should also consider possible mitigating circumstances precluding the incursion of the penalty (cf. cc.1323-1324).⁴⁸⁸

3.2.19.8. The Form of Remission of Censures

The act of remitting canonical censures differs clearly from the sacramental absolution of sins. The principles of sacramental absolutions are dealt with in Book IV, title IV of the Code. But in the case of certain penalties, especially with regard to the censures of excommunication and interdict, the remission can take place in the sacramental forum. Since sacramental absolution is different from the remission of ecclesiastical penal sanction, *The Rites of the Catholic Church (Rituale Romanum)*⁴⁸⁹ makes a special provision:

The form of absolution is not to be changed when a priest, in keeping with the provision of law, absolves a properly disposed penitent within the sacramental forum from censure *latae sententiae*. It is enough that the confessor intend to absolve also from censures. Before absolving from sins, however, the confessor may absolve from the censure, using the formula which is given below for absolution from censure outside the sacrament of penance.

When a priest, in accordance with the law, absolves a penitent from a censure outside the Sacrament of Penance, he uses the following formula: By the power granted to me, / I absolve you/ from the bond of excommunication (or suspension or interdict). In the name of the Father, and of the Son, + and of the Holy Spirit. The penitent answers: Amen.⁴⁹⁰

As per the *Roman Ritual*, three ways to remit a canonical censure are identified. The first two are within the context of the sacrament of penance. A confessor in the sacrament of penance, if the law permits, remits the censure in the very act of absolving the penitent from sin, i.e. without a specific formula. Secondly, a confessor can remit the censure using the formula given above and then give absolution to the sins. These two forms are given only in the case of *latae sententiae* censures. Thirdly, a minister outside the context of the sacrament of penance, if the law permits, remits

⁴⁸⁸ Beal (ed.), *New Commentary on The Code of Canon Law*, 1603.

⁴⁸⁹ The Ritual (*Rituale Romanum*) is one of the official books of the Roman Rite. It contains all the services performed by a priest that are not in the Missal and Breviary and has also, for convenience, some that are in those books. The Roman Ritual was revised by Decree of the Second Vatican Ecumenical Council and published by authority of Pope John Paul II, Prepared by the International Commission on English in the Liturgy, 1990.

⁴⁹⁰ International Commission on English in the Liturgy, *The Rites of the Catholic Church*, vol. 1, Minnesota: The Liturgical Press, 1990, 591.

the canonical censure in a distinct act, using the extra-sacramental formula quoted above.⁴⁹¹

Conclusion

The purpose of this chapter has been to make a study of the system of reserved sins in the Code of Canon Law, both old and new. The first part dealt with the norms on the reservation of sins in CIC 1917. This former Code contains various norms related to reserved sins (CIC 1917 cc.893-900). There was only one sin, i.e. false denunciation of the solicitation of a confessor, which was reserved *ratione sui* to the Apostolic See. But the Code was open to creating new reserved sins by Ordinaries and Religious Major Superiors. There were also exceptions to these laws and all reservations lacked force in danger of death situations. The reservation was made in order to give more seriousness to the grave sins and avoid scandal to the faithful. It also aimed to avoid serious occult sins. Finally, it was established that the intention of the Church in the matter of reserved sins is to facilitate the repentance and salvation of the souls of persons with serious sins, rather than to punish such persons.

The revised Code of Canon Law of 1983 wholly omitted the institution of reserved sins. An excessive use of reservation and its creation of various pastoral difficulties prompted the Code Commission to omit this section. But it was necessary to have some measures to deal with occult sins or delicts. Therefore, the new Code continued to use *latae sententiae* censures. The directive principles of the Code persuaded the Code Commission to reduce the number of *latae sententiae* penalties to a very few. Penalties are concerned with delicts, while reserved sins are concerned with sins. In determining the relationship between a censure and the connected sin, a distinction must be made between those censures which impede the reception of the sacraments and those which do not. There are three species of censures: excommunication, interdict and suspension. Of these three types, excommunication and interdict impede the lawful reception of the sacraments, while suspension does not carry this canonical effect. Thus, these two *latae sententiae* censures function to make the sin connected to it an indirectly reserved sin.

⁴⁹¹ Beal, (ed.), *New Commentary on the Code of Canon Law*, 1142.

The *latae sententiae* censures thus play the same role in CIC 1983 as the system of reserved sins did in CIC 1917. The canons on the remission of penalties grant special power to a confessor to remit *latae sententiae* censures which are not declared and in cases when the penitent cannot remain without the sacramental grace. So, whenever a confessor comes across a *latae sententiae* delict, he must evaluate various aspects of it and see whether he can remit the censure attached to the delict by the provision of law. If the confessor is eligible as per law to render remission of the ecclesiastical censure which prevents the person from receiving the sacraments, he can remit the censure within the sacrament of penance. A confessor can either remit the censure with the form of sacramental absolution, having the intention to remit the censure, or he can first remit the censure using the special form, and then impart sacramental absolution.

CHAPTER IV

EVALUATION OF TWO SYSTEMS OF RESERVATION RELATED TO THE SACRAMENT OF PENANCE

Introduction

In the previous chapters, it has been explained how two systems of reservation related to the sacrament of penance work in the Catholic Church. One of these is applicable in the Latin Catholic Church, the other in the Eastern Catholic Churches. The purpose of this chapter is to evaluate these two systems on the basis of their function in the Church following the promulgation of the new Codes. Since the main concern of this work is reserved sins in the sacrament of penance, the comparison and evaluation to follow will concentrate more on the reservation related to the sacrament of penance than on the penalties.

Due to increased migration in the modern world, Eastern and Latin Christians often live together in the same ecclesiastical units. Keeping this in mind, the comparison is performed and pastoral problems are examined.

This study is also based on an empirical survey recently conducted among a selected group of priests working in Switzerland. Though this does not provide a complete model, it does give some idea about the pastoral execution of these two systems of reservations, at least in the modern Church in Europe. This chapter is thus an attempt to compare these two systems of reservations theoretically and pastorally in the field of the sacrament of penance and to examine its merits and demerits.

4.1. The System of Reserved Sins in the CCEO

The system of reserved sin has been discussed in detail in the second chapter. It is important to draw on some of its main elements here to compare the two systems. According to Eastern Canon Law, there are certain sins the absolution of which is reserved to an authority higher than an ordinary confessor with ordinary habitual faculty. Two sins, i.e. the direct violation of the confessional seal and the absolutions

of an accomplice in a sin against chastity, are reserved to the Apostolic See. A single sin, i.e. abortion, is reserved to the local bishop (CCEO c.728 §§1, 2).

The following important matters are to be noted with respect to the reserved sins in the Eastern Code. The purpose of reserved sin is not to punish the sinner, but to bring the more serious sin before those best qualified to give them the guidance and prudent consideration they required. In other words, the purpose of establishing reserved sins is to bring the penitent before a superior authority for better guidance. The norms on reserved sins are added in the part of the sacrament of penance and not listed among the canonical penalties. So, in no way should the withholding of absolution be seen as a punishment for sin. Actually the sacrament of penance reconciles the sinner with God and the Church. Therefore, it is evident from the CCEO that the reservation of sin is not a canonical penalty (CCEO c.1402).⁴⁹²

Another function of reservation in the Eastern Code is disciplinary, in the sense that it safeguards the integrity of the sacrament. If some serious norms are not established, the sacrament of penance will be left open to abuse. Both of the two sins reserved to the Apostolic See concern the dignity of the sacrament of penance itself. The direct violation of the seal is considered a breach of the penitent's confidence and trust in the sacrament. The second sin is the manipulation of the authority given by God and the Church. Hence, these reservations safeguard the integrity of the sacrament itself.

Pastoral sensitivity also leads the Church to take all necessary precautions to ensure that the sacrament is truly an encounter with our Lord who pardons and reconciles and does not become an occasion for committing further sins.⁴⁹³ It is up to the minister who celebrates the sacrament to ensure that these conditions are met. Speaking of abortion and the sacrament of penance, John McAreavey states that the purpose of the law on abortion is "to protect unborn life and to reconcile with God and the Church those who have had abortions."⁴⁹⁴ Thus, the Church is also merciful towards one who has committed this serious sin by granting him or her absolution and proper guidance to help him or her out of the post-abortion trauma.

⁴⁹² Michael J. Kuchera, "Two Different Systems in Confessional Reservations: *Reservatio Ratio Censurae* and *Reservatio Rationae sui*," *Kanonika* (2013), 187-202, 195.

⁴⁹³ Marini, *Comparative Sacramental Discipline in the CCEO and CIC*, 117.

⁴⁹⁴ McAreavey, "Abortion and the Sacrament of Penance," 230.

Another positive aim of the reservation of sins is to protect the welfare of the group, while at the same time not excluding the welfare of the individual, as observed before. Scandal is to be avoided by reproof, imploring and rebuking a sinner with the greatest patience and teaching (CCEO c.1401). This is done in the interest both of bringing the erring sheep back to God as well as of correcting any scandal in the Christian community. The correction of the sinner is a consequence of the reservation of sins for the public good of the Church.⁴⁹⁵

Another factor to be noted is that the limitation of the faculty described as reservation does not inflict incapacity directly on the penitent but rather on the confessor's power to absolve. As we compare the two systems, Latin and Eastern, it is very important to note that the restriction in the first place is a restriction on the confessor and not on the penitent. Though perhaps it is more difficult for the penitent to receive absolution, it is never impossible.

Another remarkable point is that there is no *latae sententiae* censure in the Eastern Code.⁴⁹⁶ In 1974, at the first preliminary meeting of the commission for the revision of the Eastern Code of Canon Law, three main principles were established for the revision of the Eastern penal laws. The first was to abolish all *latae sententiae* sanctions, rather than simply reducing the sanctions to a minimum.⁴⁹⁷ During the *denua recognitio* of the 1981 Schema regarding penal sanctions in the Church, the expert study group took up the question of introducing automatic penalties notwithstanding the approved guidelines to abolish them. But after much reflection, the study group agreed not to propose to the members of the Commission a reconsideration of the decision made in 1974.⁴⁹⁸ During the review of the 1986 SCICO, one member of PCCICOR again proposed the introduction of *poenae latae*

⁴⁹⁵ Kuchera, "Two Different Systems in Confessional Reservations: *Reservatio Ratio Censurae* and *Reservatio Rationae sui*," 195.

⁴⁹⁶ *Nuntia* 3 (1976) 24.

⁴⁹⁷ 1. *Nel Codice Orientale si aboliscano tutte le latae sententiae, perché esse non corrispondono alle genuine tradizioni orientali, sono sconosciute alle Chiese Ortodosse, e non sembrano necessarie ad un adattamento del Codice orientale alle esigenze moderne della disciplina delle Chiese Orientali Cattoliche.* *Nuntia* 4 (1977), 72-78 ff.

⁴⁹⁸ Thomas J. Green, "Penal Law in the Code of Canon Law and in the Code of Canon of the Eastern Churches: Some Comparative Reflection," *Studia Canonica* 28 (1994), 407-451, 422.

sententiae into the Eastern Code, but this was rejected by the Commission.⁴⁹⁹ For Eastern Catholics, therefore, according to the New Code, no *latae sententiae* penalties could be applied.

In the Eastern Code, the punishment is more medicinal and should be delivered only upon examining each case (*ferendae sententiae*). In an automatic punishment, the subjective and objective elements involved in the act are not examined by the judge. In the Eastern Code, the purpose of penalty is aimed more at the conversion of the offender than the reparation of the damage caused by the act. Normally, the reparation is committed also when one is converted and the medicinal penalties are fulfilled. So, the Eastern Code totally abrogated the *latae sententiae* penalties which had been applicable to Eastern Catholics in the previous legislations.

4.2. The System of ‘*ratione censurae*’ Reserved Sin in the CIC

The system of reserved sin presented in CIC 1917 is currently removed from the new Code of Canon Law. Neither reserved sin nor even the possibility of reserved sin is envisaged in CIC 1983. The reasons behind its removal were the insignificant and inappropriate usages of this system in the pastoral life of the Latin Church. There were numerous reserved sins and much confusion due to these reservations. The strong recommendation of the Apostolic Penitentiary to abrogate the institution of reserved sins was taken into consideration during the codification of the Code.⁵⁰⁰

The purpose of reserved sin is actually served in an indirect way by *latae sententiae* excommunications and interdicts. Since the Code commission decided to avoid the section on reserved sins, the system of reserved *latae sententiae* censures, remittance of which is reserved to higher authorities than an ordinary priest or confessor, were

⁴⁹⁹ *Nuntia* 28 (1989) 96-98.

⁵⁰⁰ Abbass, “Penance: A Comparative Study of the Eastern and Latin Codes”, 299; *Comm.* XV n.1, 209: “4. Affirmetur principium reservationis peccatorum. R. Reservatio peccatorum suppressa fuit, rogante praesertim Sacra Poenitentiaria, cum minus utilis videatur et sufficiens provideri possit per censuras. Huiusmodi suppressio amplius invenit favorem in consultatione. Reservatio non debet proinde iterum introducere.”

In reviewing the codification of the sacramental law of CIC 1983 the following sources are to be studied: the 1975 schema on sacramental law and the 1977 schema on sacred times and places of divine worship. Another important source is the 1981 *Relatio* of the Secretariat of the Code Commission, reporting on comments on the so-called 1980 schema by members of the Commission.

preserved in the Latin Code. Thus today there do exist indirect reserved sins, even though there are no norms associated with reserved sins in the Code.

The *latae sententiae* censures are included in the section on sanctions and not with the norms of the sacrament of penance. Thus it is evident that the *latae sententiae* censures are intended to put sanctions on delinquents. Indirect reservations on various sins are a secondary effect of the censures' imposition. The primary purpose of the *latae sententiae* censure is not to allow for reservations in the sacrament of penance, but to prevent grave occult offences in the Church. Someone who has committed a grave delict, attached to a *latae sententiae* censure by law, is automatically under censure by the very act itself. As explained in the third chapter, the censures of excommunication and interdict forbid not only the reception of sacraments but also the administration of sacraments and sacramentals, ministerial leadership in public worship, and the exercise of ecclesiastical offices, ministries, functions or acts of governance (CIC c.1331 §1). The prohibition on receiving the sacrament of penance is just one of the effects of censure. Therefore, a censure cannot be seen as equal to the reserved sins in the Eastern Code.

Among the various guiding principles, suggestions are made for a better coordination of the internal and external forums, the imposition of fewer and simpler penalties, and fewer reservations of canonical faculties.⁵⁰¹ In this way, the Code commission totally abrogated the reserved sins and reduced the number of reserved delicts, especially those with *latae sententiae* censures.

4.3. Different Types of Reservations in the CIC and CCEO that Affect the Sacrament of Penance

Entirely different types of reservations given in the CCEO and CIC are found to affect the sacrament of penance. In the Eastern Code, the faculty to absolve certain sins is reserved to higher authorities. These are also known as 'directly reserved sins', a terminology unknown to present Codes. The CIC includes no reservation of a faculty to absolve any particular sin to the higher authorities. In the Latin Code, by contrast, certain delicts are penalized automatically and the remittance of the penalties of these

⁵⁰¹ Beal (ed.), *New Commentary on The Code of Canon Law*, 12.

delicts is reserved to higher authorities. In the CIC, jurisdiction to impose any sanction on a member of the faithful or to remit such sanction is reserved to the Ordinaries. The *latae sententiae* excommunication and interdict have the effect of reserved sin, given that the excommunicated or interdicted person is prohibited from receiving all sacraments. This system was known in the old legal system as the system of ‘indirect reserved sins’, though the old Code does not make use of the term. Thus it is clear that the CCEO and CIC use different types of reservations that affect the sacrament of penance.

