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PERSISTENT DISOBEDIENCE
TO CHURCH AUTHORITY:
HISTORY, ANALYSIS AND
APPLICATION
OF CANON 1371, 2°

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INTRODUCTION

I was reminded of the importance of penal law when I first read an article written in 2010 by the Secretary of the Pontifical Council for Legislative Texts entitled «Cardinal Ratzinger and the Revision of the Canonical Penal System: A Crucial Role»¹. Among other things, the author mentioned that the text of Book VI of the Code of Canon Law, entitled *De Sanctionibus in Ecclesia*, was in the early stages of being reexamined, a development that began in 2007 at the initiative of Pope Benedict XVI². That an entire book of the CIC was being revised only twenty-four years after its promulgation and in the wake of the fairly recent publication of the *motu proprio Sacramentorum sanctitatis tutela*³ struck me as significant.

I also regularly came across other articles that illustrated what appeared to be a crisis of obedience on the part of clerics and laypeople towards competent authority in the Catholic Church. I was greatly disturbed to read about Church members, often priests, who were disobedient to their bishops or religious superiors and were happy to make public their side of the story. Also of concern was that their defiance won them the acclaim of others who considered these disobedient ones to be heroic. On other occasions, people who at least on the surface appeared to be disobedient seemed to suffer no consequences, and in such instances I found myself questioning whether the competent authority

¹ J.I. ARRIETA, «Cardinal Ratzinger», 490.

² J.I. ARRIETA, «Cardinal Ratzinger», 490. As Prefect of the Congregation for the Doctrine of the Faith, then-Cardinal Ratzinger brought to the attention of the head of the Pontifical Council for Legislative Texts his observations, based largely on experience he gained as prefect of the mentioned dicastery, of apparent inadequacies in penal law, especially as regards priests accused of immoral behavior but whose prosecution under the provisions of the CIC was considered cumbersome.

³ JOHN PAUL II, *m.p. Sacramentorum sanctitatis tutela*, 30 April 2001.

was properly using its power of governance by not acting (or at least apparently not taking action).

The combination of the above – a renewed interest in penal law and my perception that a lack of obedience to competent authority in the Church was and is an issue that should be addressed – along with the fact that little has been written on our canon of study, are some reasons motivating this analysis of persistent disobedience through the lens of Book VI of the CIC. It seems that a comprehensive study of can. 1371, 2°, CIC 1983 could assist the reader in arriving at an authentic understanding of the canon as well as help one to conclude whether or not the CIC provides competent authority with the tools needed to punish those who are persistently disobedient.

Canon 1371, 2° addresses the topic of persistent disobedience to competent Church authority, stating that one is to be punished with a just penalty who does not comply with or yield to a legitimate precept (command) or prohibition of the Apostolic See, an Ordinary or another Superior and who, after having received a warning, persists in his or her disobedience. It states, «iusta poena puniatur: qui aliter Sedi Apostolicae, Ordinario, vel Superiori legitime praecipienti vel prohibenti non obtemperat, et post monitum in inoboedientia persistit». This text follows the first part of the canon, which addresses one who teaches a doctrine previously condemned by the Roman Pontiff or by an ecumenical council or who rejects certain other doctrine and who, after a warning, does not retract his views on the matter(s).

Chapter one of this work begins by considering how we arrived at the present form of can. 1371, 2°. While only its CIC 1917 counterpart (can. 2331 §1) is attributed as a font to can. 1371, 2° by Card. Pietro Gasparri, another twenty fonts or sources are ascribed to can. 2331 §1. Each of these fonts provides evidence that acts of disobedience have been brought to the attention of the highest level of competent Church authority since at least the end of the first century. The fonts help to assist us in understanding what motivated the canon as it currently appears in the CIC 1983. In the fonts we learn about various situations, issues and concerns presented to the Apostolic See along with decisions rendered, thus increasing our understanding of the mind of various popes and of the Roman Curia concerning persistent disobedience to competent Church authority.

In chapter two a study of can. 2331 §1, CIC 1917 is undertaken. An analysis of the words is helpful and interesting and will prepare us for what is to follow in the subsequent chapter. Chapter two continues with

a study of the revision process of the CIC in regards to what would become can. 1371.

Chapter three undertakes a study of the words contained in can. 1371, 2° understood in their text and context (can. 17, CIC 1983), for example: *iusta pena, puniatur, Superiori, legitime, praecipienti, prohibenti, non obtemperat*⁴, *post monitum, inoboedientia* and *persistit*. This study is followed by an analysis of can. 1371, 2°, including a consideration of opinions held by experts in canon law followed by a comparison with can. 1446, CCEO 1990. Major and recurring terms or themes seen in the canons will be pointed out along with a comparison between can. 1371, 2° and its 1917 precedent, including similarities and differences.

The work thus far has looked at history and law. But how do we apply what we have learned? For what types of matters are disobedient members of the Church being punished? How does one define or determine a just penalty or punishment? What do warnings look like? In what way might one be disobedient to the Apostolic See? Are bishops ever disobedient? In reality is a just penalty ever imposed upon a persistently disobedient layperson? Our fourth chapter aims to shed light on these issues as we examine jurisprudence of the Roman Curia. Here we look at recourses that have been presented to competent dicasteries for adjudication, namely the Congregation for the Doctrine of the Faith, Congregation for the Clergy and the Apostolic Signatura. The reader should find many of the cases interesting and useful, inasmuch as they provide an interpretative light as we attempt to accurately understand and apply can. 1371, 2°.

In fact, jurisprudence informs the canon as it currently appears in the CIC. Since the promulgation of the CIC 1983 competent authority has had over thirty years to make use of the legislation therein. The practice of subsidiarity has led to an increase in the number of recourses presented to competent dicasteries of the Roman Curia. This dissertation takes advantage of an examination of some matters of a disputed nature. The recourses in question were presented by a subordinate who considered him/herself aggrieved with a decision of his or her ordinary.

⁴ Interestingly enough, the word *obtemperat* (obtempero, obtemperare) appears only one other time in the 1983 CIC: canon 260, which concerns obedience to the seminary rector. Where *oboedientia* is found in several canons, *obtemperare* is not.

Jurisprudence having been examined, chapter five of the dissertation seeks to undertake a contemporary reading of can. 1371, 2°, beginning with conciliation. The chapter also addresses the proper use of precepts and warnings, provides a checklist to ensure correct implementation of the canon, briefly presents non-canonical resources, including materials to assist managers in the secular realm and finally offers questions open for possible future study.

The reality is that on a fairly regular basis competent authority must determine if and how to address misbehavior. A superior must decide how to tackle various matters, including lack of obedience, and how far to push. Canon law provides leeway and room for interpretation and judgment. Competent authority must consider the reality of scandal that might result if no punishment is imposed upon one who appears to be persistently disobedient. On the other hand, competent authority also has to be mindful that others may consider themselves to be aggrieved when punishment is imposed upon their favorite priest, for example, whether or not he is guilty of a crime. While the CIC was not designed to foresee every possible situation that might arise in different parts of the world, it does provide tools to competent authority and to his or her advisors. This work will bring this reality to light.

This dissertation aims to arrive at a proper understanding of can. 1371, 2°, to see how it is applied in everyday situations, to lead the reader to an understanding of how the canon should be implemented in order to foster right governance (which should result in care for the *salus animarum*⁵) and to demonstrate the complementarity between accepted management principles and canon law. Having finished reading the work, the reader should have a clear understanding of when a bishop or other superior may impose a just penalty and when he may not, realizing that the punishable offense is persistent disobedience rather than a single act of disobedience. The reader should also comprehend better how competent authority should go about properly implementing the canon in conjunction with other relevant canons in the CIC and supplemental legislation for the good ordering of the Church.

As with any work, limits have to be put in place. I do not intend to make connections between the canon in question and other canons concerning disobedience as regards members of religious institutes. That a

⁵ Cf. M. DEL POZZO, «*Salus animarum*», 134-139 for a concise examination of what «salvation of souls» means and does not mean.

religious is to be punished with a just penalty under canon 1371, 2° will be examined; indeed some cases in chapter four concern disobedient religious. However, it is outside the scope of this work to consider in a profound way canons that pertain specifically to members of religious institutes. Also outside the scope of this work is a speculative study of what just penalties might be in certain situations. Nor is it my intention to analyze various hypothetical scenarios that might arise. In this regard, the jurisprudence section already provides enough real-life examples.

Having outlined the approach of this work, we now begin with a look at the sources or fonts underlying can. 1371, 2°.

CHAPTER I

Historical Sources before the CIC 1917

1. Introduction to the study of the fonts

Our short and straightforward canon finds its basis in various sources or «fonts». These sources can be useful inasmuch as they help to provide a context, underpinning, overview and understanding of the canon as it currently appears. The authority of a particular font depends upon different factors; for example, by whom it was promulgated. Juridically the fonts hold no weight. Yet they often provide the foundation of a canon. It is the Supreme Legislator's promulgation, however, that gives force to the canons. Therefore, we enter this study on the one hand aware of the limitations of the fonts while on the other hand with the realization that a profound study of the fonts can broaden our understanding of the canon as it reads today.

In Book VI of the CIC 1983, only can. 1316¹, concerning the uniformity of penal laws at the local level, does not include as a font a corresponding canon or canons from the CIC 1917. In addition to canons from the CIC 1917, fonts have as their foundation decisions reached in Ecumenical Councils, which popes would draw upon. In the case of our canon of study, can. 1371, 2^o CIC 1983, only one font is listed: canon 2331 §1 of the CIC 1917. That canon states: «Qui Romano Pontifici vel proprio Ordinario aliquid legitime praecipienti vel prohibenti pertinaciter non obtemperant, congruis poenis, censuris non exclusis, pro gravitate culpaepuniantur». Twenty-one fonts are listed for this canon. The

¹ «Curent Episcopi diocesani ut, quatenus fieri potest, in eadem civitate vel regione uniformes ferantur, si quae ferendae sint, poenales leges».

goal of the first chapter is to examine each and every font so as to better understand how our current legislation came to be. In some cases, commentaries on the legislation will be cited and explained in order to help us to understand how to interpret the meaning of a particular font.

Some of the fonts stem from interpretations of situations or problems that came to the attention of ecclesiastical authority over the centuries. We will see that it was not uncommon for the pope himself to render a decision or interpretation after having considered the facts of a given case. As time progressed, dicasteries of the Holy See, by means of vicarious authority, would become more involved in studying specific issues and cases and later rendering decisions.

The following fonts are studied with the goal of understanding some of the issues and problems that ultimately led to the formation of our canon in question. Studying this jurisprudence, which spans from the year 100 through 1910, will prepare us for part of the last chapter of this work which will examine fairly recent jurisprudence of various Roman Dicasteries. We will see that, regardless of culture or time, competent authority has been able to discern disobedient acts.

Our material will be viewed through the lens of concern for the *salus animarum* as the supreme law of the Church, as stated in the last canon in the CIC 1983² and which traces its roots to the Twelve Tables of Roman Law (450 B.C.). According to Cicero, «salus populi suprema lex esto»³, indicating that the material in the final canon of the current Code is not new. Very likely the same maxim influenced law since not long after the founding of Rome.

The first part of the chapter will be divided into sections covering various time periods prior to the promulgation of the CIC 1917. Therefore, the fonts will not appear in the same order as found in the official publication by Gasparri⁴ but rather chronologically⁵. The goal of this

² The relevant part of can. 1752 states: «[...] prae oculis habita salute animarum, quae in Ecclesia suprema semper lex esse debet».

³ M.T. CICERO, *De Legibus*, Bk. 3, par. 8: «Iuris disceptator, qui privata iudicet iudicarive iubeat, praetor esto. Is iuris civilis custos esto. Huic potestate pari quotcumque senatus creverit populusve iusserit, tot sunt. Regio imperio duo sunt, iique <a> praeundo iudicando consulendo praetores iudices consules appellamino. Militiae summum ius habento, nemini parento. Ollis salus populi suprema lex esto».

⁴ The fonts are included in the CIC 1917 along with an analytical index, both prepared by Pietro Cardinal Gasparri.

part of the work is to assist us in recognizing developments and in analyzing trends through our study of the fonts.

2. Pre 1917 CIC Fonts

2.1 *First and second centuries*

Three of our fonts stem from the early years of the Church.

2.1.1 Clement and obedience to the bishop

Our first source dates back to before the year 100, or about 65 years after the resurrection of Christ. It is listed as sixth in order by Gasparri. The font is found in the *Decretum*, attributed to Pope St. Clement who as third successor to St. Peter reigned from 88 to 97⁶. Here the Roman Pontiff informs those with an ecclesiastical rank lower than that of bishop that their bishop needs to be obeyed. The nature of this required obedience and in which matters obedience was expected is not clear. The pope clearly states that clerics and laypeople who do not obey the bishops are made infamous (or notorious or disreputable) – *infames efficiuntur*. This early pope is specific inasmuch as he spells out who is held to obey the bishop, including presbyters, all other clerics, «princes of both greater and lesser order and in fact all other peoples»⁷. This same first century Pontiff holds

⁵ The reader is invited to refer to the chart at the end of chapter one for a comparison of my chronological ordering to Gasparri's editorial ordering. Also, the text of many of our fonts can be found in P. GASPARRI, ed., *Codicis Iuris Canonici Fontes*; A. FRIEDBERG, *Decretum Magistri Gratiani*, and ID., *Decretalium Collectiones*.

⁶ Several epistles are attributed to the authorship of Pope St. Clement. They concern matters of rules, discipline, behavior of a Christian in the presence of non-believers and heretics and worship in the Church. Clement was the «mouthpiece» of the Apostles to succeeding generations of Christians, and described as a fellow minister to the apostles. Cf. J. LIGHTFOOT, ed., *The Apostolic Fathers*, 100-101.

⁷ «Omnes coeiscopos, presbyteros, diaconos et reliquos clericos et cunctos principes maiores minoresve omnesque generaliter fideles edocet, Dominum episcopos vice sua et loco apostolorum ad docendos omnes misisse; itaque et populum et principes ut Deo obedire iis debere, quique iis resistat, eum resistere Domino. Inissu episcopi ne presbyteri, diaconi, alii clerici quidquam agant, neve aut sacra procurent, aut baptizent cet. Addit de baptismo dando, de propaganda veritate, de libero arbitrio etc.» (3). P. JAFFÉ, *Regesta Pontificum*, I, 3, no. XI. In English: «He [Pope Clement] instructs all fellow-bishops, priests, deacons, and remaining clerics, and all princes, greater or lesser, and in general all the faithful, that the Lord sent bishops in his stead and in the place of the Apostles to teach everyone; and so

that those falling into the above category will not only be infamous, but should consider themselves exiled from the kingdom of God and from the fellowship of the faithful⁸.

This font, using a form of *non oboedire*, addresses disobedience on the part of all members of the Church with the exception of bishops. Those who disobey a bishop will suffer consequences, not only in this life, but if unrepentant, in the next life as well. Disobedience to certain authority could preclude one from entering into heaven, let alone be unwelcome in the Church. Heresy and schism were the cause of religious corrosion, and a main duty of the bishops was to clearly set forth the Truth found in Jesus Christ⁹. In this epistle, the pope intended to clarify the authority of bishops, successors to the apostles who are to obey God out of a concern for the eternal salvation of souls¹⁰.

To summarize the essence of the font, we see that the issue being addressed is the lack of obedience on the part of priests, clerics and lay-people. The objects of the obedience (to whom the obedience is to be paid) are bishops. The punishment for disobedience is that the presumed to be guilty party becomes infamous – notorious or disreputable – and, if a priest, deacon or cleric, subject to sanctions which limited their permission to baptize¹¹ or celebrate the sacred rites.

both the people and the princes must obey them as they obey God, and whoever resists them, he resists the Lord. Let not priests, deacons or other clerics do anything, nor let them celebrate sacred rites, nor baptize, without the command of the bishop [...]. Unless otherwise noted, the translations are mine, with the helpful assistance of Kevin Keiser, to whom I am most grateful, and who also offered corrections and clarifications as well as pointing out some errors in my translations from Latin into English. Note that all the sources taken from Jaffé are not direct fonts but are footnotes to the fonts. They sometimes contain historical information or expound on some of the content of the font.

⁸ C. 11, q. 3, c. 11. *Clerici et laici, qui non obedient episcopis, infames efficiuntur*. «Item Clemens [epist. III. Omnibus Coepiscopis]. «Si autem uobis episcopis non obedierint omnes presbiteri, et reliqui clerici, omnes que principes tam maioris ordinis quam inferioris, atque reliqui populi, non solum infames, sed etiam extorres a regno Dei et a consortio fidelium, et a liminibus sanctae Dei ecclesiae alieni erunt».

⁹ Cf. R. DEFFERRARI, ed., *The Fathers of the Church*, I, ix-x.

¹⁰ Cf. C. 11, q. 3, c. 11 in footnote 7 above.

¹¹ While it may seem foreign to hear about a priest being forbidden to baptize, the text in footnote seven above does not indicate validity of the baptism would be affected. Can. 1722, CIC 1983 allows the Ordinary to exclude an accused person from the sacred ministry «to prevent scandals, to protect the freedom of witnesses and to guard the courts of justice».

2.1.2 Transgressors

Pope Pius I, Bishop of Rome from 142 or 146 until 157 or 161¹² is the author of our next font, which dates to around the year 150. The pope begins by stating that those departing from their purpose are rendered infamous, including one who has transgressed from the commands of the apostolic see. So serious is such an infraction, that even if one claims to have converted from his erroneous ways and rejoined the faith, he is to be held in suspicion in regards to «right faith». His faith and conduct are to be investigated, and only those who appear to be above reproach are to be taken back, and then only if the person's integrity can be established¹³.

The foreseen investigation appears to be standard procedure not so much to protect the right of the transgressor to provide his defense, but more so to make sure his conversion is a genuine one. Has his unacceptable conduct truly changed? Can this be verified? The accused should be able to provide verifiable proof that he is reformed; on its own, his word is not enough¹⁴. Concern for the *salus animarum* is primary.

A related source adds that bishops should not be accused by their subjects and that the faith and conduct of accusers is to be investigated. «Whoever neglects a command of the Apostolic See, he is infamous»¹⁵.

In summary, the font addresses willing transgression (*libenter transgressus*) from the commands of the Apostolic See and is in regards to every member of the Church. The punishment foreseen for the guilty party includes being rendered infamous, notorious or disreputable. Whether Church authority needs to declare the person infamous or

¹² *Annuario Pontificio* 2013, 8*. As a contemporary of St. Polycarp, he had to deal regularly with many heretical groups promoting their views in *Urbe*, including the Gnostics and Marcio. Cf. M. BUNSON, *The Pope Encyclopedia*, 275.

¹³ To preserve the integrity of the text while avoiding excessive footnoting, the entire text will normally be cited after an explanation has been provided, sometimes over several paragraphs. In some cases, this will result in some paragraphs not being footnoted; the reader is invited to continue reading; all material that needs to be footnoted is indeed footnoted.

¹⁴ C. 3, q. 4, c. 3. *A suo proposito discendentes fiunt infames. Item Pius Papa*, [epist. I]. «Si quis uero a suo proposito retrorsum exorbitauerit, et iussa apostolicae sedis libenter transgressus fuerit, infamis efficitur. Reprobati ergo oportet eorum redargutiones, qui in recta fide suspecti sunt. Fides autem et conuersatio primum scrutanda est, et denuo qui inreprehensibiles aparuerint sunt recipiendi, et non prius».

¹⁵ «Iussum apostolicae sedis qui neglexerit, eum infamem esse». P. JAFFÉ, *Regesta Pontificum*, I, 7, n. XL.

whether by the transgression itself one automatically incurs the undesired status is not clear.

2.1.3 Disobedient clerics

The same Pontiff is responsible for the next font, found in Pope Pius I's second epistle and dating to the middle of the second century. It concerns clerics who fail to obey – *inobediens* – their bishop or are guilty of other offenses such as betraying or deceiving the bishop, directly insulting him, being calumnious or verbally assaulting the chief shepherd of the diocese. If said cleric is convicted he is to be quickly and forcefully removed and then handed over to the curia to be punished¹⁶.

While the previous font is addressed to all the faithful, the font currently being studied is intended for clerics. The font includes a list of punishable disobedient acts, calls for the right of defense and foresees a just penalty. Furthermore, it states that a cleric is accountable for acts of disobedience against his bishop. Here we see that there is no room for disobedience on the part of any cleric, not just priests. Moreover, no precise definition of disobedience is provided here; perhaps in the middle of the second century it was understood well enough by the faithful and clerics alike.

The punishment for said disobedience, while being left to the judgment of curial officials, is to fit the crime. Since it was impossible to know the gravity of each crime before it would be committed, the legislator allowed for much discretion on the part of those who would be responsible for punishing the guilty party.

This font stemmed from a letter written by Pope Pius I to his Italian confreres (most likely other bishops) in which he states that one is guilty of sacrilege who transfers to irreligious use property that was destined for divine use. The letter concludes, «Let those clerics who do not obey the bishop, or prepare treachery or insult or calumny “be handed over to the curia”»¹⁷. The gloss found in the *Monumenta Iuris Canonici* addresses the issue of who is to judge the disobedience. The cleric's bishop was

¹⁶ C. 11, q. 1, c. 18. *Clericus suo inobediens episcopo depositus curiae tradatur*. Item Pius Papa. [epist. II]. «Si quis sacerdotum uel reliquorum clericorum suo episcopo inobediens fuerit, aut ei insidias parauerit, aut contumeliam, aut calumpniam, uel conuicia intulerit, et conuinci potuerit, mox depositus curiae tradatur, et recipiat quod inique gessit».

¹⁷ «Italicis fratribus scribit, praedia divino usui destinata qui ab humanum usum transferat, eum sacrilegum esse. Qui clerici episcopo non obedient, aut insidias vel contumeliam vel calumpniam parent, ii, curiae tradantur». P. JAFFÉ, *Regesta Pontificum* 7, n. XLI.

competent in the matter unless the disobedient cleric was a religious who lived in a monastery. In this case, it would be the monasterial curia that would be responsible for judging the offense. The monastery, in fact, is called an ecclesiastical court where ecclesiastical men are punished, in the same way as secular men are punished through a civil court. The statement continues, «for if [a religious] who has been deposed ought to be punished, he should be punished in a monastery»¹⁸. Though the word *depositus* translated into English has various meanings, in this case deposition should be rendered «removal» or «degradation»¹⁹. To be deposed, therefore, meant that the man was returned to the ranks of the laity²⁰.

To summarize this font, then, we note that the issue being addressed is disobedience on the part of a cleric. The punishment for the guilty cleric is that he is to be handed over to the Curia, which would determine his punishment. The foreseen penalty is left open, and is dependent upon the facts and circumstances of a given case.

¹⁸ «Dicuntur ergo curia ecclesiastica monasterium, ea ratione, quia sicut per curiam secularis puniuntur, sic in monasterio uiri ecclesiastici, tradi ergo curie est in monasterium detrudi. Quod perpenditur cum dicit *mox tradatur*, et iterum, *et recipiat quod inique*, quasi puniatur. Nam si depositus magis puniatur in monasterium detrudetur, ut di.lxxxii. Dictum est, Sacerdos. Eadem ergo in proprietate dicitur monasterium curia qua et exilium». P. LANDAU – W. KOZUR, *Monumenta Iuris Canonici*, 165.

¹⁹ F. W. MAITLAND, *Roman Canon Law in the Church of England: Six Essays*, 143. The author analyzes the same font in his essay entitled «Henry II and the Criminal Clerks». On pp. 133-135, the author states that a crime committed by cleric would fall into two categories: temporal (murder, robbery larceny, rape, etc.) or ecclesiastical (incontinence, heresy, disobedience to superiors, breach of ceremonial rules, etc.). A cleric accused of homicide would first appear in front of the king to respond to an accusation (with a plea) and then would be sent to the ecclesiastical court for trial, conviction and degradation. Matters falling into the second category would not be examined by the king.

²⁰ Cf. A. BOUDINHON, «Excommunication». Also, note should be made that the term «cleric» is understood differently today than it was at the epoch in which the font is placed or even in 1917. Canon 108 §1 CIC 1917 (cf. its font, C. 38, q. 1, c. 11) states «those who are taken into divine ministries at least by the reception of first tonsure are called clerics» («Qui divinis ministeriis per primam saltem tonsuram mancipati sunt, clerici dicuntur»). Clerics, therefore, were not necessarily ordained but were usually on their way towards the reception of Sacred Orders. Our understanding of «cleric» changed only in 1972, when they «were no longer classified by First Tonsure or Minor Orders but by the reception of the diaconate». Paul VI, *m.p. Ministeria quaedam*, 91.

2.2 *Third century*

Gasparri places two of our fonts in the third century.

2.2.1 Failing to obey one's bishop

Our next font places us in the first part of the third century. Drawing upon an address of Pope Anterus (r. 21 November 235 to 3 January 236) to the bishops of Spain, it was decreed that anyone not obedient to the bishop is «plucked up by the mouth of demons» (*demonum ore decerpitur*). The word *decerpitur* is both indicative and passive and can be translated «plucked», «snatched», «reaped», «culled» or «pulled». It does not say «*let* [the disobedient one] be plucked by demons» but states that, in fact, the snatching or plucking is the consequence for disobedience to a successor to the apostles²¹. The pope's words, which may seem strong to us today, were likely acceptable to his audience at that time.

We notice also that a form of *obtemperare* is found in this font. It is defined as «to comply with», «conform to», or «submit to». *Oboedire* means «to give ear to» or «to listen to». *Oboedientia* is translated «obedience» or «compliance»²². Though the definitions are similar, note should be taken of the distinctions, given that *obtemperare* is the word that appears in can. 1371, 2°.

The Old Testament tells us that there was indeed a penalty for not obeying the priests. A priest *non obtemperasset* would be placed outside the camp and either stoned by the people or subjected to the sword (Dt 17, 12). The pope draws upon this source, indicating however that physical punishment is no longer the penalty; one who is disobedient in this way is to be placed under spiritual censure (lesser excommunication)²³.

²¹ C. 11, q. 3, c. 14. *Episcopo non obediens demonum ore decerpitur*. Item Anterus Papa. [Episcopis Hispaniae]. «Absit, ut quicquam sinistrum de his arbitremur, qui apostolico gradui succedentes Christi corpus sacro ore conficiunt, per quos nos Christiani sumus, qui clause regni celorum habentes ante iudicii diem iudicant. In ueteri quidem lege habetur: quicumque sacerdotibus non obtemperasset, aut extra castra positus lapidabatur a populo, aut gladio ceruice subiecta contemptum expiabat cruore. Nunc uero inobediens spirituali animaduersione truncatur, aut eiectus de ecclesia rapido ore demonum decerpitur».

²² D.P. SIMPSON, *Cassell's Latin Dictionary*, 566. Note that the CIC 1917 and 1983 reference the second and third words several times while *obtemperare* is found only twice.

²³ «*Spirituali animaduersione*: idest minori excommunicatione». P. LANDAU – W. KOZUR, *Monumenta Iuris Canonici*, 176.

Canon 5 of the Council of Nicea mentions excommunication, considering it a true and proper penalty but less grave than *anathema*²⁴. This source is closest to the time of the font. As defined by Gregory IX, lesser excommunication includes prohibition from receiving the sacraments along with other indirect consequences; for example, a priest who celebrates sacraments after having incurred minor excommunication falls into grave sin²⁵. We notice here the development in the understanding of the role of law and its need to provide for some flexibility. Physical punishment was once recognized as an appropriate penalty. Yet the pope declared that a spiritual resolution would be more fitting. The reader should notice signs of the Pontiff's concern for the *salus animarum*.

Concerning the term «censure» and its significance in the third century, we turn to a few of the fonts for can. 2257 §1, CIC 1917, which address the failure to attend a synod. The first font is from the Second Council of Arles (year 314), can. 19, which excluded from the communion of the brethren (probably referring to ordained clerics and not limited to bishops) anyone who had neglected or disdained to attend a synod²⁶. Moreover, the Council of Agde²⁷ (10 September 506) and the

²⁴ «La scomunica, come vera e propria pena, meno grave dell'anatema e da questa presupposta, è menzionata nei Concili[o] di Nicea (a. 325, can. 5) [...]». A. DE IORIO, «Scomunica», 144. The canon calls for an inquiry to be held «to ascertain whether anyone has been expelled from the community because of pettiness or quarrelsomeness or any such ill nature on the part of the bishop» and the said inquiries should be conducted by «all the bishops of the province assembled together» so that by general consent «those who have offended against their own bishop may be recognized by all to reasonably excommunicated [...]». N. TANNER, *Decrees of the Ecumenical Councils* I, *8.

²⁵ X, 5, 39, 59. Two classes of excommunication existed until these were dropped by Pope Pius IX. PIUS IX, bull *Apostolicae Sedis*, 12 March 1868, 7-58. Cf. I.T. DE ROCABERTI, *Bibliotheca maxima pontificia*.

²⁶ D. 18, c. 12. «Si quis autem adesse neglexerit; uel cetum fratrum, antequam concilium dissolatur, crediderit deserendum alienatum se a fratrum communione agnoscat; nec eum recipe liceat, nisi in dequenti sinodo fuerit absolutus». It is understood here that this would apply only to someone who was expected to attend a synod and not to someone who was not invited.

²⁷ D. 18, c. 13. «Si episcopus metropolitanus ad comprouinciales episcopos epistolas direxerit, in quibus eos aut ad ordinationem summi pontificis, ut ad sinodum inuitet, postpositis omnibus (excepta graui infirmitate corporis, ac preceptione regia) ad constitutum diem adesse non differant. Quod si defuerint (sicut prisca canonum precipit auctoritas) usque ad proximam sinodum a caritate fratrum et ecclesiae communione priuentur».

Council of Tarragona²⁸ (516) both call for the excommunication of bishops who, having been invited or summoned by their metropolitan bishop to attend a synod, either scorn, disdain or ignore the summons or invitation – *uenire contempserit*. A *gravi infirmitate corporis* or *preceptione regia* would excuse a bishop, as mentioned in the Council of Agde²⁹.

Those under interdict remain in the communion of the Church, but are prohibited from certain sacred things³⁰. Suspension applies only to a cleric (prohibition from office or benefice or both)³¹. Even though such precise definitions were probably not in place in the third century, seeds of how the word is understood today can be found in the early centuries of the Church.

To summarize the font under consideration, we see that the issue is not submitting to or complying with – *non obtemperare* – the command of a bishop. Those addressed by this font include everyone with lower ecclesiastical rank than a bishop. The foreseen punishment is minor excommunication.

2.2.2 Cases not to be admitted to a canonical hearing

Later in the third century, and originating from the *Decreti Secunda Pars*, our next font, number three as listed by Gasparri, is attributed to Pope St. Dionisius (r. 22 July 260 – 26 December 268) and addressed to Bishop Seuerum³². The title is a source of mild controversy as there are

²⁸ D. 18, c. 14. «Si quis episcoporum commonitus a metropolitano ad sinodum, nulla graui intercedente necessitate corporali, uenire contempserit, sicut statute Patrum sanxerunt, usque ad futurum concilium cunctorum episcoporum caritatis communione priuetur».