The two codes use different terms in speaking of reservations. ‘Delict’ and ‘sin’ are two entirely different terms, both in their meaning and sense. ‘Remittance’ and ‘absolution’ are also distinguished in the modern legal system. In the Eastern Code, the faculty to absolve certain sins is reserved to higher authorities, thereby excluding the confessor with a normal faculty. In the Latin Code, however, the jurisdiction (faculty) to remit the penalty is reserved to higher authorities, and thus the ordinary priest is excluded. The significance of this fact should be emphasized: these are two juridically different systems affecting the same sacrament of penance in the same Catholic Church. It is already seen how a *latae sententiae* censure affects the sacrament of penance and how it plays the role of reserved sins. It has been observed that most priests treat the reserved censures in the new Code as if they were reserved sins, though the concept of reserved sins existed already in CIC 1917. This difference has not received much attention in the Church, and the majority of the priests still think that reserved sins and reserved delicts are the same. This may bring illicit and undesired actions by a priest in the sacrament of penance, especially in the inter-ritual administration of the sacrament.

4.4. Legal Differences between the Two Systems

In legal language, these two systems of reservations have entirely different elements. Different terminologies are also used. In the following sections, various elements of these differences are discussed.

4.4.1. Faculty and Jurisdiction

‘Faculty’ is a term used in the sacramental principle to indicate the power (jurisdiction) of the priest to administer the sacrament of penance. The old Code had used the term ‘jurisdiction’ even to indicate the confessional faculty.⁵⁰² This faculty is not the same that is used in the remission of penalty. Since penalties are given in the external forum and have their consequences in the external forum, a priest requires the jurisdiction to remit a penalty. In case of reserved *latae sententiae* censure, this jurisdiction is withheld from a confessor and one can remit such a penalty only after receiving jurisdiction from the concerned authority or, in certain cases, obliging the penitent to have recourse within one month to the concerned superior (c.1357 §1). As it happens, in the internal forum, in case of *latae sententiae* censures, this jurisdiction is sometimes misunderstood as the faculty to administer the sacrament of penance.

4.4.2. *Latae sententiae* Censure and Reserved Sin

In both systems, what prevents a person from receiving the sacrament of penance is different. According to the CIC, it is a *latae sententiae* censure that prevents one from receiving the sacrament of penance, whereas according to the CCEO it is the reserved sin that prevents this. Legally, these are not the same, and their effects and legal consequences differ likewise.⁵⁰³ There are different types of censures and they are given to one who commits the delict. Reserved sins are sins for which the faculty to absolve them is reserved to a higher authority. The penitent is under no penalty with respect to reserved sin.

4.4.3. Penal Norms and Sacramental Principles

Another difference between these two systems is that one is a penal norm and the other a sacramental norm. The system of the CIC is purely a penal norm and its effect of reserved sin is only indirect, due to the penalty of prohibition on the reception of all the sacraments. The Eastern Code directly places this system of reservation under the sacramental principles, which has nothing to do with penalties. These are merely

⁵⁰² See pages 82-84.

⁵⁰³ Philippe Toxè, “Approche canonique de cas de conscience particuliers et traitement des délits au for interne sacramentel,” in *Faire pénitence, se laisser réconcilier*. Hélène Bricout and Patrick Prétot (eds.), Paris: Cerf, 2013, 52-154.

certain sacramental principles meant for the benefit of the sacrament itself, the society and the person himself or herself.

4.4.4. Internal and External Matters

According to Canon Law all penal laws concern the external forum, whereas the sacrament of penance concerns purely in the internal forum. There is thus a difference between these *fora*. The censures have a relation with the internal forum only when they relate to the sacrament of penance. Otherwise they remain purely an external forum matter. Reserved sins strictly concern the internal forum and can in no way be in the external forum.

4.4.5. Remission and Absolution

These two terminologies have different senses in the legal realm. The removal of any penalty is known as ‘remission’, while the sacramental removal of sins is known as ‘absolution’. Yet the term absolution is used at times in the same context and in the same sense, especially in the old law. The present Codes and legal writings clearly distinguish these two terms. In case of censure, what a confessor does in the confessional is remit the censure. The CIC canon 1357, which provides for this, uses the term ‘remission’ and not ‘absolution’. The form of this remission may be different from that of sacramental absolution or else the same sacramental absolution with the intention of removing the censure.⁵⁰⁴ The reserved sins can be absolved only with the sacramental absolution, but censures may be remitted in the external forum as well.

4.4.6. Delict (Offence) and Sin

‘Delict’⁵⁰⁵ and ‘sin’ are different terminologies found in the two systems. Censures are applied to the one who has committed a delict and their remittance, in certain cases, is reserved to higher authorities. It is the ecclesiastical authority who has the jurisdiction to remove the penalty. Sin is an act against God and the punishment for sin and its removal is completely the act of God. It is believed that, even though a confessor is

⁵⁰⁴ Toxè, “Approche Canonique De cas de Conscience Particuliers et Traitement des Délits au for Interne Sacramentel,” 165-166.

⁵⁰⁵ Latin *dēlictum*, a fault, noun use of the neuter of *dēlictus* (past participle of *dēlinquere*, to do wrong). A wrongful act for which the person injured is entitled to a civil remedy; CIC c.1321 §1.

active in the sacrament of penance, the real absolution is given by Jesus Himself. The priest acts *in persona Christi* in the sacrament. So, a delict and a sin are different both in their sense and in the manner of their removal.

4.4.7. Non-Eligibility of the Priest and Non-Eligibility of the Penitent

According to the system of the CIC, the priest is eligible or has the faculty to absolve all sins, but the penitent is rendered ineligible to receive the sacrament of penance by censure (CIC c.1331 §1, 2°). In other words, priests have the confessional faculty with all sinners and all sins. It is the non-eligibility of the penitent that prevents him from administering the sacrament. According to the CCEO, a penitent with a reserved sin is eligible to receive the sacrament of penance. But not all priests have the faculty to absolve all sins (CCEO cc.727, 728). The faculty to absolve certain sins is withheld from them. Thus, the absence of the faculty in the confessor prevents the penitent from receiving absolution even if there is no direct prohibition on his or her receiving the sacrament of penance.

4.5. Two Different Means of Receiving the Confessional Faculty

When the types of reservation in the Latin and Eastern Codes are examined, it is evident that the faculty in relation to the sacrament of penance is different. According to the Eastern system, the faculty is reserved in that ordinary confessors do not have the faculty to give absolution of the reserved sin. The penitent is not prevented from receiving sacrament of penance and is not under excommunication until he has been punished with a judgment or a special decree. In the case that a penitent with a reserved sin approaches the ordinary confessor, therefore, the confessor must receive the faculty to absolve that sin from the legitimate superior who can do so. In this case, the priest is delegated the faculty to absolve the reserved sin from the proper superior.

In the Latin Code, there is no reservation of the faculty to absolve certain sins to the higher authority. As was seen above, the confessor has the faculty with regard to all penitents and all sins. However, delicts that are punished with *latae sententiae* excommunication or interdict prohibit the person who comes with such delicts from receiving the sacrament. Once the faithful is automatically excommunicated by the very act itself, according to the law, he cannot receive any sacrament. Nor can any

priest allow any excommunicated person to receive any sacrament in a normal situation. In this case, strictly speaking, the penitent has no right even to approach for the sacrament of penance since he is under punishment, even if the penitent is not aware of this. In other words, according to the CIC, the penalty renders the penitent incapable of receiving absolution. In the case of *latae sententiae* censures in the context of the sacrament of penance, therefore, the priest must first remit the penalty so that the person becomes eligible to receive the sacrament.

Although all priests have the faculty to absolve any sin according to the CIC, they have no habitual faculty to remit a penalty. Remission of penalties normally belongs to the authority who has imposed it or to the superior authority, as per the law (CIC cc.1354-1357). In the Church, an Ordinary is the lowest authority that can give and remit penalties. So the ordinary priests do not have the faculty (jurisdiction) to remit a penalty already imposed. Thus, the priest should receive the faculty to remit a penalty from the concerned superior. With this delegated power, a priest remits the penalty and makes the person eligible to receive the sacrament of penance. An exception is given in the sacramental forum for undeclared *latae sententiae* excommunications and interdicts, which may be remitted by a confessor (CIC c.1357). According to this provision, the confessor must oblige the penitent to have recourse within a month to the competent superior, or else the confessor himself may have such recourse.

According to the CCEO, abortion is reserved to the eparchial bishop (c.728 §2). The canon does not make use of the term Local Hierarchy. So in this case, the priests should receive the faculty directly from the eparchial bishop. According to the CIC, remission of the censure caused by the delict of abortion is the right of the Ordinary (CIC c.1356). The Ordinary need not be the diocesan bishop. Thus, in the case of abortion, the Eastern Code holds that the diocesan bishop gives the faculty, while the Latin Code holds that any Ordinary (who need not be the bishop in person) can grant the faculty to remit the censure.

Certain priests, orders or congregations possess the faculty to remit the penalty by a special grant given by the Apostolic See. Even now, many priests, both Latin and Eastern, do not understand the difference in these two types of faculties and think that they too have the special faculty to absolve reserved sin. It is a question to be raised

how these priests get the faculty to absolve the reserved sin by the mere fact that they are given special concession to the general law of the remission of penalties. Since there is no reserved sin according to the Code of Canon Law (CIC), it is meaningless to grant a faculty not envisaged in the law. Therefore, the Latin Ordinaries reasonably do not give the faculty to absolve a reserved sin to a Latin rite priest.

Indeed, the ways and means of receiving the faculty to absolve a reserved sin may be different from the ways and means of remitting a *latae sententiae* censure, reserved or non-reserved.

4.6. Theoretical Problems of Two Systems

Theoretically speaking, a penalty is not identical with a reserved sin. The absolution of sin is purely a spiritual matter, while penal sanctions are purely external matters. Penalties usually put some ban on the delinquent or makes compensation for the damage done. But how can a purely spiritual matter be regarded as equivalent to an external matter? Theoretically it is impossible to see these two systems as equal even though certain of their effects are the same.

Even in the Code, reserved sin is a wholly sacramental principle, while the *latae sententiae* censures are wholly a penal principle. Sin and its punishment are purely theological in nature, as sin is an act against the will of God and the punishment is totally dependent on God. Grace and mercy are at work in the forgiveness of sin. This raises the problem of how these two sacramental and penal principles are seen equally and treated in the pastoral field without their theoretical differences being considered.

4.7. Survey Made among the Priests to Evaluate Pastoral Difficulties

The laws on reserved sin are meant to be applied in the day-to-day pastoral life of the Church. Considering the differences between these norms, it is understood that some pastoral difficulties arise due to different laws on reservation in the sacrament of mercy. Therefore, as part of the present study, a simple investigation has been made among priests working in Switzerland to identify the difficulties in its pastoral application.

4.7.1. The Survey

In order to evaluate the practical consequences of the co-existence of two types of reservations, a survey was made among priests in Switzerland. It is appropriate that Switzerland should be taken as the sample in the present study since this research is being conducted in Switzerland and it is a country where there are faithful from different continents and, significantly, from various Eastern Churches.⁵⁰⁶ In reviewing these two legal systems, it was necessary to make an empirical study to know how these laws are put into practice and evaluate their pastoral significance.

A questionnaire was prepared under the guidance of sociologists and canonists. This questionnaire was distributed among the priests selected at random from across the country, belonging to different dioceses (Diagram 1) and religious congregations. Three hundred and twenty five questionnaires were distributed and one hundred and thirty replies were received. In reviewing the results of the survey, large variations were observed, in part due to the very weak reception of the questionnaire by the priests. Among the hundred and thirty questionnaire received, six answered only by giving their opinions on the subject without responding to the questionnaire. The other one hundred and twenty four completed questionnaires were evaluated, and the results of this will be analysed in the remainder of this study in order to clarify certain pastoral and inter-ritual problems.

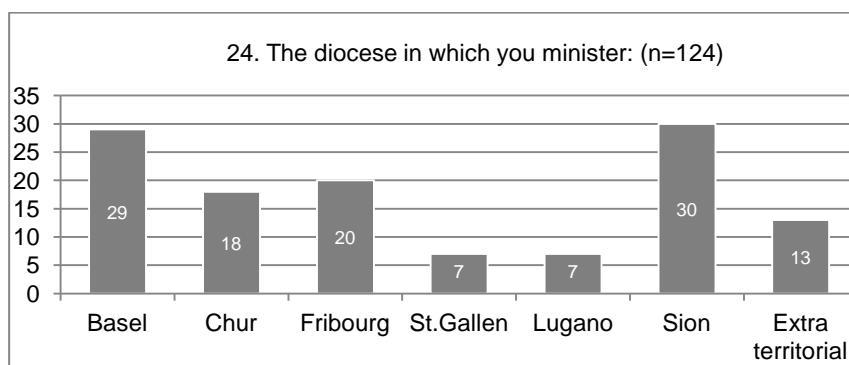


Diagram: 1

⁵⁰⁶ The Migration department of the Bishop's conference of Switzerland works for the following migrant groups: Albanian, Italian, Korean, Chinese, Croatian, Philippine, Polish, Portuguese, Slovakian, Slovenian, Spanish, Tamilian, Tcheque Republican, Hungarian, Vietnamese, Eritrean and Ethiopian, Greek Catholics, Syro-Malabar Catholics, Malankara Catholics.

The reality of today's Church in Switzerland should be taken into consideration, since it is taken here as the sample. Practicing Catholics are fewer in number and the number of those individually receiving the sacrament of penance has radically fallen in recent decades. The Church in Switzerland introduced a general absolution after the Second Vatican Council, but the Swiss Catholic Bishops Conference forbid this practice in 2009.⁵⁰⁷ Still, the system of the collective penitential service continues and in a very few parishes collective absolution is still practiced. This is either because of negligence or due to the needs of the hour. In the present scenario, a large number of the faithful find meaning neither in individual confession nor in collective penitential service and absolution. Still, a small group does regularly seek individual confession and try to find meaning in it. This particular situation should be taken into account in evaluating the survey.

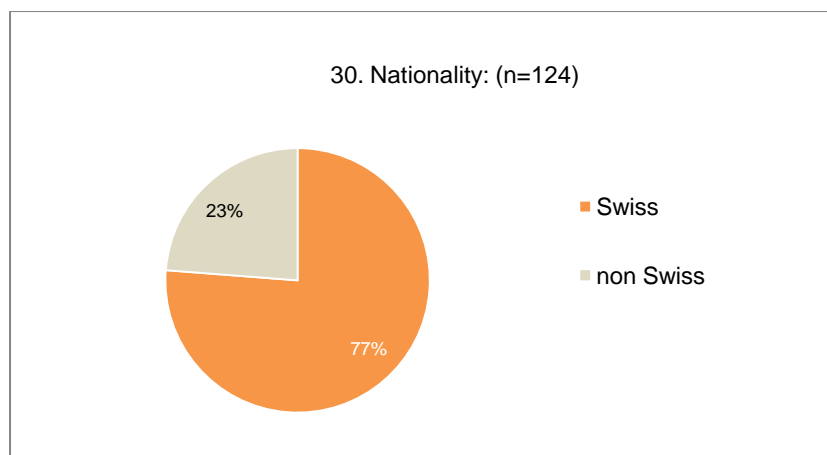


Diagram: 2

4.7.2. The Purpose of the Survey

The basic purposes of the survey was to determine 1) whether the Latin priests know that there are reserved sins in the Eastern Churches, 2) whether they are aware of the absence of *latae sententiae* (automatic) penalties in Eastern Churches, 3) whether the priests working in Switzerland are aware of the differences in the reservation, 4) how the Latin confessor deals with Eastern faithful in case of *latae sententiae* censures, 5) how the Eastern priest working for the Latin faithful deals with such cases, 6) whether

⁵⁰⁷ En date du 15 mars 1989, la Conférence des évêques suisses a promulgué des normes particulières se référant au c. 961 CIC.

there are any illegal practices in the pastoral field in relation to the reserved sins and *latae sententiae* censures, 7) whether the confessors correctly follow the laws on reservation in practise and 8) the practicability and utility of having two different systems in the reservation.

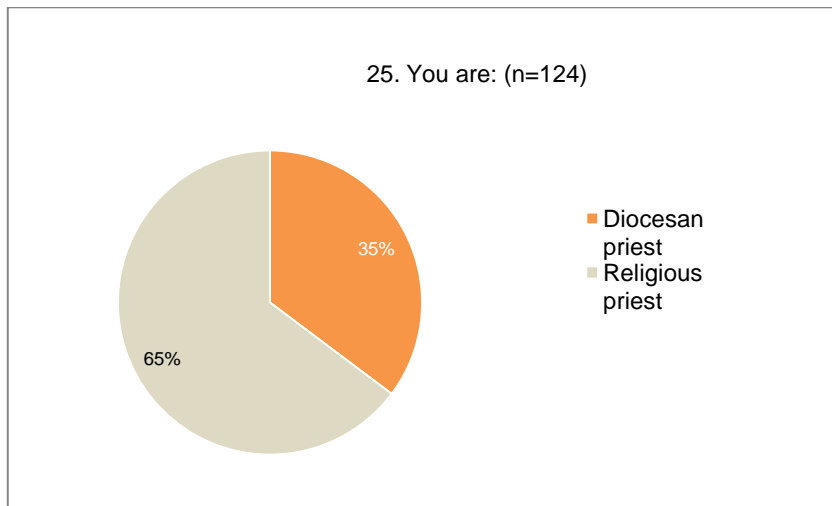


Diagram: 3

4.8. Pastoral Difficulties Due to Reservations

In the pastoral field, a certain amount of confusion exists in relation to reserved sins and reserved or non-reserved *latae sententiae* censures. For a confessor, it is difficult to judge a sin and the delict attached to it since he judges it in the internal forum. The confessor must always verify whether there are any elements preventing him from granting absolution. If there is a reserved delict or a sin, he has to check the exceptions related to its effectiveness, then evaluate its gravity by assessing the willingness and knowledge of the doer. This perhaps puts an unnecessary burden on the confessor. For the person who comes with adequate repentance, it is an added burden when a priest denies absolution or obliges him to go to a superior for the absolution or remission. On many occasions, the penitent may not be able to come for a second time to the same priest for confession, especially in pilgrim centers and other big churches.

Secondly, priests of different rites are not fully aware of the particular laws proper to every individual Church. For priests, it is not feasible to know the reserved sins in all

other Churches *sui iuris*. Normally the confessor applies the laws of one's own Church *sui iuris* to the penitent without considering the personal laws of the penitent.

Usually during the confession, confessors are not interested to know about the rite of the penitent, and a penitent rarely announces his rite. So a confessor may not know to which Church *sui iuris* the penitent belongs, whether the Eastern or the Latin Church. But for him to apply the laws of his own Church to a person from another Church *sui iuris* is a case of legal impropriety, especially in multi-jurisdictional territory. This causes pastoral complexities in the field of the sacrament of penance which will be dealt in detail in the coming pages.

Normally in the pastoral field, if someone approaches a confessor for the sacrament of penance, the confessor has an obligation to impart it. The obliging canon is found in the CIC, which has no parallel canon in the CCEO. "CIC c. 980 - If the confessor has no doubt about the disposition of the penitent, and the penitent seeks absolution, absolution is to be neither refused nor deferred." At the same time, if there is a reserved sin or a reserved delict, the confessor is prohibited from giving absolution to the person even though he could absolve other sins. The principle of the integrity of the sacrament of penance must be kept. The absolution in the confessional takes away all the sins of a penitent sinner and not merely a portion of sins. The confessor cannot absolve the rest of the sin, then send the penitent to another authorized confessor for absolution of the reserved sin or delict.

In the same way, a valid confession cannot be divided: that is, one is supposed to tell all his sins to the same priest.⁵⁰⁸ The penitent cannot hide any sin that is either reserved or puts him under censures and merely confess all other sins to get an absolution, thinking that he can get absolution for the particular, reserved sin later on from the competent authority. One must consider how reservation to the higher authorities and the 'integrity' of the sacrament of penance are to be observed. Practically, this issue makes the reservation pastorally useless, as it is the same priest who grants absolution after obtaining the delegated faculty. In actual practice, nobody goes directly to the higher authority to get the absolution. Normally, it is the confessor

⁵⁰⁸ Tentler, *Sin and Confession on the Eve of Reformation*, 304.

who seeks out the faculty to absolve a reserved sin and, in the case of a non-declared censure, it is the confessor who makes a recourse within a month to the higher authority after the remission of censure and absolution.

The existence of reserved sins and reserved censures makes the sacrament of penance more legalistic.⁵⁰⁹ It is a sacrament of mercy and pardon; the Church should not make the sacrament so legalistic. One reason for the weak response to the survey conducted as a part of this study is presumably the reaction of priests who think the sacrament of penance has been made more complicated and legalistic by reservations. In the survey, many priests expressed dislike for the confessional being made legalistic. For a pastor, it is painful to be hard in the confessional with legal measures and send the penitent back in despair, without absolution and reconciliation with the Church. In short, the strict application of the Church's discipline tends to render the sacrament odious for penitents and confessors alike.⁵¹⁰

Another pastoral problem is the crisis in the very use of the sacrament of penance. According to the exegetical commentary, there are three points of doctrinal confusion at the root of this crisis.

First, there is confusion about what sin is, especially mortal sin that, following the teaching of the Council of Trent, must be forgiven after baptism, in the sacrament of penance. Second, there is confusion about the essence of the sacrament, particularly the nature of the sacramental sign. And lastly, there is a false tension between reconciliation with God and with Church with an emphasis on the communitarian aspect of the celebration of the sacrament.⁵¹¹

Given such theoretical confusion, the use of reservation is more complicated in the pastoral field.

4.9. Eastern and Latin Inter-Ritual Problems due to Different Systems in Reservation

A large-scale migration is occurring in the modern world. Many of the faithful from various Eastern rites live in Latin dioceses. It is usually not possible for there to be ministers for each Eastern Church *sui iuris* in a given diocese, especially when the group from that Church is relatively small. In any diocese, the diocesan bishop has an

⁵⁰⁹ Tentler, *Sin and Confession on the Eve of Reformation*, 305.

⁵¹⁰ Cf. McAreevey, "Abortion and the Sacrament of Penance," 230-235.

⁵¹¹ Marzoa, *Exegetical Commentary*, vol. IV, 749.

obligation to provide pastoral care for the faithful of other Churches *sui iuris* with their proper pastors. If there is no proper parish at all, the faithful of other Churches *sui iuris* should be given adequate chances to follow their rite (CCEO c.193, CIC c.382 §2). Before examining the pastoral problems arising from the differences between Eastern and Latin systems of reservation, certain norms on the inter-ritual administration must be discussed.

4.9.1. The Inter-Ritual Administration of Penance

The arrival of Eastern Catholics in regions of the Latin Church often creates problems for the local Latin hierarchy. Throughout the history of the Church, interventions of the Apostolic See took place from time to time to ensure the faithful their inter-ritual rights. Pope Leo XIII (1878-1903) issued his famous Apostolic Letter *Orientalium* on November 30, 1894.⁵¹² In this letter, Leo asserted the general principle that all the faithful of the Eastern rites living outside their own patriarchate or Eastern territory must be subject to the jurisdiction of the Local Latin Ordinary.

‘The Sacred Congregation for the Doctrine of Faith’ on several occasions tried to ensure the faithful access to the sacrament of penance regardless of their rite.⁵¹³ John J. Walsh affirms this in his study:

The Holy See has never been accustomed to limit in any way the Christian’s freedom in such a delicate matter as is the sacrament of penance. She has always wished that anyone be permitted to confess his sins to any approved confessor according to his preference. She has never prohibited any approved confessor from hearing in his own church the confession of any Catholic whatsoever who presented himself in the sacred tribunal.⁵¹⁴

On this point there has never been any distinction of rite, since the administration of this sacrament effects no change of rite.

The 1917 Latin code, which was the first general legislation of the Church, explicitly approves the inter-ritual administration of the sacrament of penance. “All priests of

⁵¹² Pope Leo XIII, Litterae Apostolicae: *Orientalium dignitas Ecclesiarum*, 30 November 1894, *Leonis XIII Pontificis Maximi Acta* vol. 14, Rome: Ex’ Typographia Vaticana, 1895, 358-370.

⁵¹³ 1647: The CDF declared that Oriental patriarchs and bishops could not prevent Latin missionaries from administering the sacrament of penance to penitents of the Oriental rites. 1715: The Holy Office told Latin and Oriental bishops they were free to approve priests of any rite as confessors for all the faithful in their diocese. In 1838: The CDF and Oriental bishops could not prohibit their subjects from making confession to Latin missionaries.

⁵¹⁴ Walsh, *The Jurisdiction of the Inter-ritual Confessor in the United States and Canada*, 27.

either type of clergy in a place, whether so enabled by ordinary or delegated jurisdiction, can also validly and licitly absolve wanderers and travelers from another diocese or parish coming to them and likewise Catholics of any oriental rite” (CIC 1917 c.881 §1).⁵¹⁵ Canon 872 reiterated the teaching of the Church requiring that the minister of the sacrament of penance be a validly ordained priest possessing ordinary or delegated jurisdiction over the penitent. The Church granted both the confessor and the penitent definite rights related to the inter-ritual administration of the sacrament of penance in the 1917 Code.

The 1983 Code of Canon Law explicitly approves of the inter-ritual administration of the sacrament of penance, while the confessor possesses an ordinary faculty. “Every member of the Christian faithful is free to confess sins to a legitimately approved confessor of his or her choice, even to one from another rite” (CIC c.991). The number 16 of the council decree *Orientalium Ecclesiarum* is the proper source of canon 991. Like all confessors, the inter-ritual confessor must possess the faculty to give absolution to a penitent. There is no parallel canon in CCEO. But there is even another special provision that, in danger of death situations, all validly ordained priests, even without faculty, can absolve any baptized person (CIC c.976, CCEO c.725). Although the confessor’s faculty may be limited for other reasons, it is in no way restricted by the Code due to the diversity of rite.⁵¹⁶ The confessor has in a way the obligation to admit the penitent without regard to the rite for the sacrament of penance (CIC c.843 §1, CCEO c.381§2).

4.9.2. The Obligation of the Confessor to Follow his Own Rite

The general principle related to the minister in the administration of the sacraments is to follow one’s own rite, even if he administers it for the faithful of other Churches *sui iuris*. “The minister is to celebrate the sacraments according to the minister’s own rite” (CIC c.846 §2). The same principle is found in the Eastern code: “The minister should celebrate the sacraments according to the liturgical prescripts of his own Church *sui iuris*, unless the law establishes otherwise or he himself has obtained a special faculty from the Apostolic See” (CCEO c.674 §2). The norm is clear that the

⁵¹⁵ *The 1917 or Pio-Benedictine Code of Canon Law: In English Translation.*

⁵¹⁶ Walsh, *The Jurisdiction of the Inter-ritual Confessor in the United States and Canada*, 31.

minister shall follow his own rite under normal conditions. If there is permission from the Apostolic See, one can celebrate the sacraments in another rite. Such permissions are usually granted wherever there is a shortage of clergy and if there is an agreement with the Local Ordinaries of both rites.⁵¹⁷ If it is specifically mentioned in the permission letter or one has obtained a special faculty to follow another rite, a priest can administer the sacrament in another rite if there is a need. In general, the confessor follows his own rite and the norms of his own Churches *sui iuris* regardless of the rite of the penitent to whom he administers the sacrament of penance.

4.9.3. The Obligation of the Inter-Ritual Confessor to Know Other Rites

Confessors who serve among the faithful from different *sui iuris* churches have the obligation to know the laws of the people whom they serve. CCEO c.41 states:

The Christian faithful of any Church *sui iuris*, even the Latin Church, who by reason of their office, ministry, or function have frequent dealing with the Christian faithful of another Church *sui iuris*, are to have an accurate formation in the knowledge and practice of the rite of the same Church in keeping with the importance of the office, ministry or function they hold.

There is no parallel canon for this in the CIC. Since the Latin Church is specifically mentioned in it, this canon is applicable to the faithful and to ministers from both the Latin and Eastern churches. So the Eastern priests who serve among the Latin faithful and Latin priests who serve among the Eastern faithful have an obligation to learn the laws and practice of other rites. In the matter of the sacrament of penance, priests from both rites should learn the different systems of reservation.

4.9.4. The Liberty of the Penitent

The Church grants penitents the right to choose any legitimately approved confessor.⁵¹⁸ They can even choose a confessor from another rite than their own, as stated in CIC canon 991. This canon affords the penitent an almost unrestricted liberty in choosing their confessor. The only condition is that the confessor selected be competent according to the prescriptions of law. This liberty is given in the sacrament of penance due to its internal nature and importance in the lives of faithful.

⁵¹⁷ Marzoa, *Exegetical Commentary*, vol. III, 421.

⁵¹⁸ Bruno C.O. Gonçalves, “Le Confesseur et le Pénitent dans la législation Canonique Latine Actuelle, Faire Pénitence.” in *Faire pénitence se Laisser Réconcilier*, 136.

Since the Church gives the faithful the right to confess their sins to any competent confessor of any rite, confessors act unlawfully if they refuse to hear the confessions of any of the faithful based the simple reason that the latter belongs to a different rite.⁵¹⁹ Such a refusal would be contrary to the common law of the Church as expressed in CCEO canon 735.

4.9.5. The Right and Obligation of the Faithful to Observe one's own Rite

Every faithful of a Church *sui iuris* has an obligation to follow and appreciate his or her own rite. CCEO canon 40 §3 states, “Also, the other Christian faithful are to foster the knowledge and appreciation of their own rite and are bound to observe it everywhere unless an exception is provided by the law.” This puts an obligation on the faithful to follow their rite. At the same time, the Christian faithful have the right to follow their own rite. CIC canon 214 states, “The Christian faithful have the right to worship God according to the prescriptions of their own rite approved by the legitimate pastors of the Church and to follow their own form of spiritual life so long as it is consonant with the doctrine of the Church.” The parallel CCEO canon 17 accords the same right to the Christian faithful. So, the faithful can also appeal to their right whenever they are not allowed to follow the liturgy and spirituality of their own Church *sui iuris*. Consequently, the penitent has the right and obligation to follow his or her own rite and the norms of his or her own Church *sui iuris*.