²⁹ Whether the inflicted excommunication was considered a penalty is not always easy to discern. «[...] Nei primi secoli i vescovi corregionali spesso privavano qualche confratello della comunione (fraterna) senza infliggergli alcuna pena, ciò che non avrebbe potuto fare, trattandosi di un non suddito. Anche i romani pontefici più di una volta si rifiutarono di comunicare con qualche vescovo o con i suoi delegati, per dimostrare la loro indignazione, senza infliggere una pena». A. DE IORIO, «Scomunica», 144.

³⁰ Canon 2268 §1: «Interdictum est censura qua fideles, in communione Ecclesiae permanentes, prohibentur sacris quae in canonibus, qui sequuntur, enumerantur».

³¹ Canon 2278 §1: «Suspensio est censura qua clericus officio vel beneficio vel utroque prohibetur».

³² P. Jaffé explains in a detailed way: «Severo episcopo, ecclesiae parochianae qualiter sint custodiendae per Cordubensem provinciam consulenti, ecclesiae Romanae exemplum proponit, ubi ecclesias singulas inquit singulis presbyteris dedimus, parochias et coemeteria eis divisimus et unicuique ius proprium habere statuimus.

variances in different versions of the text. The Friedberg edition, cited in the footnote below, begins «Infamous persons cannot accuse heretics» (*Infames hereticos accusare non possunt*). Another edition says *Infames accusare non possunt*. Many others say *Infames accusare possunt haereticos* while still others say *Infames non possunt accusare catholicos* or «Disgraced persons cannot accuse Catholics»³³. This last title seems to best fit the sense of the text. In any event, this font addresses both doctrinal and disciplinary disobedience. It is not limited to clerics or exclusively to Catholics. It would seem to apply even to those who wished to convert and be baptized. Those who did not believe had no right to accuse professed believers of heresy or other infractions. The penalty is not specified and apparently would be held to the judgment of Church authority³⁴ depending upon the gravity of the disobedience³⁵.

The font also says that the Church is unable to receive those who are in error voluntarily (one who «departs from the path of his purpose») or who do not obey – *non obedientem* – the sacred rules and constitutions of the fathers. These same ones are not permitted to accuse those right believers or those who are obedient to the sanctions (rules and constitutions) of the Fathers. In other words, they may not present a case against obedient believers. The font ends by stating that those who violate their own specific law (we can assume this would apply to a non-Christian) or those who willingly set aside apostolic or «regular authority» are defined as «infamous». Thus the necessity of being faithful to what is set out by the Church and obedient to superiors is stressed. Those who did not claim to be Christian would seem to have some rights (to accuse «right believers» of heresy) if they at least followed their own law.

Monet, necrimina episcopis per alios sinat ullo modo fieri, nisi per ipsos, qui crimina intendant». P. JAFFÉ, *Regesta Pontificum* I, 22, n. XCLX.

³³ Under the heading «Notationes Correctorum» is found the following: «C. XXIII. “In multis vutustis exemplaribus rubrica huius capitis sic habet: *Infames accusare possunt haereticos*. In aliis vero nonnullis: *Infames non possunt accusare catholicos*”». A. FRIEDBERG, *Decretum Magistri Gratiani*, 487-488.

³⁴ One can notice the root of the notion of a «just penalty».

³⁵ C. 2, q. 7, c. 23. *Infames hereticos accusare non possunt*. «Alieni erroris socium, uel a sui uoluntarie propositi tramite recedentem, aut sacris Patrum regulis et constitutionibus non obedientem suscipere non possumus nec debemus, nec inpetere recte credentes uel sanctorum Patrum sanctionibus obtemperantes permittimus, quia infames omnes esse censemus, qui suam aut Christianam legem preuaricantur, aut apostolicam uel regularem postponunt libenter auctoritatem».

Note must be made that the word *obtemperant* is found only in this font and in one other (D. 19, c. 5, below). It is commonly defined as «obey»; «comply with the demands of»; «be submissive to».

To summarize this font, which closes out the first three centuries of Christianity, we note that the issue addressed is disobedience to sacred rules or constitutions or to apostolic or canonical authority. The canon addresses those already baptized and those preparing for baptism. The consequence for disobedience includes non-acceptance into the Church and no permission or right to accuse believers. Finally, both *obedire* and *obtemperare* are used in this font³⁶.

In considering the above-mentioned fonts, which take us through the third century, we note that *obedire* directly appears in all but one source, but that even where the word is not stated, it is at least implied. We see that a (sometimes indeterminate) penalty is called for in each instance, which is understood to be the consequence for a disobedient act. Note is also to be taken that the fonts stress obedience to both the apostolic see and bishops.

2.3 450: unauthorized building of monasteries

Our next source begins with an introduction from Gratian, who explains that, at some point in history, the decision had been made that clerics of individual monasteries would be under the power of the bishops, and that no one should be permitted to build a monastery without first making the bishop aware. The sense of the word *conscientia*, in the context of this font, is that the bishop should have knowledge or be privy to the action about to take place³⁷.

The issue of the building of monasteries was discussed at the Council of Chalcedon, held in 451³⁸. Here we find three points relative to our topic. First, the Council determined that clerics who find themselves outside their home diocese are subject to the local bishop (*ciuitatis episcopi*) and must not refuse him their obedience due to their stubbornness or obstinacy. Second, the Council established that clerics with

³⁶ To draw a conclusion here concerning the primacy of concern for the *salus animarum* would seem to be a stretch. The pope's concern with keeping order appears to have fueled this font.

³⁷ C. LEWIS – C. SHORT, *A Latin Dictionary*, 426.

³⁸ The issue was addressed on 31 October 451 at the 15th session. The two natures of Christ and rejection of Monophysism were also discussed. Cf. H. DENZINGER, *Enchiridion Symbolorum*, 166-171.

the responsibility of caring for the poor or for the upkeep of martyrs' shrines are likewise subject to the bishop. Third, the Council stated that clerics who in any way might dare to subvert (or upset, overturn or overthrow) the bishop's authority are to be subject to canonical condemnation. Monks or laypeople who are disobedient in the above-mentioned matters are to be suspended from communion³⁹.

Paragraph two of the font addresses a cleric's refusal to be subject to his own bishop, while the following paragraph speaks of one avoiding

³⁹ C. 18, q. 2, c. 10: Gratian. *Hinc etiam constitutum est, ut clerici singulorum monasteriorum sint in potestate episcoporum, nec alicui liceat extra eorum consensientiam monasteria edificare. Unde in Calcedonensi Concilio* [c. 4] legitur:

C. X. «Sine conscientia episcopi monasteria nullus edifice. Quidam monachorum habitu utentes indifferenter per ciuitates, necnon et monasteria et se ipsos presumptione propria commendant. Placuit igitur neminem aut edificare aut construere monasteria, aut oratorii domum sine conscientia ipsius ciuitatis episcopi. Item: [c. 8]. 1. Clerici in ptochiis, monasteriis, aut martiriis constituti sub potestate sint eius, qui in ea ciuitate est episcopus, secundum traditionem sanctorum Patrum, neque per presumptionem recedant a suo episcopo. 2. Eos uero, qui ausi fuerint rescindere huiusmodi institutionem quocumque modo, uel si noluerint subiacere proprio episcopo, si quidem fuerint clerici, secundum, personarum ordinationem subiaceant condemnationibus canonum, si uero laici uel monachi fuerint communione priuentur. Item: 3. Clerici, qui pauperum dispositioni, uel monasteriorum uel martiriorum presunt, sub potestate singularum ciuitatum episcoporum secundum traditionem canonum perdurent, neque per suam temeritatem episcopi sui moderationem decinent. Qui autem huiusmodi dispositionem quolibet modo subuertere ausi fuerint, et episcopo suo non obedierint, si quidem clerici fuerint, canonicae dampnationi subiaceant, si autem monachi uel laici sunt, a communione suspendantur». The original text of the Council of Chalcedon translated into English is found in N. TANNER, *Decrees of the Ecumenical Councils*, 89, and reads somewhat differently from what is found in the font: «Those who truly and sincerely live the monastic life should be accorded appropriate recognition. But since there are some who don the monastic habit and meddle with the churches and in civil matters, and circulate indiscriminately in the cities and even are involved in founding monasteries for themselves, it has been decided that no one is to build or found a monastery or oratory anywhere against the will of the local bishop; and that monks of each city and region are to be subject to the bishop, are to foster peace and quiet, and attend solely to fasting and prayer, staying set apart in their places. They are not to abandon their own monasteries and interfere, or take part, in ecclesiastical or secular business unless they are perhaps assigned to do so by the local bishop because of some urgent necessity. No slave is to be taken into the monasteries to become a monk against the will of his own master. We have decreed that anyone who transgresses this decision of ours is to be excommunicated, lest God's name be blasphemed. However, it is for the local bishop to exercise the care and attention that the monasteries need».

the governance of his own bishop and of another who subverts an order from his bishop. Contumaciousness was a *sine qua non* for one to be considered culpable of an offense.

The prescribed punishment for disobedience would vary depending upon whether the guilty party was a cleric or a layperson. Those clerics found to be disobedient – *non obedierint* – to their bishop are to be subject to condemnation according to the canons governing ordained clerics. Monks or laypeople are to be excommunicated. Without knowing for sure what the canons governing ordained clerics foresaw as a just punishment for disobedient clerics, we might presume that the consequence would be graver for one ordained than for one not ordained. Therefore, the disobedient priest would suffer more than mere excommunication.

A bishop necessarily must concern himself with matters affecting people's spiritual health. The requirement that the shepherd be informed about a group's plans to build a monastery, for example, seems to concern more than the mere good order of things. Concern for the salvation of souls too might be at stake and the bishop himself is the one who can best determine how fitting it would be for another monastery to be built. He can also address other related matters.

In summary, this font addresses two issues: failure to obey the bishop and also failure to inform him of the intention to build a new monastery. The font addresses clerics, monks and laypeople. The punishment varies depending upon the offender's state in life. A form of the word *obedire* appears one time in the text.

2.4 500: *Trampling upon ecclesiastical privileges*

The next font to be examined originates from just before the year 500, and likely was authored by Pope St. Gelasius, who wrote to Bishops Maioricus, Serenus and John ordering the excommunication of the Dionysians on account of their meddling in the rights of the church of Vibo Valentia. The author calls for the suing of the Dionysians in the civil forum. Moreover, Celestinus, who gave Holy Communion to the mentioned excommunicated bishops, was to be deprived of his status as a presbyter⁴⁰.

⁴⁰ «Maiorico, Sereno, Iohanni episcopis scribit, Dionysios ob turbata iura ecclesiae Vibonensis excommunicandos publicisque legibus interrogandos esse, quique communionem sacram illis ministraverit, Coelestinum presbyteratu privandum». P. JAFFÉ, *Regesta Pontificum* I, 94, n. 450.

The font is entitled «Let him who tramples upon ecclesiastical privileges be deprived of participation in the divine service» and it is addressed to the above-mentioned bishops who, we are told, are from an unknown time⁴¹. These bishops were accused of treating with contempt human laws and ecclesiastical privileges, of casting aside reverence for religion and of taking advantage of the poor. After having been warned and convicted, they continued in their unscrupulous ways, lacking remorse and refusing to atone for the damage they had done.

The font explains that the just penalty for the mentioned behavior is deprivation of sacred duties, including the offering of Mass (*diuini muneris*); according to the font, the bishops are held in disdain due to their sacrilegious ways. Also subject to punishment is a certain Celestinus, a priest under Bishop Serenus, who disobediently administered Holy Communion to the previously mentioned bishops. Since Celestinus was aware that he was not to administer Holy Communion to the disobedient bishops, he is «to be cast out» and removed from ecclesial office. Nor is he able to claim ignorance in the matter⁴². This casting out (*repellatur*) from ecclesiastical office is likely intended to be an example to others who, for whatever reason, even if out of misguided charity, would dare to consider giving Holy Communion to one who is excommunicated for the above-mentioned reasons. Concern for the *salus animarum* of those addressed seems to be an important factor here.

Nowhere in the prior fonts is anything mentioned about a warning. In the text of this font, however, a form of *commonere* is found; it may

⁴¹ However, according to footnote 285 of the Friedberg edition of this font, *Ep. incerti temporis*, the time frame is between 492 and 496 and during the reign of Pope St. Gelasius I. A. FRIEDBERG, *Decretum Magistri Gratiani*, 695-696.

⁴² C. 12, q. 2 c. 24. *Diuini muneris participatione priuetur qui ecclesiastica priuilegia calcat*. «Idem Maiorico, Sereno et Iohanni Episcopis. Qui et humanis legibus inciuli dampnatione calcatis, et reuerentia religionis abiecta, uel ecclesiastica priuilegia calcare contendunt, uel ubilibet in pauperum prosilire dispendium, nec huiusmodi saltem conmoniti conuicti que nequiciam sopire consentiunt atque illata sacris rebus detrimenta sarcire, merito diuini muneris sunt participatione priuandi, ut huius perceptione careant, quod sacrilegis ausibus habuere despectiu. Celestinus uero presbiter fratris et coepiscopi nostri Sereni, qui contra pontificale iudicium contra que apostolicae sedis mandata prorumpens, supradictis communionem sacram ministrare presumpsit, cum non potuerit ignorare sententiam proprii sacerdotis, ab officio protinus ecclesiastico repellatur, ut nullus ecclesiae ministrorum contra pontificalia institute uenire contendat».

be translated as «forcibly remind», «warn», «bring to recollection», or «impress upon one»⁴³. The pope does not require that a warning be given but instead simply points out that the above-mentioned bishops had been warned about their unacceptable behavior but refused to change. Therefore, it can be concluded that they were contumacious (stubbornly or willfully disobedient) even though the word *pertinaciter* (which is found in cann. 2331 CIC 1917 and 1371 CIC 1983) does not appear in the text.

Words more commonly used to indicate obedience are not present in the text. We do find *contra uenire* near the end of the last sentence, however, and one reading the text could rightly conclude that lack of obedience is being addressed.

As previously noted, Celestinus was fully aware of the prohibition to distribute Holy Communion to the bishops; he could not plead ignorance of the law: ignorance, therefore, would not be a mitigating factor in the determination of imputability. We may consider that can. 2202 §1, CIC 1917 uses the term «culpable ignorance». Non-culpable ignorance concerning the violation of a law is not imputable while partial ignorance renders one imputable according to his culpability for the ignorance. Moreover, one who is ignorant only of the penalty would enjoy reduced imputability⁴⁴. Finally, we note that there is no mention of the need for a warning before the application of a penalty.

In summary, the issue is disobedience to ecclesiastical authority after having received a warning. The disobedience is in reference to certain bishops and the priest Celestinus. The foreseen penalty for the bishops is the prohibition against participating in divine services. The penalty for Celestinus is his being cast out of ecclesiastical office. This might be interpreted as loss of his status as a presbyter, but the pope is not clear concerning Celestinus' eligibility to ever serve as a priest again.

2.5 *Sixth century*

Three of our fonts are placed in the sixth century.

⁴³ C. LEWIS – C. SHORT, *A Latin Dictionary*, 382.

⁴⁴ Canon 2202 §1: «Violatio legis ignoratae nullatenus imputatur, si ignorantia fuerit inculpabilis; secus imputabilitas minuitur plus, inusve pro ignorantiae ipsius culpabilitate. §2: Ignorantia solius poenae imputabilitatem delicti non tollit, sed aliquantum minuit».

2.5.1 Violation of the bishop's decree or constitution

Not much time passed before our next font came into being just after the year 500 and with the general heading *de maiortate et obedientia* («on superiority and obedience»). The specific title used to introduce this font is, *Veniens contra decretum vel constitutionem episcopi debet excommunicari* («One contravening the decree or constitution of the bishop must be excommunicated»). The font is simple and straightforward, holding that anyone who would contravene (or go against, act contrary to, act against or oppose – *venerit contra*) the decree of the bishop is to be cast out from the Church. The Book of Kings is cited: «He who does not obey the prince, let him be put to death» (Dt 17, 12). Cited in the font is the Council of Agde⁴⁵, which commanded that such a one should be anathematized⁴⁶. We find a form of *obedire* in the font, but it is only in relation to the Book of Kings. The premise would seem to be that the bishop knows what is best and that he has at the forefront concern for the *salus animarum* of his people.

The type of decree or constitution the Council Fathers might have been referring to or the precise meaning of «contravene» is not clear. One who internally opposes a command made by his bishop but makes reasonable effort to ensure the command is executed would not be subject to sanction. Culpability occurs only when there is an external manifestation of opposition, including public refutation of the bishop. The text does not specify whether the punishment needs to be declared or if by the offense itself a guilty party would incur the punishment.

To summarize this succinct font, the issue concerns one of the faithful acting contrary to a decree or constitution of a bishop. The punishment for one guilty of the offense is that he is to be anathema (*anathematizetur*)⁴⁷. Finally, a form of *obedire* is contained in the text.

⁴⁵ This Council took place on 11 September 506 in the town of Agde on the coast of France.

⁴⁶ X. 1, 33, 2. Idem. «Si quis venerit contra decretum episcopi, ab ecclesia abiiciatur. In libro Regum legitur: Qui non obedierit principi, morte moriatur. Et in concilio Agathensi, quod anathematizetur».

⁴⁷ The word is usually rendered «anathema» in English, but it could also be defined as «put under ban», «curse», or «detest». C. LEWIS – C. SHORT, *A Latin Dictionary*, 116.

2.5.2 Refusal to acquiesce to the bishop

A teaching from Pope Pelagius I, Roman Pontiff from 556-561, brings us to the middle part of the sixth century. The font consists of two canons, both from the *Decretum* of Gratian and cited in footnotes 51 and 53 in the chapter. The first is titled «*Non qui ad bonum, sed qui ad malum cogit persequitur*» or «He does not persecute who compels to the good, but who compels to evil». The pope is addressing criticisms from those who accuse the Church of persecution for attempting to restrain or prevent sins that people would otherwise commit or for seeking the salvation of souls. In response to these criticisms, the Roman Pontiff insists that those who suggest evil or are silent in the face of an evil they witness another person commit are the ones who compel to evil.

The pope, displaying concern for the *salus animarum*, states that the Church in fact demonstrates love towards a person by punishing one who has committed an evil or by prohibiting something with the intention of preventing an evil from taking place. He continues by observing that both human and divine laws establish punishment for evil and rewards for good. Schismatics, according to Pelagius, need to be restrained or suppressed – «conprimere» – even if by authority outside the Church⁴⁸.

In addition, Pope Pelagius quotes part of canon four of the Council of Chalcedon⁴⁹. He begins by addressing the situation of one who suspends himself – *ipsius suspendit* – from communion. The resulting suspension is based upon the person's active decision to act in a certain way. However, the subject is only defined as *qui*. One could conclude from the context that of course priests and bishops are included, as well as laypeople. One who is accused of schism but ignores or fights against the bishop who attempts to correct him is condemned and deprived of any honors⁵⁰.

⁴⁸ I believe two sentences in this font (cf. fn. 51) explain well the reasons for penalties in the first place: «He who either punishes an evil already done or prohibits it so that it may not be done—such a one does not persecute, but loves. For if, as they suppose, no one is to be either scolded away from evil or drawn back to the good, this necessarily renders void human and divine laws, which, at the urging of justice, establish both punishment for evil things and rewards for good things».

⁴⁹ Cf. footnote 38 above.

⁵⁰ While the Latin version uses the word *orationem*, the Greek uses θεραπεία, or remedy, which would be more faithfully translated *curationem* or *tractationem*.

The font mentions three possible ways one would be considered disobedient. The first is «*noluit uocanti episcopo consentire*», or refusing to consent to the bishop summoning or calling him. The second is «*noluit eidem acquiescere*», or refusing to acquiesce. The third is «*neque obedire et prius et secundo uocanti*», or failing to obey the summons of the bishop on two occasions.

Moreover, the pope indicates that a penalty, due to its medicinal nature, is intended to save the person's soul. Deprivation of spiritual goods is sometimes necessary in order to facilitate repentance⁵¹.

The second paragraph of the font quotes St. Augustine, who states that corporal punishment is sometimes called for – *plectendis agenda sunt*, – even though the one being punished may not be aware of such a need. The most important consideration is the person's spiritual well-being. In fact, the Bishop of Hippo sees correction as fatherly in nature, and points out that while it may be difficult for a father to discipline a child because of the pain that may be caused, the son is often cured by such pain (Pr 13,24), even if unwillingly. The Church's goal is love, and sometimes this love includes correcting people who find themselves in error. St. Augustine is evidently addressing bishops when he encourages them to frequently exhort others in order to prevent future transgressions⁵².

⁵¹ C. 23, q. 5, c. 42. Item Pelagius Papa. «Non uos hominum uaniloquia retardant dicentium, quia persecutionem ecclesia faciat, dum uel ea, que committuntur, reprimat, uel animarum salutem requirit. Errant huiusmodi rumoris fabulatores. Non persequitur, nisi qui ad malum cogit. Qui uero malum uel factum iam punit, uel prohibet ne fiat, non persequitur iste, sed diligit. Nam si, ut illi putant, nemo nec reprehendendus a malo, nec retrahendus ad bonum est, humanas ac diuinas leges necesse est euacuari, que et malis penam, et bonis premia iusticia suadente constituunt. Malum autem scisma esse, et per exterius etiam potestates huiusmodi obprimi homines debere, et canonicae scripturae auctoritas, et patrum nos regularum ueritas docet. Quisquis ergo ab apostolicis diuisus est sedibus, in scismate eum dubium non est esse, et contra uniuersalem ecclesiam altare conatur erigere. §1. Sed quid de talibus insertus Calcedonensi synodo canon statuatur, gloria uestra consideret, ubi post alia sic dicit: Qui a communione semet ipsum suspendit, et collectam fecit, et altare constituit, et noluit uocanti episcopo consentire, et noluit eidem acquiescere, neque obedire et prius et secundo uocanti, hunc omnino dampnari, nec umquam uel orationem mereri, nec recipere eum posse honorem. Si enim permanserit turbas faciens et seditiones ecclesiae, per extraneam potestatem tamquam seditiosum conprimi».

⁵² C. 23, q. 5, c. 42. §2. «Et B. Augustinus de talibus dicit: Multa etiam cum inuitis benigna quadam asperitate plectendis agenda sunt, quorum potius utilitati consulendum est quam uoluntati.

Nam in corripiendo filio, quamuis asper, numquam paternus amor amittitur; fit tamen quod nolle ut doleat qui etiam inuitus uidetur dolore sanandus. Ecce uidetis,

Paragraph three refers to a time in history when, though in the midst of an invasion (of Totila), «Your Highness» – *celsitudo uestra* – would not permit one to be made a Bishop of Milan until such intention was reported to the prince and he had acknowledged it. The pope is paying a compliment to this superior for his obedience (even during very difficult times, in which he may have been pressured by the people, he was obedient). Failure to keep a superior informed is considered disobedience. The bishop or other superior must be informed and be able to give his opinion in certain matters⁵³.

Let us now summarize the first three paragraphs of this lengthy font. The issue or offense is dividing oneself from the Apostolic See through schism and the refusing to consent, acquiesce or obey the order of the bishop's summons. Schism and contumacious behavior are addressed. The subject of the disobedience includes anyone; it is not limited to Catholics alone. The penalties include ineligibility to receive an honor, complete condemnation and/or suppression. A variation of the word *oboedire* is found. And although *pertinaciter* does not appear, it is implied. Finally, the resulting penalty is specific rather than open.

2.5.3 Contempt of the Apostolic See

The last part of this same font is also placed in the middle part of the sixth century. Entitled «Let the powers of the world coerce schismatics and heretics», it is addressed to Narses, a nobleman and duke in Italy. It concerns the refusal of the bishops of Venetia, Istria and Liguria to accept the decrees of the Fifth General Council of Aquileia, held in the year 553. The pope's statement is very strong. He exhorts Narses to take appropriate punitive action against these bishops, including sup-

quemadmodum tanti testimonio patris non persequatur talia coercendo, sed diligat emendando tales semper ecclesia.

Facite ergo etiam uos quod scientes intentionem Christianitatis uestrae frequenter hortamur, et date operam, ut talia ultra fieri non liceat, sed etiam (quod uobis facillimum esse non dubito) hii, qui presumpserunt talia, ad piissimum principem sub digna custodia dirigantur».

⁵³ C. 23, q. 5, c. 42. §3. «Recolere enim debet celsitudo uestra, quid per uos Deus fecerit tempore illo, quo et, Istrias et Venetias tyranno Totila possidente, Francis etiam cuncta uasantibus, non ante tamen Mediolanensem episcopum fieri permisistis, nisi ad clementissimum principem exinde retulissetis, et quid fieri debuisset eius iterum scriptis recognouissetis, et inter ubique feruentes hostes, Rauennam tamen et is, qui ordinabatur, et is, qui ordinaturus erat, prouidentia culminis uestri deducti sunt».

pression or restraint, due to their contempt for the Apostolic See. In the judgment of Pope Pelagius, had these bishops in question directed their disagreements to the Apostolic See instead of acting on their own, perhaps any misunderstandings would have been clarified. In any case, excommunication and condemnation are in order for such men largely responsible for division and schism, and state authority should oppress them. Church and state authority are to act in a way that is restrictive.

The font continues,

Therefore, do not delay to put down such men by princely and judicial authority, since the rules of the Fathers have specifically established that if any person of ecclesiastical office resist him to whom he is subject, or assemble apart, or erect another altar, or make a schism, let him be excommunicated and condemned. But if perhaps he disdain even this and continue making divisions and schisms, let him be oppressed through public powers. Behold, lord: since your spirit is perhaps afraid that you might seem to be persecuting, I have taken care that these things from the authority of the Fathers be directed briefly to you, although there may be a thousand other examples and constitutions by which it is evidently acknowledged that those making splits in the holy Church should be coerced through the public powers not only with exiles, but also should not exclude proscription of their goods and hard imprisonment⁵⁴.

The pope is criticizing Tarsus, who, though a high ranking civil leader, nonetheless had authority in these ecclesiastical matters. The criti-

⁵⁴ C. 23, q. 5, c. 43. *Scismaticos et hereticos seculi potestates coerceant*. «De Liguribus, atque Veneticis, et Istriis episcopis quid dicam? quos ydonea est excellentia uestra et ratione et potestate reprimere, et dimittitis eos in contemptum apostolicarum sedium de sua rusticitate gloriari, cum, si quid eos de iudicio uniuersalis sinodi, quod Constantinopoli per primam nuper elapsam indictionem actum est, forte mouebat, ad sedem apostolicam (quomodo semper factum est) electis aliquibus de suis, qui dare et accipere rationem possint, dirigere debuerunt, et non clausis oculis corpus Christi Domini nostri, hoc est sanctam ecclesiam, lacerare. Nolite ergo dubitare huiusmodi homines principali uel iudiciali auctoritate conprimere, quia regulae Patrum hoc specialiter constituerunt, ut, si qua ecclesiastici offitii persona cui subiectus est restiterit, uel seorsum collegerit, aut aliud altare erexerit, seu scisma fecerit, iste excommunicetur atque dampnetur. Quod si forte et hoc contempserit, et permanserit diuisiones et scismata faciendo, per potestates publicas obprimatur. Ecce, domine, quia animus uester forte timidus est, ne persequi uideamur, de Patrum uobis auctoritate hec breuiter dirigenda curauimus, cum mille alia exempla et constitutiones sint, quibus euidenter agnoscitur, ut facientes scissuras in sancta ecclesia non solum exiliis, sed etiam proscriptione rerum et dura custodia per publicas potestates debeant coerceri».

cism arose due to Tarsus's failure to take appropriate action and his lack of oversight of the bishops, whose actions placed them in contempt of the Apostolic See. Still, it is the offending bishops, whose primary responsibility should be concern for the *salus animarum*, who ultimately bear responsibility for their behavior⁵⁵.

Examining this font closer, we notice that the issue is disobedience or contempt (failing to follow or outright resistance to certain decrees) in relation to doctrinal or dogmatic issues. The disobedience concerns bishops. The punishment foreseen by the pope is excommunication.

2.6 Circa 600-800

Two of our fonts of study date back to around the seventh century.

2.6.1 Unauthorized departure from a monastery

Our next font stems from a November 597 letter from Pope Gregory I (the Great) to Vitalianus, bishop of Siponto⁵⁶ and concerns the case of a young woman who left religious life voluntarily, or who, in the words of the same pontiff, «cast aside religious garb». The pope, clearly concerned with the woman's eternal salvation, demands that she be com-

⁵⁵ Jaffé's collection includes the following: «Valerianum patricium monet, ut schismaticos quosdam post diem resurrectionis Domini unacum frater eius Iohanne Patricio reprimat. Decretis synodi Chalcedoniae et dictis b. Augustini demonstrate, schismaticos saeculari potestate reprimendos esse. Faciant ergo, ut tales ad piissimum principem sub digna custodia dirigantur. Recolere etiam debet celsitudo vestra inquitquid per vos Deus fecerit tempore illo, quo Istriam et Venetias tyranno Totila possidente, Francis etiam cuncta vastantibus, non ante tamen Mediolanensem episcopum fieri permisistis, nisi ad clementissimum principem exinde retulissetis; et inter ubique ferventes hostes, Ravennam tamen et is, qui ordinabatur, et is, qui ordinaturus erat,...deducti sunt». P. JAFFÉ, *Regesta Pontificum* II. 135-136, n. 680. The pope, relying on the decrees of the Council of Chalcedon and some writings of St. Augustine, admonishes the patricians Valerian and John, to «repress» certain schismatics. The same pope praises Valerian for not allowing a bishop of Milan to be made before Valerian had him presented to religious authority for approval. We can conclude, then, that there was an expectation upon secular authority to exercise its power in Church matters when it came to safeguarding the faith.

⁵⁶ «Vitalianum, episcopum Sipontinum, vehementer incusat, quod Tulliani quondam magistri militia, filiam monasterium deserere siverit eique iubet, ut una cum Sergio defensore eam retrahat». P. JAFFÉ, *Regesta Pontificum* I, 178, n. 1129.

pelled to return to her religious habit (or garb) and confined to a monastery. But the religious in question, identified as the daughter of Tullianus, is not the only one to be admonished here. Her behavior, which Pope Gregory the Great describes as «illicit», caused the scandal. However, the bishop bears his share of responsibility, and in fact is the recipient of a strong reprimand due to his failure to be vigilant in the matter. The Roman Pontiff holds that the woman would not have returned to secular clothes had there been appropriate oversight and supervision. Being a guardian of the religious habit is one such duty of the local bishop. Gregory accuses both the unnamed superior and Bishop Vitalianus of being excessively slack and listless, since proper discipline on the part of church authority likely would have prevented the woman's escape, and thus scandal would have been avoided. The pope lays down orders for the bishop so that this particular situation might be properly handled and preventive measures instituted.