4.10. Differences in Number and Kind Cause Pastoral Difficulties

In fact, the difference in the number of reservations in the Eastern Churches and Latin Church creates problems in inter-ritual situations. The number of reservation *rationae censure* is higher than the reserved sins (see the list below). There are only three reserved sins, whereas there are fourteen sins indirectly reserved by the *latae sententiae censures*. This is in no way an equivalent legal system and indeed not even comparable. The pastoral problem thus arises, as it affects the single sacrament of penance. In a way, it could be said that there is some legal partiality based on the rite. In principle, a judge should apply the same law in the same court of justice for the same type of cases. But the existence of two types of reservation put this principle in

⁵¹⁹ Walsh, *The Jurisdiction of the Inter-ritual Confessor in the United States and Canada*, 34.

danger. In the confessional, a confessor cannot see the penitent differently based only on his or her rite. For him, it is very difficult to give different judgements in the same matter based on the rite.

The differences can be better understood by considering the following list of reserved cases:

Latae sententiae excommunication reserved to the Apostolic See:

1. Desecration of the Sacred Species (CIC c.1367)
2. Physically assaulting the Pope (CIC c.1370 §1)
3. Absolution of an accomplice (CIC c.1378, §1)
4. Unlawful consecration of a bishop and reception of such an ordination (CIC c.1382)
5. Direct violation of the sacramental seal (CIC c.1388 §1)
6. Attempt to confer sacred ordination on a woman or the reception of ordinations.

Latae sententiae excommunications without reservation:

1. Apostasy, Heresy and Schism (CIC c.1364 §1)
2. Abortion (CIC c.1398).
3. Recording and publishing in the public media whatever is said by a confessor or a penitent.

Latae sententiae interdicts:

1. Using physical force against a bishop (CIC c.1370)
2. Attempting to preside at a Eucharistic celebration (CIC c.1378 § 2, 1°)
3. Attempting to give absolution or hearing confessions (CIC c.1378 §2, 2°)
4. False denunciation of solicitation (CIC c.1390 §1)
5. Attempted marriage by a perpetually professed religious who is not a priest (CIC c.1394).

Reserved sins (CCEO c.728 §§ 1, 2):

1. Direct violation of sacramental seal (Apostolic See)
2. Absolution of an accomplice (Apostolic See)
3. Abortion (Bishop).

It is evident that the number of delicts with *latae sententiae* censures and the reserved sins are not equal. The reason why the Code commission did not make adequate attention to the matter is not clear. It introduces a certain amount of confusion and illegal practices into the penitential field, though of course it is not legality which is most important, but rather conversion.

4.11. Different Exceptions to the Reservations Raise Pastoral Problems

According to the CCEO, there are certain exceptions to the reservation of sins about which a detailed explanation was given in the second chapter.⁵²⁰ CCEO canon 729 provides that any reservation of the absolution from sin lacks all force in certain situations. As per the canon, the following situations are excepted: 1) when a sick person who cannot leave the house confesses, 2) when a person confesses in view of marriage and 3) when a person make a confession with grave inconvenience. The reservation lacks its force also when there is a danger that the sacramental seal will be violated. It must be also remembered that the reservation of the faculty to absolve a sin of absolution of an accomplice lacks force in danger-of-death cases according to CCEO canon 730.

Exceptions to the delicts with *latae sententiae* censures were examined in the third chapter.⁵²¹ According to the CIC, there are ten circumstances in which the delinquent is exempted from *latae sententiae* penalties (c.1324 §3) and deserves mitigation of other penalties (c.1324 §1). According to canon 1323, there are seven given circumstances in which the delinquent is exempted from all penalties. But this study has specifically focused on situations where there are exceptions to a *latae sententiae* censure.⁵²²

⁵²⁰ See pages 113-116.

⁵²¹ See pages 145-146. 1. The imperfect use of reason, 2. a lack of use of reason for culpable drunkenness, etc., 3. the heat of passion, 4. if one is under eighteen, 5. fear, necessity, grave inconvenience where the crime was intrinsically evil, etc., 6. lawful defence exceeding due moderation, 7. provocation, 8. culpable error due to presence of fear, necessity, lawful defence, 9. inculpable ignorance that there was a penalty attached to a law or precept, 10. a lack of full imputability.

⁵²² Toxè, "Approche canonique de cas de conscience particuliers et traitement des délits au for interne sacramental," 157.

The occasions of exceptions in *latae sententiae* excommunication and interdict are not the same as the occasions of exceptions in reserved sins. This is a blow to any effort to make the *latae sententiae* censure serve the purpose of reserved sin.

For example, the case of the direct violation of the confessional secret can be compared: suppose that a priest whose life is under threat reveals the confessional secret in an occult manner. When this priest confesses the sin to a Latin confessor, the confessor can judge the priest to be exempted from sanction because he committed it due to a life-threatening compulsion, even though the penitent did commit a grave delict sanctioned with a *latae sententiae* excommunication reserved to the Apostolic See. In this case, the penitent committed the delict without full consent. According to the laws of the CIC, the ordinary priest can give absolution to the penitent without any difficulty. But this exemption cannot be given if he goes to an Eastern priest, because the sin still exists even if he violated it under life-threatening external force. It is said that even if someone tries to kill a priest, he is not allowed to reveal the confessional secret. Even in the midst of force, he must preserve the confessional seal. The person might feel guilty of it and he may confess. Thus the sin remains and it cannot be absolved by an ordinary priest, since absolution of a direct violation of the confessional seal is reserved to the Apostolic See. Hence, the different exempting laws on reserved sins and *latae sententiae* censure make things complicated in the sacrament of penance.

Another example of exception of penalty may be considered: suppose that a minor has procured an abortion. As per the law, those under eighteen cannot be sanctioned with *latae sententiae* excommunication (CIC c. 1324 §1, 4°, °3)⁵²³ even if there are several cases of abortion before the age of eighteen. Though the delict of completed violation of abortion is under the sanction of excommunication, due to the nonage of the penitent the censure cannot be applied. A Latin priest without any special faculty can absolve the penitent under eighteen for having committed a sin of abortion. But in the Eastern law, the sin of a completed abortion is treated as a reserved sin, the absolution of which is reserved to the bishop. In the case of the sin of abortion, in the Eastern

⁵²³ Toxè, “Approche canonique de cas de conscience particuliers et traitement des délits au for interne sacramental,” 158.

Code, nonage affords one no exception in the case of a reserved sin. Even if the sin of abortion is committed by a person under eighteen, it is treated as a reserved sin. So the ordinary priest cannot give absolution without acquiring the faculty to absolve such a reserved sin.

The same case can be considered in light of an exception given in the CCEO for the reserved sins. When an adult who has committed the delict of abortion confesses this sin in view of getting married, the sin of abortion can be absolved without getting any special faculty from the bishop. The canon 729, 1° in CCEO gives exemption to the reserved sins on such occasions. But it is not the same case in the Latin Code, because such an exemption is not given in case of the violation of a delict with *latae sententiae* excommunication. So even if such a person confesses in view of the marriage, the Latin priest cannot absolve the penitent since he or she is under the censure of excommunication. So, the priest has to acquire the special faculty to remit the censure or else apply the law concerning the remission of censure on the occasion of confession.⁵²⁴

4.12. The Provision of Suspension of *Latae sententiae* Penalties (c.1352) Creates other Confusions

In the CIC, *latae sententiae* penalties can be partially or totally suspended. The canon on suspension (CIC c.1352 §2) poses the problem of equalizing the *latae sententiae* censure with reserved sin. “The obligation of observing a *latae sententiae* penalty which has not been declared and is not notorious in the place where the offender actually is, is suspended either in whole or in part to the extent that the offender cannot observe it without the danger of grave scandal or loss of good name” (CIC c.1352 §2). Suspension of penalty means suspension of its effects or, more precisely, suspension of the obligation of the penalty in all its effects or only in part according to the provisions of the penal law, given that the causes established by the law still exist.⁵²⁵ The second paragraph of the canon provides for a suspension of the obligation to observe the penalties, either of some part of the obligation that causes a loss of reputation and a scandalous situation, or else the whole obligation. If the penalty is

⁵²⁴ CIC c.1329 specifies co-delinquency in *latae sententiae*.

⁵²⁵ Marzoa, *Exegetical Commentary*, vol. IV, 395.

suspended, the ordinary confessor gains the faculty to absolve the sin connected to the delict with which he could be penalized. In that case, the confessor need not get the required jurisdiction (faculty) to remit a penalty because the penitent is eligible to receive sacraments. According to the CIC, there is no directly reserved sin and the confessor has the faculty to absolve all sins.

In the section on the penalties of censure, it must be noted that *ex parte paenitentis*, a penalty like excommunication or interdict prohibiting reception of the sacraments, is *suspended* for as long as the person is in danger of death (c.1352 §1). The suspension of penalties thus enables a confessor to impart absolution without granting remission of the censure.⁵²⁶ However, in case of recovery, the suspension ends and he remains bound by censure until remission is sought. In the case of reserved sins, in situations where there is a danger of death, it is absolved forever and there is no recovery of the absolved sin.

In the case of reserved sin, there is no suspension but only the exception. Exceptions and suspensions of the penalty are not the same. In effect, the same sin can be dealt with in two ways by a confessor in the Eastern Churches and the Latin Church.

For example, a sacristan who has committed a sin of physical attack on a bishop in an occult manner is under interdict and is therefore not eligible to receive sacraments. Since it happened in occult and the sacristan wants to make confession and receive communion in order to avoid scandal, the *latae sententiae* could be suspended and he could receive the sacrament of penance, without any recourse to the superior authority. The confessor can give absolution without hesitation since this is a suspension of penalty, based on CIC c. 1352 §2.

In the case of a reserved sin, there is no provision for suspension because it has consequences only in the internal forum. But as an exception, absolution could be granted by a confessor without his acquiring the required faculty when it cannot be requested without serious inconveniences to the penitent and without the danger of a violation of the sacramental seal (CCEO c.729, 2°). On such occasions, *ipso iure*, the confessor has the faculty to absolve.

⁵²⁶ Stenson, "Penalties in the New Code: The Role of the Confessor," 412.

4.13. The Lack of Knowledge of Priests Regarding the Different Reservations

Based on the results of the survey conducted, it is evident that the priests are not aware that two different systems of reservation exist. They do not mind the reservation as such for various reasons. First, they have not been adequately informed about the differences between the two systems during their formation. Secondly, they give little importance to ritual differences. Thirdly, these are treated as rare cases as the people who commit these sins may not be practising Christians. The faithful are also not aware of these types of reserved cases or sins since the catechism is often nominal and very little is taught about different rites.

This lack of knowledge is shown by the results of the survey made among priests working in Switzerland. Eighty three out of the total hundred twenty four responses answered wrongly that there are reserved sins in the Latin Code (Diagram: 4). Twenty six replied that they are not sure about it and eight of them did not answer. Only seven priests confirmed that there are no reserved sins in Latin Code. The CIC completely avoids reserved sins and even the possibility of any further reserved sins.⁵²⁷ But many priests confuse censure with reserved sin and a large majority thought that there are reserved sins according to the Latin law.

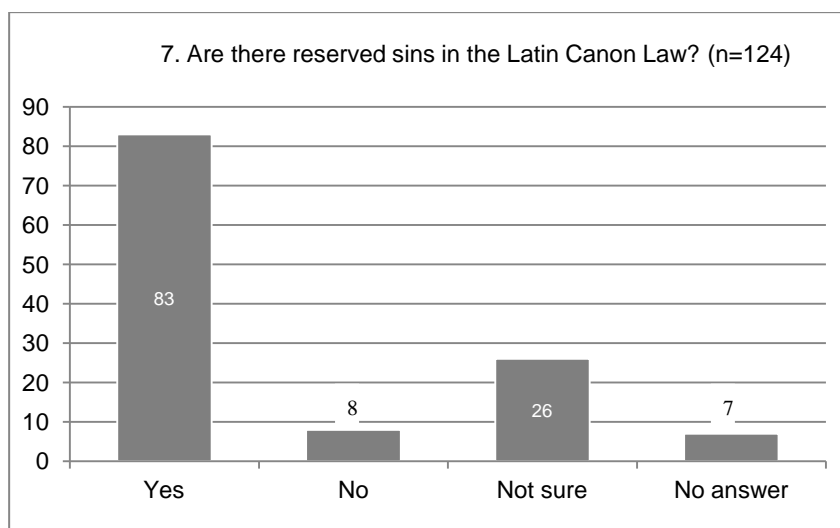


Diagram: 4

⁵²⁷ *Comm.* 10 (1978), 45-71.

Even in response to the direct question regarding the existence of the reserved sins in the Eastern law, seventy five respondents were not sure about this fact (Diagram: 5). Eleven did not answer it and three said there are no reserved sins. Only thirty five answered that there are reserved sins in the Eastern Churches. This result also makes clear the ignorance of the priests surveyed regarding the norms concerning reserved sins in the Eastern Churches.

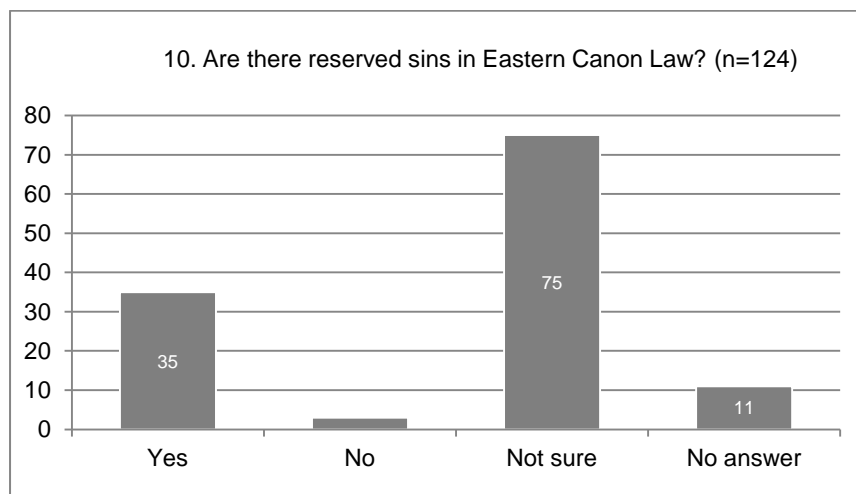


Diagram: 5

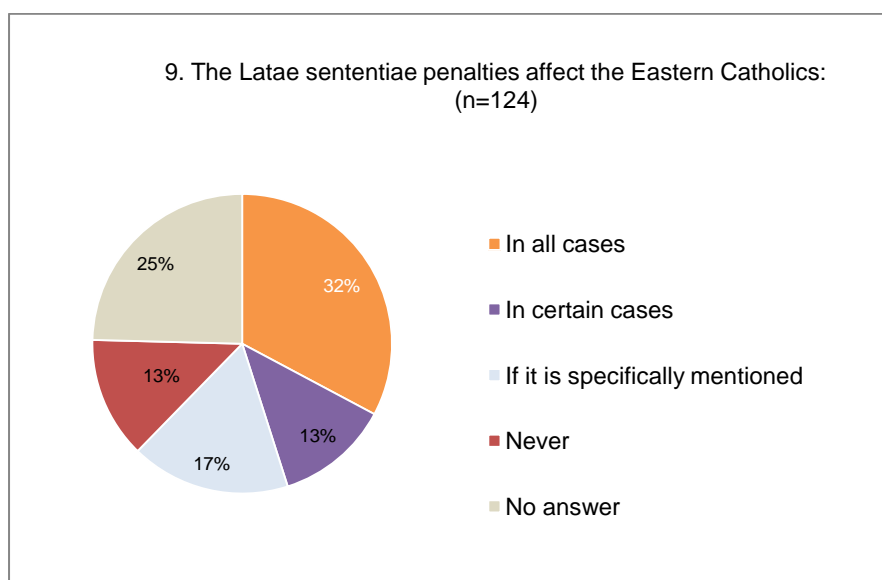


Diagram: 6

One important norm that all priests should be clear about is that there are no *latae sententiae* penalties in Eastern Canon Law. The answers to the above statement show

that the priests surveyed lack knowledge about the norms concerning reservations in the Catholic Church (Diagram: 6). Thirty two percent think that the *latae sententiae* penalties always affect the Eastern faithful. Only thirteen percent answered correctly that *latae sententiae* penalties categorically do not exist in the Eastern Law. All others either have a wrong conception or do not know the norms. Again this shows that the priests need further formation in the norms concerning the sacrament of penance in order to deal justly and correctly with penitents in the confessional.

The new Code states that the confessor must always remember that he is both judge and physician, a dispenser of God's justice and mercy (CIC 1983 c.978 §1 = CIC 1917 c.888 §1). In order to carry out this ministry effectively, it is imperative that he has, among other qualities, a sufficient knowledge of the norms concerning the sacrament.

4.14. Legal Confusions Caused by the Two Systems

Much legal confusion seems to have arisen from the existence of two systems of reservation in the Church. As was found in the survey, many priests are confused as to which law is applicable to the penitent (Diagram: 7). Many are not taking these laws into consideration and, as a result, illegal practices continue. The Eastern faithful are not under *latae sententiae censures* and yet the Latin priests apply these laws even in the case of an Eastern penitent. The law states that the priest should follow his own rite. The faithful has the right to be dealt with in accordance with their personal laws. This confusion is more prevalent in places where people from different rites live together.

Although the 1983 Latin Code suppressed the reservations of sins, it is clear from the survey conducted that priests are unclear in their understanding of reserved sins and reserved delicts. Out of a hundred and twenty four responses, seventy have responded there are reserved sins in the Latin law. This shows the danger of creating two types of reservations that affect the sacrament of penance, for illegal and even invalid practices would seem to be common, at least on certain occasions. The existence of two legal systems pertaining to confession can create confusion and an unintended violation of the law. An Eastern priest who never remits a censure has no idea about the remission

of censure of a Latin penitent. For an Eastern priest to give absolution to a Latin penitent for a sin not reserved according to Eastern norms, but for a delict attached with a *latae sententiae* censure could be regarded as an illegal or even an invalid act. The study shows that most of the priests surveyed face some confusion in the inter-ritual celebration of the sacrament due to the existence of two different systems of reservation (Diagram: 7).

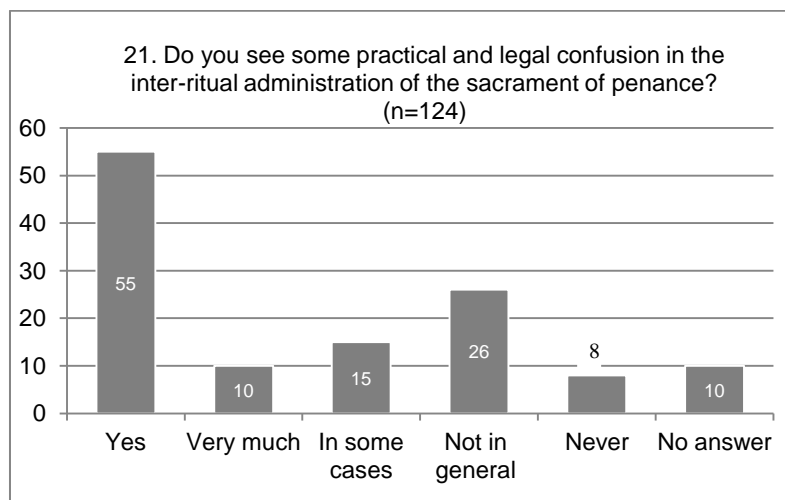


Diagram: 7

4.15. Injustice to the Faithful

When priests lack due knowledge, injustice to the faithful can be the result. If a Latin priest denies absolution to a penitent of the Eastern Church saying that he has no faculty to remit a penalty of *latae sententiae* excommunication reserved to the Apostolic See, injustice is done to the faithful. As a result, the penitent, who is under no excommunication, has to unlawfully suffer the consequences of excommunication, meaning the denial of the sacrament of confession or the obligation to make recourse to the higher authority in order to remit the penalty. In such a case, an Eastern faithful is unjustly treated and subjected to a law not applicable to him.

It is an injustice to an Eastern penitent if a Latin priest deals with his case in the same way that he treats the case of *latae sententiae* censures. Diagram 8 shows the different answers given by the priests surveyed. Fifty-two percent responded that they would deal in the same way as with a Latin penitent. So if any of these priests concludes that

an Eastern penitent is under censure and demands that he have recourse to the Apostolic See to receive the remission, it is a serious fault on the part of the confessor. The penitent is neither under the censure of excommunication nor any interdict. The norms on penalties especially should be interpreted strictly. CCEO 1423 §2 states; “Every reservation is to be interpreted strictly.”

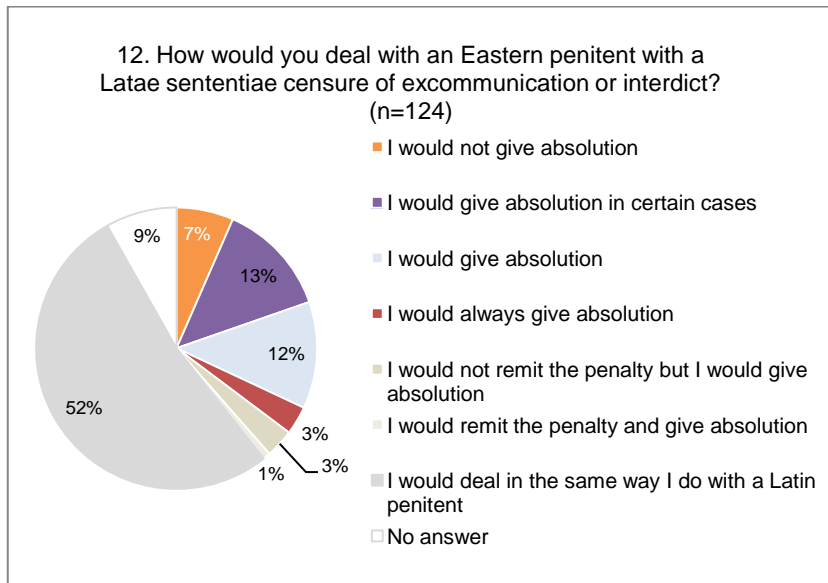


Diagram: 8

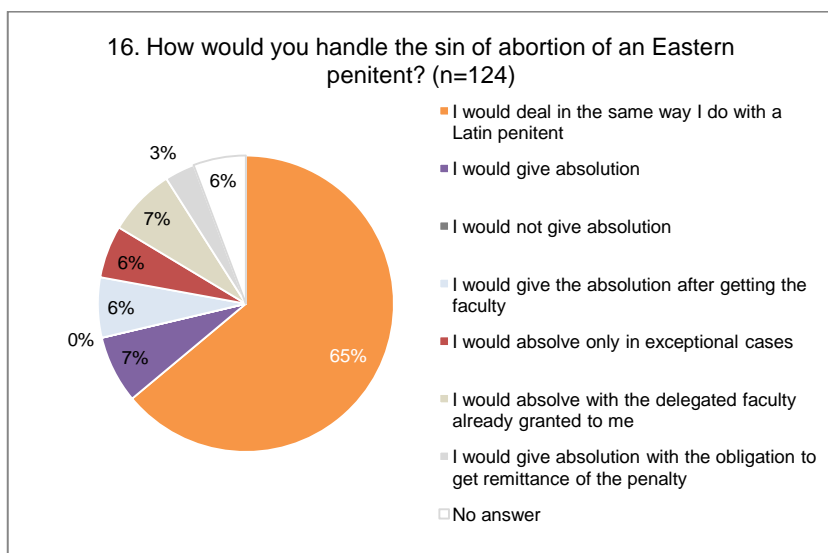


Diagram: 9

The same answer is received from a majority of the priests regarding the question on abortion (Diagram: 9). The Eastern penitent is in no way under censure of

excommunication and does not require a remission of penalty. The faculty given by the Local Ordinary to remit a penalty does not work if it is taken strictly in the legal terms. Since the sin of abortion is not reserved to the bishop as per the CIC, there is no special granting of faculty to a priest by the bishop. The faculty that he gives is the faculty to remit the censure of excommunication.

4.16. Internal and External Forum Conflicts

Reserved sins purely concern the internal forum, i.e. the absolution of sin is in the internal forum. But the reservation of the penalty affects the external forum as well. The censures of excommunication or interdict have many other consequences in the external forum. A person under censure, whether it is declared or non-declared,⁵²⁸ is prohibited from receiving not only the sacrament of penance but all other sacraments as well. When a confessor deals with a reserved delict in the sacrament of penance, it is treated as a mixing up of the external and internal forums. Confessors who act purely in the internal forum also take away all the consequences of the penalties in the external forum. Thus there can be an overlapping of faculties in the external and internal forums and a certain conflict and irregularity between these two forums.

A key issue in the literature on penal reform is that of the relationship between the two *fora*. There seems to be a growing consensus that the application and remission of penalties should take place in the external forum since there are significant penal prohibitions and legal restrictions there. Usually, these penalties become insignificant upon recourse to a confessor in the internal forum for often the confessor is unwilling to confront the penitent with the implications of ecclesiastical penalties.

The character of penalties in a public forum seems to imply that only those with public power in the external forum can or ought to determine penalties. The effects of penalties are to remain only within the external forum. Thus, there will be a clear distinction between *fora* and penalties will be implemented in a more humane way.⁵²⁹ But the system of remission in the internal forum, prior to the remission of a penalty

⁵²⁸ See Chapter III, 149ff.

⁵²⁹ Thomas J. Green, "The Future of Penal Law in the Church," *Jurist*, (1971) 222.

in the public forum, is to be abolished or at least modified to avoid conflicts between the external and internal forums.

4.17. Illegal Practice by the Priests

Regarding the sacrament of penance, a delict is specified in the penal section. Attempting to impart sacramental absolution or hearing a sacramental confession when one cannot do so validly is penalized (CIC c.1378 §2, 2°). As per law, to impart a valid absolution a confessor needs the power of ordination and the faculty to do so. “The valid absolution of sins requires that the minister have, in addition to the power of orders, the faculty of exercising it for the faithful to whom he imparts absolution” (CIC c.966 §1). The same norm is found in the Eastern Code, as it stipulates: “However, for presbyters to act validly, they must also have the faculty to administer the sacrament of penance” (CCEO c.722 §3). Since the reservation of sin is a restriction on granting absolution, if a Latin penitent confesses a reserved sin to an Eastern confessor in the territory of the Eastern ecclesiastical authority who has kept the reservation, the priest cannot validly grant absolution because the faculty is needed for the valid administration of the sacrament. If a confessor gives absolution without having the faculty it will be an invalid absolution. In such instances, the faculty is reserved and the ordinary priest has to receive the faculty from the concerned superior. Yet there are cases where priests absolve without having the proper legal faculty.

CIC canon 843 §1 states, “Sacred ministers cannot deny the sacraments to those who seek them at appropriate times, are properly disposed, and are not prohibited by law from receiving them.” The clause in this canon, namely ‘those who are not prohibited by law from receiving them’, should be taken into account by the confessors of the Latin rite. The penitent who has committed a delict attached to a sanction of *latae sententiae* excommunication or interdict is prohibited from receiving all sacraments. If the confessor gives absolution without taking into account the prohibition on the penitent, he violates the laws of the Church and acts illegally.

If a Latin penitent comes to an Eastern confessor accused of sins that are not reserved in the Eastern rite but are connected with a *latae sententiae* censure in Latin rite, by which he is prohibited to receive sacraments but not excluded from their validity, the

Eastern confessor can validly absolve, yet such an absolution may be illicit. The confession would be illicit if it is indirectly prohibited by the Latin Code and the same is not concerned with Eastern Catholics.⁵³⁰

One of the priests responded to the questionnaire saying that he gives absolution always, by quoting CIC c.980 “If the confessor has no doubt about the disposition of the penitent, and the penitent seeks absolution, absolution is to be neither refused nor deferred.” But the minister has to observe various disciplines and the norms issued by the competent authority. CIC canon 978 §2 states this clearly, “In administering the sacrament, the confessor as a minister of the Church is to adhere faithfully to the doctrine of the magisterium and the norms issued by competent authority.” Canon 980 does not mean that a confessor can give absolution without observing the norms of the Church. So in case the confessor lacks the necessary faculty, he has to get it or, if the penitent is prohibited from receiving the sacrament, has to get the faculty to remit the penalty. If the confessors do not follow the norms, then they act illegally. This need not be seen to invalidate the confession itself but would constitute an illegal act on the part of the confessor.

4.18. The Reservation is Made Ineffective

It is also possible to treat all the norms on reservation as ineffective and useless. The two systems give opportunity for the faithful to go to the confessor of a different rite for absolution, which is reserved *ratione sui* or *ratione censurae* in one’s own Church. The priest who is unaware of the difference makes use of the law of his Church to absolve. As a result, the desired effect of the reservation is lost.

The pastoral situation always demands the immediate reconciliation of a penitent who approaches the sacrament of penance with a proper disposition. According to CIC canon 980, the confessor must give absolution if the penitent asks for it with a proper disposition. He cannot deny or postpone it, according to the law. The confessor shows the mercy of God, normally, and gives absolution by observing the norms. Of the two aspects, mercy and discipline, mercy always has priority over discipline. So normally,

⁵³⁰ Peter Erdo, *Periodica* 90 (2001), 446-449.

the reservation exhibits no difference in its administration. Furthermore, exceptions to the laws of reservation tend to make the reservation practically useless.

Many in the pastoral field have stated that the norms on reservations are generally irrelevant. In the survey, twenty five percent responded that these norms have no relevance in their pastoral ministry. Eighteen percent stated that they are impractical and thirty percent answered that they are of very little use. This result shows that the majority have little confidence in the value of reserved sins in the modern world.