Gregory the Great gives three admonitions. First, the fleeing woman is to be summoned to return to religious habit immediately. She is also to be «pushed back» into a monastery and closely guarded. Her superiors are to show concern for her though not minimizing that the actions of the returned religious were evil or morally wrong. The returned woman is to be completely and closely guarded, and thus be shown all solicitude, so that she might be able to know from the bishop's severity how wicked – *nefarium* – is that which she committed. Second, if any layperson tries to resist measures taken by the bishop to secure the return of the woman who defected, he is to be suspended from participation in Holy Communion and the matter is to be reported to the pope. This punishment is intended to make clear to the offender that that which he presumes to do is detestable. Finally the third paragraph is more of an exhortation to the negligent bishop: «strive to show yourself so careful and vigilant, that you might be able, not to double your fault by neglect, but to diminish it for a time by your solicitude»⁵⁷.

⁵⁷ C. 27, q. 1, c. 18. *Ad habitum redire cogatur, et recludatur in monasterio, qui religiosam uestem abiecit.* Item Gregorius Vitaliano, Episcopo Sipontino. [lib. VII. Indict. 1. epist. 9]. «Si custos religiosi habitus, aut esse nesses episcopus, filiam gloriosae memoriae Tulliani magistri militiae, te illic posito proiectis religiosis uestibus nec ad secularem reuerti habitum, nec ad nos licuisset peruersam epistolam destinare. Sed quia nimia desidia ac torpore deprimeris, in tuo dedecore res ad presens illicita inpune commissae est. Nam sicut, prefati sumus, si sollicitus extitisses, prius ad nos ultio mulieris prauissimae quam culpa debuit peruenire. Quia ergo tantum hebes tantum que es negligens, ut, nisi canoni-

There are different ways the above-mentioned people would be considered disobedient. The religious woman's disobedience stemmed from her fleeing of the monastery after (presumably) having vowed obedience to her superiors but then failing to ask permission or to inform the superiors about her intentions. The bishop's disobedience originated from negligence of his duties. The laypeople could be accused of disobedience if they resisted measures which their bishop was taking in order to get the woman back into the monastery. One might argue that ignorance of the bishop's authority in the matter could mitigate culpability on the part of the layperson, but the font does not address this possibility.

In summary, the font addresses the following offenses: lack of oversight, unauthorized departure from a monastery and obstruction of justice. Those subjected to the provisions of the font include the specific bishop (Gregorius Vitaliano), the daughter of Tullian, and various lay-people. The foreseen punishment varies, from the issuance of a reprimand (to the bishop) to being forced back into the monastery (the daughter of Tullian) to the denial of participation in Holy Communion (a culpable layperson). The foreseen punishment would be considered medicinal inasmuch as its intent is corrective in nature, according to Pope Gregory.

2.6.2 Obligation to pledge vows (bishop candidates)

The next font informs us that among the issues discussed at the eleventh Council of Toledo⁵⁸ was the expectation that those clerics under

cam in te fueris coercionem expertus, in aliis distractionem et disciplinam nescias custodire, qualiter debeas esse sollicitus congruo tibi, si Domino placuerit, tempore demonstrabimus. §1. Presentia igitur scripta suscipiens, euigila et excitatus saltem exequere quod pressus nunc usque ignavia distulisti. Instantiae ergo tuae sit predictam mulierem una cum Sergio defensore nostro comprehendere, et statim non solum ad male contemptum habitum sine excusatione aliqua reuocare, sed etiam in monasterio, ubi omnino districte ualeat custodiri, detrudere, et ita omnem circa illam sollicitudinem exhibere, ut quam sit nefarium quod commisit ex tua possit distractione cognoscere. §2. Qua in re si quis (quod non credimus) laicorum aliquo tibi ingenio temptauerit obsistendum, a sanctissimae eum communionis participatione suspende nobis que renunciare festina, ut quantum sit execrabile quod presumit, postquam consideratione propria non aduertit, emendationis qualitate cognoscat. §3. In his autem omnibus ita cautum stude te uigilantemque ostendere, ut culpam tuam non geminare neglectu, sed aliquantisper ualeas sollicitudine minuere».

⁵⁸ Cf. N. TANNER, *Decrees of the Ecumenical Councils* I, xviii, who holds that despite the historical importance of Toledo XI, it still should not be considered an ecumenical council.

consideration for promotion to the rank of bishop are to display greater obedience. Taken from the same *Decretum* of Gratian, the approach of the font seems to be positive and forward looking. While recognizing the need to hold everyone dedicated to sacred orders to the canonical rules, those considered for promotion to the ecclesiastical ranks should instead make a particular promise, which «is more feared» – *plus timere* – than a general promise. Not only would the making of this promise be good for the candidate by bringing to the forefront the responsibility he would have as bishop in being faithful to God and the Church, but also for those whose eternal salvation the man may have responsibility for in the future.

The font lays out specific expectations. A candidate to the episcopate must resolve to keep the catholic faith with a sincere devotion of heart and to live piously and justly and to avoid contradicting any of the canonical rules. Moreover, each candidate should pay due honor and respect – *honorem atque obsequie reuerentiam* – to his superior, according to the edict of Pope Leo⁵⁹. These promises were to be made under obligation, which apparently meant that one who refused to make said promises would not be eligible for promotion to the rank of bishop⁶⁰. The candidate was to pay obedience – *obedientiam* – to his superior.

⁵⁹ The «Leo» referred to here is Pope St. Leo the Great (440-461) and the 44th successor to St. Peter. When he said «Let him who knows that he is set over others not bear it with annoyance that someone is set over him, but let he himself also pay out the obedience which he demands», he was likely addressing bishops, who owed obedience to him (cf. the following footnote for the original Latin text). Leo was firm in his advocacy for papal authority, universal and supreme. R. MCBRIEN, *Lives of the Popes*, 75.

⁶⁰ D. 23, c. 6. *Vota suae promissionis spondeant, quos ecclesiastica promouet disciplina*. Item ex Concilio Tolletano XI. [c. 10]. «Quamquam omnes, qui sacris mancipantur ordinibus, canonicis regulis teneantur astricti, expedibile tamen est, ut promissionis suae uota sub cautione spondeant, quos ad promotionis gradus ecclesiastica probat disciplina. Solet enim plus timeri, quod singulariter pollicetur, quam quod generali sponsione concluditur. §1. Et ideo placuit huic sancto concilio, ut unusquisque, qui ad ecclesiasticos gradus est accessurus, non ante honoris consecrationem accipiat, quam placiti sui innotacione promittat, ut fidem catholicam sincera cordis deuotione custodiens iuste et pie uiuere debeat, et in nullis operibus suis canonicis regulis contradicat, atque ut debitum per omnia honorem atque obsequii reuerentiam preminenti sibi unusquisque dependat, iuxta illud Papae Leonis edictum: Qui se scit aliquibus esse prepositum, non moleste ferat aliquem sibi esse prelatum, sed obedientiam, quam exigit, etiam ipse dependat. Pena tamen iuxta ecclesiasticae consuetudinis morem et placitis talium inferenda, et ab his, qui transgressores fuerint, persoluenda est».

To summarize this font, we see that the issue addressed is the requirement to promise obedience to the canonical rules on the part of those who have already been ordained. The penalty for failing to promise obedience includes disqualification from consideration for promotion to the episcopacy and other possible penalties. Finally, we note the presence of the word *obsequium* in the font.

2.7 *Ninth century*

We now consider two fonts that date back to the ninth century.

2.7.1 Contempt for precepts of the Apostolic See

Authorship of our next font is attributed to Pope Gregory IV, who served as Bishop of Rome from 827-844, and taken from his *Epistola XIV*⁶¹, this font is found in the *Decretum Gratiani*. Certain bishops, particularly in Greece, were said to have spurned the Roman Church, refusing to observe precepts set out by the Apostolic See. They are exhorted not to fall away from the Roman Church or face deposition (return to the lay state). In fact, the more that has been entrusted to them, the more they ought to be punished for their disobedience⁶².

The pope establishes that a candidate to the papacy must at least not be disobedient. One who refuses to obey apostolic precepts is not suitable for pontifical office. The Roman Pontiff goes even further when he states that anyone who would contradict apostolic decrees should be «cast down to his sorrow and ruin» and should no longer have a place among the priests. This appears to suggest that those who do not obey the decrees of the Roman See are heretical. The gloss states, «you should, however, understand what it says here to mean that one is a heretic who says that the Roman Church is not the head and may not make canons». The pope says that a disobedient cleric's condemnation by Church authority will be evident if he is banished from ministry in the Church. If he loses the care of souls and is the subject of major⁶³

⁶¹ For a brief history of the situation in the Church in the ninth century, see R. DAVIS, *The Lives of the Ninth-Century Popes (Liber Pontificalis)*, 45-70.

⁶² Cf. A. THOMPSON – J. GORDLEY, ed., *Gratian, The Treatise on Laws*, 79-80, as found in the gloss.

⁶³ According to the gloss, that the excommunication be major rather than minor is «so it may be argued that as a person's offense is greater, so much greater should be the punishment». A. THOMPSON – J. GORDLEY, ed., *Gratian, The Treatise on Laws*, 80.

excommunication (loss of communion with the Christian community) there will be little doubt that the Church has taken action against the cleric for his disdainful behavior. The punishment is not light: «Let him who refuses to submit to apostolic precepts also be cut off from every divine and pontifical (or episcopal) office»⁶⁴, though it is unclear whether or not the disobedience must be notorious⁶⁵.

How should these three terms (divine, episcopal, pontifical) be understood? The *Catechism of the Catholic Church* states that the three levels of Holy Orders, as we understand them today, were divinely instituted (CCC 1554). The Lord himself placed Peter at the head of the apostolic college by the Lord (CCC 880-882). So while all of the above were divinely instituted, the author saw fit to make a distinction between the office of priests and bishops and that of the pope. The contents of the font were addressed to everyone, but apparently focusing on candidates to papal office.

There are a couple of possible reasons given for the imposition of major excommunication. First, a man entrusted with the discipline of the Church is to appear obedient to the commands of the holy Church. Second, he is to instill them in others lest they perish. A bishop or priest who is not obedient to the commands certainly will not foster obedience among his flock. But even the appearance of disobedience could be dangerous to the salvation of members of the flock, who

⁶⁴ D. 19, c. 5. *A pontificalibus sit alienus offitiis, qui apostolicis non uult obedire praeceptis. Item Gregorius [IV].* «Nulli fas est uel uelle, uel posse transgredi apostolicae sedis precepta nec nostrae dispositionis ministerium, quod uestram sequi oportet caritatem. II. Pars. §I. Sit ergo riunae suae dolore prostratus, quisquis apostolicis uoluerit contraire decretis, nec locum deinceps inter sacerdotes habeat, sed extorris fiat a sancto ministerio, non de eius iudicio quisquam postea curam habeat, quoniam iam dampnatus a sancta et apostolica ecclesia sua inoboedientia atque presumptione a quoquam esse non dubitatur: quia maioris excommunicationis deiectione est abiciendus, cui sanctae ecclesiae commissa fuerit disciplina, qui non solum prelatae sanctae ecclesiae iussionibus parere debuit, sed etiam aliis ne preterirent insinuare. Sitque alienus a diuinis et pontificalibus offitiis, qui noluit preceptis obtemperare apostolicis». Translation from A. THOMPSON – J. GORDLEY, *Gratian, The Treatise on Laws (Decretum dd. 1-20)*, 80. Though the above translators render the «pontificalibus» as «pontifical», since the contents of the font are addressed to all clerics (and not only bishops) it seems accurate to include the possibility that the author intended the word to be interpreted as not only «pontifical» but also «episcopal». J.F. NIERMEYER, *Mediae Latinitatis lexicon minus*, 812.

⁶⁵ «Uel ut quidam uolunt, loquitur de eo, cuius est notorium inobedientia». O. PRÉROVSKY, ed., *Monumenta Iuris Canonici Huguccio Pisanus*, 309.

might follow suit by picking and choosing which commands they will follow and which ones they will avoid.

Pope Gregory IV uses some key words in his decree, including *inobedientia* and *obtemperare*⁶⁶ along with a word that often implies disobedience – *transgredi*. Instead of the original *obtemperare*, as found in the text according to Friedberg, Polycarp, Anslem and others preferred the word *obedire*⁶⁷. *Apostolica sede* is also found; we note that it has a more vast sense today than it did in the ninth century⁶⁸.

To summarize, we notice that the font addresses two issues: the contradiction of apostolic decrees and the appearance of disobedience. Subjects seem to be limited to ordained clerics, including bishops. The penalty foreseen could include their banishment from ministry, loss of the care of souls, major excommunication and disqualification from every divine and pontifical office (as explained above).

2.7.2 Observation of the mandates of the Roman Pontiff

The next font dates to the latter part of the ninth century and is attributed to Pope Nicholas (r. 858-867), who presided over the 30 October 863 Universal Synod⁶⁹. Entitled «Let him be anathema, who disdains to keep the mandates or decrees of the Roman Pontiffs», this quite straightforward font states that if anyone «disdains the dogmas, mandates, interdicts, sanctions or decrees profitably promulgated by the Prelate of the Apostolic See for the benefit of the Catholic Faith or ecclesiastical discipline, for the correction of imminent or future evils, let him be anathema»⁷⁰.

⁶⁶ Two footnotes clarify that in fact the writing in question was a decree of the pope. One says, «Caput hoc est in eadem epistola Gregorii IV ex qua suntum est c. *Decreto nostro*». The other states *Ivo Decr.* V, 11. (Gregory IV. Galliae Europae Germaniae episcopis. Can. Rom. Eccl. *in medio*). A. FRIEDBERG, *Decretum Magistri Gratiani*, 61.

⁶⁷ «Obedire: *Anselm. Polyc. alii sec. Corr.*». A. FRIEDBERG, *Decretum Magistri Gratiani* 61-62, fn. 98.

⁶⁸ From the thirteenth century, the pope would carry out business of the Church with the assistance of cardinals *in Urbe*. It was Pope Sixtus V with his ap. cons. *Immensa aeterni Dei*, dated 22 January 1588, that set up dicasteries. Cf. JOHN PAUL II, *PB* 9.

⁶⁹ Cf. P. JAFFÉ, *Regesta Pontificum* II, 351, n. 2074.

⁷⁰ C. 25, q. 2, c. 18. *Anathema sit qui mandata uel decreta Romanorum Pontificum seruare contempserit*. «Si quis dogmata, mandata, interdicta, sanctiones uel decreta pro catholica fide uel ecclesiastica disciplina, pro correctione imminentium uel futurorum malorum a sedis apostolicae Presule salubriter promulgata contempserit, anathe-

To whom is the Supreme Pontiff addressing this mandate? It depends how *qui* is understood. We learn from a note to this font that not only does the mandate apply to two archbishops (who are deprived «of every office of the priesthood and all episcopal rulership») but also to other bishops involved in the injury «unless they confess their fault through legates and in writing». The pope also declares anathema a laywoman named Ingiltrude, who is the daughter of Count Mactifred. Finally, the Roman Pontiff declares that those «who belittle the decrees of the Apostolic See are coerced with anathema»⁷¹. The penalty, imposed with the intention of the accused's conversion, is considered medicinal⁷².

Excommunication was anything but a private matter⁷³. Not only were the formalities publically carried out, but also the offender's local pastor (parish priest) was to be informed. The pastor, equally concerned about the eternal salvation of those entrusted to his care, would ensure that the excommunicated ones were prevented from participating in the life of the Church or from frequenting the sacraments.

The word *obedire* is not found in the font, but the word for contempt is (*contempserit*). *Contemnare* can be defined as «to consider a person or thing as unimportant or of small value», «to value little»,

ma sit». It may be safely concluded that, by this statement, the pope intended to include every dogma, mandate, interdict, sanction or decree he had promulgated or would promulgate since the goal of each would fall under one of the reasons listed.

⁷¹ «Vitalem, patriarcham Gradensem, ad concilium, die 30. M. Octobris Romae celebrandum, invitat. Concilium, in quo 1) acta synodi Metensis, m. Iunio celebratae, rescinduntur; 2) Theutgaudus Trevirensis et Guntharius Coloniensis archiepiscopi omni sacerdotii officio et omni episcopali regimine privantur; 3) ceteri episcopi, eorundem noxae socii, nisi per legatos litterasque culpam confiteantur, eadem afficiuntur poena;

4) Ingiltrudis, Mactifredi comitis filia, iterum anathematiztur; 5) itemque contemptores decretorum sedis apostolicae anathemate coercentur».

⁷² Cf. can. 2257 § 2, CIC 1917, which states: «Dicitur quoque anathema, praesertim si cum sollemnialibus infligatur quae in Pontificali Romano describuntur».

⁷³ In fact, excommunication was not merely declared; there was a rite associated with it. Cf. C. 11, q. 3, c. 106. *Modus et forma excommunicationis*. «Debent duodecim sacerdotes episcopum circumstare, et lucernas ardentes in manibus tenere, quas in conclusionem anathematis uel excommunicationis proicere debent in terram et conculcare pedibus; deinde epistola per parrochias mittatur, continens excommunicatorum nomina et causam excommunicationis». In English: «Twelve priests must stand around the bishop and hold burning lamps in their hands, which they must cast down to the ground and trample underfoot at the conclusion of the anathema or excommunication; then let a letter be sent throughout the parishes, containing the names of the excommunicated and the cause of their excommunication».

«to esteem lightly», «to condemn, despise, disdain or defy»⁷⁴. One who defies the legitimate commands of competent authority by definition is disobedient.

In summary, the issue addressed by the font is the keeping of papal sanctions and decrees. Those subject to the contents of the font would include anyone. The penalty of anathema against the guilty party is foreseen.

2.8 *Middle of the eleventh century to 1200*

We now study two more fonts: one dating back to around 1050 and the other to 1150.

2.8.1 Authority of an Ordinary

This font comes from the *Decretali* of Pope Gregory IX and likely dates back to 1047 during the reign of Pope Clement II, who served as Roman Pontiff for only ten months⁷⁵. It concerns a problem that had arisen during this time period involving ordained and non-ordained clerics who abandoned ministry after having been admonished for their lavishness. Sometimes these headstrong clerics would present themselves in their religious habit while involved in secular pursuits («betaking themselves to the merchandising of laypeople») while others ceased wearing the habit and instead donned lay clothing⁷⁶. These men,

⁷⁴ C. LEWIS – C. SHORT, *A Latin Dictionary*, 445.

⁷⁵ According to Jaffé: «Episcopo Eliensi concedit, ut clericos, qui suspensi vel interdicti vel excommunicati ecclesias dimittant et se conferant ad mercimonia laicorum, si commoniti a turpibus actibus revocari nequeant, excommunicationi subiiciat. Ita addit: “Ex quo electionis confirmationem accepisti, de talibus, praeter ea, quae maioris inquisitionis discussionem et ministerium consecrationis desiderant, statuendi liberam habeas facultatem”» (Alias Coelistino III. Tribuitur). P. JAFFÉ, *Regesta Pontificum* II, 567, n. 10206. In English: «He concedes to the bishop of Ely that he may subject to excommunication clerics who, having been suspended or placed under interdict or excommunicated, leave their churches and betake themselves to the merchandising of laypeople, if, having been admonished, they cannot be called back from their base acts. He adds thus: As soon as you have received the confirmation of your election, you may have the free faculty of deciding about such persons, aside from those things which require the scrutiny of greater inquiry and the ministry of [episcopal] consecration». (In other places, it is attributed to Celestine III). Note that if indeed the author of the font is Pope Celestine III, it would be in the same time period as the font that follows.

⁷⁶ The problem of religious engaging in secular affairs was not uncommon during

holding that the abbot does not have the power to correct them unless the Apostolic See specifically grant him permission to correct, eluded correction by ecclesiastical authority. The pope refers to them as contemptuous. He instructs the abbot that these men are first to be warned (invited back). If they refuse to return to the clerical state⁷⁷ and make satisfaction for their contempt, they may be excommunicated. The abbot could count upon the support of the Apostolic See should the cleric question the abbot's authority. The font concerns all clerics, not only ordained clergy. However, those in Sacred Orders would especially be expected to make fitting satisfaction for their guilt. Finally, permission is given for the abbot to

execute these things without a special mandate, since from the time when you received confirmation of your election, you have the free faculty of establishing what is just and what befits ecclesiastical utility, aside from those things which require an examination of greater inquiry and which need the ministry of consecration⁷⁸.

the time period in question. The Angelic Doctor, in fact, addresses the question, «Whether it is lawful for religious to occupy themselves with secular business. He responds: «As stated above (186, 1, *sed contra*; 7, ad 1), the religious state is directed to the attainment of the perfection of charity, which consists principally in the love of God and secondarily in the love of neighbor. Therefore religious must chiefly and for its own sake strive give themselves to God. But if the need of their neighbor demands it, they should involve themselves in his affairs out of charity, according to St. Paul (Gal. 6,2), “Bear ye one another’s burthens: and so you shall fulfil the law of Christ”, because by the very fact that they serve their neighbor on account of God, they are obedient to divine love. Therefore it is stated in James (1,27): “Religion clean and undefiled before God and the Father, is this: to visit the fatherless and widows in their tribulation”, which means, according to a gloss, “to assist the helpless in their time of need”.

It must be said, therefore, that it is not lawful for monks or clerics to handle secular for avaricious motives; but out of charity, with permission of their superiors, and in due moderation they may engage in the administration and direction of secular affairs. Hence the *Decretum* (88, c. 1): “The holy synod declares that henceforth no cleric shall administer funds or occupy himself with secular affairs except with a view to the care of the fatherless, orphans, or widows, or when the bishop of the city commands him to take charge of ecclesiastical goods”. The same rule applies to religious and clerics because they are both forbidden to engage in secular affairs, as has been said». THOMAS AQUINAS, *Summa Theologica* II-II, q. 187 a. 2.

⁷⁷ Note that one whose outward actions are contrary to what the Church asks of clerics (by involving himself in secular pursuits) is deemed to have left the clerical state. He may repent and return to the clerical state, as is indicated in the text.

⁷⁸ X. 1, 6, 15. *Per confirmationem electionis non transfertur potestas exercendi ea, quae sunt ordinis. Illa enim transferuntur per consecrationem.* Abbas. Idem.

First, we notice that his subjects were questioning the abbot's authority, and that some of them were resistant to recognize his authority in only some matters. Still other clerics apparently did not want to accept that they could be excommunicated by anyone but the pope himself. The response of the Apostolic See is quite the opposite, indicating that by his election, the abbot enjoys a certain authority, especially as regards disciplinary matters. One can see hints of the principle of subsidiarity in this response. Also evident is the selective obedience of certain members, who with their lack of respect for the abbot and his office could see no connection between being obedient to their superior and how that might be beneficial for their eternal salvation.

Also present is the need for a warning. A single act of disobedience before a warning is issued is not enough to warrant excommunication. Failing to follow the orders of their legitimate superior (the abbot), while not praiseworthy and certainly contrary to the vow of obedience taken by the cleric, does not rise to the level of an excommunicable offense. The extending of an invitation to the cleric to return is a *condicio sine qua non*. If the cleric refuses to accept the invitation but chooses to remain in his contumacious state, the abbot then has the authority to excommunicate him⁷⁹.

«Transmissam dudum, sicut insinuare curasti, ad nostram audientiam quaestionem, tua nunc dilectio replicavit. Quaesivisti, quid faciendum sit tibi super eo, quod clerici tuae dioecesis, quum pro suis excessibus suspensionis, vel interdicti, vel excommunicationis sententia percelluntur, parvipendentes eam, dimittunt ecclesias, et transferunt se ad mercimonia laicorum; nonnulli quoque ipsorum habitu clericali postposito vestes induunt laicales, et sicut laici mercatores se turpibus quaestibus implicant, consimilium sibi laicorum manus associant, et correctionem ecclesiasticam per contemptum eludunt, dicentes, quod potestatem non habeas eos, nisi tibi specialiter apostolica sedes indulserit, corrigendi? Respondemus igitur, quod, si quando tales repereris, si commoniti noluerint a tam turpibus actibus revocari, et de contemptu satisfaciendo plenarie ad clericale schema redire, tu eos auctoritate nostra suffultus excommunicationi appellatione cessante subiicias, faciasque eos arctius ab omnibus evitari, donec reatum suum congrua satisfactione diluerint, praesertim si qui eorum in sacris sunt ordinibus constituti. Etiam haec sine speciali mandato exsequi posses, quum ex quo electionis tuae confirmationem accepisti, de talibus et consimilibus, praeter ea, quae maioris inquisitionis discussionem exigunt, et ministerium consecrationis desiderant, quod iustum est et ecclesiasticae convenit utilitati statuendi habeas liberam facultatem». Emphasis in the original text.

⁷⁹ It is not clear what responsibilities the abbot would have concerning the support of the wayward cleric, especially considering or if there was a limit as to how long the cleric could remain excommunicated and still a cleric.

To summarize, the issue addressed is disobedience of a command given by the subject's abbot to return to the clerical state. The legislation is applicable to clerics alone. The punishment foreseen is excommunication with the cessation of appeal. The word *inobedientia* is not found in the text, though it is disobedience that is being addressed.

2.8.2 Loss of benefice after suspension

Moving ahead about one hundred years, the next font is taken from the *Decretali* of Pope Gregory IX and is entitled *de aetate et qualitate et ordine praeficiendorum*, listed under the heading «Whoever will have remained in suspension for a year is deprived of the benefice⁸⁰ which he had before and any which he acquired in the meantime»⁸¹. The legislation stems from the authority of Pope Celestine III⁸² and refers back to the time of Pope Clement I (92-102), who had summoned several clerics of Bari to Rome so that they could respond to a complaint made against them by an archdeacon from Bari who claimed they had injured him. The apostolic mandate issued by Pope Clement was ignored, and he decided to suspend the clerics, through the bishop of Bisceglie (Puglia)⁸³ for a period of three years. Yet some of them had obtained another ecclesiastical benefice. The question arose: how should these men be dealt with? Could they legitimately retain this extra benefice even though they could not exercise ministry?

Celestine responded that such suspended clerics were not entitled to the benefice they had before the suspension or to any additional ones they might have attained afterwards. The archbishop of Bari, who was

⁸⁰ Canon 1409 CIC 1917 states: «Beneficium ecclesiasticum est ens iuridicum a competente ecclesiastica auctoritate in perpetuum constitutum seu erectum, constans officio sacro et iure percipiendi redditus ex dote officio adnexos».

⁸¹ *Qui steterit per annum in suspensione, privatur beneficio, quod prius habebat, et quod interim acquisivit* (italics in the original text).

⁸² Pope Celestine III served as Supreme Pontiff from 14 March 1191 to 8 January 1198. *Annuario Pontificio* 2013, 15*.

⁸³ «Capitulo Lucensi (Luceriensi?) respondet, clericos Barenses, qui, per Virgiliensem episcopum pro inobedientia erga sedem apostolicam suspensi, beneficia ecclesiastica adepti sint, beneficiis esse privandos». P. JAFFÉ, *Regesta Pontificum* II, 640, n. 10700. Translated: «He responds to the chapter of Lucca (Lucera?) that the clerics of Bari who, having been suspended by the bishop of Bisceglie for their disobedience to the Apostolic See, have obtained ecclesiastical benefices, are to be deprived of the benefices».

their Ordinary, was to strip – *privandos* – the clerics of said benefices and retain them himself, pending further instruction from the Apostolic See⁸⁴.

Here we have an example of the pope exercising his power of governance and then instructing a bishop to execute the pontiff's decision. The Roman Pontiff determined that blatant disregard for papal authority on the part of the accused clerics called for the application of a stiff penalty, probably for the good of their souls. The clerics' failure to appear was considered willful disobedience of the summons, inasmuch as there was no legitimate impediment that might excuse their offense.

In summary, the issue is the spurning of an apostolic mandate on the part of certain priests. The penalty foreseen is their being divested of benefices. We see the word for «contempt» or «disdain» used twice. Also, *inobedientia*, though not found in the font itself, is contained in Jaffé's footnote to the font, attributed to Celestine⁸⁵.

2.9 Thirteenth century: an excommunicated cleric who engages in ministry

We move on to our next font, composed under the auspices of Pope Gregory IX and dating back to the beginning of the thirteenth century. It is composed of five *capitoli*, which will be cited separately below under the general heading: «On a cleric who is excommunicated, deposed, or under interdict, engaging in ministry»⁸⁶.

⁸⁴ X. 1, 14, 8. Coelestinus III. «Quum bonae memoriae Clemens Papa praedecessor noster I. Buccarum, Melearum, Maium Raofacam, et quosdam alios Baranenses clericos vocavisset, ut ad praesentiam ipsius accederent, H. archidiacono suo, quem graviter laeserant, responsuri, quia venire iuxta mandatum apostolicum contempserunt, in eos fecit *per Vigiliensem episcopum* sententiam suspensionis promulgari, in qua, sicut dicitur, triennio permanentes, quidam ex ipsis suspensi aliud beneficium ecclesiasticum sunt adepti. Et quia, utrum beneficia sic recepta possint rationabiliter retinere, nos consulere voluisti, *significatione tibi praesentium* respondemus, quod non licet eis *nec* illa, quae habuerunt beneficia, vel quae postmodum sunt adepti aliquatenus retinere. Unde *venerabili fratri nostro* Baranensi archiepiscopo dedimus in mandatis, ut eos pro tanta pertinacia et contemptu apostolico beneficiis, quae habent, non differat spoliare, *ea tamdiu in suis manibus detenturus, donec quid super his facere debeat, literas nostras accipiat et mandatum*».

⁸⁵ Cf. P. JAFFÉ, *Regesta Pontificum* II, 640, n. 10700 as noted in footnote 83 above.

⁸⁶ *De Clerico Excommunicato, Deposito vel Interdicto Ministrante*.

2.9.1 A deposed cleric

Chapter one begins by stating that a deposed cleric who celebrates the sacraments is excommunicated. This is based on a canon of the Apostles, which states: «If any bishop, presbyter or deacon, having been justly deposed (returned to the ranks of the laity) for definite crimes, will have dared to lay hold of the ministry formerly committed to him: let this man be utterly cut off from the Church»⁸⁷.

2.9.2 A suspended person

Chapter II of title 27 begins with the heading: «A degraded⁸⁸ or suspended person who is celebrating [the sacraments] and, having been warned, does not desist, is excommunicated; and, if not even thus does he desist, he is condemned to exile through the secular power at the request of the Church»⁸⁹. With the Council of Antioch as a backdrop, the font concerns presbyters or other clerics who have either been degraded or suspended by the bishop for definite crimes but nonetheless perform ministry which they had been forbidden to engage in due to their contempt, pride or presumption (usurpation)⁹⁰. If such a man, having been rebuked by his bishop for this behavior, persists in his usurpation (in this case the exercise of his ministry without the authority or right to do so), he is not only to be excommunicated but also expelled from the Church. «If someone will have disdained all these things, and the bishop has not been able to correct him, let

⁸⁷ X. 5, 27, 1. «Clericus, depositus celebrans, excommunicatur. Ex canone Apostolorum. Si quis episcopus, presbyter vel diaconus, depositus iuste pro certis criminibus, ausus fuerit attractare ministerium sibi dudum commissum: hic ab ecclesia *penitus* abscindatur». The rendering of the meaning of the word «deposed» remains the same throughout the remainder of this font; there is no need for further explanation.

⁸⁸ That is to say, reduced in rank or deprived from office.