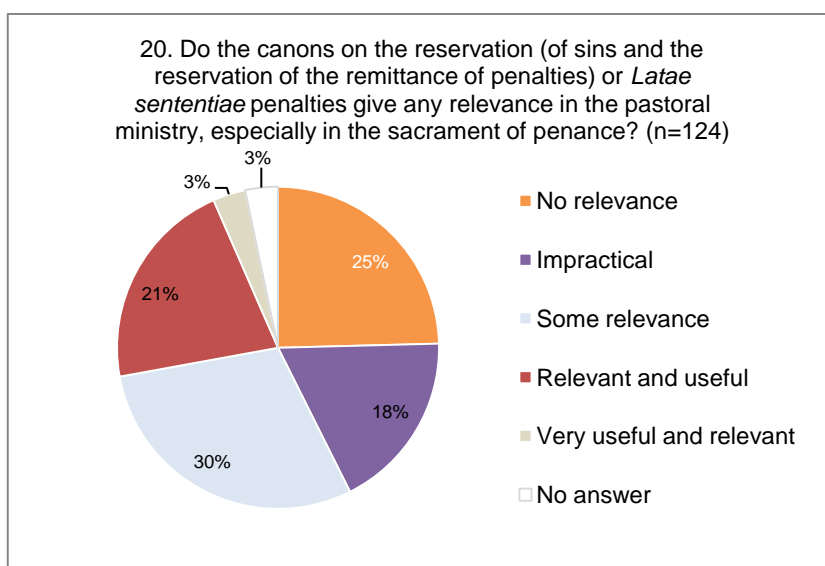


Diagram: 10

If remittance in the internal forum can take away the effects of all penalties, there is no use in creating *latae sententiae* censures. According to the Latin system, the *latae sententiae* censure is rendered ineffective by the confessor's ability to remit a non-declared censure (though the confessor must oblige the person to have recourse to the concerned authority). In effect, without a declared *latae sententiae* censure, it has no practical use as a penalty. It thus looks like an unrealistic penalty. So it is better to retain the penalties in the *fora externa* and the reserved sins in the *fora interna*.

Public delicts can be punished with *ferendae sententiae* penalties following a proper investigation. If a person accepts a grave sin in the internal forum, let it remain occult and be treated in an occult manner, as in the case of reserved sins. The medicinal nature of penalties demands that the Church use it as a last resort when all other

pastoral remedies have failed. In *latae sententiae* censure, there is no possibility of correcting the person or using pastoral remedies before giving the punishment or excommunicating them.

4.19. Certain Examples of Complications in Eastern-Latin Confessions

It will be easier to clarify the Eastern-Latin confusions and problems in the sacrament of penance by considering the example of one particular sin. The question arises of which law should be applicable when an Eastern penitent goes for confession to a Latin priest. Being an Eastern faithful, he or she would not know the *latae sententiae* censures. On the contrary, the priest has the faculty to absolve a completed abortion in the Latin rite. But what the priest lacks is the faculty of remission of censure. For him, the sin is only indirectly reserved due to the *latae sententiae* excommunication. Therefore, he must first remove the penalty of automatic excommunication in order to give the penitent the sacramental absolution. In this case, while giving the absolution, the confessor has to oblige to the penitent to have recourse within one month. But this law is not applicable to an Eastern faithful and is totally unknown and unbinding to an Eastern faithful. According to the liturgical rules, the confessor has to follow his own rite. The co-existence of two systems creates confusion in an inter-ritual confession. In many dioceses, such problems will not arise since the Ordinary has delegated the faculty for the remission of this censure to all priests or at least all parish priests.

Now, consider the other way around, where the priest comes to know that the penitent is from the Eastern Churches and applies the law of reserved sins. If the law of the penitent is applied, the priest has to follow the law of reserved sin and so the sin of completed abortion would be reserved to the bishop. In that case, the confessor must get the relevant faculty from his Bishop, who belongs to the Latin rite. Since there is no reservation of faculty to absolve a sin to the bishop in the Latin rite, it is not legal to grant it. A bishop cannot apply a law which is non-existing. In principle, he can give the faculty to remit the penalty of censure of automatic excommunication. Many times, the rite of the penitent is not recognized by the confessor. Thus there is still more chance for injustice to the faithful, especially when people from different rites live together.

Another example to explain the confusion is the desecration of the Sacred Species. If a Latin priest hears the confession of an Eastern faithful, he will regard the penitent as excommunicated and this obliges him to have recourse to the Apostolic See. In this case, there is no automatic excommunication for the penitent, as he belongs to the Eastern Churches, and his sin is not treated as a reserved sin. So when a priest remits the excommunication and gives him absolution, the confessor must oblige the penitent to have recourse to the Apostolic See either himself or through the confessor. If the confessor asks the Eastern penitent to have the recourse himself, it might be a clear instance of injustice to the penitent and another example of the irregularities arising from the fact of these two different systems.

The case of the desecration of the Sacred Species by a Latin penitent may also be considered. If the penitent goes to an Eastern Confessor for absolution, the confessor can give absolution without any difficulty because it is neither a *latae sententiae* censure nor a reserved sin in his Church. The confessor thus has the faculty to give absolution. In this case, however, in reality, the penitent is under censure of excommunication. This fact is not known to the confessor, unless the rite of the person is mentioned in the confession, which is rare in practice. The confessor follows the rite and norms of his Church and gives absolution. In this case too, an illegal practice occurs not due to negligence but due to the existence of two systems of reservations in relation to the sacrament of penance in the same Catholic Church.

4.20. The New Reservation to the CDF and the Sacrament of Penance

In the apostolic letter *Sacramentorum Sanctitatis Tutela*,⁵³¹ promulgated by Pope John Paul II on 30 April 2001, the norms for addressing cases of *gravioribus delictis* (grave crimes) are outlined and certain grave delicts are reserved to the Congregation for the Doctrine of Faith.⁵³² This document concerns mainly delicts committed in the celebration of the sacraments and delicts against faith and morals. Nine years after the promulgation of *Motu Proprio Sacramentorum Sanctitatis Tutela*, the Congregation for the Doctrine of the Faith found it necessary to proceed with a reform of the

⁵³¹ AAS 93 (2001) 737-739.

⁵³² Charles J. Scieluna, "The Procedure and Praxis of the Congregation for the Doctrine of the Faith Regarding *Graviora Delicta*," *Apostolica*, 10-16.

document without changing it in its entirety, but only in certain areas, so as to render the text more useful. The text of the *Normae de Gravioribus Delictis*,⁵³³ was revised by Pope Benedict XVI on 21 May 2010, containing modifications to both the substantial and the procedural norms found in the original text of *Sacramentorum Sanctitatis Tutela*.

The text of *Sacramentorum Sanctitatis Tutela* with its modification of the reservation in certain cases to the CDF needs to be considered in connection with the topic under discussion here. For both the Eastern Churches and the Latin Church are affected by the decree. The cases are reserved in the external forum alone and do not directly affect the internal forum. The delicts reserved to the CDF can be judged only according to procedural norms set forth in the document, and these cases are reserved *ipso iure* to the jurisdiction of the Congregation for the Doctrine of Faith.

The following delicts are reserved to the Congregation for the Doctrine of Faith. In case of delicts against faith, including heresy, apostasy and schism, the competency to undertake judicial trial in the first instance or issue an extrajudicial decree or remit the penalty falls to Ordinary or Hierarch. But the Congregation becomes competent in the case of an appeal or recourse in these delicts (SST art.2§ 2).

1. Apostasy, Heresy and Schism (art.2, §1), (CIC c.1364 §1, CCEO cc.1436, 1437).
2. Desecration of the Sacred Species (art.3 §1, 1°), (CIC c.1367; CCEO c.1442).
3. An attempt to preside at a Eucharistic celebration by someone not in Holy Orders (art.3 §1, 2°), (CIC c.1378 §2, 1°).
4. Simulation of the administration of Eucharist (art.3 §1, 3°), (CIC c.1379; CCEO c.1443).
5. Con-celebration of the Eucharistic Sacrifice when this is prohibited by law (art.3 §1, 4°), (CIC cc.908, 1365; CCEO cc.702, 1440).
6. Consecration for a sacrilegious purpose of one matter without the other, or even of both, either within or outside of the Eucharistic celebration (art.3 §2).
7. Absolution of an accomplice (art.4 §1, 1°), (CIC c.1378, §1; CCEO c.1457).
8. Attempted sacramental absolution or hearing the confessions (art.4 §1, 2°), (CIC

⁵³³ AAS 102 (2010), 419-431.

c.1378 §2, 2°).

9. Simulation of sacramental absolution (art.4 §1, 3°), (CIC c.1379; CCEO c.1443)

10. Solicitation to a sin against the sixth commandment in the act, on the occasion or under the pretext of confession (art.4 §1, 4°), (CIC c.1387; CCEO c.1458).

11. Direct or indirect violation of sacramental seal (art.4 §1, 5°), (CIC c.1388 §1; CCEO c.1456 §1).

12. Recording and publishing in the public media whatever is said by a confessor or a penitent (art.4 §2).

13. Attempted sacred ordination of a woman or reception of sacred ordination by a woman (art.5, 1°), (CIC c.1378; CCEO c.1443).

14. Clerical paedophilia with a minor below the age of eighteen or with one who lacks the use of reason (art.6 §1, 1°).

15. The acquisition, possession or distribution of pornographic images of minors under the age of fourteen by a cleric (art.6 §1, 2°).

Among the fifteen delicts reserved to the CDF, only eight are under the *latae sententiae* censures and only two are reserved sins. It is very evident that the cases reserved to the CDF are in the external forum for the judgement of the delict. So these reservations have nothing to do with the sacrament of penance. Only the eight cases reserved to the CDF have an indirect connection to the sacrament of penance as they are attached to either *latae sententiae* censures or reserved sins. Some priests, and even canonists, sometimes get confused and consider all fifteen delicts reserved to the CDF as reserved sins. Michael Kuchera, writing on the two systems of reservation, concludes by saying that the number of reserved sins has been increased by SST.⁵³⁴ Actually, reservation to the CDF has nothing to do with the sacrament of penance. In the internal forum, it is the Sacred Penitentiary who has the authority to give the faculty. The confusion is created by the co-existence of certain delicts attached to *latae sententiae* censures and reserved sins.

⁵³⁴ Kuchera, "Two Different Systems in Confessional Reservations *Reservatio Ratio Censurae* and *Reservatio Rationae sui*," 202.

4.21. New *Latae sententiae* Censures, after the Promulgation of the Codes, do not Affect the Eastern Churches

After the promulgation of the two Codes, the CIC and CCEO, two more additions were made to the *Latae sententiae* censures of excommunication. One relates to the indirect violation of the confessional seal by recording and publishing what is shared between the penitent and confessor in the public media; the second is the attempted sacred ordination of women or reception of sacred ordination by a woman. These two are not *latae sententiae* for the Eastern Churches. This is clear from the recent promulgation of *latae sententiae* for the Latin Church, which excludes the Eastern Churches. Even in the document published concerning the ‘*gravioribus delictis*’ in 2010, the faithful of the Eastern Churches were exempted from the *latae sententiae* censure. Art.5, 2° states:

If the one attempting to confer sacred ordination, or the women who attempts to receive sacred ordination, is a member of the Christian faithful subject to the Code of Canons of the Eastern Churches, with due regard for canon 1443 of that Code, he or she is to be punished by major excommunication reserved to the Apostolic See.

Thus, for the same delict, the Latin faithful receive *latae sententiae* excommunication and Easterners, *ferendae sententiae* excommunication. Thus, the new *latae sententiae* censures after the promulgation of the Codes do not affect the Eastern Church because it is against their common law.

One can understand this difference by considering the example of an Eastern bishop who ordains a woman in secret. The Eastern bishop incurs no excommunication until this becomes known and the Apostolic See imposes the sanction of excommunication through a decree. If the bishop confesses before it is declared, the confessor has the faculty to give him absolution. But it is not the case with Latin bishop who commits the same delict, because he is automatically excommunicated by the act itself. In this case, if the bishop confesses before the declaration, the confessor cannot give absolution because the penitent is under censure of excommunication. If the pastoral situation calls for it, the confessor must absolve the bishop and oblige him to have recourse to the Apostolic See for remittance of the penalty. For the Eastern bishop, if he is not sanctioned with a formal excommunication, there is no difficulty in his

receiving absolution because it is neither a reserved sin nor a *delict* attached to a *latae sententiae* censure.

4.22. The Feasibility of Reserving Matters Concerning the Internal Forum

It is debatable whether the reservation in the internal forum is apt. The confessor is normally unwilling to confront the penitent with the implications of ecclesiastical penalties. When a penitent approaches a confessor with sufficient repentance, there should not be any harsh rule that prevents him from receiving pardon and mercy based on the seriousness of his sin. The Lord never denied pardon to one who repented and asked for pardon. For this reason, it is not ideal to reserve the absolution of sins to higher authorities.

On the other hand, the internal forum penalties (automatic censures) prevent one from approaching the sacrament of reconciliation before the penalty is remitted. External forum *ferendae sententiae* reservations could be enough to prevent the scandal caused by serious delicts. So it is better to avoid bringing the penalties into the internal forum and regulate the internal forum sacramental principles.

Though the present study on reserved sins motivates us to consider the viability of the internal forum reservation, it is good enough to specify a very few reserved sins to prevent misuse of the sacrament itself and put a check on serious sins committed in secret. It is seen from history that absolution often differed until the conversion and vindication of the damage caused by the delict.

4.23. Suggestions for Avoiding the Complications Caused by Different Types of Reservation

The sacrament of penance is a sacrament of mercy and is administered throughout the whole Catholic Church in almost the same manner. But the law regarding reserved sins makes the administration of the sacrament rather too complicated and legalistic. The existence of differing systems of reservation gives rise to inter-ritual and pastoral problems. In the survey conducted for this study, the responses and reactions of priests gives evidence of this. Four options were given as suggestions in the questionnaire to avoid confusions and complications with the reservation. They were the following: 1)

Make the same law for the entire Catholic Church regarding the sacrament of penance, 2) Make equal in number and kind the sin reserved and delict attached to the *latae sententiae* censures, 3) Abolish laws both on the reservation of sins and on the reservation of penalties, 4) Make laws on reserved sin and laws on *latae sententiae* for both the Latin Church and the Eastern Churches.

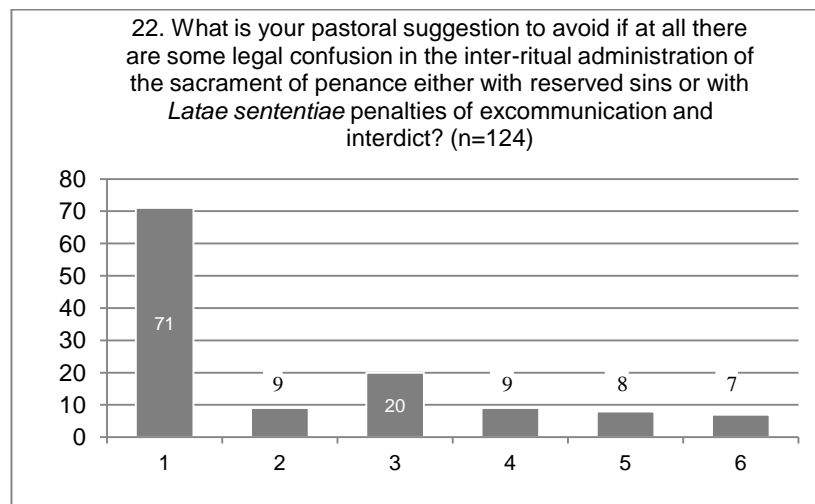


Diagram: 11

1. A majority of priests who answered the survey opted to have the same norms for the entire Catholic Church regarding the sacrament of penance (Diagram: 11). There are various ways to attain the goal of having the same norms on this matter. One of the methods would be to keep equal the number of reserved sins in both the Eastern and Latin law and completely abolish the *latae sententiae* censures. It is also possible to have the same norm by maintaining a few *latae sententiae* censures in both Codes and eliminate reserved sins.

Another way to equalize norms is to make equal the number of reserved sins and *latae sententiae* penalties in both Codes. This would mean introducing both systems in both Codes. There can be an objection here on the part of Eastern Canon lawyers, namely that *latae sententiae* is unknown in the Eastern tradition, though reserved sins exist in both legal systems. The medicinal character of the Eastern tradition has led it to use no *latae sententiae*, i.e. no automatic sentences without a judge, but rather only imposed *ferendae sententiae* in the external forum. In other words, the judge, who is a type of

doctor, must first diagnose the illness and only then apply the medicine.⁵³⁵ Therefore, making the two systems equal in number in both codes would be a difficult task.

2. The second suggestion in the questionnaire was to make equal in number and kind the sin reserved and the delict attached to the *latae sententiae* censure. If the two systems of reservations are kept at all in the realm of penance, it would be better to reserve all the sins connected to those delicts that are punished with *latae sententiae* excommunication or interdict in the CIC. At least, such equality in reservation may help in avoiding a certain amount of confusion. The Apostolic See can always add more reserved sins, as it has done with certain delicts by attaching them to *latae sententiae* censures after the promulgation of CIC 1983. There are fourteen *latae sententiae* censures affecting the sacrament of penance, and only three reserved sins. In order to make equal the number and kind of reservations in both system, either the number of reserved sins must be increased in correspondence with *latae sententiae* censures affecting the sacrament of penance, or else the number of *latae sententiae* censures affecting the sacrament of penance must be reduced to correspond with the reserved sins.

During the codification process of the CCEO, there was a suggestion to equalize the number of reservations.⁵³⁶ Yet this discussion was rejected by the Code commission by saying that in order to equalize the number of CIC *latae sententiae* censures, a large number of reserved sins would have to be created in the Eastern Code. The guidelines for codification thus suggest keeping the number of reserved sins to a minimum. Thus to equalize them would contradict the intention of the guiding principles. So the Code commission rejected this idea.

3. Yet another possibility is to remove all the reservations affecting the sacrament of penance. The reservation could be maintained only in the external forum for grave delicts. But this may not address the problem of grave occult sins and delicts. Twenty respondents to the survey opt to take away all reservations affecting the sacrament of penance.

⁵³⁵ Kuchera, "Two Different Systems in Confessional Reservations *Reservatio Ratio Censurae* and *Reservatio Rationae sui*," 193.

⁵³⁶ *Nuntia* 28 (1989), 96-98.

4. A fourth suggestion was to make both the laws on reserved sin and those on *latae sententiae* for both the Latin Church and the Eastern Churches. This proposition is to have reserved sins and *latae sententiae* censures in both Codes. It may appear close to the first suggestion, but it is more closed. In the first suggestion there are several ways to make equal norms of reservation for the entire Catholic Church, while here there is only one.

It is our own contention that the best way to enact equal norms for the entire Catholic Church, the preference for which is shown in the first answer, would be to maintain a very few reserved sins in both Churches and completely abolish the *latae sententiae* censures affecting the sacrament of penance. Reserved sins are enough to put a check and control over sins committed in secret. Reserved sins have existed in the Latin Church for centuries and were codified officially in CIC 1917. So there is no difficulty in adding reserved sins to the CIC. To introduce *latae sententiae* into the Eastern Code would be challenging, as it is foreign to the Eastern tradition. Automatic penalties have never been appreciated in the Church; they are judgements without a judge. Further studies and research may have to be conducted to determine the best way to establish the same norms for the Catholic Church.

Conclusion

In comparing the two systems of reservation affecting the sacrament of penance, it has become clear that a certain amount of confusion arises from having these two systems along with a number of pastoral problems. Legally, these systems are not the same. They can be distinguished by examining their legal implications. Today, with the large-scale globalization and the rapid migration of people, the existence of two systems can even produce certain illegal practices and pastoral discomforts for both the penitent and confessor, causing injustice.

Latae sententiae censures are foreign to the Eastern mentality. Thus they could be removed from both legislations. The *latae sententiae* censures are not in tune with the medicinal nature of sanctions. There is no judgement, as the mere fact of the commission of the delict determines the judgement. Neither the will of the delinquent nor any attenuating circumstances are taken into account and the conversion of the

delinquent is not obviously the main aim in applying *latae sententiae* censures.⁵³⁷ There is also a mixing up of the external forum and internal forum in the remission of the *latae sententiae* censures, which gives rise to much confusion for confessors. It is not easy to judge in every detail how a penitent has committed a certain delict. The confessional is not the place to make any detailed or harsh judgment; it is a place where one should experience the forgiving love of God.

Most respondents to the survey conducted for this study suggested that the pastoral and legal problems caused by having two systems of reservation could be resolved by establishing equal norms for the entire Catholic Church in the field of the sacrament of penance. The best possible method for establishing equal norms in this way would be to remove all *latae sententiae* censures from both Codes and, in both Codes, retain a very few number of reserved sins.

⁵³⁷ “Besides the cases prescribed in this or in other laws, the external violation of divine or canon law can be punished with a just penalty only when the special gravity of the violation requires it and necessity demands that scandals be prevented or repaired.” CIC c.1399.

GENERAL CONCLUSION

Eucharist and Penance are two sacraments of the Catholic Church which impart grace to the faithful, enabling them to live in union with God in their daily lives. Of these two sacraments, the sacrament of penance raises certain theological and practical perplexities for various reasons. There are many issues affecting this sacrament, such as the loss of a sense of sin, increasing dislike for individual confession in recent decades, doubt concerning the faculty of the Church to forgive sins, and problems related to the comportments of the ministers of the sacrament. The modern situation of globalization, along with an overemphasis on individualism and secularism, especially in the European world, has created new problems in the areas of sin, individual confession and the administration of sacrament of penance. Even the proposition of this study on the topic of reserved sin met with a certain amount of skepticism due to the waning interest in individual confession and other unfavourable circumstances related to the sacrament of penance in the European context.

At present, however, the situation is becoming more favourable for the sacrament of penance thanks to the attention Pope Francis has given to the theme of mercy. The Pope has declared an Extraordinary Jubilee Year for the Church, calling it a “Holy Year of Mercy.”⁵³⁸ The Bull of Indiction of this Jubilee Year opens with the declaration, “Jesus is the face of the Father’s mercy. These words might well sum up the mystery of the Christian faith.” In it, an attempt is made to renew the faithful’s awareness of the need for repentance and forgiveness in daily life, especially through the sacrament of penance. One hopes this may encourage the Catholic world to come back to the sacrament of penance with a better understanding and more positive outlook. It is also hoped that this study on reserved sin might help to impart the mercy of God in a better way in the future.

Our analysis of the theology and history of the sacrament of penance has shown that it is of divine origin. The sacrament of penance is an occasion to see the face of God, i.e. mercy expressed through Jesus Christ. Jesus Christ manifested the mercy of God the

⁵³⁸ Pope Francis released on 11th April, the bull of Indiction of extraordinary Jubilee, titled “*Misericordiae Vultus*” or “The Face of Mercy.” Jubilee Year of Mercy will run from 8th December 2015 to 20th November 2016.

Father in a concrete way through His salvific activities. His work of mercy continued through the chosen people. The first chapter of this dissertation establishes that Jesus Christ is the founder of the sacrament of penance and entrusted the Apostles with the power of the keys to bind and lose the sins of those who believe in Him. The power to forgive sins was transferred through the Church in the past centuries and the Church promulgated various norms for the better administration and regulation of the sacrament. The reservation of sin is one such regulation that gradually developed in the administration of the absolution of sins.

In the first codification of Canon Law, in 1917, directly reserved sins were very few in number. The only sin reserved to the Apostolic See was the false denunciation of the solicitation of a confessor (CIC 1917 c.894). But provisions were made for sins to be reserved by Ordinaries, the Superior General of an exempt clerical organization and the Abbot of an autonomous monastery for the souls under their care (CIC 1917 cc.893 § 1, 896). Many diocesan bishops in the Latin rite reserved certain sins to themselves. In addition to direct reservations some sins were also indirectly reserved by the effect of *latae sententiae* censures. Certain automatic reserved and non-reserved censures could be remitted by superiors higher than ordinary priests. These censures effectively prohibited the faithful from receiving the sacraments and thus indirectly accorded reservation to higher authorities in the sacrament of penance.

The directive principles for the reform of the CIC included guidelines to limit the number of *latae sententiae* penalties and avoid the conflict between the internal forum and external forum. So, CIC 1983 completely avoids the system of reserved sins and foresees no possibility of reserved sin. On the other hand it does preserve the *latae sententiae* reserved censures, though fewer in number. These *latae sententiae* reserved and non-reserved censures, such as excommunication and interdict, indirectly had the effect of reserved sin. Since excommunication and interdict prohibit a person from receiving the sacraments, the one who is under such penalties cannot validly and licitly receive the sacrament of penance. The confessor also cannot give absolution since he cannot administer the sacrament to one who is excommunicated or interdicted. The confessor is granted the faculty for the remission of censures from the higher authority to which it legitimately belongs. Having the faculty to remove this

censure, the confessor remits the censure with a special formula or with the same sacramental absolution. Provision is also made to remit censure in the sacramental forum without according the faculty, but with an obligation of having recourse to the concerned authority within one month (CIC 1983 c.1357).

According to the Latin law at present, six *latae sententiae* excommunications are reserved to the Apostolic See and three excommunications and five interdicts are reserved to the Ordinaries.⁵³⁹ One of the excommunications reserved to the Apostolic See and one of the excommunications reserved to Ordinaries were promulgated after the 1983 Code. This number shows that a large number of reservations still indirectly affect the sacrament of penance in the Latin Church, as compared to the Eastern reserved sins.

During the process of codifying the CCEO there was a strong desire among some to omit all *latae sententiae* penalties from the Code. The non-promulgated Eastern laws on penalties had adopted the norms of CIC 1917. Thus, the directive principles for codification aimed to form a Code more attuned to the Eastern system. Since the penal law section in the new Code did omit *latae sententiae* censures and since the system of reserved sins was more attuned to the Eastern Code, the Code commission decided to preserve reserved sins in the CCEO. There are three reserved sins in the CCEO, of which two are reserved to the Apostolic See and one to the eparchial bishop. No further reservations are found in the common law of the Eastern Church after those included in the 1990 Code.

In comparing these two systems of reservations that affect the sacrament of penance, it has been found that the two are entirely different in a legal sense. They make use of different terminologies in the context of reservation affecting the sacrament of penance. The system of reservation in the CCEO uses the terms like ‘faculty’, ‘sin’ and ‘absolution’, whereas the system of *latae sententiae* censures in CIC uses terms like ‘jurisdiction’, ‘delict’ and ‘remission’. The terms ‘faculty’ and ‘jurisdiction’ are not the same from a legal point of view. Sin and delicts are not equal in their meaning. According to the CIC, it is the censure or the penalty that makes one incapable of

⁵³⁹ See Chapter III 153ff.

receiving the sacrament of penance. But according to the CCEO, it is the reservation of the faculty to absolve certain sin to the higher authorities that prevents the penitent from receiving the sacrament of penance. The differences between these systems are studied and are compared in the fourth chapter.⁵⁴⁰

According to the CIC, the confessor has the faculty to absolve all sins of all penitents. But the penalty of the penitent prevents the confessor from administering the sacrament. The penitent is prohibited automatically from receiving all sacraments due to censures. According to the CCEO there are no automatic censures, and thus there is no provision that the penalties of excommunication or interdict prohibit a person from receiving the sacraments. Priests are not given the faculty to absolve certain grave sins in the CCEO. This withholding of the faculty from ordinary confessors prevents the penitent who has committed any such grave sin from receiving absolution from an ordinary confessor. The penitent is under no direct prohibition caused by an automatic penalty. This restriction of the faculty on an ordinary confessor from giving absolution to a person with reserved sins prevents such a penitent from receiving absolution.

Likewise, the exempting grounds of reserved sins and the *latae sententiae* censures are not the same in the CIC and CCEO. These different exceptions give rise to two types of interpretation of the same sin in the confessional, especially in inter-ritual confessions. Because the system of reservation in the CCEO is a sacramental principle while the *latae sententiae* censures in the CIC are penal principles, reserved sins fall under the internal forum, while the *latae sententiae* censures fall under the external forum. The fact of these two types of reservation has produced a certain amount of conflict between the internal and external forums, for one is handling an external forum matter, i.e. a penalty, in the internal forum. The censure has other consequences than merely the prohibition on receiving sacraments. By remitting the censure, the internal forum takes away the consequences of the external forum. The confessor has to evaluate a delict according to the norms of penalties, not according to sacramental principles. An Eastern priest who has nothing to do with the delict may have to deal with the delict of a Latin penitent according to the penal laws of Latin Church. A

⁵⁴⁰ See Chapter IV, 186ff.

Latin priest who hears the confession of an Eastern penitent has to deal with him in accordance with internal sacramental principles.

The sacraments are the same in the Catholic Church, though there are different rites for their administration. Unlike other sacraments, the sacrament of penance deals with the internal forum and there can be no difference in judging the seriousness of sins based on the rite of the penitent. The way of administration could differ based on the rite. However, these two systems of reservation create the impression that the faithful are judged differently in the internal forum for the same sin, according to their rite.

This study enables us to see the distinction between these two systems more clearly. It establishes that the two are not legally equal. It also concludes that the differences between Latin and Eastern inter-ritual administration of the sacrament of penance have given rise to a certain amount of confusion and even to the violation of certain ecclesiastical laws due to the differences between the systems.

In the modern, globalized world, there is a great deal of migration and the faithful from different Churches often live together as one ecclesiastical unit. When an Eastern faithful makes confession to a Latin priest, he deals with the sins according to the CIC, yet this can bring injustice to him as an Eastern penitent. The reality is that the confessor often does not know the rite of the penitent. The different systems of reservations, the ignorance of the confessor about the laws of the Eastern Churches or the Latin Church and the difficulty in recognizing the rite of the penitent in the confessional can lead to the unintended violation of laws. It might bring injustice to the penitent in the context of the sacrament of penance.

As detailed above, a survey has been conducted in connection with the present study among priests working in Switzerland in order to determine the extent to which they were informed concerning these two different systems. Three hundred and twenty five questionnaires were given to priests in different dioceses of the country. One hundred twenty four priests responded to the questionnaire. In this the survey, many priests who were interviewed stated that they had not studied Eastern Canon Law and so applied the same law of the Latin Church to their faithful irrespective of rite. Many did not answer the questionnaire, presumably thinking it did not concern them since

there are questions related to the CCEO. These negative responses and reluctance to give a response are clear evidence that there could be a violation of laws. There are even priests who said they do not understand many terms in the questionnaire. Though the two systems are not the same, the results of our survey clearly indicated that many priests in the pastoral field treat these two systems as equal. Again, this shows that the priests surveyed pay little attention to the differences in reservation in the sacrament of penance. Of course, Switzerland is a country in which a large part of its faithful does not practice regular individual confession, tending rather to attend the penitential service or collective reconciliation ceremony during the Lenten season.