⁸⁹ «Degradatus vel suspensus celebrans, et monitus non desistens, excommunicatur; et, si nec sic desistat, per saecularem potestatem ad requisitionem ecclesiae exsilio damnatur».

⁹⁰ During the time period in which this text was written, «praesumptione» commonly meant «premature action» or «usurpation». In the context of this font, «to usurp» may rightly be defined as «possessed unjustly or illegally». Considering the context of the phrase in which the word appears, only the second common definition would make any sense. J.H. BAXTER – C. JOHNSON, *Medieval Latin Word-List*, 328; J.A. SIMPSON – E.S.C. WEINER, *The Oxford English Dictionary* XIX, 363-365.

him be condemned to exile by the judgment of the king at the request of the Church»⁹¹.

Let us begin by considering how certain terms were likely to have been understood at this time in history (the early part of the thirteenth century). «Suspended» (*suspensus*) can be defined as «barred for a period from a privilege, office, or position, usually as a punishment»⁹² from office or from the sacraments⁹³. *Communicaverit* was rendered «will have or have administered or given the sacraments to (someone) or to participate in the sacraments»⁹⁴. «Excommunicated» means to be «laid under the ban of the Church»⁹⁵; an offender was excluded from the sacraments, often from Holy Communion⁹⁶. Finally, one who is expelled – *expellatur* – is outlawed or exiled⁹⁷ from the Church.

We note the duty of the bishop to do his part to correct those involved in the forbidden behavior, be he the cleric who is unlawfully performing ministry or the layperson (or cleric) who joins himself to this cleric. Once the bishop has done his part, if the person persists in disobedience, the consequences for this behavior are foreseen to be grave. Again, the need for a warning, in this case given through correction, is a *sine qua non*.

2.9.3 One under interdict

Chapter III of the same Title 27 is entitled: «One under interdict and excommunicated who celebrates [the sacraments] and does not desist after having been warned, is deposed»⁹⁸. It concerns clerics who have

⁹¹ X. 5, 27, 2. Ex concilio Antiocheno. «Si quis presbyter aut alius clericus *ab episcopo suo* fuerit degradatus, aut ab officio pro certis criminibus suspensus, et ipse per contemptum et superbiam aliquid de ministerio sibi interdicto agere praesumpserit, et postea ab episcopo suo correptus in incepta praesumptione perduraverit: *hic* modis omnibus excommunicetur *et ab ecclesia expellatur*. Et quicumque cum eo communicaverit, similiter se sciat esse excommunicatum. Similiter de clericis, laicis vel feminis excommunicatis observandum est. Quodsi aliquis ista omnia contempserit, et episcopus minime emendare potuerit, regis iudicio ad requisitionem ecclesiae exsilio damnetur».

⁹² C. LEWIS – C. SHORT, *A Latin Dictionary*, 1819-1820.

⁹³ J.H. BAXTER – C. JOHNSON, *Medieval Latin Word-List*, 419. In the eleventh century, *suspensio* referred to the hanging of criminals.

⁹⁴ J.H. BAXTER – C. JOHNSON, *Medieval Latin Word-List*, 90.

⁹⁵ C. LEWIS – C. SHORT, *A Latin Dictionary*, 679.

⁹⁶ P. SCHAFF, *History of the Church* IV, 1.

⁹⁷ J.H. BAXTER – C. JOHNSON, *Medieval Latin Word-List*, 162.

⁹⁸ *Interdictus et excommunicatus celebrans, monitus non desistens, deponitur*.

either been interdicted or excommunicated by their own bishops or even by a foreign bishop who has been mandated to do so by the Roman Pontiff. Clerics who celebrate the divine offices (divine services, probably including Mass)⁹⁹ before being absolved are first to be warned. If they fail to return (repent) without delay they are to be permanently dismissed¹⁰⁰.

2.9.4 One excommunicated and under interdict

Chapter IV builds upon the previous chapter and makes provision for situations that call for flexibility: «Excommunicated persons and those under interdict who celebrate [the sacraments] must be deposed, unless the punishment should be mitigated because of the multitude»¹⁰¹.

The admonition is addressed to the Archbishop of Toledo¹⁰²:

After approaching our presence with your own letter, the carriers of the present letter have more fully recounted to us their own excess, namely, that both they and many others, after they were put under interdict or excommunicated, presumed to celebrate the divine offices. But since they were saying that a great multitude had sinned with them in this, and it has

⁹⁹ A common definition in the thirteenth century of both «divina» and «officia» was «divine service». J.H. BAXTER – C. JOHNSON, *Medieval Latin Word-List*, 140; 285.

¹⁰⁰ X. 5, 27, 3. Alexander III. Londonensi Episcopo. «Clerici autem, si qui a suis, aut etiam de mandato Romani Pontificis ab alienis episcopis interdicti vel excommunicati [fuerint, et] ante absolutionem divina officia celebraverint, nisi moniti sine dilatione redierint, perpetuae depositionis sententiam pro ausu tantae temeritatis incurrant».

¹⁰¹ *Excommunicati vel interdicti celebrantes deponi debent, nisi propter multitudinem mitigetur poena.*

¹⁰² «Archiepiscopo Toletano mandat, ut qui interdicti et excommunicati sacra procuraverint, eos, si quadraginta solummodo vel pauciores sint, munere sacerdotali in perpetuum privet: si vero multitudinem magnam in hoc peccasse cognoverit, eos, quos magis causam esse delicti constiterit, perpetua depositione condemnet, et alios ab officio ad tempus suspendat, et omnibus poenitentiam iniungat». P. JAFFÉ, *Regesta Pontificum* II, 396, n. 9171. In English: «He commands the archbishop of Toledo that he should forever deprive of the priestly office those who, having been placed under interdict and excommunicated, have celebrated the sacred rites, “if they be only forty or fewer”; but if he recognizes that a great multitude has sinned in this matter, he should condemn with perpetual dismissal those whom he has established to be more the cause of the transgression; and the others he should suspend from office for a time, and he should enjoin a penance on all». P. JAFFÉ, *Regesta Pontificum* II, 396, n. 9171.

not been able to be made known to us who among them has transgressed more or less, we have considered that the business itself should be returned to the judgment of your own discretion. We command your Fraternity, by means of charging you through apostolic writ, that, having searched into the truth of the matter more diligently, if it be sure that only 40 or fewer have transgressed in these things, you should depose them all from the clerical state permanently. But if you learn that a great multitude has sinned in this, those who, it is sure, were more the cause of the transgression, you should condemn with permanent dismissal; and the others who have not transgressed so much, you should suspend from office for a time; and upon all, you should enjoin a penance according to the discretion given to you by God¹⁰³.

We see the at least implicit notion of subsidiarity. The bishop may use his own discretion under defined circumstances and is also given the authority to depose from the clerical state those clerics who have transgressed. While the unworthy celebration of the divine offices is an offense, what is being punished in this canon is the celebration of the divine offices when one is aware of the prohibition against their celebration and the consequent penalty of excommunication or interdict. Once the person is removed, if he still persists in the unlawful and forbidden act of participating in the divine office, he is to be deposed from the clerical state.

The practical nature of this chapter of the font is not to be overlooked. The Roman Pontiff, the author of the legislation, recognizes that some offenders will be more culpable than others. Some may have followed along, not having discerned well or even having been fooled. Perhaps their intentions were not disordered but merely misguided

¹⁰³ X. 5, 27, 4. *Excommunicati vel interdicti celebrantes deponi debent, nisi propter multitudinem mitigetur poena.* Idem Toletano Archiepiscopo. «Latores praesentium, cum tuis literis ad nostram accedentes praesentiam, suum nobis excessum plenius intimarunt, scilicet, quod tam ipsi quam multi alii, postquam interdicti vel excommunicati fuerunt, divina praesumpserunt officia celebrare. Quoniam vero cum eis magnam multitudinem in hoc peccasse dicebant, nec nobis, quis eorum magis vel minus deliquerit, innotescere potuit, negotium ipsum tuae discretionis arbitrio duximus remittendum. Fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus, rei veritate diligentius inquisita, si XL. solummodo vel pauciores in his deliquisse constiterit, omnes in perpetuum ab officio sacerdotali deponas. Si vero multitudinem magnam in hoc peccasse cognoveris, eos, quos magis causam delicti esse constiterit, perpetua depositione condemnes, et alios, qui non tantum deliquerunt, ab officio ad tempus suspendas, et omnibus poenitentiam secundum discretionem tibi a Deo datam iniungas».

(more «culpa» than «dolus»). The bishop would be within the law if he temporarily suspended and imposed a penance on a less culpable cleric.

2.9.5 Excommunicated person loses his benefice

The last chapter cited in this lengthy font is entitled: «An excommunicated person who celebrates [the sacraments] is deposed from his benefice»¹⁰⁴. It is addressed to the Archbishop of Besançon, France, and dates back to 21 May 1203. The archbishop is empowered to despoil – *spoliare* – benefices from presbyters and other clerics of his diocese who, having been anathemized by the archbishop for their excesses, presume to celebrate the divine offices¹⁰⁵. The clerics' loss of benefices, or source of income, is deemed a just penalty given the crime. And since one goal is to reform the offender, the hope is that he would repent and return, which has a direct connection to the *salus animarum*. Of course, the presumption is that the archbishop had taken proper steps (including the giving of a warning) before declaring the excommunication.

2.9.6 Summary

The issue addressed is persistent disobedience by subjects who continue to engage in priestly ministry despite excommunication, deposition or interdict. Those subject to the punishment are bishops, presbyters and deacons, and in the case of one chapter of the font, others who join themselves to these disobedient clerics. The penalty envisioned is exclusion from ministry and possibly from benefices as well. Clearly a warning is required. Usurpation of office – *praesumptio* – and contempt, scorn or disdain – *contemptio*¹⁰⁶ – are used to convey the concept of disobedience.

2.10 Fifteenth century

The following font is set in the later part of the 1400's and is broken down to two parts for ease of study.

¹⁰⁴ *Excommunicatus celebrans a beneficio deponitur*. Note that chapter five is not listed as a font, thus the reason for the jump from chapter four to chapter six.

¹⁰⁵ X. 5, 27, 6. Idem Bisuntino Archiepiscopo. «Fraternitati tuae (*Et infra*: [cf. c. 7. *de eo, qui cogn. IV. 13.*]) Presbyteros autem et alios clericos *dioecesis tuae*, qui pro suis excessibus a te nexibus anathematis canonice innodati praesumpserunt vel praesumunt officia celebrare divina, rationabiliter poteris omnibus beneficiis ecclesiasticis spoliare». [*Priorem etc. Dat. Ferentini XII. Kal. Iun. Ao. VI. 1203.*].

¹⁰⁶ J.H. BAXTER – C. JOHNSON, *Medieval Latin Word-List*, 102.

2.10.1 Reserved Sins (Paul II)

We find no fonts from the beginning of this period, which included the Avignon Papacy, a period of antipopes, and finally the Council of Constance, whose members in 1417 elected Oddone Colonna, who took as his name Martin V¹⁰⁷. Our font under consideration stems from Pope Paul II the Venetian¹⁰⁸ and is dated 3 March 1468. This font is found in the *Extravagantes Communes*. Chapter three is prefaced with: «On account of certain causes, there is placed here a constitution containing the cases reserved to the Pope, from which no one can absolve without the special license of the Apostolic See»¹⁰⁹. While not wishing to place obstacles in the way of mercy and forgiveness, the pontiff states that there are some cases where, for the good of the person's eternal salvation, precautions must be taken when one of the faithful has committed certain grave sins. The pope is fearful that due to the ease of pardon (be it through indulgence, remission or faculty), a member might be more inclined to sin or to commit unlawful things. Thus, it is necessary to place a limit on who could grant the pardon. Hitherto certain priests had the faculty to impose a penance upon someone who desired a plenary or partial indulgence. This would now be limited given that a long list of sins would now be remittable only by the Apostolic See.

Pope Paul II admits that he instituted the form and norm of plenary remissions (today known as «indulgences»), which could be granted only twice in one's lifetime, including when the person was on his deathbed. However, the same pope later determined that certain sins should be reserved to the Apostolic See. These sins include: offenses

¹⁰⁷ Cf. P. COLONNA – N. GOZZANO – P. PIERGIOVANNI, *The Colonna Family*, 74–80. As Roman Pontiff, Pope Martin V made reforms to the Roman Curia, including setting up the first offices in the Secretariat of State. He took the name Martin since he was elected on 11 November, the Liturgical celebration of St. Martin of Tours. He was a Cardinal Subdeacon at the time of his election as Successor to Peter and therefore was ordained deacon, priest and then bishop on 12, 13 and 14 November 1417 respectively.

¹⁰⁸ Paul II, the 208th successor to St. Peter, was elected Roman Pontiff on 30 August 1464 and continued until his death on 26 July 1471. *Annuario Pontificio* 2013, 18*.

¹⁰⁹ *Constitutio, casus Papae reservatos comprehendens, certis ex causis hic ponitur; a quibus nullus potest absolvere sine speciali licentia sedis apostolicae*. One might question the necessity of including this font in our study. While its pertinence might not be readily apparent, it is still important that it be retained and presented so as to ensure that this historical section be complete.

against ecclesiastical liberty; violation of interdict imposed by the Apostolic See; crimes of heresy; conspiracy against the person or status of the Roman Pontiff; any offense, disobedience or rebellion against the Roman Pontiff or the Apostolic See; the murder of a priest; personal offense against a bishop or other prelate; invasion, plunder, occupation or ravaging of lands subject to the Roman Pontiff; attacking pilgrims on their way to Rome or others on their way to the Roman Curia; prohibition of the referral of causes to the Roman Curia; transportation of arms and other forbidden things to the regions of the infidels; the imposition of new property taxes or personal taxes upon churches or ecclesiastical persons; simony contracted for orders or for obtaining favors in the same Curia or elsewhere and, finally, other cases contained in the Bull normally published by the Roman Pontiff on Holy Thursday. A penitent who commits one or more of the above-mentioned sins can only be absolved by a priest to whom the pope has conceded special permission. The font continues by stating that, while this decision had been communicated four years earlier, it seemed fitting to republish the information in the form of a letter so that no one might pretend ignorance. The chapter closes by stating that anyone who fails to follow these rules will have offended God (literally, will «incur the indignation of Almighty God and of His blessed Apostles Peter and Paul»)¹¹⁰.

¹¹⁰ Extrav. com. 5, 9, 3. Paulus Venetus Papa II. «Etsi dominici gregis saluti semper intenti singulis cum humilitate poscentibus ea benigne concedere studeamus, per quae (peccatorum mole deposita) salus ipsa succedat, et ab hostis humani generis servitute ereptas animas lucrifaciamus Altissimo, qui nobis eas sua bonitate commisit: id tamen propensiori studio praecavendum esse censemus, ne cuiusvis indulgentiae, remissionis vel facultatis obtentu Christi fideles procliviores ad illicita in posterum committenda reddantur, aut veniae facilitas eis peccandi tribuat incentivum. Hac itaque consideratione habita olim emanavit a nobis constitutioni tenoris subsequentis, videlicet: “Sanctissimus in Christo pater et dominus noster, dominus Paulus, divina providentia Papa secundus, qui pridem super plenariis remissionibus, quae semel in vita, et semel in mortis articulo conceduntur, formam et normam instituit, ne passim sine exceptione quorumcunque criminum procliviores redderentur homines ad peccandum, per regulam in cancellaria apostolica publicatam statuit et ordinavit, quod in quibuscunque concessionibus et facultatibus absolvendi casus infra scripti, tanquam speciales sedi apostolicae reservati, semper intelligerentur excepti, videlicet offensae ecclesiasticae libertatis, violationis interdicti ab eadem sede impositi, criminum haeresis, conspirationis in personam aut statum Romani Pontificis, seu cuiusvis offensae, inobedientiae seu rebellionis eiusdem Pontificis vel sedis apostolicae, presbytericidii, offensae personalis in episcopum seu alium praelatum, invasionis, depredationis, occupationis aut devastationis terrarum Romanae ecclesiae mediate vel immediate su-

As stated above, the pope feared that if forgiveness of certain grave sins was too easy to obtain, people might be prone to sin more and be less likely to control themselves. Abuse of indulgences was obviously a concern. The pope reasoned that the faithful would think twice before committing certain grave sins if the sins were reserved to the Apostolic See¹¹¹.

2.10.2 Reserved Sins (Sixtus IV)

Sixtus IV is the author of the second half of this font, dated 1478¹¹². Despite the fact that his predecessor spoke strongly against easy indulgences, in fact Sixtus had conceded many of them in only a few years. He eventually found it necessary to revoke these new indulgences.

biectarum, ac etiam invasionis Romipetarum, seu quorumcunque aliorum ad Romanam curiam venientium, prohibitionis devolutionis causarum ad dictam curiam, delationis armorum et aliorum prohibitorum ad partes infidelium, impositionis novarum onerum realium vel personalium, ecclesiis vel ecclesiasticis personis, simoniae super ordinibus vel beneficiis assequendis in eadem curia vel extra contractae, et generaliter in casibus, contentis in bulla, quae consuevit in die coenae Domini per praedecessores suos Romanos Pontifices publicari, considerans, quod plerumque contingit suam sanctitatem huiusmodi facultates et confessionalia tam praesentibus quam assentibus etiam oraculo vivae vocis concedere (ne praetextu concessionis huiusmodi vel poenitentes vel confessores in supra scriptis casibus fallantur et fallant), statuit et decrevit, suae intentionis fuisse et esse, per quascunque concessionem et facultates, per suam sanctitatem tam scripto quam verbo factas et in posterum faciendas, nemini licere irritos dictis casibus absolvere sine speciali suae sanctitatis licentia, quin immo concessionem et indulta praedicta, quoad casus exceptos huiusmodi nulli penitus suffragari”. Ut autem ipsa constitutio, (quae dudum, scilicet quinto Kalendas Aprilis anni ab incarnatione Domini nostri Iesu Christi millesimi quadrigentesimi sexagesimi sexti, pontificatus nostri anno secundo publicata fuit) eisdem Christi fidelibus plenius innotescat, nullusque illius ignorantiam praetendere valeat in futurum: praesentibus inseri fecimus, ut ad maiorem omnium perveniat notionem. Nulli ergo omnino hominum liceat hanc paginam nostrorum statuti, ordinationis et decreti infringere, vel ei ausu temerario contraire. Si quis autem hoc attentare praesumpserit, indignationem omnipotentis Dei et beatorum Petri et Pauli Apostolorum eius se noverit incursurum. Datum Romae apud sanctum Petrum, anno incarnationis dominicae MCCCCLXVIII. quinto Non. Mart. Pont. Nostri Ao.V».

¹¹¹ Chapter three of this font is listed as a font for canons 1364 §1, CIC 1983 and 2314 §1, CIC 1917, which call for a *latae sententiae* excommunication upon heretics.

¹¹² Sixtus IV della Rovere, 209th successor to St. Peter, was elected pope on 9 August 1471 and served until 12 August 1484. *Annuario Pontificio* 2013, 18*. According to R. MCBRIEN, *Lives of the Popes*, 264-266, Francesco della Rovere widened the availability of indulgences; the abuse in this regard played a part in the Protestant Reformation.

Pope Sixtus addresses the letter to different people and organizations that might have made use of a confessor hitherto authorized to absolve all sins and impose a penance on a penitent, thereby qualifying for a particular indulgence. The pope declares that none of the confessors who heard confessions in places mentioned in the font should deign to absolve anyone, no matter who he might be and what dignity he might have, if that person is guilty of the any of the crimes listed above. Moreover, he adds the mutilation of body parts – *mutilationis membrorum* – or slaying of anyone constituted in Sacred Orders to the list of reserved sins. Likewise, these same confessors are forbidden from commuting the vows pronounced by penitents regarding pilgrimage to the Holy Sepulchre in Jerusalem, to the basilicas of Sts. Peter and Paul or to Santiago de Compostela in Spain. Nor may vows of chastity or of religion be commuted unless special permission has been given by the Apostolic See, having definite knowledge of the situation¹¹³. However, the pope is willing to extend mercy by allowing absolution to be given to one repentant for having broken a vow mentioned above and who finds himself at the point of death. Should a confessor presume to attempt to absolve anyone guilty of the previously mentioned sins or to commute the above-mentioned excepted vows, the absolution and commutation would be without force or weight. In addition, the confessor, or anyone acting against the decree, would incur the sentence of excommunication *ipso facto*, which can only be absolved by the Roman Pontiff, unless the offender is situated at the point of death. The pope ends the decree by specifying special publication so that no one could legitimately feign ignorance¹¹⁴.

¹¹³ Cf. J. KOWAL, *Uscita definitiva dall'istituto*, 92.

¹¹⁴ Extrav. com. 5, 9, 5. *Sixtus tempore suo multis multas concesserat indulgentias, quas certis ex causis hic revocat*. Idem. «Etsi dominici gregis saluti semper intenti singulis cum humilitate poscentibus ea benigne concedere studeamus, per quae (peccatorum mole deposita) salus ipsa succedat, et hostis humani generis servitute ereptas animas lucrifaciamus Altissimo, qui nobis eas sua bonitate commisit: id tamen propensiori studio praecavendum esse censemus, ne cuiusvis indulgentiae, remissionis vel facultatis obtentu Christi fideles procliviores ad illicita in posterum committenda reddantur aut facilitatis veniae eis peccandi tribuat incentivum. Quum itaque (sicut multorum fide dignorum testimonio accepimus), ob multitudinem facultatum per nos vel auctoritate nostra concessarum, tam verbo quam in scriptis, confectis exinde literis vel non, praelatis et personis ecclesiasticis, etiam religiosis et saecularibus utriusque sexus, capitulis, collegiis, conventibus, hospitalibus, confratris, et universitatibus, tam in genere quam in specie, sub electione vel deputatione confessorum, qui eligen-

tes eosdem, vel pro indulgentiis per nos concessis consequendis ad ecclesias et alia pia loca confluentes, seu ad aliqua pia opera manus porrigentes adiutrices, earundemque confratriarum confratres et sorores, ac in hospitalibus praedictis decedentes seu deservientes, aut eis pie aliquid relinquentes, vel aliqua alia meritorum ministeria exhibentes, et in ordinibus profitentes, eorum confessione diligenter audita, in singulis etiam sedi apostolicae reservatis casibus semel in vita, et in aliis toties quoties, ac in morte plenarie, vel alias etiam ad effectum consequendi quascunque indulgentias plenarias vel non plenarias absolvere, et poenitentiam salutarem eis iniungere, emissa quoque vota per illos quaecunque in alia pietatis opera commutare libere et licite valeant, fideles praefati ad peccandum, et ad alia illicita committendum nonnunquam procliviores existant in non parvum periculum salutis animarum suarum: nos, qui Deo propitio eiusdem gregis dominici (meritis licet insufficientibus) causam gerimus, et illum spiritualis thesauri elargitione cupimus ipsi Deo reddere acceptabilem, ne exinde clavium auctoritas deducatur in contemptum, ipsique ad peccandum procliviores (ut diximus) liberius prolabantur, ex praemissis et aliis rationabilibus causis animum nostrum moventibus motu proprio, non ad alicuius nobis super hoc oblatae petitionis instantiam, sed de nostra mera voluntate et deliberatione, auctoritate apostolica tenore praesentium statuimus et ordinamus, quod de cetero praetextu facultatum huiusmodi, concessarum a nobis vel auctoritate nostra, et quas concedi quomodolibet continget in posterum, verbo, literis aut quavis alia scriptura, etiam cum clausula, quod sola signatura sufficiat etiam in favorem fidei et cruciatae, nullus confessorum eorundem quempiam, cuiusvis status, gradus, ordinis vel conditionis existat, et quacunque ecclesiastica, etiam episcopali vel maiori, aut mundana, etiam regali et maiori dignitate praefulgeat, qui offensae ecclesiasticae libertatis, violationis interdicti ab eadem sede impositi, seu haeresis, postquam fuerint de ea sententialiter condemnati, delati seu publice diffamati, conspiracy in personam aut statum Romani Pontificis, seu cuiusvis offensae, inobedientiae aut rebellionis eiusdem Pontificis dictae sedis, mutilationis membrorum vel occisionis cuiuscunque in sacris ordinibus constituti, offensae personalis in episcopum seu alium praelatum, invasionis, depredationis, occupationis aut devastationis terrarum Romanae ecclesiae mediate vel immediate subiectarum, ac etiam invasionis Romipetarum, seu quorumcunque aliorum ad Romanam curiam venientium, prohibitionis devolutionum causarum ad dictam curiam, delationis armorum et aliorum prohibitorum ad partes infidelium, impositionis novorum onerum realium vel personalium ecclesiis vel ecclesiasticis personis, simoniae super ordinibus vel beneficiis consequendis in dicta curia vel extra eam contractae criminum quomodolibet reus foret, et generaliter in casibus, contentis in literis, quae consueverunt in die coenae Domini publicari, praetextu huiusmodi facultatum absolvere, et per eos emissa peregrinationis ultramarinae, et visitationis liminum Apostolorum Petri et Pauli, in Compostella, et castitatis ac religionis vota, nisi ex speciali licentia et certa scientia nostra, de qua demum constare censeatur, quum in signatura nostra desuper manu nostra scriptum aut in literis nostris expressum fuerit, nos ex certa scientia et de speciali gratia id concedere cum derogatione praesentis constitutionis, illius de verbo ad verbum inserto tenore, non autem per clausulas id importantes, vel in articulo mortis constitutum, et tunc in casibus, in quibus satisfactio fuerit impendenda, facta satisfactione vel idonea praestita cautione, commutare praesumant. Et si aliqui confessorum

The pope's concern for the salvation of souls is evidenced by his allowance for the granting of mercy when a penitent was near death¹¹⁵. The guilty person is expected to express remorse for his or her wrongdoing.

The font indicates that one would be disobedient who would try to obtain sacramental forgiveness for a reserved sin from a priest not authorized to grant absolution in such cases. The disobedience does not admit of ignorance. The disobedience would be even greater on the part of a priest who, though unauthorized to grant absolution in such cases and knowing the intention of the Roman Pontiff in this matter, ignores it and grants absolution to one who approaches him saddled with one of the above-mentioned grave sins. In such a scenario, the priest or bishop would be considered disobedient to the Roman Pontiff or the Apostolic See, which is grave matter in itself.

Here we notice that no warning appears to be required. In fact, the declaration already made by the pope is considered warning enough. Confessors, it would seem, would carry a greater burden in knowing and following the rules than would a layperson.

The font can be summarized as such: The issue/crime addressed is disobeying a prohibition against the granting of absolution of those guilty of certain reserved sins (on the part of a cleric) or disobedience to the same prohibition by means of approaching, for absolution of sins the person knows are reserved, a confessor whom the person (cleric or lay) knows does not possess the required faculties to absolve the reserved sins. This legislation, then, concerns confessors (priests and bishops), religious and laity. The foreseen consequences for the diso-

praedictorum contra praesentem constitutionem quemquam absolvere, aut excepta vota praedicta commutare attentaverint: absolutio et commutatio huiusmodi nullius sit roboris vel momenti. Et contra facientes eo ipso excommunicationis sententiam incurrant, a qua, (nisi in mortis articulo constituti,) ab alio quam a Romano Pontifice absolvi non possint, non obstantibus litteris et constitutionibus huiusmodi, ac constitutionibus et ordinationibus etc. Et ne aliquis de praesentibus ignorantiam valeat allegare, mandamus, eas in cancellariae apostolicas et audientia litterarum contradi-tarum legi et publicari, ac inter extravagantes alias apostolicas constitutiones in quater-no dictae cancellariae describi etc. Nulli ergo omnino hominum liceat hanc paginam nostrarum suspensionis, inhibitionis, mandati et voluntatis etc. Datum Spirae anno Domini MCCCCLXXVIII».

¹¹⁵ Cf. cann. 882 CIC 1917 and 976 CIC 1983, which both highlight the Church's concern for the spiritual well being of those who are *in periculo mortis*. The mentioned font is not listed as a font to either canon.

bedience include automatic excommunication¹¹⁶ and the incurring of moral wrath of God. Moreover, any absolution received would have no force or weight; that is to say, it would be invalid.

2.11 *Circa 1700*

Two fonts date to the early part of the 1700's and involve priests.

2.11.1 A lazy and obstinate priest

The document *Nullius Montis Virginis* dates to 1699 and 1700 and provides the text for our next font. While only a small part of the document constitutes this font, it would be quite helpful to know the background. Therefore, the font will be summarized and the entire text footnoted. The case concerns a priest named Anthony Renna. The Abbot General of Monte Virgine, to whom Renna was subject, paid a visit to the parish and discovered that the priest had unfulfilled Mass intentions (literally he was «burdened with many Masses»). The abbot then decreed that the priest was bound, under the pain of suspension, «to show within the space of fifteen days a distinct note of the fulfillment of the said duties together with their record book». Fifteen days had elapsed, and the priest provided no proof to the Abbot of having fulfilled his Mass requirements. The Abbot allowed another three terms – the first and second consisting of ten days each and the third consisting of three days, effectively providing the priest additional opportunities to fulfill his Mass duties. Since Renna still had provided no proof that he had complied with the Abbot's orders, the Abbot suspended Renna for the latter's obstinacy. Furthermore, the Abbot ordered that notices to this effect be posted. Renna's response was that he was a vicar of the Lateran Basilica in the dioceses of Agrigento, Conza and Sant'Agata de' Goti, and therefore exempt from the ordinary jurisdiction of the Abbot General. However, an investigation soon revealed that his appointment as vicar of the Lateran Basilica had been revoked long before. Renna not only proceeded to have the edicts or notices of suspension removed, he also had them replaced with other notices in which he declared that the Abbot General and his minsters were excommunicated

¹¹⁶ We cannot fail to see the connection between *ipso facto* excommunication and the canons in the present Code that foresee *latae sententiae* excommunication, even if this particular font on study does not appear on the list of fonts regarding excommunication for confessional related matters in the CIC.

under the pretext of meddling in the jurisdiction of the Lateran Basilica. The Abbot filed recourse to the Sacred Congregation of the Consistory¹¹⁷ at which time the censures placed on the priest were suspended for three months in order for the priest to respond to the allegations. Renna failed to present his defense to the Congregation¹¹⁸.

¹¹⁷ Since 1967, the name for this Dicastery is the Congregation for Bishops. *Anuario Pontificio* 2013, 1822.

¹¹⁸ SACRA CONGREGATIO CONSISTORIALIS, *Nullius Montis Virginis*, 14 November 1699. «Occasione visitationis peractae per Abbatem Generalem Montis Virginis in terra Mercuriani eius ordinariae iurisdictioni subiecta, compertum fuit ecclesiam S. Antonii Viennen, cuius Rector est Sacerdos Antonius Renna, gravatam esse annuo onere plurium Missarum absque eo quod appareret de illarum satisfactione. Quamobrem Abbas inter alia decrevit quod Renna titularis degens in Civitate Neapolis, teneretur sub poena suspensionis imposita in novissima constitutione Sanctissimi Domini Nostri super celebratione Missarum, exhibere infra spatium quindecim dierum distinctam notulam satisfactionis dictorum onerum una cum illorum tabella.

Verum quia elapso termino assignato ad docendum de adimplemento nemo comparuit, Abbas praefixis aliis tribus terminis, primo nempe et secundo cum spatio decem dierum pro quolibet, et tertio peremptorio trium dierum, illisque tandem elapsis Rennam in sua contumacia persistentem declaravit incursum in poenam suspensionis, et successive mandavit affigi cedulones.

Audita istorum publicatione Renna asserens se Vicarium Basilicae Lateranen. in Diocesis Grigentina, Compsana et S. Agathae Gothorum, et sic exemptum a iurisdictione ordinaria (*licet eius deputatio longe prius revocata fuisset a Reverendissimo Capitulo Lateranen.*) non solum deaffigi fecit praefata edicta, seu cedulones suspensionis, sed etiam illorum loco affigi et subrogari curavit alios cedulones, in quibus declarabat excommunicatos praefatum Abbatem Generalem eiusque Ministros sub praetextu turbate iurisdictionis Basilicae Lateranen.

Interposito per Abbatem recursu ad hanc Sacram Congregationem, demandata fuit suspensio censurarum per tres menses cum praefixione competentis termini eidem Rennae ad deducenda iura sua in Sacra Congregatione, quo iam praefixo et effluxo, monitoque saepius Procuratore praedicti Rennae ad informandum, Vestrum erit, Eminentissimi Patres, quid iustitiae ac prudentiae consentaneum existimabitur super infra-scriptis dubiis sapientissime decernere:

1. *Ad suspensio Antonii Rennae a divinis facta per Abbatem Generalem Montis Virginis substineatur?*

2. *An licuerit eidem Rennae excommunicare praefatum Abbatem Generalem et Ministros Curiae Abbatialis?* Ex quatenus negative:

3. *An, et qua poena pro praemissis omnibus puniri debeat idem Renna in casu?*

4. *Die, etc. Sacra, etc. ad I. censuit: incurrisse*

ad. 2 respondit: Negative

ad. 3: iniungendum censuit, prout iniungit Abbati, quatenus conficiat processum et procedat ad poenas, prout de iure».

The Congregation Fathers decided to uphold the *a divinis* suspension of Renna imposed by the Abbot. They further determined that Renna's excommunication of the Abbot was illegitimate. Finally, they determined that a penalty should be enjoined on Renna and directed the abbot to proceed with imposing it according to the law. Upon further examination some months later, the Congregation upheld the prior decision¹¹⁹.

In this case disobedience can be noted in various actions and inactions of Renna. First, he refused to fulfill the Masses (most likely Mass intentions, though this is not explicitly clear) as ordered by the Abbot General. This behavior occurred not only once (the first fifteen day period), but also three other times, given that the Abbot gave him three other opportunities to show good faith. In addition, Renna's decision to have the notices posted at the behest of the Abbot removed and replaced with other notices indicating that rather it was the Abbot who was excommunicated showed disrespect and disobedience for authority, yet it probably would not be considered contumacious. Renna was given a chance to offer his defense and give proofs that he was wronged, though he was under no obligation to defend himself or further participate in the process.

At the same time, we also notice that the priest was given written and clear warnings, that the authority behind the warnings was legitimate, that at least some of the priest's behavior was contumacious and that there was a penalty applied by the abbot, which was upheld by the Apostolic See. One might argue that since the abbot clearly defined expectations, followed up to ensure compliance, gave further warnings in writing and ultimately took punitive action, he was progressive in his approach and did not suspend the priest in a capricious manner. The recourse presented by the priest was rejected; the Council determined that he was persistently disobedient to the abbot.

The *salus animarum* was certainly at stake in the above case. The priest was either not regularly celebrating Mass or had little interest in

¹¹⁹ SACRA CONGREGATIO CONSISTORIALIS, *Nullius Montis Virginis*, 26 June 1700. «Obtenta adversus resoluta in causa *Nullis Montis Virginis*, die 14 novembris 1699 per Rennam nova audientia, ex iuribus noviter deducendis EE. VV. respondere non gravabuntur:

An sic standum, vel recendum a decisis in casu?

Die, etc. Sacra, etc. stetit in decisis in omnibus».

A brief summary in Latin can be found in S. PALLOTTINI, *Collectio omnium conclusionum*, 133, n. 14. It falls under the heading «Poena seu censurae in genere».

fulfilling one of his principal duties. Those for whom the Masses were offered did not receive the graces that flow from the Mass. All of these conclusions could make up a well-founded argument as to how following the law (on everyone's part) and enforcing the law (on the part of superiors) can have favorable eternal consequences.

To summarize, the issue addressed is obstinacy in refusing to execute or obey the abbot's commands that the Mass obligations be fulfilled. The obstinacy concerned a specific priest, Renna. The penalty incurred was suspension, and notice of this effect was made public. The word *inobedientia* is absent but the font indeed addresses disobedience.

2.11.2 Lazy and obstinate priests ten years later

Our next font is situated in the year 1709 and concerns priests in Naples who, under the pretext of a certain privilege they claimed to have had, refused to participate in the local Corpus Christi procession. These priests were suspended from celebrating the sacraments by the archiepiscopal curia of Naples, though the font does not indicate precisely which competent authority within the curia issued the suspension. Having been notified of their suspension, the priests decided to present recourse to the Sacred Congregation for the Consistory. The Archbishop was asked to forward the acts of the case as soon as possible. The Dicastery reviewed said acts and affirmed that not only were the clergy of the Church of St. James bound to come to the Corpus Christi procession but that the suspension from celebrating the sacraments imposed on them by the archdiocesan curia was to be sustained¹²⁰.

¹²⁰ SACRA CONGREGATIO CONSISTORIALIS, *Neopolitana*, 3 August 1709. «Renuentibus Presbyteris ecclesiae S. Iacobi Hispanorum huius Civitatis praetextu suorum privilegiorum accedere ad processionem prope peractam Sanctissimi Corporis Christi, Curia Archiepiscopalis eorum nonnullos suspensione a divinis irretivit. Sed iisdem reclamantibus apud hanc Sacram Congregationem, praeacceptaque relatione Eminentissimi Archiepiscopi, proposita fuit causa per summarium in Congregatione proxime decursa, et rescriptum extitit: *Transmittantur acta quamprimum, et proponatur causa omnino in prima, firma remanente suspensione*. Actis itaque transmissis, iuxta demandata, causa hodie proponitur, ut ex deducendis hinc inde a partibus monitis, dignentur EE. VV. resolvere infrascripta dubia inter easdem concordata:

1. *An Clerus ecclesiae S. Iacobi Nationis Hispanorum Neapolis teneatur accedere ad processionem Sanctissimi Corporis Christi?*

2. *An suspensio a divinis lata a Curia Archiepiscopali Neopolitana contra Capellanos et Clericos dictae ecclesiae sustineatur in casu?*

Die, etc. Sacra, etc. ad I. et 2. respondit: Affirmative».

Lest we assume that the priests were suspended in haste, the context seems to indicate that the archiepiscopal curia was in dialogue with the priests who were refusing to participate in the procession. It would seem safe to assume that they were given the opportunity to provide a defense, explaining the reason(s) for their refusal. Since the priests invoked a certain privilege suggests that they were either spoken to personally or were at least contacted about the curia's concerns and asked or ordered to participate in the procession. It was only when they refused to reconsider their position that the decision was made to suspend them. Therefore, the font implies that a warning had been given to the accused priests, who were also given the opportunity to present their side of the story, not to mention encouraged or even ordered to participate in the procession. Suspension *a divinis* was considered a just penalty.

We notice that it was not the archbishop who communicated with the priests but rather others in the archiepiscopal curia that declared the priests to be suspended. Though who actually constituted the particular archdiocesan curia is not specified in the font, likely the vicar general would have played a large role¹²¹. This is a sign that not every act of governance was necessarily undertaken by the ordinary himself; others were available and authorized to assist in this regard¹²².

In regards to the *salus animarum* of both of the priests and the people, it seems safe to speculate that the imposed punishment helped to encourage the priests' presence in the procession the following year. Their presence may have been an encouragement for the laity. As a result, the *salus animarum* was fostered.

In summary, the issue is disobedience for failure to participate in a mandatory event on the part of certain priests from a particular church (parish) in Naples. The penalty: prohibition from celebrating the sac-

¹²¹ The involvement of a vicar general was not new at the time. «Al dubbio: Se il Vicario costituito in un luogo o parte della diocesi con facoltà generali per tutte le cause del medesimo luogo, o parte di diocesi s'intenda esser *delegato*, o pur *Vicario generale del Vescovo*, in modo che possa eseguire le lettere apostoliche dirette al Vicario generale per i sudditi di quella giurisdizione, Sacra etc. censuit Vicarium ut proponitur deputatum esse *delegatum* non autem *Vicarium Episcopalem generalem*, ideoque litteras apostolicas exequi non posse». SACRA CONGREGATIO EPISCOPORUM ET REGULARIUM, *Nullius*, 22 December 1628.

¹²² Not to be overlooked is that the population in Naples was on the rise in 1700, which meant that *de facto* the bishop could not tend to every matter facing the curia. For statistics in regards to Naples, cf. G. ALFANO, *Istorica descrizione del regno di Napoli: diviso in dodici provincie*.

raments, or an *a divinis* suspension. The word *inobedientia* is not to be found in the font though disobedience is implied in the text.

2.12 1729-1820

Three fonts are placed between the years 1729 and 1820.

2.12.1 Not fulfilling one's duty to serve

The year 1729 is the date of one of two fonts authored by the Sacred Congregation for the Propagation of the Faith, known today as the Congregation for the Evangelization of Peoples¹²³. Though only a small portion is listed as a font, a summary will assist in better understanding the contents. The font concerns Regulars, perhaps clerks regular or canons regular, who, having received a decree of appointment to work in the mission fields, refused do so within a reasonable time frame or at all. The font establishes that in such cases the subjects had not only received the decree of assignment, but also the customary letter of examination. Assuming there existed no legitimate cause – *legitima causa* – for the Regular's failure or refusal to fulfill his promise or commitment, the punishment for this disobedience was the privation of active and passive voice in his religious institute and his being rendered *inhabilis* – disqualified or juridically unable to act – to serve in an administrative capacity in his religious order. Anyone who failed to execute the decree (of assignment to a particular mission territory) would be subject to the penalties¹²⁴.

¹²³ «Con la Costituzione *Regimini Ecclesiae universae*, del 15 ag. 1967, la Congregazione ha assunto il nome: Congregazione per l'Evangelizzazione dei Popoli o «De Propaganda Fide», e nella Costituzione *Pastor Bonus*, del 28 giu. 1988, si chiama semplicemente Congregazione per l'Evangelizzazione dei Popoli». *Annuario Pontificio* 2013, 1825.

¹²⁴ «Inhaerendo decretis alias latis quoad eos (Regulares) qui post obtentum decretum suae deputationis ad exercendum munus missionis sibi commissae, illud exequi renuunt, contra huiusmodi renuentes poena statuitur privationis vocis activae et passivae, et inhabilitationis ad quaecumque officia eorum Ordinis, ita quod quilibet Religiosus qui nedum post editum, ut supra, decretum suae deputationis, verum etiam post expeditas solitas litteras pro eorum examine, recedat a suscipiendo munere missionis absque legitima causa per S.C. cognoscenda et approbanda, ipso facto praedictam privationem incurrat, ad beneplacitum eiusdem S.C. duraturam». SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, (C.G.) 12 September 1729. Note that «C.G.» stands for «Congregazione Generale». This means the mat-

Stipulated in the decision of the Congregation is that if there exists a legitimate cause for not being able to fulfill the promise, one would not suffer any penalties. In addition, a religious who changes his mind before having been notified of the decree and before the customary letter of examination had been filled out would also not be subject to penalties. Furthermore, the decree, in effect, served as a warning; therefore no further warning would need to be afforded the priest.

The reader will notice at least two differences between this font and the following one. The earlier font does not mention that remuneration had already been provided to the cleric; perhaps this is to be assumed. A second difference is that the authority of the first document stems from the SCPF without specific approval from the Holy Father, as was the case with the 1820 document which will be discussed in the following paragraph¹²⁵.

2.12.2 Failure to fulfill missionary duty 91 years later

Our next font is dated 24 September 1820 and issued by the same Sacred Congregation¹²⁶. It is strikingly similar to the decree cited above and concerns religious priests who accept an appointment as missionaries, and with the appointment money necessary for the voyage. However, some of these religious failed to undertake the journey to the agreed upon missionary country as they had previously agreed to do, which made it clear to the Sacred Congregation that these religious either never thought seriously about fulfilling their promise or else defected from their initial stated intention. That is to say, their failure to make the journey involved fraud or defection or both. In order to prevent such abuses in the future, the Holy Father

is to be entreated to declare that those who, after having received the appointment and accepted the money furnished by the Congregation, and having refused to undertake this assignment, are to be deprived for ten years from active and passive voice in their Religious Institutes and they must repay the money to the Congregation.

ter was decided in a General Congregation meeting. L. CODIGNOLA, *Guide to Documents*, xi, 37.

¹²⁵ The summary of font twenty-one will be combined with that of font twenty-two.

¹²⁶ For reasons of thematic continuity, this font is placed here even though it does not follow the established chronological order.

This penalty would not apply if the religious were able to prove to the Congregation that there indeed was a grave cause that prevented him from fulfilling the assignment¹²⁷.

Given the nature of religious life, where the religious superior might accept an assignment on behalf of the religious order or institute with the intention of having a member fulfill the duty, it would not be fair to infer that in every case the religious himself accepted a missionary assignment directly from the SCPF. We therefore might conclude that in the case of a superior who accepted the assignment with the presumed intention of having another fulfill it, it would be the superior himself who would be penalized if the assignment were not fulfilled. But this is speculation.

In both of these fonts, the word *inobedientia* is missing. Yet since both passages are listed as official sources for canon 1371, 2°, it would seem that in some way there is a connection with disobedience. I would propose that the disobedience occurred in the priest's accepting of an assignment, along with the remuneration connected with it, with no intention of ever fulfilling the task and perhaps hoping that he would never be held accountable in this regard. Therefore, the acceptance of the assignment implied obeying the authority which provided or arranged the assignment, which in this case was the SCPF.

Another point of interest is that these decrees themselves may be considered warnings. There would be no need for a priest who accepts a missionary journey to be formally warned that if he does not fulfill his duties he will suffer the above-mentioned consequences. A priest who accepts a missionary assignment (and the remuneration connected with it) is generally expected to follow through on his promise. Having already been warned by means of the decree, failure to fulfill the mission would render the priest culpable.

¹²⁷ «Cum aliquoties acciderit Religiosos nonnullos sacris missionibus deputatos, post acceptam a S.C. pecuniam ad iter conficiendum necessariam, iter accipere diutius detrectasse, atque ita ut S. Congregationi manifeste appareret eos vel numquam de sacris missionibus ineundis serio cogitasse, vel a sancto proposito turpiter defecisse, S.C. ad hos coercendos abusus censuit supplicandum SS.mo ut, firma remanente obli-gatione restitutionis acceptae pecuniae, privationis vocis activae et passivae poenam, per decem subsequentes annos durturam, et Sedi Apostolicae reservatam, eum ipso facto incurrere decernat, qui post acceptam missionem et pecuniam, quam viatici nomine designatis missionariis S.C. suppeditat, absque gravi causa ad ipsa S.C. probanda, expetitur et acceptum onus subire recusaverit. Quam S. Congregationis sententiam SS.mo D.N. relatum per R.P.D. Secretarium in audientia habita die 24 Septembris 1820 SS.mus in omnibus approbavit et exequi mandavit». SCPF, decree, 30 September 1820.

The decree of 1729 was a first step in addressing the disobedience. When it became clear that the authority of the Sacred Congregation itself was not weighty enough, the next step was to involve the Holy Father. This can be seen as an example of subsidiarity, with higher authority involving itself only when necessary. Had the Congregation's initial decision been followed and respected in practice, there would have been little reason for the matter to be revisited, either by the Dicastery itself (bringing the matter to the attention of the pope) or by the Pontiff's direct intervention¹²⁸.

This font touches heavily upon the *salus animarum*. An offending priest could likely be culpable of stealing. The people in the missionary country would have less access to Mass and the sacraments, which would certainly not improve their spiritual lives.

The preceding two fonts may be summarized in this manner: the issue is the refusal to fulfill a commitment one promised to make and for which money was received. The font concerns various religious priests. The penalty consists of deprivation of active and passive voice and the requirement that the money received be paid back to the SCPF.

2.12.3 Usury

Our subsequent font, authored by Benedict XIV and concerning usury, is set in the eighteenth century. In his encyclical *Vix Pervenit*, the Roman Pontiff does not discourage the lending of money, but calls for the borrower to eventually return the principal without interest. Allowances are made for investing one's money and receiving a return, but Pope Lambertini makes a distinction between legitimate investing and illegitimate lending. For our purposes, we note that only number V is cited as a font. For the sake of clarity, and since the font is not extensive, it is quoted here in its entirety:

Therefore We address these encyclical letters to all Italian Archbishops, Bishops, and priests to make all of you aware of these matters. Whenever Synods are held or sermons preached or instructions on sacred doctrine

¹²⁸ Also possible is that the pope took a great interest in missionary activity; it is well known that much missionary activity took place in the 1700's. Considering that the offices of the SCPF were located in close proximity to the Spanish Embassy, that the then papal residence was located on the Via del Quirinale (where four papal conclaves were convened in the 1800's) and that many missionaries came from Spain, likely various popes took personal interest in such matters.

given, the above opinions must be adhered to strictly. Take great care that no one in your dioceses dares to write or preach the contrary; however if any one should refuse to obey, he should be subjected to the penalties imposed by the sacred canons on those who violate Apostolic mandates¹²⁹.

The above excerpt addresses bishops, archbishops and priests in Italy and concerns the way they choose to preach on the subject of usury. Those faithful who fail to follow what is put forth in the decree, for example, by insisting on lending money with the expectation of receiving something extra in return, will find themselves in the state of disobedience¹³⁰. As is the case with other fonts, no further warning need be given. The faithful are expected to be aware of the contents of the encyclical and follow its instructions, for the good of their souls¹³¹.

¹²⁹ BENEDICT XIV, encycl. *Vix Pervenit* V: «Perciò abbiamo inviato questa Lettera Enciclica a tutti gli Arcivescovi, Vescovi e Ordinari d'Italia, in modo che essa fosse nota a Te, Venerabile Fratello, e a tutti gli altri; e ogni qual volta avverrà di celebrare Sinodi, di parlare al popolo, di istruirlo nelle sacre dottrine, non si pronuncii parola che sia contraria a quelle Sentenze che più sopra abbiamo esaminato. Inoltre vi esortiamo vivamente a impedire con tutto il vostro zelo che qualcuno osi con Lettere o Sermoni insegnare il contrario nelle Vostre Diocesi; se poi qualcuno rifiutasse di obbedire, lo dichiariamo colpevole e soggetto alle pene stabilite nei Sacri Canoni contro coloro che abbiano disprezzato e violato i doveri apostolici». English translation from www.papalencyclicals.net [accessed 19 July 2012].

¹³⁰ Number eight of the same decree presents a healthy and balanced approach concerning people's views on usury. It is equally valid, in my opinion, for debated moral issues of our time: «In the second place, some trust in their own strength and knowledge to such an extent that they do not hesitate to give answers to those questions which demand considerable knowledge of sacred theology and of the canons. But it is essential for these people, also, to avoid extremes, which are always evil. For instance, there are some who judge these matters with such severity that they hold any profit derived from money to be illegal and usurious; in contrast to them, there are some so indulgent and so remiss that they hold any gain whatsoever to be free of usury. Let them not adhere too much to their private opinions. Before they give their answer, let them consult a number of eminent writers; then let them accept those views which they understand to be confirmed by knowledge and authority. And if a dispute should arise, when some contract is discussed, let no insults be hurled at those who hold the contrary opinion; nor let it be asserted that it must be severely censured, particularly if it does not lack the support of reason and of men of reputation. Indeed clamorous outcries and accusations break the chain of Christian love and give offense and scandal to the people» (English translation from www.papalencyclicals.net) [accessed 22 August 2012].

¹³¹ The encyclical does not address the issue of proving the disobedience, which might have its own challenges.

The font can be summarized by noting that the issues include writing or preaching on the topic of usury (on the part of archbishops, bishops and priests in Italy) and the refusal to obey the commands set out in the encyclical (on the part of the above-mentioned clerics and lay people in Italy). The penalty includes being subject to penalties already established in the canons. The words «refuses to obey» (*rifiutasse di obbedire*) are used by the pope.

2.13 1910 – removal of pastors

The final font in our analysis (listed as number eighteen by Gaspari) dates back to only one century ago and just seven years before the publication of the 1917 CIC. It is from the decree *Maxima cura*, which was produced by the SCC in 1910 and lists and explains the causes for which a parish priest (pastor) can be removed from his position in an administrative manner. The decree is twelve pages long and contains thirty-two canons. Not surprisingly, it is listed as one of the fonts for the canons in the 1917 and 1983 Codes concerning the removal of pastors¹³². Canon 1, n. 9 of the decree lists the following causes for which a parish priest can be removed in an administrative manner:

Disobedience to the precepts of an Ordinary after a first and second warning and in a matter of grave importance, such as avoiding familiarity with some person or family, or taking care for the due guardianship and cleanliness of the house of God, or of applying the measure in the exaction of parochial taxes and the like¹³³.

The decree is specific about the requirements for an admonition to be considered an official warning, including that it must be given by the Ordinary in written form and stored in the curia (so that it would become part of the record). While the decree does not forbid a verbal warning, given in a fatherly manner, such an admonition would not be

¹³² Canons 2147-2156 CIC 1917 and 1740, 1741, 1743, 1744, 1746, 1747 CIC 1983.

¹³³ SCC, decr. *Maxima Cura*, can. 1, n. 9: «Causae ob quas parochus administrativo modo amoveri potest hae sunt: Inobedientia praeceptis Ordinarii post unam et alteram monitionem et in re gravis momenti, ceu cavendi a familiaritate cum aliqua persona vel familia, curandi debitam custodiam et munditiam domus Dei, modum adhibendi in taxarum parochialium exactione et similibus». There are nine sections, thus the reason for the plural *causae* instead of *causa* in the introduction.

construed as a warning for purposes of the same and therefore a pastor could not be removed unless the formalities were followed¹³⁴.

This short font is packed with information. First, it lays out the issue: *inobedientia* to the precepts of an Ordinary. It states the conditions: the matter must be of grave importance and two warnings must have been given to the offender. It also gives examples of matters in the first category: being too familiar with a person or family, not having enough concern for the cleanliness of the church, or failing to pay the parish tax. The bishop must first set out a precept or precepts. If the pastor refuses to abide by them, he is to be given a second warning. If the pattern of disobedience continues, he may be removed administratively – *administrativo modo* – from his position¹³⁵.

However, there is more that must be considered. The ordinary must have reached moral certitude that the negligence or other failure of duty actually occurred. He needs to inquire and determine whether an investigation should be undertaken and not rely on rumors¹³⁶. The ordinary is also the one to give the written warning to the pastor. A record is to be kept. A verbal warning is not enough¹³⁷. While nothing would prevent the bishop from having a conversation with the offending priest, it would not qualify as a warning for the purposes of this canon¹³⁸. Numerous reasons foreseen by the decree are presented in the document¹³⁹.

¹³⁴ SACRA CONGREGATIO CONSISTORIALIS, decr. *Maxima cura*, can. 1, n. 9: «Motio de qua superius sub extremo duplici numero, ut peremptoria sit et proximae amotionis praenuntia, fieri ab Ordinario debet, non paterno dumtaxat more, verbo tenus et clam omnibus; sed ita ut de eadem in actis Curiae legitime constet».

¹³⁵ Canon 1741 of the 1983 CIC tends to follow contents of the above-mentioned decree, with the exception of no. 4°, which states a cause for the legitimate removal of a pastor includes «grave neglect or violation of parochial duties which persists after a warning». This current legislation provides no explanation as to what constitutes a warning. Also, only one warning is now required instead of two as stated above.

¹³⁶ Cf. C. MEIER, *Penal Administrative Procedure*, 155.

¹³⁷ However, the same author points out that sometimes this paternal approach – persuasion as opposed to canonical threats – renews the priests «fervor and vigor on behalf of the souls committed to his care». C. MEIER, *Penal Administrative Procedure*, 155.

¹³⁸ A. VERMEERSCH – J. CREUSEN, *Epitome Iuris Canonici* III, 327 refer to this decree (*Maxima cura*) when defining the requirements for persistent disobedience. *Post unam et alteram monitionem* is required.

¹³⁹ Outside of disobedience to the bishop in regards to the three matters mentioned above, the decree lists various other reasons for the legitimate removal of a pastor without a penal process, including insanity, inexperience or ignorance to the point of being seriously hindered from performing his role satisfactorily; deafness, blindness

The decree also makes a direct reference to the salvation of souls: «The salvation of the people is indeed the supreme law: and the ministry of the pastor was instituted in the Church not for the benefit of the one to whom it is entrusted, but for the salvation of those for whom it is conferred»¹⁴⁰.

To summarize this font, the delict is persistent disobedience to the Ordinary in matters specifically stated in the decree. The font concerns parish priests (pastors). The punishment can include administrative removal of the pastor from his parish. The font uses many of the same words found in can. 2331 §1, CIC 1917 including «*inobedientia*», «*praeceptis*» and «*monitum*».

2.14 *General observations*

In examining the above twenty-two fonts, we notice that many contain some of the same substantial words found in the corresponding canons in the 1917 and 1983 CIC. In other cases, inferences need to be made. That is to say, that disobedience or persistent disobedience is the topic of discussion is fairly clear, even though the specific word or words for (persistent) disobedience may not be found.

The first such word is «*inobedientia*» or «*inobediens*» or some form of the word meaning «disobedience» in English. It directly appears in only six of the fonts: 1, 5, 6, 15, 16, and 18. In font thirteen, a reference to disobedience appears in a footnote to the font, but not directly. Yet in each source the actions or inaction described falls under the category of disobedience.

Each of the above-mentioned fonts concerns in some way clerics but in only a few is a layperson included. We see this in the third font, where «infamous people cannot accuse clerics»¹⁴¹. The fourth font concerns anyone transgressing the commands of the Apostolic See, which

or another physical ailment that incapacitates the pastor from carrying out his duties for a significant period of time; hatred or ill will on the part of the parishioners, whether or not this is justified or deserved; loss of reputation among reasonable men (*viros*); or poor administration in the temporal realm. SCC, decr. *Maxima cura*, can. 9, nn. 1-8.

¹⁴⁰ SACRA CONGREGATIO CONSISTORIALIS, decr. *Maxima cura*, preface: «Salus enim populi suprema lex est: et parochi ministerium fuit in Ecclesia institutum, non in commodum eius cui committitur, sed in eorum salutem pro quibus confertur». Translation from J.A. GRAY, *Causes and Proofs*, 5.

¹⁴¹ «Infames hereticos accusare non possunt» from C. 2, q. 7, c. 23.

would include clerics, religious and laypeople. Both parts of font six pertain to clerics and laypeople who do not obey the bishops. Font number eight, which addresses the building of monasteries without the awareness of the bishop, includes laypeople as possible subjects. Font nine includes those who refuse to consent to the bishop, some of whom find themselves in schism. Font ten anathematizes anyone who disdains keeping the mandates or decrees of the Roman Pontiffs, which would include laypeople. Font number eleven concerns those who abandon religious life, often a non-cleric, holding the superiors in their charge at least partially responsible. Font number fourteen includes the laity, who might disobey or violate a decree or constitution of the bishop and therefore must be excommunicated. Font fifteen, though primarily addressed to clerics, foresees that laypeople can also be considered disobedient if they aid and abet a suspended priest who insists on celebrating the sacraments. Font number sixteen likewise concerns clerics by and large, but also could involve a layperson, who would be considered disobedient if he or she attempted to receive absolution from an unauthorized priest after having committed a sin reserved to the Apostolic See. While font number seventeen could include a layperson, primarily it is addressed to clerics. Fonts eighteen through twenty concern priests (secular and religious, though in practice they would more often concern secular priests) while the final two fonts are addressed to religious priests. These final five fonts do not concern laypeople, as the following table indicates:

<i>Font Number</i>	<i>Summary of Situation</i>	<i>Who is addressed</i>
1 (11)	Concerning those suitable for Papal Office	Clerics
2 (10)	Concerning the obligation to pledge vows before being promoted to bishop	Clerics
3 (4)	Concerning cases not to be admitted to a canonical hearing	Laity, including pagans
4 (2)	Concerning the willing transgression of the commands of Apostolic See	Clerics and laity
5 (3)	Concerning a cleric who disobeys his bishop	Cleric
6 (1)	Concerning one who does not obey his	Clerics and laypeople

<i>Font Number</i>	<i>Summary of Situation</i>	<i>Who is addressed</i>
	bishop	
7 (6)	Concerning the trampling upon ecclesiastical privileges	Bishops
8 (5)	Concerning the building of monasteries without informing local bishop	Monks, clerics and laypeople
9a (8a)	Concerning the refusal to consent to the bishop	Clerics and laypeople
9b (8b)	Concerning contempt of the Apostolic See	Bishops
10 (12)	Concerning contempt to keep the mandates or decrees of the Roman Pontiffs	Clerics and laypeople
11 (9)	Concerning leaving the monastery (casting aside religious garb)	Religious (incl. superiors) and laypeople
12 (13)	Concerning the authority of an Ordinary	Clerics
13 (14)	Concerning the loss of benefice after suspension	Clerics
14 (7)	Concerning violation of a decree or constitution of the bishop	Clerics and laypeople
15 (15)	Concerning a cleric who is excommunicated or under interdict but engaging in priestly ministry; one communicating with him	Bishop, presbyter or deacon; all clerics or laypeople.
16 (16)	Concerning cases reserved to the pope and the restricting of indulgences	Clerics and laypeople
17 (21)	Concerning usury	Clerics and laypeople
18 (22)	Concerning causes for removal of a pastor	Presbyters
19 (17)	Concerning obedience to one's Ordinary	Presbyters
20 (18)	Concerning obedience to one's Ordinary	Presbyters
21 (19)	Concerning the execution of a decree	Religious (Regulars)
22 (20)	Concerning the execution of a decree	Religious (Regulars)

Note that the «font number» is according to the ordering provided by Gasparri while the number in parentheses indicates the order in which the font was presented by the author.

This first chapter helps establish: 1. That the presentation of recourses to the Holy Father or Apostolic See was in place from the early times of the Church, even if each font does not clearly establish the motive for the involvement of the pope or Apostolic See; 2. That forms of the verb «*obtemperare*» appear only twice in the various fonts while «*obedientia*» is more common; 3. That in some cases, the issuing of a warning was foreseen before punishment could be legitimately imposed; 4. That the hierarchical superiors found it necessary and opportune to exercise their authority, including the imposition of penalties in various matters; and 5. That concern for the salvation of souls regards not only the future but the present and is not limited only to a specific person but also to those who could be affected by the person's actions; this concern seems to have motivated many of the decisions rendered by competent authority, including those that called for the excommunication of those who offended or might eventually offend.

We continue our study and begin our next chapter by examining the final font: can. 2331 §1, CIC 1917.

CHAPTER II

From the CIC 1917 to the preparation of the CIC 1983

1. Canon 2331 §1, CIC 1917

Having concluded our examination of the fonts attributed to can. 2331 §1 of the CIC 1917¹, we now turn our attention to the canon itself, which has no direct link to divine law but instead falls under the category of ecclesiastical or positive law. Canon 2331 §1 states: «Whoever pertinaciously does not obey the Roman Pontiff or a proper Ordinary or another [competent authority] legitimately precepting or prohibiting shall be punished with appropriate penalties, not excluding censures, according to the gravity of the fault»². The second paragraph of the canon addresses conspiracy against the authority of the Roman Pontiff, of a Papal Legate or of one's own ordinary. It will not be examined as part of this work as it is outside the scope of our study.

We will begin by defining the substantial words in the canon so as to better understand their significance and meaning when they were promulgated. In the following chapter we will see that some meanings have not changed, some definitions have been modified and some words that are defined in the CIC 1917 are not defined in the CIC 1983.

¹ Since the entire part of this chapter will discuss canons found in the CIC 1917, the reader may presume that, unless another indication is given, each canon cited comes from the CIC 1917.

² «Qui Romano Pontifici vel proprio Ordinario aliquid legitime praecipienti vel prohibenti pertinaciter non obtemperant, congruis poenis, censuris non exclusis, pro gravitate culpae puniantur». English translation for each citation from the CIC 1917 is taken from E.N. PETERS, ed., *The 1917 Pio-Benedictine Code of Canon Law*, 739.

1.1 Qui

Let us first look at the word «*qui*», or «everyone who». Here «*qui*» appears in plural form since the verbs both are in the plural. Canon 12 tells us that not everyone is held to follow merely ecclesiastical laws, including: 1. those who are not baptized; 2. those who are baptized but lack sufficient use of reason; and 3. those not yet seven years old, even if they have attained the use of reason³. That baptism is essential is stated in the early part of the CIC, where we are told that it is baptism that constitutes one a person in the Church with corresponding rights and duties⁴. Subject to the CIC, then, are those who are baptized, who have reached the age of reason, and who possess sufficient maturity to commit a delict. All three requisites must be met.

Determining whether the final requirement has been met can cause some difficulty. Minors not having reached the age of puberty (14 for boys and 12 for girls) are excused from all *latae sententiae* penalties. The legislator foresees correction in the form of educational punishment or corrections rather than censures or more serious penalties⁵. And the younger a minor is, the less is his imputability for committing a delict⁶.

Considering that this canon addresses any baptized person who is above the age of reason and possesses sufficient maturity, the «*qui*» referred to by the legislator includes clerics⁷, whether ordained or not, religious and laity. Nowhere in the canon is a qualifier placed on the word «*qui*».

1.1.1 Clerics and religious

There are various levels of accountability and responsibility for those who have made promises or vows compared to those who have not. For

³ Canon 12. «Legibus mere ecclesiasticis non tenentur qui baptismum non receperunt, nec baptizati qui sufficienti rationis usu non gaudent, nec qui, licet rationis usum assecuti, septimum aetatis annum nondum expleverunt, nisi aliud iure expresse caveatur».

⁴ Canon 87. «Baptismate homo constituitur in Ecclesia Christi persona cum omnibus christianorum iuribus et officiis [...]». Cf. G. MICHIELS, *De Delictis et Poenis*, III, 11.

⁵ Canon 2230. «Impuberes excusantur a poenis latae sententiae, et potius punitionibus educativis, quam censuris aliisve poenis gravioribus vindicativis corrigantur [...]». Cf. A. CICOGNANI *Canon Law*, 564; H. AYRINHAC – P.J. LYDON, *Penal Legislation*, 43.

⁶ Canon 2204. «Minor aetas, nisi aliud constet, minuit delicti imputabilitatem eoque magis quo ad infantiam propius accedit».

⁷ Cf. can. 107, which renders clerics distinct from laity but also says that not all the orders that constitute the clerical state are of divine origin.

example, can. 124 states that clerics are to lead holier lives than laypeople and should «excel in rendering them [laity] an example of virtue and good deeds»⁸. Moreover, all clerics, especially priests, «are bound by a special obligation to show reverence and obedience to their own Ordinary»⁹. Other obligations of clerics found in the CIC include the duty to be prudent with and avoid cohabitation with women who are not relatives¹⁰; the wearing of a decent ecclesiastical habit (but not a ring) (can. 136 §§1, 2); the avoidance of anything alien to the clerical state (can. 139 §1), including «public theaters, shows, dances and spectacles» when there is danger of scandal (can. 140). In total, there are twenty-one canons (124-144) that concern clerical obligations.

The obligations of religious are spelled out in canons 592-612 and refer to the vows taken by a religious (can. 593), to their spiritual lives (can. 595), to religious garb (*habitum*) (can. 596), and to rules regarding the cloister (cann. 597-607).

1.1.2 Laity

It is only can. 682 that speaks of the rights of the laity to receive spiritual goods and aid necessary for salvation. Canon 683 prohibits laity from wearing a clerical habit, with the exception of seminarians not yet enrolled in the order of cleric. There are other obligations that bind all the faithful, for example that one receive Holy Communion at least once per year, preferably during Holy Week or Lent¹¹.

The brief analysis above leads us to conclude that, from the point of view of the CIC 1917, clerics and religious bear a heavier burden in regards to canonical obligations than do laypeople. It is therefore safe to suggest that Ordinaries would tend to invoke this canon more often against religious and clerics than against laypeople.

⁸ «Clerici debent sanctiorem prae laicis vitam interiorem et exteriorem ducere eisque virtute et recte factis in exemplum excellere».

⁹ Canon 127. «Omnes clerici, praesertim vero presbyteri, speciali obligatione tenentur suo quisque Ordinario reverentiam et obedientiam exhibendi».

¹⁰ Canon 133 §1. «Caveant clerici ne mulieres, de quibus suspicio esse possit, apud se retineant aut quoquo modo frequentent. §2. Eisdem licet cum illis tantum mulieribus cohabitare in quibus naturale foedus nihil mali permittit suspicari, quales sunt mater, soror, amita et huiusmodi, aut a quibus spectata morum honestas, cum proveciore aetate coniuncta, omnem suspicionem amoveat».

¹¹ Canon 859. Canons in the CIC 1983 concerning the obligations and rights of the lay Christian faithful (224-231) have no CIC 1917 counterparts.

1.2 Romano Pontifici

There are three categories of competent authority set out in can. 2331 §1. The first is the Roman Pontiff, who, as successor «in primacy» to Saint Peter, enjoys supreme and full power of jurisdiction over the universal Church. This power of jurisdiction concerns matters pertaining to faith and morals in addition to those matters relative to discipline and government¹². Canon 218 §2 explains that «this power is truly episcopal, ordinary and immediate both over each and every church and over each and every pastor and faithful independent from any human authority»¹³. Lest one conclude that our understanding of the primacy of the Supreme Pontiff is a recent or modern invention, we can cite Church Father St. Augustine, who wrote «Romanus Pontifex est Primas universalis Ecclesiae et in Codice punitur inobedientia erga ipsum quatenus est Primas Ecclesiae non quatenus est princeps temporalis»¹⁴.

Though we do not find the word «ordinary» in the definition provided in can. 218, that the pope's power is supreme and full indicates that it is not vicarious. He does not exercise it in a delegated manner. He has every right to command by penal precept. A precept from the Roman Pontiff is always presumed to be legitimate and is to be obeyed by all to whom it is addressed. If the Supreme Pontiff writes a bull or brief, one may not exempt him or herself from being obedient to the mandates contained therein¹⁵. Moreover, «Prima sedes a nemine iudicatur» (can. 1556).

Some might express a concern that one man could have so much power. Indeed, the pope is responsible for using wisely and judiciously

¹² Canon 218 §1: «Romanus Pontifex, Beati Petri in primatu Successor, habet non solum primatum honoris, sed supremam et plenam potestatem iurisdictionis in universam Ecclesiam tum in rebus quae ad fidem et mores, tum in iis quae ad disciplinam et regimen Ecclesiae per totum orbem diffusae pertinent».

¹³ «Haec potestas est vere episcopalis, ordinaria, et immediata tum in omnes et singulas ecclesias, tum in omnes et singulos pastores et fideles, a quavis humana auctoritate independens».

¹⁴ As quoted in M. CONTE A CORONATA, *Institutiones Iuris Canonici* IV, 374, n. 1928.

¹⁵ «Praecepta Romani Pontificis semper legitima praesumuntur; si nimis ardua videantur aut insufficientibus informationibus fundata, poterit is cui data sunt supplicare et maiores ipsi Romani Pontifici informationes offerre. Quod si, his non obstantibus, Romanus Pontifex praeceptum non revocet, ei obediendum omnino est». M. CONTE A. CORONATA, *Institutiones Iuris Canonici* IV, 1928. Conte a Coronata also cites three authors: H. AYRINHAC – P. LYDON, *Penal Legislation*, V, 244; E. EICHMANN, *Lehrbuch des Kirchenrechts*, 148; I. CHELODI, *Ius Poenale*, 69.

this power, not to lord it over people, but in view of the salvation of souls¹⁶, remembering always that he is a servant of the servants of God.

One commentary offers theological insights relative to can. 219¹⁷:

The position of the Roman Pontiff is altogether without parallel in the world. In all other independent human organizations and societies, the form of government is dependent on the will of the majority, but the form of government of the Church is fixed by Christ, and thus cannot be changed by men. The authority of the Supreme Pontiff does not come from the Church, but from Christ. All that the Church can do is determine the manner of electing her Supreme Head. The power of the pope comes directly from God, for he is not merely the representative of the people of the church, but the representative of Christ. The Church has all the characteristics of an independent human society, but it has its own peculiar constitution, which is well adapted to its spiritual nature and purpose¹⁸.

1.2.1 Other considerations on the Roman Pontiff

Can another person or body besides the pope fall under the «Romanus Pontifex» umbrella? The Holy Father is assisted in the governing of the Church by numerous dicasteries, and their decisions carry a certain weight. Regatillo holds that a precept or prohibition could include a mandate by the Roman Pontiff «...ab aliquot dicasterio romano de eius mandato aut cum approbatione in forma specifica...»¹⁹. «*De eius mandato*» means «by his [the pope's] mandate». Therefore when the pope gives approval *in forma specifica* to a precept or prohibition issued by a dicastery of the Roman Curia, the decree has more force or weight since the pope is making it his own²⁰. For purposes of can. 2331

¹⁶ Though there is no canon in the CIC that specifically touches on the salvation of souls, seven years before the promulgation of the CIC, the SCC produced a document on the administrative removal of pastors. In the preface, we find the words «salus enim populi suprema lex est». SCC, decr. *Maxima cura*, 20 August 1910, 636. Pius XII spoke about the topic in an address to seminarians and those responsible for their formation early in his pontificate: «Etiam iuris canonici disciplina ad animarum salutem dirigitur et omnibus normis legibusque suis in id denique potissimumque tendit, ut homines gratia Dei sancti effecti vivant et moriantur». PIUS XII, *Sermo*, 24 June 1939, 248.

¹⁷ «Romanus Pontifex, legitime electus, statim ab acceptata electione, obtinet, iure divino, plenam supremae iurisdictionis potestatem».

¹⁸ S. WOYWOD – C. SMITH, *A practical commentary* I, 98-99.

¹⁹ E. REGATILLO, *Institutiones Iuris Canonici* II⁷, 586, n. 986.

²⁰ Since the understanding and interpretation of «Romanum Pontificem» in this context concerns more than simply the pope himself, it is not illogical that the corre-

§1, a dicasterial decree is to be considered as having come from the Roman Pontiff himself²¹.

To examine Regatillo's interpretation, let us consider the contents of can. 7:

Under the name Apostolic See or Holy See in this Code come not just the Roman Pontiff, but also, unless by the nature of the thing or from the context of the words something else appears, the Congregations, Tribunals and Offices through which the same Roman Pontiff is wont to expedite the affairs of the universal Church²².

Having considered this definition, one might ask, «since the pope expedites the affairs of the universal Church through congregations, tribunals and offices, would all or any of them have the authority to precept or prohibit certain things within the limits of their competence»? The answer is yes, as they act on behalf of the Holy Father. But it is another question all together whether these offices of the Roman Curia are foreseen by the legislator to fall under the umbrella of «Roman Pontiff». One might also pose the question, «if the intent of the legislator was to include all the congregations, tribunals and offices of the Roman Curia, why would he not have used “*Sedes Apostolicae*” or “*Sancta Sedes*” (or both) instead of “*Romanus Pontifex*”»²³? Moreover, it would seem that since can. 19 calls for a strict interpretation of laws that establish a penalty, «Roman Pontiff» should be limited to the pope himself, notwithstand-

sponding canon in the CIC 1983 replaces this term with «apostolica sedis». It would seem that this would eliminate confusion.

²¹ «The expression *in forma specifica* indicates that the pope has reviewed the document and makes it his own by express approbation, and thus the document acquires the canonical force of a formal papal act». J. BRETZKE, *Consecrated Phrases*, 104.

²² «*Nomine Sedis Apostolicae vel Sanctae Sedis in hoc Codice veniunt non solum Romanus Pontifex, sed etiam, nisi ex rei natura vel sermonis contextu aliud appareat, Congregationes, Tribunalia, Officia, per quae idem Romanus Pontifex negotia Ecclesiae universae expedire solet*».

²³ Conte a Coronata explains that the Roman Pontiff has the right to special honorific titles and includes «*eius vero sedes Sedes Apostolica vel Sancta Sedes [...]*». While this does not answer our question, the explanation does show the link between the Roman Pontiff and the Apostolic See and the Holy See. M. CONTE A CORONATA, *Institutiones Iuris Canonici* I, 365. Other authors do not make a distinction. For example we read in a commentary on can. 218: «*Asseritur potestas regendi totam Ecclesiam legibus, iudicio et poenis, non inspectione tantum aut directione*». A. VERMEERSCH – I. CREUSEN, *Epitome Iuris Canonici* I, 288.

ing Regatillo's interpretation above²⁴. It is enough at this juncture to conclude that subjects of can. 2331 §1 are held to precepts and prohibitions coming from dicasteries of the Roman Curia, provided, of course, that the requirements set out by the canon have been met. Therefore, a dicastery must be competent for the matter(s) in question.

1.3 Proprio ordinario

The second category of competent authority listed in our canon of study is one's «proper ordinary». An examination of the words in the canon reveals that «proper» modifies «ordinary», thus limiting the jurisdiction of an Ordinary to his subjects alone. One is not held to obey an Ordinary not properly his, as was taught back in the time of St. Augustine and is still held to this day²⁵.

Before considering these words further, let us first consider what the CIC states about an ordinary. According to can. 198:

§1. In law by the name of *Ordinaries* are understood, unless they are expressly excepted, in addition to the Roman Pontiff, a residential Bishop²⁶ in his own territory, an Abbot or Prelate *nullius* and his Vicar General, Administrator, Vicar or Prefect Apostolic, and likewise those who, in the absence of the 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 [institutes]. §2. By the name of *Local Ordinaries* come all those just mentioned with the exception of religious superiors²⁷.

²⁴ Canon 1371, 2°, CIC 1983 expanded competent authority from «Roman Pontiff» to «Apostolic See», as we will see in the next chapter.

²⁵ «Ordinario non proprio reverentia utique, at non obedientia debetur». M. CONTE A CORONOTA, *Institutiones Iuris Canonici* IV, 1928.

²⁶ According to can. 218 §2 and in regards to bishops: «Haec potestas est vere episcopalis, ordinaria et immediata tum in omnes et singulas ecclesias, tum in omnes et singulos pastores et fideles, a quavis humana auctoritate independens». The first paragraph of the canon concerns the pope.

²⁷ §1. «In iure nomine Ordinarii intelliguntur, nisi quis expresse excipiat, praeter Romanum Pontificem, pro suo quisque territorio Episcopus residentialis, Abbas vel Praelatus *nullius* eorumque Vicarius Generalis, Administrator, Vicarius et Praefectus Apostolicus, itemque ii qui praedictis deficientibus interim ex iuris praescripto aut ex probatis constitutionibus succedunt in regimine, pro suis vero subditis Superiores maiores in religionibus clericalibus exemptis. §2. Nomine autem ordinarii loci seu locarum veniunt omnes recensiti, exceptis Superioribus religiosis». Translation taken from E.N. PETERS, ed., *The 1917 Pio-Benedictine Code*, 86.

As we study who the CIC considers to be an ordinary, we keep in mind that each has an area or territory of competence and that the ordinary is not to exceed the competence given him by law. Should he go beyond the competence he enjoys by virtue of his office and as foreseen in the CIC, the precept or prohibition promulgated by him would be invalid.

1.3.1 Residential bishops

Before considering residential bishops, let us examine what the CIC says about bishops in general. They are successors to the apostles, who were given authority by Jesus Christ himself. Bishops are placed over specific churches and «govern with ordinary power under the authority of the Roman Pontiff» who freely appoints them²⁸. Bishops, in assisting the pope in his care of the whole church, exercise power in virtue of their office which was instituted by Christ. It is not delegated power, therefore²⁹.

We now consider residential bishops. Canon 334 defines them as «ordinary and immediate pastors in the dioceses committed to them»³⁰. Residential bishops have both the right and duty to govern their dioceses in matters spiritual and temporal. Additionally, the bishop is to urge everyone in his diocese to observe the ecclesiastical laws and should do his utmost to ensure that abuses (for example of the administration of the sacraments and sacramentals) are to be avoided. The residential bishop oversees worship of God and the saints, preaching, indulgences, faith and morals and instruction of the young in the Catholic faith³¹.

²⁸ Canon 329 §1: «Episcopi sunt Apostolorum successores atque ex divina institutione peculiaribus ecclesiis praeficiuntur quas cum potestate ordinaria regunt sub auctoritate Romani Pontificis».

²⁹ S. WOYWOD – C. SMITH, *A practical commentary*, 134. The authors continue, «the extent of the power which the bishops possess was not defined by Christ; it is left to the Supreme Head of the Church to determine the government of the Church».

³⁰ Canon 334 §1: «Episcopi residentiales sunt ordinarii et immediati pastores in diocesis sibi commissis».

³¹ Canon 336 §1. «Observantiam legum ecclesiasticarum Episcopi urgeant; nec in iure communi dispensare possunt, nisi ad normam can. 91 §2: Advigilent ne abusus in ecclesiasticam disciplinam irrepant, praesertim circa administrationem Sacramentorum et Sacramentalium, cultum Dei et Sanctorum, praedicationem verbi Dei, sacras indulgentias, implementum piarum voluntatum; curentque ut puritas fidei ac morum in clero et populo conservetur, ut fidelibus, praecipue pueris ac rudibus, pabulum doc-

1.3.2 Other bishops

Canons 350-355 cover coadjutor and auxiliary bishops. Those assigned to these positions are not considered Ordinaries because they can only exercise the duties committed to them by the diocesan bishop. Even the coadjutor bishop, who enjoys the right of succession, can only do what he is allowed to by the diocesan bishop, unless the Apostolic See has provided otherwise (which would be contained in the apostolic letter) or if the diocesan bishop is incapacitated. It is only then that the Coadjutor would enjoy all the episcopal rights and duties³². As regards auxiliary bishops, nearly nothing is stated, except for when their office expires³³.

1.3.3 Vicar general

One important person not appearing on the above list is the Vicar General. Why is he excluded? Canon 2220 §2 states that unless he has a special mandate, the Vicar General does not have the power to inflict penalties³⁴. It is only if he also exercises the office of *officialis* or judge delegate that he would have this power. That is to say, if concurrent with his position as vicar general he is the *officialis* or a judge of the diocesan curia, he would have the power to not only to try cases but also to inflict penalties. However, according to can. 1573 §1, he normally is not to be judge of the diocesan curia³⁵. This limitation does not take away from the true jurisdiction he possesses³⁶.

trinae christinae praebeatur, ut in scholis puerorum ac iuvenum institutio secundum catholicae religionis principia tradatur».

³² Canon 351 §1. «Iura Coadiutoris dati personae Episcopi desumantur ex litteris apostolicis, quibus constituitur. §2. Nisi aliud in his litteris caveatur, Coadiutor qui datur Episcopo prorsus inhabili, habet Omnia iura ac officia episcopalia; ceteri tantum possunt quantum Episcopus eisdem commiserit».

³³ Canon 355 §2: «Cum Episcopi munere exspirat Auxiliaris officium, nisi aliud in litteris apostolicis caveatur».

³⁴ «Vicarius Generalis sine mandato speciali non habet potestatem infligendi poenas». «[...] idest non potest, ne valide quidem, poenas legi aut praecepto a se dato adnectere; nec sententia condemnatoria reum poenae a iure latae subiicere». M. CONTE A CORONATA, *Institutiones Iuris Canonici* V, 90, n. 1693.

³⁵ «Quilibet Episcopus tenetur officialem eligere cum potestate ordinaria iudicandi, a Vicario Generali distinctum, nisi parvitas dioecesis aut paucitas negotiorum sua-deat hoc officium ipsi Vicario Generali committi».

³⁶ Cf. T. BOUSCAREN – A. ELLIS, *Canon Law: A Text and Commentary*, 848.

1.3.4 Vicars and Prefects Apostolic

Canon 293 begins the section on Vicars and Prefects Apostolic. Simply put, they are in charge of territories which have not been erected into dioceses. This would often include mission territory. The Apostolic See enjoys exclusive competence in the appointments of vicars and prefects apostolic³⁷, who are not necessarily bishops. We are told in can. 294 that they enjoy the same rights and faculties as do residential bishops. Moreover, even those who «lack episcopal character» may impart all blessings that bishops are authorized to impart, consecrate certain sacred vessels, grant certain indulgences; and confer confirmation as well as certain minor orders³⁸.

1.3.5 Apostolic administrator

There are times when a see may fall vacant. It is within the purview of the Supreme Pontiff, «for grave and special causes», to appoint an apostolic administrator, either for a time or permanently, even if the see is not vacant (can. 312). In the case of vacancy (perhaps the bishop is impeded from governing for some reason), so long as the letter of appointment places no limits on the apostolic administrator's exercise of jurisdiction, he would enjoy the same power as the residential bishop would normally have, except in this case the residential bishop's jurisdiction would be suspended³⁹. Finally, an abbot or prelate *nullius* enjoys the same ordinary powers and obligations as does a residential bishop.

1.3.6 Limitations

According to Conte a Coronata, the *potestas* of the ordinary is limited to divine law – *iure divino* – and also to *iure communi Ecclesiae*

³⁷ Cf. can. 293 §1. «Territoria quae erecta non sunt in dioeceses reguntur per Vicarios aut Praefectos Apostolicos; qui omnes ab una Apostolica Sede nominantur».

³⁸ Cf. can. 294 §1. «Vicarii et Praefecti Apostolici iisdem iuribus et facultatibus in suo territorio gaudent, quae in propriis dioecesibus competunt Episcopis residentialibus, nisi quid Apostolica Sedes reservaverit. §2. Etiam ii qui characterе episcopali carent, possunt, intra sui territorii fines ac perdurante munere, omnes benedictiones Episcopis reservatas, una pontificali excepta, impertiri, calices, patenas et altaria portatilia cum sacris oleis ab Episcopo benedictis consecrare, indulgentias quinquaginta dierum concedere, confirmationem, primam tonsuram et ordines minores conferre ad normam cann. 782 §3; 957 §2».

³⁹ Cf. cann. 314; 316 §1.

unless an indult or privilege has been granted⁴⁰. This explanation is in line with the requirement placed by the legislator that a strict interpretation be the norm when penal laws are concerned. Canon 19 states «Leges quae poenam statuunt, aut liberum iurium exercitium coarctant, aut exceptionem a lege continent, strictae subsunt interpretationi». Therefore, if a legitimate doubt arises concerning whether a certain person falls into the category of «proper ordinary», he should be excluded.

1.4 Aliquid

The definition of *aliquid* provided by Lewis and Short is: «somebody or other; some person obscurely definite»⁴¹. Even though a dictionary may not define *aliquid* as «other legitimate superior», it is fair to translate the word in this way since it follows both «Romano Pontifici» and «proprio ordinario». If *aliquid* were translated simply as «someone else», the meaning would be rendered imprecise and inaccurate. One author interprets *aliquid* to include «all superiors who enjoy jurisdiction in the external forum»⁴².

The superior must be legitimate. This point is made by Vermeersch and Creusen who explain that when considering whether or not an offense rises to the level of a delict a few factors must be considered, including that any warning or precept must come from a legitimate superior. If this legitimate superior does not order or warn – *non praecipit* – one would not be guilty of persistent disobedience so far as the canon 2331 §1 is concerned⁴³. Indeed one could continually disobey a law which he is held to follow, but in the sense of what is stated in our canon, not be considered persistently disobedient to competent authority⁴⁴.

⁴⁰ Cf. M. CONTE A CORONATA, *Compendium Iuris Canonici* II, 456.

⁴¹ C. LEWIS – C. SHORT, *A Latin Dictionary*, 87-88.

⁴² F. DELLA ROCCA, *Manual of Canon Law*, 588. The author includes in a footnote on the same page that the superior must be competent and the command licit. Della Rocca adds that the crime of disobedience or *negata obedientia* «consists in such obstinate and pertinacious refusal to obey the commands of legitimate authority that it implies non-recognition or contempt of that authority».

⁴³ «Delicta. Inobedientia non est ubi Superior *legitime* non praecipit». A. VERMEERSCH – J. CREUSEN, *Epitome Iuris Canonici* III, 327.

⁴⁴ For example, priests are held to follow the rubrics in the Roman Missal. One who does not take the time to familiarize himself with the rubrics or is quite familiar with what the Church expects but thinks he knows better and does not follow the rubrics or follows them only selectively, would be disobedient; however, he would not

It can be safely concluded that the legislator foresaw that more than just ordinaries should be obeyed, which resulted in his widening of the ambit of legitimate superiors. Included in the category of religious are the supreme moderator and major superior and, in some cases, the ordinary of the place⁴⁵.

What about the pastor (*parochus*)? What authority would he have over his subjects, including parochial vicars and his parishioners? While a number of canons mention the responsibilities of a pastor, especially as regards the administration of sacraments, only one mentions his role as «corrector». Can. 467 §1 states that, in regards to the pastor «*suas oves cognoscere et errantes prudenter corrigere*» (to know his sheep and prudently correct the erring). The faithful are to be so admonished «*ut frequenter [...] ad suas paroeciales ecclesias accedant ibique divinis officiis intersint et verbum Dei audient*» (that frequently they attend their parochial churches and are present there for divine offices and that they hear the word of God) according to can. 467 §2. If the faithful fail to respond to their pastor's prudent correcting and admonishing, however, in most cases he would not, by his own authority, be able to invoke can. 2331 §1. An exception would be if the pastor were delegated by the local ordinary to act in his place, the pastor could be considered to be acting legitimately and with authority (in this case with delegated authority)⁴⁶.

1.5 Legitime praecipienti

«Legitime praecipienti» may be defined simply as «a command given by a competent Superior to an individual person»⁴⁷. The word appears as a

be punishable under this canon, unless he had been previously warned by competent authority.

⁴⁵ «Religiosi religionis clericalis exemptae proprium Ordinarium habent in Supremo Moderatore et in Superiore maiori et in certis materiis etiam Ordinarium loci; ceteri religiosi non exempti pro Ordinario proprio habent Ordinarium loci domus religiosae cui assignati sunt». M. CONTE A CORONATA, *Institutiones Iuris Canonici* IV, 374, n. 1928.

⁴⁶ «Notandum etiam est monitionem aut praeceptum, ut delictum habeatur, procedere debere ab Ordinario proprio, nec sufficere ad delictum de quo hic agimus praeceptum datum a proprio parochus, nisi forte parochus agat ex delegatione Ordinarii loci, ut si Ordinarius ei committat citare aliquem testem aut eius depositionem suspicere». M. CONTE A CORONATA, *Institutiones Iuris Canonici* IV, 375, n. 1928.

⁴⁷ E. ROELKER, *Precepts*, 3. The author notes that different authors define this term in various ways, but that the principal ideas in the text are agreed upon by all of them,

participial verb and comes from the root «*praecipio*», which literally means «to take or receive in advance», «to take or to seize beforehand», «to anticipate, to warn, to order, to teach or to instruct». Yet as a participle, it is defined as «to give rules or precepts to anyone, to advise, to admonish, to warn, to inform»⁴⁸, etc. Of course, «*praeceptum*» logically follows.

In the context of canon law, the term should be defined more precisely: «a command given by a legitimate ecclesiastical superior, by which there is accurately indicated what the subject ought to do or what he must avoid, together with a threat of penalty for transgression»⁴⁹. Regatillo lists as one requirement for persistent disobedience a «*praeceptum legitimum ratione materiae et legitime auctoritatis*»⁵⁰. The legitimacy of a precept is determined by the matter addressed and the authority that addressed it.

A precept may be issued as a preventive penal remedy, after admonitions or formal corrections have proven futile (can. 2310) or to inflict a penalty (can. 1933 §4), and a precept always flows «from the right of jurisdiction possessed by legitimately constituted authority»⁵¹. A precept may be used to threaten or inflict a penalty⁵², to correct or break the contumacy of a subject or as a deterrent⁵³.

1.5.1 Command

A precept contains a command, which is stronger than an exhortation. The command should be clear and not admit of ambiguity. It should lay out as succinctly as possible the expectation(s) as well as the consequences for failing to heed the command. While an exhortation or fatherly advice in fact might be more effective in a given situation and is not forbidden, it would not fulfill the requirements of the canon⁵⁴.

including Michiels, Cappello and Cicognani. M. Conte a Coronata insists that legitimacy demands that the matter be within the superior's *potestas*. M. CONTE A CORONATA, *Institutiones Iuris Canonici*, IV, 374, n. 1928.

⁴⁸ C. LEWIS – C. SHORT, *A Latin Dictionary*, 1413.

⁴⁹ H. QUINN, *The Particular Penal Precept*, 2. The author cites as the source M. CONTE A CORONATA, *Institutiones Iuris Canonici* IV, 261-262, n. 1816.

⁵⁰ E. REGATILLO, *Institutiones Iuris Canonici* II⁷, 586, n. 986.

⁵¹ H. QUINN, *The Particular Penal Precept*, 1.

⁵² Canons 2310; 1933 §4.

⁵³ H. QUINN, *The Particular Penal Precept*, 20.

⁵⁴ Cf. E. ROELKER, 4. For an example of an exhortative canon, cf. can. 1353, which exhorts priests and bishops to protect boys who show signs of having an ecclesiastical vocation from the «contagions of the world» and form them in piety. However-

An example of this command would be the precepts of the Church to which Catholics are held. For example, that of attending Mass «on feast days of precept»⁵⁵ and the precept requiring that Catholics over the age of reason receive Holy Communion at least once a year⁵⁶. These are not considered penal precepts, but rather an injunction or order⁵⁷ the Church places upon Catholics for the *salus animarum*.

1.5.2 Limits to content of the command

The superior may not command more than is allowed by law. He must be competent, by law, to issue a command. For example, a bishop cannot issue commands or precepts for the faithful in a diocese for which he is not responsible for the care of souls, nor may an archbishop issue commands upon those residing in a sufragan diocese, generally speaking. The bishop has authority over and responsibility for the portion of the People of God entrusted to him, and the legislator does not foresee him being involved in disciplinary matters of a diocese not his own.

This being said, there are no limits to commands that may be given by the pope, whose commands and prohibitions are presumed to be legitimate. One who finds a command too burdensome may offer an explanation, and if the papal response to the explanation appears to have been based upon insufficient information, the one affected may offer another response. However, if competent authority (either the pope himself or his delegate) upholds the decision, one is required to submit⁵⁸.

1.5.3 Who must follow the command

The one to whom the command is addressed must obey the demand laid out in the precept. The precept concerns only the person or group

er, the canon foresees no consequences to be imposed upon priests or bishops who fail to follow the exhortation.

⁵⁵ Canon 1248. «Festis de praecepto diebus Missa audienda est [...]».

⁵⁶ Canons 859-861.

⁵⁷ C. LEWIS – C. SHORT, *A Latin Dictionary*, 1412.

⁵⁸ H. AYRINHAC – P. LYDON, *Penal Legislation V*, 189. On page 60, the authors make a distinction between «appeal» and «recourse». An appeal is «the act of referring the sentence of a court to a higher court for review». A recourse, on the other hand, «implies that there has been no judicial sentence but rather some extra-judicial precept of the superior which the person affected thinks unjust».

of persons to whom it is addressed, depending upon how the precept is worded. This «relationship» is considered to be individual or personal.

For example, if the diocesan bishop places a precept upon a specific priest as a result of the priest's refusal to don an alb when he celebrates Mass, it applies only to that particular priest. Even if there are other priests in the diocese who do not wear an alb for Mass, the precept does not apply to them unless the one issuing the precept specifically states this in the precept. While of course all priests are to vest properly, only those could be considered contumacious in disobedience who are the subject of a precept and do not change their disobedient ways⁵⁹.

1.5.4 Promulgation

The precept must be promulgated in some manner, even if the formalities indicated in can. 24⁶⁰ are not strictly followed. The formalities are prescribed for a reason, and a superior might have difficulty in proving or substantiating that a precept was actually imposed if, for example, it were given only verbally. Formalities would include the issuing of a legitimate document and administering the precept before two witnesses⁶¹. Canon 24 does not define precisely what is meant by a legitimate document. However, if the language contained in the precept demonstrates that the bishop intends to use his authority to impose a precept and the document contains relevant information such as the place it was issued along with the date and bishop's signature, it can be considered legitimate and therefore would meet the requirements laid out in can. 24⁶².

1.5.5 Prevention

It is not necessary that a crime be committed before a superior threatens a penalty. A precept may exist as a mere threat initially, but eventually materialize in the future should the prohibition be ignored⁶³.

⁵⁹ Cf. E. ROELKER, *Precepts*, 5.

⁶⁰ «Praecepta, singulis data, eos quibus dantur, ubique urgent, sed iudicialiter urgeri nequeunt et cessant reolouto iure praecipientis, nisi per legitimum documentum aut coram duobus testibus imposita fuerint».

⁶¹ Cf. E. ROELKER, *Precepts*, 6. The maxim *quod non est in actis non est in mundo* is likewise appropriate to keep in mind.

⁶² Cf. S. WOYWOD – C. SMITH, *A Practical Commentary* I, 16-17.

⁶³ Cf. C. 5, *de sententia excommunicationis, suspensionis et interdicti* V, 11 in VI. Here Pope Innocent IV expresses opposition to the infliction of excommunication for a future act unless a reasonable cause warrants it.

1.5.6 Who may give precepts

In light of can. 24, every ecclesiastical legislator has the power to give precepts, including those with power of jurisdiction in the external forum. On this list one finds rectors of seminaries and some superiors of colleges. So long as one possesses canonical coercive power (the using of one's authority to compel someone to something he does not want to do), he may give precepts⁶⁴.

Canon 2220 §1 falls under the title «de superiore potestatem coactivam habente». The canon tells us that anyone with the power to impose laws or precepts can attach penalties to them. One with judicial power only may apply penalties according to the norm of law⁶⁵. Canon 2220 §2 explains that a vicar general does not have the power to inflict penalties unless he has been given a special mandate⁶⁶.

1.5.7 Other observations

Precepts are issued by superiors for the guidance of individuals or the community in a particular case and are temporary⁶⁷. Like a law, a precept is ordered towards the good of society. A precept corresponds to a specific person or persons and addresses a particular problem. A precept, therefore, affects not only the common good, but also the good of the individual⁶⁸. Its temporary nature is a distinguishing feature of a precept as compared to a law⁶⁹.

One author holds that when a precept is used as a penal remedy, it in fact is perpetual in nature⁷⁰. Yet one who imposes a preventive penal precept also has the authority to remove it, especially if the precept is no longer useful. For example if a cleric is ordered to abstain from all alcoholic beverages but in time has clearly grown in temperance, the

⁶⁴ Cf. A. CICOGNANI, *Canon Law*, 636. The author points out that Christ himself conceded the power for the Church to give precepts, based upon Mt 18,18, «Whatever you shall bind on earth, shall be bound also in heaven».

⁶⁵ «Qui pollent potestate leges ferendi vel praecepta imponendi, possunt quoque legi vel praecepto poenas adnectere; qui iudiciali tantum, possunt solummodo poenas, legitime statutas, ad normam iuris applicare».

⁶⁶ «Vicarius Generalis sine mandato speciali non habet potestatem infligendi poenas».

⁶⁷ Cf. A. CICOGNANI, *Canon Law*, 637.

⁶⁸ Cf. H. QUINN, *The Particular Penal Precept*, 26-27.

⁶⁹ Cf. S. WOYWOD – C. SMITH, *A Practical Commentary*, I, 16.

⁷⁰ Cf. M. CONTE A CORONATA, *Institutiones Iuris Canonici*, IV, 77.

Ordinary may wish to remove the precept, having determined it to be no longer necessary⁷¹.

1.6 Prohibenti

The word *prohibenti* (to hinder, restrain, forbid or prevent) likewise appears as a participle. In the dative form it can mean «to withhold from one». In its participle form it means either to forbid or prohibit a thing⁷².

What types of things might the Ordinary forbid? Most actions that are opposed to divine or ecclesiastical law or near occasions of the same may be forbidden. This would include occasions of grave sin, neglect of duties and imprudent preaching. A bishop could forbid one of his priests who has a drinking problem from frequenting places that serve alcoholic beverages or one with a gambling problem from visiting casinos⁷³. In general the bishop, using his authority for the good of the Church and the good of the priest or layperson, would not be restricted from applying penal precepts in many areas—liturgy, politics, the running of a parish or school and the like.

There are limits, however, to what the Ordinary may forbid. If the law itself specifies that something cannot be prohibited, the Ordinary is not free to ignore the law. Canon 2262 §1 lists what an excommunicated person may not do. However, §2 states that it is not prohibited for the faithful to pray privately for him (1°) or for priests to apply Mass for the excommunicated person, provided it is done privately and that scandal is avoided. An Ordinary, therefore, cannot legitimately forbid these mentioned activities. Canon 903 states that one who is unable to confess except through an interpreter is not prohibited from making use of an interpreter during confession. An Ordinary, then, may not prohibit such a one from confessing through an interpreter. Canon 973 §2 says that the bishop may not prohibit one who is ordained but refuses to receive higher orders from exercising the orders already received, unless there exists a canonical impediment or another grave cause. Nor

⁷¹ Cf. H. QUINN, *The Particular Penal Precept*, 29.

⁷² C. LEWIS – C. SHORT, *A Latin Dictionary*, 1461.

⁷³ Cf. H. AYRINHAC – P. LYDON, *Penal Legislation V*, 189 point out that there is a limit, as the Ordinary «may not forbid under censure an occasional act of quiet hunting unless there be special circumstances making it gravely wrong because of neglect of some serious duty, scandal, etc». The authors make reference to a decision in the matter by the S.C.C. on 11 June 1921.

may the bishop compel the deacon to receive a higher order. In normal circumstances, if the law does not prohibit something, neither should the Ordinary or a priest.

1.7 Pertinaciter

We consider now the adverb *pertinaciter* (pertinaciously, obstinately, stubbornly, firmly⁷⁴). For one to be pertinacious implies the giving of a warning by competent authority (concerning a legitimate matter) on at least one occasion which the person failed to heed⁷⁵. One cannot persist in disobedience if he has not been told of his punishable fault(s) and given at least one opportunity to mend his ways⁷⁶. Not just any – *quaelibet* – disobedience constitutes a delict, but rather pertinacious or contumacious disobedience, according to Conte a Coronata⁷⁷. «*Pertinaciter non oboedit qui, de absoluta voluntate Superioris satis monitus, non paret*»⁷⁸.

Before one can be considered pertinacious, some type of penal remedy is to be employed. Penal remedies provided in can. 2306 include admonition, correction, precept and vigilance⁷⁹. The admonition or correction may be done privately or publicly (administered in the presence

⁷⁴ D.P. SIMPSON, ed., *Cassell's Latin Dictionary*, 443.

⁷⁵ «Pertinacia, obstinata inobedientia, si repetito iusso quis non paret; vel monitus ut pareat adhuc inobedit; vel insolenter respondet: "nolo"». E. REGATILLO, *Institutiones Iuris Canonici* II⁷, 586, n. 986.

⁷⁶ One author holds «contumacy is not mere disobedience to authority, but a disobedience coupled with contempt of the imposed censure». Thus it is necessary that the accused have knowledge of the censure that will result if the disobedience continues. I. SWOBODA, *Ignorance*, 219. However, another author holds that «since this canon does not directly demand an admonition, it cannot be said with certainty that a penal precept is understood». E. ROELKER, *Precepts*, 181.

⁷⁷ «Ad delictum constituendum non sufficit quaelibet inobedientia, sed requiritur inobedientia *pertinax* seu inobedientia quae coniunctam habeat aliqualem contumaciam». M. CONTE A CORONATA, *Institutiones Iuris Canonici* IV, 375, n. 1928.

⁷⁸ A. VERMEERSCH – J. CREUSEN, *Epitome Iuris Canonici*, III, 307. The authors continue by making reference to the decree *Maxima Cura* (already mentioned in our earlier treatment of the fonts) which specifies that two warnings are to be given («post unam et alteram monitionem»).

⁷⁹ Canon 2306: «Remedia poenalia sunt:

- 1° Monitio
- 2° Correptio
- 3° Praeceptum
- 4° Vigilantia».

of a notary or two witnesses or even by means of a letter sent by certified mail)⁸⁰. A superior would usually invoke measures gradually and according to need⁸¹. If admonitions or corrections have proven fruitless or if there is little founded hope that they will be effective, a precept is to be given «in which there shall be accurately described what, on the part of the subject, is to be done or to be avoided, together with a threat of a penalty in the case of transgression»⁸².

The Code also allows for an Ordinary, either personally or by means of a delegate, to warn someone in the near occasion of committing a delict or who under suspicion of having committed one, an inquiry having been performed⁸³. Therefore, there must be a strong connection between a delict (in danger of being committed or having been committed) and a warning⁸⁴. The CIC 1917 foresees correction to be given if scandal or grave disturbance arises as a result of one's way of life⁸⁵.

1.8 Obtemperare and where it is found elsewhere in the 1917 CIC

Let us now examine a principal word, «*obtemperare*», or in this case, «*non obtemperant*». Some form of «*obtemperare*» is found only five times in the CIC. At least two authors, when commenting on can. 2331 §1, make no reference to the word, using instead the word «*inobedientia*» in place of «*obtemperare*». This choice would seem to indicate that the authors do not consider any slight difference in meaning between the two words in need of exploration⁸⁶.

⁸⁰ J. ABBO – J. HANNAN, *The Sacred Canons* II, 861.

⁸¹ Cf. E. ROELKER, *Precepts*, 194.

⁸² J. ABBO – J. HANNAN, *The Sacred Canons* II, 861.

⁸³ Canon 2307: «Eum qui versatur in proxima occasione delictum committendi vel in quem, ex inquisitione peracta, gravis suspicio cadit delicti commissi, Ordinarius per se vel per interpositam personam moneat».

⁸⁴ Cf. P. LOVE, *The Penal Remedies*, 114. The author points out that many authors commenting on the CIC 1917 are in agreement about when the warning may be given. Cf. F. WERNZ, *Ius Decretalium*, VI, 259, n. 254; A. VERMEERSCH – J. CREUSEN, *Epitome Iuris Canonici*, III, 307, 502; H. JONE, *Commentarium in Codicem Iuris Canonici*, III, 491; A. DE MEESTER, *Iuris Canonici et Iuris Canonico-Civilis Compendium*, 228, n. 1802; E. REGATILLO, *Institutiones Iuris Canonici* II⁷, 532, n. 958; G. COCCHI, *Commentarium in Codicem Iuris Canonici ad Usus Scholarum* VIII, 208, n. 122.

⁸⁵ Canon 2308.

⁸⁶ Cf. E. REGATILLO, *Institutiones Iuris Canonici* II⁷, 586, n. 986 and M. CONTE A. CORONATA, *Institutiones Iuris Canonici* IV, 374, n. 1928 a. The word *inobedientia*

«*Obtemperare*» may be translated «to obey», but there are other subtle meanings that could also be attributed to the word. Consider the etymology of «*ob-tempero*»: the verb «*temperare*» can mean abstain, control, check, hold, moderate, restrain, refrain, regulate or temper. «*Ob*» can mean «on account of, for, because of, in consideration of, toward, to, in return for, instead of or by reason of». «*Obtemperare*», then, can be translated «abide by, accede, accept, adhere, attend to, comply with, conform to, fall into line with, fulfill, submit to, take the true sense of the command, yield»⁸⁷. It is a bit clearer in Italian, where at least one dictionary makes a distinction, rendering «*ottemperare*», as conforming oneself to, or attending to, with conscious and respectful adhesion, to what constitutes a duty or obligation – to laws, to dispositions, to precepts or to desires⁸⁸.

One who does not yield to, comply with, fall into line with or abide by a command or prohibition is not obedient to the command or prohibition. Even though we will often use the translation «obey» for «*obtemperare*», it will be important to keep in mind the subtleties just presented, including that this preliminary study would seem to suggest that the object of one's yielding to or compliance with is the command or prohibition itself rather than the person issuing the command.

1.8.1 Canon 1360 §2

Canon 1360 §2 states «*Rectori Seminarii in propriis muneribus implendis obtemperare omnes debent*». All must obey the rector of the seminary in carrying out their proper duties. One author translates «*omnes debent obtemperare*» as «all must *yield to*»⁸⁹. One may not agree with what the rector decides, but in the end, he must yield to his authority. This «yielding» is less weighty or onerous than the obedi-

appears in the second paragraph of can. 2331 and the author defines it as «*pertinax resistentia praecepto aut prohibitioni legitimi Superioris legitime praecipientis*». Conte a Coronata makes no distinctions between the words, but rather analyzes both sections of can. 2331 as if the word *inobedientia* appeared in both.

⁸⁷ C. LEWIS – C. SHORT, *A Latin Dictionary*, 1246; D.P. SIMPSON, *Cassell's Latin Dictionary*, 405; L.F. STELTEN, *Dictionary of Ecclesiastical Latin*, 177.

⁸⁸ «Conformarsi, attenersi, con coscienza e rispettosa adesione, a quanto costituisce un dovere o un obbligo», per esempio «alle leggi, alle disposizioni, a un precetto o a un desiderio». <http://www.wordreference.com/definizioneottemperare> [accessed 22 November 2015].

⁸⁹ E.N. PETERS, ed., *The 1917 Code of Canon Law*, 458.

ence a cleric would owe his ordinary, having promised or vowed obedience at the time of ordination. While a cleric or layperson at times might do nothing more than simply yield to a decision or policy of their bishop, in general obedience is expected to go deeper than simple yielding, especially in regards to the obedience expected of clerics. Here we notice that the yielding to or conforming to is towards the rector himself and not towards a command or prohibition of the rector. The use of «*obtemperare*» in can. 1360 §2 seems to suggest that our prior preliminary conclusion (cf. section 1.8 immediately above) might have its limits, in that the legislator indicates the rector as the object of the obedience (yielding to or conforming to).

1.8.2 Canon 1761 §2

The word «*obtemperatum*» is found in Book IV, which addresses procedures. Here we find can. 1761, which corresponds to can. 1552 of the 1983 CIC. Canon 1761 §1 concerns witnesses whose names are proposed by one party or the other to give testimony. The parties are to provide the domicile of each proposed witness along with the positions or articles of argument upon which said witnesses are to be interrogated. Canon 1761 §2 then states, «*Si ne intra diem quidem peremptorium a iudice praestitutum, obtemperatum fuerit, postulatio deserta censetur*». That is to say «if, within a peremptory period established by the judge, [things] have passed without effect, the request is considered abandoned». The word «*obtemperatum*» cannot mean «obey» in this sentence. Rather, it is more fitting that the word be understood or translated as «to pass», or to translate «*obtemperatum fuerit*» as «have passed»⁹⁰.

1.8.3 Canon 1848

«*Obtemperaverit*» is found in Book IV, Title 11, Chapter 1, which contains canons concerning contumaciousness on the part of the petitioner or respondent. Canons 1842-1847 explain: that the judge may declare one contumacious if certain conditions are met; how to break the contumacy of a respondent; the allowed participation of one who has receded from contumacy and the benefit of *restitutio in integrum*

⁹⁰ C. LEWIS – C. SHORT, *A Latin Dictionary*, 1246 lists «pass, with mild force» as one option. Likewise, E.N. PETERS, ed., *The 1917 Code of Canon Law*, provides the same definition/translation. For an authentic interpretation of can. 1761 §1 made in 1929, see *CLD* I, 754.

that may be sought by a contumacious respondent. Canon 1848 then states, «*Regulis superius traditis etiam tum locus est cum reus, etsi primae citationi obtemperaverit, fit tamen postea, progressu iudicii, contumax*». In this case, «*obtemperaverit*» would be translated «he has cooperated or complied with» or «he will have cooperated/complied with» with the first citation, the word being declined as either perfect active subjunctive or future perfect active indicative. So here the cooperation or compliance is with the citation and not with the judge or other authority who issued the citation.

1.8.4 Canon 2181

The fourth canon containing a form of «*obtemperare*» is found in Book IV, Part III, Title XXXI, «*De modo procedendi contra clericos concubinos*». Canons 2176-2180 list the progressive approach the bishop is to employ when a cleric has a woman of doubtful character with him or if the cleric keeps company with such a woman. The ordinary should begin with a warning by means of a penal precept. If ineffective, he should impose suspension *a divinis*. The next step would involve depriving the cleric of a benefice and of his parish if he is a pastor. The cleric is also allowed to provide a defense, which the bishop along with two assessors is to consider. Canon 2181 states: «*Si ne eae quidem iudicentur legitimae, Ordinarius clerico rursus praecipiat ut intra congruum tempus mandato obtemperet; quo tempore inutiliter transacto, procedat ad normam can. 2177*». That is to say, if a disobedient and removable pastor does not present legitimate reasons or excuses for keeping company with a suspicious woman, the Ordinary is to order him to comply with the original mandate. *Obtemperet* is third person active subjunctive in the present tense, and the most suitable translation would be «comply with» the mandate. If the cleric does not comply, he is to suffer the consequences found in can. 2177, some of which are mentioned in the preceding paragraph. Here we note again that object of the pastor's compliance is not the Ordinary but rather the mandate issued by the Ordinary.

1.8.5 Brief summary

By means of review, we notice the word *obtemperare* translated or defined in various ways. The rector is to be obeyed or yielded to (can.

1360 §2). «*Obtemperare*» can mean a passage of time (can. 1761 §2)⁹¹. It can also mean to cooperate (can. 1848) or to comply with (can. 2181). In the context of can. 2331 §1, the focus of our study, the word necessarily carries the meaning «obey», especially when the opinion of experts is considered and an analogy with the second section of the canon is made. We conclude that the obedience required by the canon (by means of the word «*obtemperant*») is less weighty or onerous than a vow of obedience made by a religious but that this obedience (complying with, abiding by or adhering to a command) is necessary to keep order.

1.9 *Congruis poenis*

The word «*congruis*» is understood to mean «corresponding with», «suitable», or «fitting»⁹². «*Poenis*» is normally translated «penalty»⁹³. In other words, the punishment is to fit the crime. Conte a Coronata explains:

Poenā congrua ea est quae gravitati culpae correspondet. Gravitas autem culpae, in hac praesertim re, pendet magna ex parte a qualitate personae quae delictum committit. Licet enim certum sit, ut diximus, etiam laicos obligari ad obediendum Ordinario suo et Summo Pontifici legitime praecipientibus, tamen certo gravius obligantur clerici et religiosi quorum proinde inobedientia gravior gravioribus poenis est punienda⁹⁴.

1.9.1 Pre CIC 1917

Before the promulgation of the 1917 CIC, the generally accepted kinds of ecclesiastical punishments were divided into *forum internum* and *forum externum* categories. Those given in the internal forum (the tribunal of penance) were called penances («*poenitentiae*») rather than punishments («*poenae*»). Penances were received voluntarily by the

⁹¹ Note also that in can. 2181, the word «transacto» is rendered «the passage of time» while «obtemperat» is defined as «to comply».

⁹² «To coincide or correspond with a person or thing, in substance, in feeling, or in time, to be suited or adapted to, to agree with, accord, suit, fit» is one set of definitions found in C. LEWIS – C. SHORT, *A Latin Dictionary*, 420.

⁹³ «Indemnification, compensation, satisfaction, expiation, punishment, penalty». C. LEWIS – C. SHORT, *A Latin Dictionary*, 1390.

⁹⁴ M. CONTE A CORONATA, *Institutiones Iuris Canonici* IV, 377, n. 1931. The reader will notice that the notion of *congruis poenis* is not defined in a precise manner. While Conte a Coronata explains the factors that must be taken into consideration when attempting to determine a *congruis* penalty, he goes no further.

guilty party, while punishments were inflicted (even upon those not willing to accept them). In the internal forum penances were imposed for both crimes and sins; in the external forum, punishments were imposed only for external, or known, delicts that violated both divine and ecclesiastical law⁹⁵.

1.9.2 Definition of poena in the CIC 1917

Canon 2215 provides a basic understanding of penalty, which involves the privation of some good (temporal or spiritual benefit) and is inflicted by legitimate authority with the purpose of correcting an offender or punishing a delict⁹⁶. G. Michiels offers as a definition of «*poena*» «*aliquod malum passionis aut privationis a legitima auctoritate publica alicui delinquenti illatum propter delictum reapse commissum et ad aliquem finem directe indirecteve sociale ordinatum*»⁹⁷.

The same Pope Pius, on 5 December 1954, explained the harm done to society when one commits a crime and insisted that reparation would be in order:

[...] Considering the object in which the criminal act terminates, crime is an arrogant contempt for Authority, which demands the maintenance of order and a respect for what is right and what is good. Authority is the source, the custodian, the protector and the vindicator of order itself; and inasmuch as all human Authority is ultimately derived from God, every criminal act is a defiance of God Himself, of His supreme law and His sovereign Majesty [...]. The legally established community is also a part of the object affected by the criminal act, in so far as the crime endangers or disrupts the order established by the civil laws [...]. Part of the concept of the criminal act is the fact that the perpetrator of the act becomes deserving of punishment [...]. Punishment is the reaction demanded by law and justice against crime; they are like blow and counter-blow. The order of justice which is disrupted by the crime demands to be re-established and restored to its original equilibrium [...]. Punishment in its true sense can therefore have no other meaning or purpose than to return the transgressor to the path of duty which he has deserted⁹⁸.

⁹⁵ S.B. SMITH, *Elements of Ecclesiastical Law* III, 12, n. 1665.

⁹⁶ Canon 2215: «*Poena ecclesiastica est privatio alicuius boni ad delinquentis correctionem et delicti punitionem a legitima auctoritate inflictata*».

⁹⁷ G. MICHIELS, *De Delictis et Poenis* II, 13.

⁹⁸ PIUS XII, *Nuntii*, 5 December 1954, 62: «*Considerato nel suo termine, il fatto colpevole è un arrogante disprezzo dell'Autorità, che comanda di mantenere l'ordine*».

The above-mentioned distinctions carried over to the time of the CIC 1917 (and still exist today). A crime, which might involve the breaking of an ecclesiastical law, may be remitted in the internal forum, so long as the offense has not become public. In such a case, a penance would be given to the guilty party after he presented his sins to a confessor, asked for pardon, and accepted the penance given by the confessor. The Apostolic Penitentiary is competent to remit excommunications incurred by a penitent, so long as the matter is occult. However, if one is guilty of a grave crime which is known outside the internal forum, he is to be punished appropriately. Other dicasteries are competent for delicts that have become public⁹⁹.

Some punishments are considered remedies. In calling for the infliction of punishments the Church has in mind both the repentance and amendment of the offender and the deterrence of others from committing crimes¹⁰⁰. In can. 2216 the legislator calls for a delinquent to be punished with three different types of penalties: medicinal penalties or censures; vindictive penalties; and remedial penalties or penances¹⁰¹.

1.9.3 Vindictive punishments¹⁰²

Vindictive punishments¹⁰³, addressed specifically in cann. 2286-2305, have as their primary goal the atonement of, retribution for, and

del giusto e del buono, e che è la fonte, la custode, la tutrice e la vindice dell'ordine stesso. E poiché ogni umana Autorità non può finalmente derivare che da Dio, ogni fatto colpevole è una opposizione contro Dio stesso, il supremo diritto e la sua somma maestà [...]. Termine di questo fatto è anche la comunità di diritto pubblico, se ed in quanto esso mette in pericolo e viola l'ordine stabilito dalle leggi [...]. Col concetto del fatto colpevole è congiunto quello che il suo autore diviene meritevole di pena (*reatus poenae*) [...]. La pena è la reazione, richiesta dal diritto e dalla giustizia, alla colpa: sono come colpo e contraccolpo. L'ordine violato con l'atto colpevole esige reintegrazione e ristabilimento del turbato equilibrio [...]. La pena propriamente detta non può avere altro senso e scopo che [...] di ricondurre nuovamente nell'ordine del dovere il violatore, che ne era uscito [...]». English translation from *The Pope Speaks*, 19-20.

⁹⁹ Cf. PAUL VI, *m.p. Pastorale munus*, 5-12; PIUS XII, *m.p. Crebrae allatae*, 22 February 1949, 89-117.

¹⁰⁰ Cf. S.B. SMITH, *Elements of Ecclesiastical Law* III, 14, nn. 1668, 1670.

¹⁰¹ Canon 2216. «In Ecclesia delinquentes plectuntur: 1°. Poenis medicinalibus seu censuris; 2°. Poenis vindictivis; 3°. Remediis poenalibus et poenitentiis».

¹⁰² Medicinal penalties are discussed below in the section on censures.

consequent repression of the crime, in addition to providing a warning to others¹⁰⁴. An Ordinary may impose a public punishment upon a priest who includes in his homily offensive remarks which alienate many of the parishioners. The bishop might intend for the punishment to serve as a warning for other priests who may practice a lack of charity when preaching. Canon 2298 contains twelve vindictive penalties which apply only to clerics, the first of which is a prohibition of exercising ministry outside a certain church¹⁰⁵.

1.9.4 Remedial punishments and penances

Remedial punishments and penances (2306-2313) are to help remedy a situation and the person. In fact they are mentioned in *Sacra Haec*¹⁰⁶ and *Cum magnopere*¹⁰⁷, both listed as fonts to can. 2216. In 1880, *Sacra Haec* put in place penal remedies in order to «prevent and eliminate disturbances of the social order» by clerics¹⁰⁸. Penal remedies are not punishments. A reason for imposing them would often be to remedy the effects of penalties that are too harsh or simply inadequate. Penal remedies could be imposed upon clerics with the goal of prevention or of repressing or correcting an (impending) evil¹⁰⁹. The goal of eliminating disturbances in the social order is «so that the Church as a perfect society will be able to fulfill Her God-given purpose, the sanctification and salvation of mankind»¹¹⁰.

¹⁰³ Peters translates «*vindicativis*» as «vindicative». E.N PETERS, ed. *The 1917 Code of Canon Law*, 702, 730. Stelten renders the English translation «vindictive». L.F. STELTEN, *Dictionary of Ecclesiastical Latin*, 286; 327.

¹⁰⁴ The use of the term «warning» in this context is different from the warning foreseen by the legislator and more along the lines of the sending a message to others of what is considered unacceptable conduct.

¹⁰⁵ Canon 2298. «*Poenae vindicative quae clericis tantum applicantur, sunt: 1°. Prohibitio exercendi sacrum ministerium praeterquam in certa ecclesia*».

¹⁰⁶ SCER, instr. *Sacra Haec*, 11 June 1880, 1022-1025.

¹⁰⁷ SCPF, instr. *Cum magnopere*, 1883, 475-479 (n. 4900).

¹⁰⁸ SCER, instr. *Sacra Haec*. N. 1 states: «*Ordinario pastorale onus incumbit disciplinam correctionemque clericorum a se dependentium curandi, super eorumdem vitae rationem vigilando, remediisque utendo canonicis ad praecavendas apud eosdem et eliminandas ordinis perturbationes*».

¹⁰⁹ «*Haec vero remedia, alia praeventiva sunt, alia repressiva*». SCPF, instr. *Cum magnopere*, 475.

¹¹⁰ P. LOVE, *The penal remedies*, 31. The author provides a summary of the contents of *Sacra Haec* and the Council of Trent concerning penal remedies, defining them as «mild canonical remedies imposed by the Bishop upon persons subject to his authority, to prevent and eliminate disturbances of order within the society of the Church».

The pre CIC 1917 legislation concerning penal remedies tended towards moderation, preferring this approach to severity. Even though there are no shortage of examples in Church history that point to disciplinary canons that were harsh or severe in their approach and punishment, there were also efforts towards a moderate approach made by Pope Leo I, Pope Gregory I, St. John Chrysostom and more recently Cardinal Amleto Giovanni Cicognani¹¹¹.

1.9.5 Factors to consider

Note must be made about «equitable proportion» (*aequa proportio*) called for in can. 2218 §1. The legislator advises that, when applying penalties, many factors are to be taken into consideration, including imputability, scandal, harm, object and gravity of the law, age, knowledge and mental state of the delinquent and the dignity of the person offended by the delict. In addition, the author of the delict, his intended purpose, the place and time the delict was committed, whether one acted with passion or great fear and whether he repented of the delict or tried to prevent its evil effects all are to be weighed by the one imposing a penalty¹¹². We see that all the circumstances of the action should be carefully considered; those investigating the matter should take care to ask the right questions.

1.10 Censuris

Canon 2241 §1 explains that a censure is a penalty by which a delinquent and obstinate (contumacious) baptized person is deprived of spir-

¹¹¹ P. LOVE, *The penal remedies*, 36. Cicognani (1883-1973) taught Canon Law at the *Università del clero romano di Sant'Apollinare* from 1921-1932, during which time he also held different positions in the Congregation for Oriental Churches. He served as Apostolic Delegate to the United States from 1933-1959 and Secretary for the Congregation for Oriental Churches from 1959 until he was named Cardinal Secretary of State, a position he held from 1961-1969. He participated in the Second Vatican Council and contributed to the schema *De ecclesiis Orientalibus*.

¹¹² Canon 2218 §1. «In poenis decernendis servetur aequa proportio cum delicto, habita ratione imputabilitatis, scandali et damni; quare attendi debent non modo obiectum et gravitas legis, sed etiam aetas, scientia, institutio, sexus, conditio, status mentis delinquentis, dignitas personae quae delicto offenditur, aut quae delictum committit, finis intentus, locus et tempus quo delictum commissum est, num ex passionis impetu vel ob gravem metum delinquens egerit, num eum delicti poenituerit eiusdemque malos effectus evitare ipse studuerit, aliaque similia».

itual goods or temporal goods connected with the spiritual until the person discontinues his obstinate behavior and is absolved¹¹³. Canon 2241 §2 explains that a censure, especially a *latae sententiae* censure or one involving excommunication, is not to be inflicted without serious and great circumspection¹¹⁴.

A censure should not be imposed unless the delict committed is external, grave, consummated and joined with contumacy. True repentance along with appropriate satisfaction is required before one can be said to have withdrawn from contumacy¹¹⁵.

Canon 2255 explains that censures are excommunication, interdict or suspension. An excommunicated person is excluded from communion with the faithful and from everything connected with this communion, including reception of the sacraments (can. 2260 §1), in general from confecting and ministering – *conficere et ministrare* – the sacraments (can. 2261 §1), and is not eligible to participate in an indulgence (can. 2262 §1). There are other restrictions that apply mainly to clerics, but to discuss these is outside the scope of this work.

1.10.1 Interdict

Also in the category of censure is the interdict. One placed under interdict remains in the communion of the Church, but is prohibited from certain sacred things. A general interdict (placed over an entire territory only by the Apostolic See or by its mandate) and personal interdict are both foreseen as possibilities. It will be enough to indicate that those personally interdicted cannot celebrate the divine office, and are prohibited from «ministering, confecting and receiving sacraments and sacramentals»¹¹⁶.

¹¹³ «Censura est poena qua homo baptizatus, delinquens et contumax, quibusdam bonis spiritualibus vel spiritualibus adnexis privatur, donec, a contumacia recedens, absolvatur».

¹¹⁴ «Censurae, praesertim latae sententiae, maxime excommunicatione, ne infligantur, nisi sobrie et magna cum circumspectione».

¹¹⁵ Canon 2242 §1. «Censura punitur tantummodo delictum externum, grave, consummatum, cum contumacia coniunctum; potest autem ferri censura etiam in delinquentes ignotos». §3. «Contumaciam desiisse dicendum est, cum reum vere delicti commissi poenituerit et simul ipse congruam satisfactionem pro damnis et scandalo dederit aut saltem serio promiserit [...]».

¹¹⁶ Canon 2275. «Personaliter interdicti: 1. Nequeunt divina officia celebrare eisque, excepta praedicatione verbi Dei, assistere; passive assistentes non est necesse ut expellantur; sed ab assistentia activa, quae aliquam secumferat participationem in di-

1.10.2 Suspension

Suspension «is a censure by which a cleric is prohibited from office or benefice or both». According to can. 2279, one can be suspended from office (§1); from jurisdiction (§2, 1°); from divine things (§2, 2° states that one suspended in this way is restricted «from every act of the power of orders, whether he has obtained it from ordination or through privilege»); from orders (§2, 3°); from sacred orders or some or all of their exercise (§2, 4°, 5°); from a defined ministry (e.g. hearing confessions) (§2, 7°) and others, as explained in can. 2279.

Since can. 2331 §1 allows for a censure to be inflicted upon a contumaciously disobedient member of the faithful, we can conclude that the penal remedies found in cann. 2306 (cf. footnote 79) to 2311 and the penances foreseen in can. 2312 and specifically listed in can. 2313 §1 may be inflicted by the Ordinary.

Punishments that are corrective in nature are understood to be medicinal and not merely punitive. A censure is considered correctional and therefore more focused on the repentance and amendment of the offender than with deterring others from committing crimes¹¹⁷.

1.10.3 Imposition of a censure is not mandatory

We notice that the word *censuris* is followed by *non exclusis*. So we therefore keep in mind that the legislator allows that a just penalty not exclude the declaration of a censure; this would be at the judgment of competent authority (the responsible superior)¹¹⁸.

1.11 Pro gravitate culpae

«According to the gravity of the fault» is the literal translation of «*pro gravitate culpae*». Ecclesiastical authority sometimes must make a judgment in penal matters. «*Pro gravitate culpae*» is found in many canons in the 1917 CIC, namely: concerning judges who can be punished for various reasons «*pro gravitate culpae*» (can. 1625 §§1, 2); concerning punishment for non-resident clerics «*pro gravitate culpae*»

vinis officiis celebrandis, repellantur interdicti post latam sententiam condemnationis vel declaratoriam, aut alioquin notorie interdicti. 2. Prohibentur Sacramenta et Sacramentalia ministrare, conficere et recipere, ad normam cann. 2260 §1; 2261».

¹¹⁷ S.B. SMITH, *Elements of Ecclesiastical Law* III, 14, n. 1670.

¹¹⁸ «*Censuris non exclusis*, scilicet: ad has quoque recurrere potest auctoritas». A. BLAT, *De delictis et poenis*, 222.

(can. 2170); concerning punishment for a pastor who is negligent in fulfilling his duties (cann. 2183, 2184); concerning the role of bishops in administering penalties (entreating bishops first to reprove, entreat and rebuke those subject to them in all kindness and patience) «*pro gravitate culpae*» (can. 2214); concerning simulation of the Mass or hearing of confessions by one not a priest (can. 2322, 1°) or usurping a sacerdotal responsibility (can. 2322, 2°); concerning the fulfillment of Mass requests (can. 2324); concerning violators of churches or cemeteries «*pro gravitate delictis*» (can. 2329); concerning a pastor who incites a crowd or stirs up the people due to his sermons or writings (can. 2337); concerning a layman who drags before a lay judge one enjoying the privilege of the forum, he is to be punished with an appropriate penalty *pro gravitate culpae* (can. 2341); concerning one who violates a cloister of nuns (can. 2342, 1°), gives injury to the Roman Pontiff, cardinal, etc. (can. 2344) is to be punished «*pro gravitate culpae*»; concerning the carrying off of an unwilling woman with the intent to marry her by force or fraud (can. 2353); concerning a cleric responsible for certain defined grave delicts, he shall be punished by an ecclesiastical tribunal (can. 2354 §2): all are subject to a penalty «*pro gravitate culpae*»¹¹⁹.

Many of the above-mentioned canons include determinate punishments for specified serious crimes while allowing leeway for other crimes that, while still serious in nature, are less grave in comparison. Indeed a crime committed by a layman could be treated with less severity than the same crime committed by a cleric. For example, a layman who subjects a cardinal or other high official to a secular court for matters pertaining to their duties would be excommunicated, with remission reserved to the Holy See. However, if layman were to treat in a similar manner a cleric who enjoys the privilege of the forum¹²⁰, the layman would only receive an appropriate penalty «*pro gravitate culpae*», according to can. 2241.

¹¹⁹ There are other canons containing the phrase *pro gravitate culpae*, including: 2358, 2361, 2364, 2380, 2383, 2385, 2386, 2391 §2, 2394, 1°, 2404, 2408, 2411 §2 and 2412.

¹²⁰ The «*privilegium fori*» is a privilege whereby clergy are not permitted to be tried before a lay judge (civil magistrate) for crimes but could only be tried before an ecclesiastical court. Moreover, it was for the Holy See to determine whether Cardinals, major officials of the Roman Curia and some others could be summoned before a lay judge in a particular matter (can. 120 §§1, 2).

In summary, we see that the legislator had in mind various levels of punishment depending upon the gravity of the crime or upon whom it was committed¹²¹. In general, punishments imposed upon laypeople were less harsh than those imposed upon clerics even if they both committed the same crime.

1.12 Puniantur

We consider now the word «*puniantur*», or «are to be punished». The consequence for those who do not obey a command meeting the above-mentioned requirements is some type of punishment. «*Puniantur*», the singular form, appears twenty times in the CIC 1917 while «*puniantur*» is found thirteen canons, including can. 2331, 1°. Its meaning in this context is straightforward: a penalty is to be inflicted upon one culpable of a crime. The notion of punishment can be traced back to the second and third chapters of Genesis when our first parents were punished for disobeying God's command.

1.13 *Need for a warning*

By definition, one's behavior cannot be classified as contumacious nor can he be considered persistently disobedient unless he has been warned at least once. So it is not surprising that numerous authors commenting on the subject of penal law point out the usual expectation that a warning be given before a penalty is applied for stubborn disobedience, or at least that all reasonable means of correction are attempted before the imposition of a precept¹²².

The requirement for a canonical warning can be found elsewhere in the CIC. According to can. 2242 §2¹²³, a warning must be given before

¹²¹ P. BLAT, *De Delictis et Poenis*, 222 prefers to examine the words *pro gravitate culpae* with the word *puniatur*. «Poena indeterminata sed verbis praeceptivis enuntiata».

¹²² Cf. E. ROELKER, *Precepts*, 196. The author recognizes that often it is necessary to impose an order on a person in order for any measurable improvement to result, «but there are many occasions when even a warning will suffice to obtain reform. Hence, it is entirely improper for a Superior to proceed to the imposition of a precept with a threat of punishment before he has made an effort to use milder forms of correction. The judgment, however, is his own. If he proceeds immediately to the imposition of a precept, there is no doubt that his command must be obeyed».

¹²³ «Si agatur de censuris ferendae sententiae, contumax est qui, no obstantibus monitionibus de quibus in can. 2233 §2, a delicto non desistit vel patrati delicti poenitentiam cum debita damnorum et scandalii reparatione agere detrectat [...]».

one can be considered contumacious. Canon 2233 §2¹²⁴, which contains prerequisites for the infliction of a *ferendae sententiae* censure, is referred to in can. 2242 §2. The warning must be more than simply a general threat of punishment; it must at least include that a censure will be inflicted if the warning is disregarded. The superior would do well to specify the exact censure that will be inflicted if the person violates the command or prohibition¹²⁵.

1.13.1 Verbal

Even though the CIC is silent concerning fatherly warnings, a superior may give a warning in *forma paterna*, or as a father would give to his son or mother to her daughter. There would often be no written record that such a warning was ever given. The warning, classified as a penal remedy in can. 2306, 1°, would still be considered canonical (useful, recognized or official) despite the fact that it was not put in writing¹²⁶. That is to say, a verbal or paternal warning could have the same effect as a written warning, at least according to certain authors, including A. Vermeersch and J. Creusen. Others might object that a paternal admonition does not carry the same weight as a warning.

1.13.2 Warnings and corrections elsewhere in the CIC

In the section covering religious are two canons requiring that warnings be given before a religious may be dismissed. Canon 657 speaks of «repetitis monitionibus» while can. 660 requires two warnings, one for each of the first two delicts and the minimum amount of time «saltem trium dierum integrum spatium» that must pass between the first and second warning.

The CIC 1917 contains canons specifically relating to the correction of the accused that are not found in the current Code. Canons 1947-1953 speak of when correction shall, may or may not be given and also the limit to the number of times it may be given to the same person.

¹²⁴ «Licet id legitime constet, si agatur de infligenda censura, reus reprehendatur ac moneatur ut a contumacia recedat ad normam can. 2242 §3, dato, si prudenti eiusdem iudicis vel Superioris arbitrio casus id ferat, congruo ad resipiscentiam tempore; contumacia persistente, censura infligi potest».

¹²⁵ I. SWOBODA, *Ignorance*, 218. Cf. M. CONTE A CORONATA, *Institutiones Iuris Canonici* IV, 150.

¹²⁶ A. VERMEERSCH – J. CREUSEN, *Epitome Iuris Canonici*, III, 308, n. 503.

Canon 1949 allows only two corrections to be given before a criminal trial is instructed or continued. We notice a gradual or progressive approach, which would seem to indicate the hopefulness of the legislator that the guilty party would respond to the correction, which could include a penance or pious work, by mending his ways. If he does not change but rather remains contumacious or pertinacious, can. 1949 §2 foresees a trial in the matter¹²⁷.

Canon 2143, under the title «On the matter of proceeding in resolving certain matters or in applying penal sanctions», lists the option of giving the offender a verbal or written warning. A verbal warning is to be given in the presence of the chancellor or other curial official or else in front of two witnesses. A written warning not imposed in person is to be sent to the intended recipient using certified mail, return receipt requested or by another way deemed to be safe, in accordance with the norm of can. 1719¹²⁸.

1.13.3 Some exceptions

The legislator was aware of the likelihood that situations unforeseen in the CIC might occur. We see this in can. 2222 §1, which admits that although some laws do not have a sanction attached to them, the legitimate superior may still inflict a just penalty due to scandal or the gravity of the transgression. This may be done even without a warning or threat of penalty. However, if there is no sign of scandal or the transgression was not especially grave, one may not be punished unless he was first warned¹²⁹.

Canon 2222 §2 also shows that the good of the Church sometimes must take priority over individual rights. The canon states that even if it is only probable that a delict has been committed or if a penalty for a certainly committed delict is now prescribed, the superior is not to

¹²⁷ Cf. M. CONTE A CORONOTA, *Institutiones Iuris Canonici* III, 457, n. 1467.

¹²⁸ Canon 1719. «Si ob distantiam vel aliam causam difficulter per cursorem tradi possit reo convento scheda citatoria, poterit iussu iudicis transmitti per tabellarios publicos, dummodo commendata et cum syngrapha receptionis, vel alio modo qui secundum locorum leges et conditiones tutissimus sit».

¹²⁹ «Licet lex nullam sanctionem appositam habeat, legitimus tamen Superior potest illius transgressionem, etiam sine praevia poenae comminatione, aliqua iusta poena punire, si scandalum forte datum aut specialis transgressionis gravitas id ferat; secus reus puniri nequit, nisi prius monitus fuerit cum comminatione poenae latae vel ferendae sententiae in casu transgressionis, et nihilominus legem violaverit».

promote a cleric if he is unsure of the man's suitability. The cleric may be prohibited from the exercise of ministry and even removed from office. The canon does not regard such measures as a penalty¹³⁰.

Another exception includes the CIC's call for automatic punishment in response to the gravity of some delicts. For example, the CIC foresees *ipso facto* or *latae sententiae* excommunication for the delicts of heresy, schism and apostasy (can. 2314 §1, 1°), throwing away of the sacred species (can. 2320), absolution of an accomplice *in peccato turpi* (can. 2367 §1), violation of the sacramental seal of confession (can. 2369 §1) and others. Such is not the case, however, with can. 2331 §1.

1.14 Imputability

Having considered the meanings, context and applicability of the substantial words found in can. 2331 §1, we now briefly consider the elements that must be present in order for a crime to be imputed, or «to be brought into reckoning or entered into account»¹³¹, to the accused, expressed in cann. 2199-2211. Canon 2195 §1, the introductory canon of Book V, *De delictis et poenis*, lists three essential elements, comprising the objective element, the juridical element and the subjective element.

1.14.1 Objective element

The objective element consists of the concrete or external violation of the law¹³², without which there would be no possibility of imposing a penalty. The safeguarding of the social order and pre-

¹³⁰ Canon 2222 §2. «Pariter idem legitimus Superior, licet probabile tantum sit delictum fuisse commissum aut delicti certe commissi poenalis actio praescripta sit, non solum ius, sed etiam officium habet non promovendi clericum de cuius idoneitate non constat, et, ad scandalum evitandum, prohibendi clerico exercitium sacri ministerii aut etiam eundem ab officio, ad normam iuris, amovendi; quae omnia in casu non habent rationem poenae».

¹³¹ Cf. E. FORCELLINI, *Lexicon Totius Latinitatis*, 1864 (under the word «imputo»). The word «impute» can have various, though similar, meanings, including, «assigned to the account of», «open to accusation or censure», «blameworthy», «culpable», «chargeable with fault». Furthermore, it can be defined as «the action of attributing something, usually a fault, crime, etc., to a person; the fact of being charged with a crime, fault, etc.». J.A. SIMPSON – E.S.C. WEINER, *The Oxford English Dictionary*², 758.

¹³² «externa legis violation».

venting disturbance is key in the mind of the legislator. It is when prevention has been less than successful that penal laws «seek to reinstate and restore the social order»¹³³. In the case of can. 2331 §1, if the crime is known by the bishop or other superior – and if after a further investigation is undertaken (if warranted) the crime is deemed grave enough to warrant further action – the first step is the giving of a warning. If the delict is committed again, that is to say, if there is another external violation of the law or precept, the objective element would be considered to be fulfilled and the delict punishable in the juridical forum.

1.14.2 Juridic element

One can be found juridically imputable for a crime when his actions flow from a free and deliberate intention (*dolus*) or when he is at fault (*culpa*). One not found juridically imputable is not subject to canonical penalties¹³⁴. A sinful or immoral act is not always juridically imputable to a person. One who has committed a crime not juridically imputable to him may resolve the moral consequences of the crime in the internal forum (by making a good sacramental confession).

1.14.3 Subjective element

Finally, the subjective element is imputability, which «denotes a relationship between an agent and his act»¹³⁵. A crime has to be attributable to the accused person. There could be attenuating factors that reduce or eliminate imputability all together. I. Swoboda holds that, for formal *dolus* or criminal intent (can. 2200 §1), the delinquent must not only have knowledge of law but also have a deliberate intent to violate it. In other words, he must be aware that the actions in which he is about to engage are envisioned by the law as a violation¹³⁶. For quasi *dolus*, at the time the criminal action is either being contemplated or at the time the crime is being committed the delinquent must at least be aware that the action is against the law.

¹³³ I. SWOBODA, *Ignorance*, 82.

¹³⁴ «Quorum igitur nos sumus domini, eorum principia extrinsecus non requiramus [...] sed agnoscamus ea, que proprie nostra sunt». c. 6, C. XV, q. 1 as found in I. SWOBODA, *Ignorance*, 86.

¹³⁵ I. SWOBODA, *Ignorance*, 87.

¹³⁶ I. SWOBODA, *Ignorance*, 91.

1.14.4 Ignorance

At times, one might avoid imputability due to his ignorance that a certain action or inaction is a punishable crime. We recall that can. 2331 §1 states that for a just penalty to be applied licitly, contumacious or pertinacious behavior on the part of the accused is necessary. For behavior to be considered contumacious or pertinacious, a warning must be given, leaving no doubt in the mind of the accused that his actions are not only wrong, but that if he continues to act in a similar manner, a just penalty will be applied. It would seem difficult, then, for one to claim ignorance after having been warned.

1.14.5 Other considerations

In accord with can. 19, laws that establish a penalty are subject to strict interpretation¹³⁷. Since the canon foresees a corresponding penalty for one who displays contumacious behavior, in cases of doubt, care must be taken to avoid an overly wide interpretation. For any law establishing a penalty, whether it includes a vindicative or medicinal penalty, the canon establishes that such a law is to be strictly interpreted¹³⁸. A penalty is to be applied «only to matters which are clearly included in the text»¹³⁹. Included would be atrocious crimes. Two regulations of the law include «odia restringi convenit» and «in poenis benignior est interpretatio facienda»¹⁴⁰.

1.15 Interpretation

Canon 1933 §4 allows for penances and penal remedies to be imposed by extrajudicial precept provided the delict has certainly been committed. When in doubt, the bishop can initiate an investigation or may delegate the duty to one who is competent to carry it out. He is to follow the norms of can. 1946 §2, which lists various scenarios. If the accusation or suspicion lacks foundation, it is to be archived (1°). If there are indications of a crime but not sufficient evidence to initiate criminal action, the case is to be archived but the accused is to be moni-

¹³⁷ «Leges quae poenam statuunt, aut liberum iurium exercitium coarctant, aut exceptionem a lege continent, strictae subsunt interpretationi».

¹³⁸ G. MICHIELS, *Normae Generales Juris Canonici* I, 572.

¹³⁹ J. ABBO – J. HANNAN, *The Sacred Canons*, 39.

¹⁴⁰ J. ABBO – J. HANNAN, *The Sacred Canons*, 39.

tored (2°). If there is sufficient evidence to proceed, this is to happen in accordance with cann. 1947-1959. If the accused confesses having committed the delict, the Ordinary may call for judicial correction, including admonition or a prescribed penance or pious works (cann. 1947-1953), or the Ordinary may order a criminal process to be instructed (cann. 1954-1959).

1.16 *Summary*

We will close this section with some observations concerning can. 2331 §1, including:

1. That, in general, the legislator foresees the canon to be applicable to any baptized Catholic over the age of reason, though in practice it would apply more to clerics and religious;
2. That competent authority is limited to the Roman Pontiff (though decrees and promulgations by certain dicasteries of the Roman Curia carry some weight), one's proper ordinary or another legitimate superior;
3. That the precept or prohibition must be legitimate and may be given as a preventive measure;
4. That the penalty for disobedience is to correspond to the crime committed. The gravity of the offense is to be considered;
5. That persistent or contumacious behavior is what is punishable under this canon;
6. That competent authority must give a warning to an offender or one in the danger of offending or else the person is not punishable under this canon;
7. That the verb «*obtemperare*», used rarely in the CIC, is more accurately translated as «yielding to» or «complying with», even if it often appears as «obey» in English translations.

2. Revision process: from can. 2331 §1 to can. 1371, 2°

In the first five sessions in which the revision of the *de Iure Poenale* section of the 1917 CIC was discussed,¹⁴¹ only one relator commented

¹⁴¹ These sessions were held between November 1966 and December 1967, and summaries can be found in the 2012 and 2013 volumes of *Communicationes*. Cf. PCCICR, «Coetus Studii “De Iure Poenali” Sessio I», 28-30 November 1966, *Communicationes* 44 (2012) 255-264; ID.; «Coetus Studii “De Iure Poenali” Sessio II», 9-

on the text of can. 2331 §1. He stated that disobedience to legitimate authority, including the Supreme Pontiff (and dicasteries of the Roman Curia) or to one's proper ordinary «is a problem at least in North America, if not everywhere in the world, and disturbs today's Church»¹⁴². Though he did not list specific examples, he seemed to be aware of what he considers instances of disobedience.

This relator realized the need to respect the dignity of the human person, properly understood and in line with the teachings of the Second Vatican Council, while pointing out that this does not mean that legitimate authority should become weakened or disappear:

Mihi proinde nullo modo videtur suadendum ut tale problema legibus particularibus vel praeceptis personalibus apud singulas Ecclesias particulares relinquantur. De hac re, sine ullo dubio (saltem ut mihi videtur) in lege universali novi Codicis provideri debet. Iura personalia et dignitas personae humanae certe luce Concilii Vaticani Secundi agnoscenda sunt, sed non ideo exaltanda ut omne legitimae auctoritatis exercitium in Ecclesia visibili evanescat¹⁴³.

The same relator, holding it necessary to retain the substance of this canon, proposed the following well thought out and precise text:

Qui Romano Pontifici, per se vel per alios, vel proprio Ordinario aliquid legitime praecipienti vel prohibenti pertinaciter non obtemperant, post monitiones inutiliter peractas, congruis sanctionibus poenalibus, censuris non exclusis, si casus ferat, pro gravitate inobedientiae puniantur; qui, si sint clerici, etiam provisionibus canonis 37 §1, n. 4 vel n. 6 puniri possunt¹⁴⁴.

The relator began by clarifying that one is to be obedient to legitimate precepts and prohibitions of the Roman Pontiff, including those

13 January 1967, *Communicationes* 44 (2012) 548-560; ID., Coetus Studii "De Iure Poenali" Sessio IIa», 9-13 January 1967, *Communicationes* 44 (2012) 567-591; ID., «Coetus Studii "De Iure Poenali" Sessio III», 29 May-3 June 1967, *Communicationes* 45 (2013) 165-238; ID., «Coetus Studii "De Iure Poenali" Sessio IV», 4-7 December 1967, *Communicationes* 45 (2013) 484-547.

¹⁴² PCCICR, *Acta et Documenta Coetus Studii «de iure poenalis» II*, Section B, 25. «Inobedientia erga legitimam auctoritatem vel Summi Pontificis (per se vel per Dicasteria agentis) vel Ordinarii proprii est problema quod saltem in Statibus Americae Septentrionalis, si non ubique terrarum, Ecclesiam hodiernam turbat».

¹⁴³ PCCICR, *Acta et Documenta Coetus Studii «de iure poenalis» II*, «Titulus III. De delictis contra auctoritates Ecclesiasticas et Ecclesiae libertatem», Section B, 25.

¹⁴⁴ PCCICR, *Acta et Documenta Coetus Studii «de iure poenalis» II*, Section B, 25.

precepts and prohibitions imposed by others (i.e. the Roman Curia) on his behalf. The relator also clarified that the canon mentions warnings (rather than only one warning) that were given but not heeded. He allowed for a gradation of penalties depending upon various factors, including whether the offender is a cleric. What at the time was listed as can. 37 provides specific penalties or sanctions to be imposed upon an offender¹⁴⁵. The inclusion of possible punishments that may be imposed upon a guilty cleric would assist the superior to impose «congruis sanctionibus poenalibus».

By including specific punishments upon clerics who are persistently disobedient, the canon consequently left no doubt that it is applicable to laypeople as well. At the same time the proposed text was also more restrictive than the text of the canon as it appears in the CIC 1983 as it 1) required that more than one warning be given and 2) concerned the obeying of a precept or prohibition issued by the Roman Pontiff, Apostolic See or proper ordinary. The current can. 1371, 2° widens the scope of competent authority with the inclusion of the category of «superior».

A second consultor opined that the inclusion of many delicts contained in the CIC 1917 is no longer necessary. However, he noted a few omissions in the schema, including can. 2331. The consultor commented, ending with a question:

Qui pertinaciter oboedientiam Romano Pontifici vel proprio Ordinario legitime praeipienti vel prohibenti denegant. Praeceptum poenale utique in casu adhiberi poterit, sed delictum potius ad ius universale quam ad peculiare circumstantias praecepto tuendas pertinent. Puniter enim qui subditos provocat (can. 80)¹⁴⁶, nonne et qui oboedientiam debitam ultro detrectat puniendus est?¹⁴⁷

¹⁴⁵ Canon 37 §1: «Praeter alias, quas forte lex constituerit, sunt poenae expiatoriae: 4° privatio potestatis, officii, muneris, iuris, privilegii, facultatis, gratiae, tituli, insignis, etiam mere honorifici; [...] 6° prohibitio ea exercendi, quae in n. 4 recensentur, vel prohibitio ea in certo loco vel extra certum locum exercendi». PCCICR, *Acta et Documenta Coetus Studii* «de iure poenalis», «Alterum schema generale De delictis et poenis (exceptis canonibus de poenis in singula delicta) secundum emendationes probatas a consultoribus in sess. dd. 4-8 Mart. MCMLXVIII», Section G, 9-10.

¹⁴⁶ Canon 80. «Qui publico scripto vel concione simulantes vel odia adversus actum quemlibet Sedis Apostolicae vel proprii Ordinarii excitaverit vel subditos ad inoboedientiam in eos provocaverit, interdicto vel aliis congruis poenis puniri potest».

¹⁴⁷ PCCICR, *Acta et Documenta Coetus Studii* «de iure poenalis» II, «Praevium canonum schema De singulis delictis», Section B, 3. There are a few changes made by hand and in blue ink; perhaps these are notes of one of the consultors.

The final sentence seems to indicate that the relator detected an inconsistency. Canon 80 calls for punishment to be imposed upon one who provokes his subjects to be disobedient. The relator then rhetorically asked whether one who refuses to be obedient in such a scenario should also be punished.

2.1 *First drafts of what is now can. 1371*

We now consider the early drafts leading up to can. 1371. Most of these have not hitherto been made public.

2.1.1 1969 draft

The first draft of our canon is listed as can. 76 and dated 8 April 1969, General Schema VII. It reads thus:

Iusta poena puniri potest:

1° qui, praeter casum de quo in can. 72 §1, doctrinam a Romano Pontifice vel a Concilio oecumenico traditam impugnatur vel damnatum docet, et post Apostolicae Sedis vel ordinarii monitum (vel: et ab Apostolica Sede vel ab ordinario admonitus) non retractat;

2° qui aliter Sedi Apostolicae vel Ordinario legitime praecipienti vel prohibenti non obtemperat, et post monitum in inobedientia persistat¹⁴⁸.

Recalling that the consultors and others did not have the benefit of computers, it is to be noted that the word «*persistat*» (the last word in n. 2) may have been «*persistit*». Both letters appear, one over the other. The naked eye cannot discern whether the *i* is over the *a* or vice versa. «*Persistat*» is declined as third person singular, active subjunctive mood. «*Persistit*» is in the third person singular, present active indicative mood. Since «*obtemperat*» is also in the third person singular, present active indicative mood, it would seem more grammatically consistent for «*persistit*» to be used. Though «*persistat*» appears in the next successive three drafts, «*persistit*» is found can. 1371, 2° of the CIC 1983¹⁴⁹. The final word in n. 1° re-

¹⁴⁸ PCCICR, *Acta et Documenta Coetus Studii «de iure poenalis»* II, Section D, 3. The title is the same for the first three drafts of this canon: «*De delictis contra Ecclesiasticas auctoritates et Ecclesiae libertatem*».

¹⁴⁹ One Latin scholar, who concludes that «*persistit*» was probably the way the word was intended to appear in 1969, holds that there is likely a plausible explanation why the one responsible for typing the text might have written «*persistat*». «*Persistat*

mains the same throughout: «retractat», which is governed by «puniri potest». It remains in the present active indicative the entire time and is not affected by the change in the mood of the verb at the beginning of the canon.

This version of the draft begins «iusta poena puniri potest». «Potest» is in the indicative mood. The final draft begins, «iusta poena puniatur». «Puniatur» is in the subjunctive mood. Therefore, in the first three drafts, an indicative mood verb («potest») correlates with a subjunctive mood verb («persistat»). In the final draft, a verb in the subjunctive mood («puniatur») correlates with verb in the indicative mood («persistit»). The small change to the last word in can. 1371, 2° was made in conjunction with the modification of the introduction.

This 1969 text gives the ordinary the right and power to punish. It seems to envision a future where such punishments will be rare and not needed; still, punishments are provided for should they be necessary in exceptional cases.

Consistent throughout the revisions is the fact that, beyond heretics, schismatics and apostates (can. 72 §1), the canon intends to address other offenses against doctrine as well. Thus, the inclusion of the word «praeter» makes a provision for other penalties besides «*latae sententiae* excommunication» already foreseen for formal apostasy, heresy and schism.

occurs in a relative clause that acts like a general condition (since legal texts speak in the universal, not in the particular). In conditional sentences, however, general conditions usually employ the subjunctive: the writer is not telling what happened, but discussing what to do in eventualities, contingent cases considered abstractly. However, that is not what a subjunctive means in a