The general observations and conclusions of this theoretical, canonical and empirical study of two different systems of reservation can be summarized as follows:

1. The CIC and CCEO present two different systems of reservation of sins affecting the sacrament of penance.
2. These two reservations are not equal in number and not the same in their legal implications.
3. Only non-declared *latae sententiae* excommunication and interdict can have the effect of reserved sin. Neither all *latae sententiae* censures nor *latae sententiae* expiatory penalties have the effect of reserved sin.
4. To a certain extent, priests do not take care of the norms regarding the reservations affecting the sacrament of penance prescribed in the CCEO and CIC.
5. Most priests do not distinguish between the systems of reservation presented in the CIC and CCEO.
6. The ignorance of priests with regard to the reservations leads to a violation of laws affecting the sacrament of penance.
7. The existence of two legal systems of reserved sins and the widespread ignorance of priests concerning this causes injustice, most often to the faithful of the Eastern Churches.

8. The existence of two types of reservation creates a certain amount of confusion for the Latin-Eastern inter-ritual administration of the sacrament of penance.

9. There is a conflict between the internal and external forum.

10. Reservation is made ineffective by the existence of two systems of reservation as well as by pastoral difficulties.

Similarly, the comparative study of reservation and survey made among priests to find a solution to these issues concerning the reservation in relation to the sacrament of penance leads us to the following conclusions:

1. It is necessary to more effectively coordinate the different rites in connection with the sacrament of penance, and this can be attained by enacting the solutions proposed in this study.

2. The education of priests in both Codes is to be strongly advised.

3. Further legislation is to be made for unifying the laws concerning reserved sins in order to avoid conflicts between the internal and external forums and avoid the unintended violation of laws related to the sacrament of penance.

4. The best way to avoid inter-ritual confusion would be to remove all *latae sententiae* censures from Canon Law and introduce a very few reserved sins for the entire Catholic Church, in both the Latin and Eastern rites.

The majority of the responses (71/124) to the survey question concerning the best way to avoid confusions and problems created by the existence of two systems of reservation led us to propose that a single norm on reservation affecting the sacrament of penance be created. The task is to find out how to form the same norms for the entire Catholic Church. As stated above, the best solution would be to remove all *latae sententiae* censures affecting the sacrament of penance and promulgate a very few particular reserved sins for all rites in the Catholic Church. The trend in ecclesiastical penal law is to do away with automatic penalties. CIC c.1314 states, “generally, a penalty is *ferendae sententiae*, so that it does not bind the guilty party until after it has been imposed; if the law or precept expressly establishes it, however, a penalty is

latae sententiae, so that it is incurred *ipso facto* when the delict is committed.” The penal law appreciates *ferendae sententiae* sanction because it provides an opportunity to judge in detail the committed delict and personal conditions of the offender. Since automatic penalties are foreign to the Eastern tradition, they cannot be introduced into the CCEO in the effort to establish a uniformity of norms. Reserved sins have existed in Latin legislation for a long time and it would be easy to reintroduce this notion into the CIC. Moreover, this would help to prevent unnecessary confusions and the illegal administration of the sacrament of penance.

The results of the study raise certain questions for further research and study:

1. Are there barriers to harmonizing and unifying reservations regarding the sacrament of penance for the whole Catholic Church?
2. What are the grave sins to be reserved for the entire Catholic Church?
3. Can *latae sententiae* censures be removed from Canon Law?

The biblical theme of the coming year of mercy will be: “Be merciful, just as your Father is merciful.” In his declaration of this theme, Pope Francis emphasized that this admonition applies especially to confessors. The greater the sin of a person may be, the greater the love and compassion called for on the part of the confessor. If the penitent approaches the sacrament with profound repentance and an ardent desire for conversion, the special opportunity to experience God’s grace through the sacraments of penance should not be denied or postponed based on the person’s rite or even the seriousness of the sin. This study suggests certain changes to be made with regard to the norms on reservation affecting the sacrament of penance; changes that would help confessors to deal with such cases with more compassion. Pope Francis is planning to send forth what he has called ‘Missionaries of Mercy’, i.e. priests to whom he will grant the authority to pardon even those sins reserved to the Apostolic See. This study proposes that the same law on reserved sins be enacted for the entire Catholic Church in order to make the administration of the sacrament of penance easier and more compassionate, not only at the time of Jubilee, but at all times.

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APPENDIX I

Reserved Sins According to CCEO

Canon	Sin		Reserved to :
728 §1, 1°	Direct violation of sacramental seal		Apostolic See
728 §1, 2°	Absolution of an accomplice		Apostolic See
728 §2	Abortion		Eparchial Bishop

Latae sententiae censures according to CIC

Canon	Delict	Censure	Reserved to :
1364§1	Apostasy, Heresy and Schism	Excommunication	Non reserved
1367	Desecration of the Sacred Species	Excommunication	Apostolic See
1370 §1	Physically assaulting the Pope	Excommunication	Apostolic See
1378 §1	Absolution of an accomplice	Excommunication	Apostolic See
1382	Unlawful consecration of a bishop and reception of such an ordination	Excommunication	Apostolic See
1388 §1	Direct violation of sacramental seal	Excommunication	Apostolic See
CDF, 23, September 1988	Recording and publishing it in the public media whatever is said by a confessor or a penitent	Excommunication	Non reserved
CDF 19, Dec 2007	Attempt to confer sacred ordination on a women or the reception of ordinations	Excommunication	Apostolic See
1398	Abortion	Excommunication	Non reserved
1370 §1	Using physical force against a bishop	Interdict	Non reserved
1378 §2,1°	Attempting to preside at Eucharistic celebration	Interdict	Non reserved
1378 §2,2°	The offences of attempting to give absolution or hearing the confessions	Interdict	Non reserved
1390 §1	False denunciation of solicitation	Interdict	Non reserved
1394 §1	Attempted marriage by a perpetually professed religious who is not a priest	Interdict	Non reserved

APPENDIX II

Absolution from censures

1. The form of absolution is not to be changed when a priest, in keeping with the provision of law, absolves a properly disposed penitent within the sacramental forum from a censure *latae sententiae*. It is enough that the confessor intends to absolve also from censures. Before absolving from sins, however, the confessor may absolve from the censure using the formula which is given below for absolution from censure outside the sacrament of penance.

2. When a priest, in accordance with the law, absolves a penitent from a censure outside the sacrament of penance he uses the following formula:

By the power granted to me, I absolve you from the bond of excommunication (or suspension or interdict).

In the name of the Father, and of the Son, + and of the Holy Spirit.

The penitent answers: **Amen.**

APPENDIX III

Questionnaire used for the survey:

We start with some direct questions about *latae sententiae* (automatic) ‘excommunication’ and ‘interdict’ in the Church as a penalty for serious offences (delicts). Only one answer per question is expected except when specified.

1. The censures ‘excommunication’ and ‘interdict’, prohibit a person from receiving the sacrament of penance

- ☐ Always
- ☐ In certain cases
- ☐ If it is mentioned specifically with the penalty
- ☐ Except in danger of death situation
- ☐ Never

2. An ordinary confessor has the faculty according to Canon Law to remit a penitent from the censure of *Latae sententiae*⁵⁴¹ ‘excommunication’ or ‘interdict’.

- ☐ In all cases
- ☐ Certain exceptional cases
- ☐ If the faculty is given by office or delegation
- ☐ In non-declared cases
- ☐ Never

3. You may come across in the individual confessions the following cases affected by the *Latae Sententiae* ‘excommunication’ or ‘interdict’. Please you can tick on more than one answer.

- ☐ Violation of seal of confession
- ☐ Absolution of an accomplice
- ☐ Physical attack on Pope or Bishop
- ☐ Desecration of the Sacred Species
- ☐ Attempt to preside over a Eucharist
- ☐ Attempt to give absolution or hear confession
- ☐ Recording or publishing in public media whatever said in confessional
- ☐ False denunciation a confessor of solicitation
- ☐ Attempted marriage of a perpetually professed religious
- ☐ Abortion
- ☐ Heresy

⁵⁴¹ Automatic penalties; The penalty is imposed on a person by the very commission of the delict.

- ☐ Apostasy
- ☐ Schism
- ☐ Any other.....

4. How often do you come across such cases in the individual confessions?

- ☐ Never
- ☐ Once in a while
- ☐ Rarely (a few times)
- ☐ Sometimes
- ☐ Often
- ☐ Very often

5. Do you give absolution in an individual confession to a penitent with a sin related to non declared *Latae sententiae* excommunication or interdict?

- ☐ Always
- ☐ In certain cases
- ☐ In danger of death situations
- ☐ Never

6. Do you mention about such cases in a General Absolution?

- ☐ Yes
- ☐ Yes, but only when I judge this really necessary
- ☐ Usually no
- ☐ Never

7. Are there reserved sins in the Latin Canon Law?

- ☐ Yes
- ☐ No
- ☐ Not sure

In the same Catholic Church, there are Eastern Catholic Churches and Latin Catholic Church and these are guided by two separate Codes (CCEO & CIC). Today, the migration leads to the co-living of the faithful of Eastern and Latin Churches. The following questions are concerning the sacrament of penance in a mixed living situation of the faithful of East and West.

8. Do you have the faculty to hear the confession of Eastern Catholics?

- ☐ Always
- ☐ Sometimes
- ☐ If I get bi-ritual faculty
- ☐ If I am delegated

- ☐ Never
- ☐ Not sure

9. The *Latae sententiae* penalties affect the Eastern Catholics:-

- ☐ In all cases
- ☐ In certain cases
- ☐ If it is specifically mentioned
- ☐ Never

10. Are there reserved sins in Eastern Canon Law?

- ☐ Yes
- ☐ No
- ☐ Not sure

11. If there are reserved sins how would you deal with an Eastern penitent with a reserved sin?

- ☐ I would give absolution in all the cases
- ☐ I would ask the person to go to another confessor with faculty
- ☐ I would get the faculty from competent authority and give absolution
- ☐ In exceptional cases I would give absolution
- ☐ I do not know how to deal with a penitent of Oriental Catholic Churches

12. How would you deal with an Eastern penitent with a *Latae sententiae* censure of excommunication or interdict?

- ☐ I would not give absolution
- ☐ I would give absolution in certain cases
- ☐ I would give absolution
- ☐ I would always give absolution
- ☐ I would not remit the penalty but I would give absolution
- ☐ I would remit the penalty and give absolution
- ☐ I would deal in the same way I do with a Latin penitent

13. Do you mention about the reserved sins during the General absolution?

- ☐ Yes
- ☐ Sometimes
- ☐ Rarely
- ☐ No

14. Does the General Absolution make a reserved sin absolved?

- ☐ Yes
- ☐ No
- ☐ Not sure

Thank you very much for patiently answering the above questions. Here below some examples and practical questions are given that a priest comes across while he deals with Eastern and Latin penitents. Please tick on your answer to each question:

15. How would you handle the sin of abortion in an individual confession of a Latin penitent?

- ☐ I would absolve always without any obligation of recourse
- ☐ I would absolve with the obligation of recourse to the competent authority to get remittance of penalty
- ☐ I would absolve in exceptional cases and I myself make recourse to the higher authority
- ☐ I would absolve with the delegated faculty already granted to me
- ☐ I won't absolve due to lack of faculty

16. How would you handle the sin of abortion of an Eastern penitent?

- ☐ I would deal in the same way I do with a Latin penitent
- ☐ I would give absolution
- ☐ I would not give absolution
- ☐ I would give the absolution after getting the faculty
- ☐ I would absolve only in exceptional cases
- ☐ I would absolve with the delegated faculty already granted to me
- ☐ I would give absolution with the obligation to get remittance of the penalty

17. How do you absolve the sin of throwing away the consecrated species and using it for a sacrilegious purpose by a penitent of Latin Church?

- ☐ I absolve without any obligation of recourse
- ☐ I do not absolve
- ☐ I absolve in exceptional cases with obligation of recourse
- ☐ I absolve often but not always with the obligation of recourse
- ☐ I absolve always with the obligation of recourse
- ☐ I absolve non-declared *Latae sententiae* censures with obligation to recourse
- ☐ I do not know how to deal with the sin

18. Do you absolve the sin of an Eastern penitent who threw away the consecrated species and used it for a sacrilegious purpose?

- ☐ I absolve without any obligation of recourse
- ☐ I do not absolve
- ☐ I absolve in exceptional cases with obligation of recourse
- ☐ I absolve often but not always with the obligation of recourse
- ☐ I absolve always with the obligation of recourse

- ☐ I absolve non-declared *Latae sententiae* censures with obligation to recourse
- ☐ I do not know how to deal with the sin

19. Which law, of the penitent or of the confessor, is to be applied in case of inter-ritual confession⁵⁴²?

- ☐ Of the confessor
- ☐ Of the penitent
- ☐ Both
- ☐ I don't know

20. Do the canons on the reservation (of sins and the reservation of the remittance of penalties) or *Latae sententiae* penalties give any relevance in the pastoral ministry, especially in the sacrament of penance?

- ☐ No relevance
- ☐ Impractical
- ☐ Some relevance
- ☐ Relevant and useful
- ☐ Very useful and relevant

21. Do you see some practical and legal confusion in the inter-ritual administration of the sacrament of penance?

- ☐ Yes
- ☐ Very much
- ☐ In some cases
- ☐ Not in general
- ☐ Never

22. What is your pastoral suggestion to avoid if at all there are some legal confusion in the inter-ritual administration of the sacrament of penance either with reserved sins or with *Latae sententiae* penalties of excommunication and interdict?

- ☐ Make the same law for the entire Catholic Church regarding the sacrament of Penance
- ☐ Make equal in number and kind the sin reserved and the delict attached with *latae sententiae* censure
- ☐ Abolish both laws on the reservation of sins and on the reservation of penalties

⁵⁴² A Latin priest absolves an Eastern penitent; An Eastern Catholic priest absolves a Latin penitent.

☐ Make both laws on the reserved sin and laws on latae sententiae for both the Latin Church and the Eastern churches

☐ Other suggestions:
.....

23. Do you agree that this suggestion will help more in the pastoral ministry of both Eastern and Latin Confessors?

- ☐ I agree
☐ I rather agree
☐ I rather disagree
☐ I disagree

Thank you for your answers, now we would like to know a little bit more about you:

24. The diocese in which you minister:

25. You are (Please tick): ☐ a Diocesan priest / ☐ a Religious priest

If a diocesan, the Diocese of Incardination:

.....

If a religious, name of the Congregation or Order:

.....

26. You belong originally to: ☐ the Latin Church / ☐ an Eastern Catholic Church

27. Office / Function:

28. Years of experience in the pastoral field:

29. Year of Birth:

30. Nationality / nationalities:

31. If you had a Swiss naturalization can you give your nationality of Origin:

.....

32. Your highest academic qualification in theology (please tick):

- ☐ None, ☐ Diploma in the Seminary, ☐ Diploma from University, ☐ Bachelor,
☐ Master, ☐ DEA, ☐ Licentiate, ☐ PhD ☐ Other:

33. The University/Institution from which you have the highest degree:

Name of the University/Institution:

Country: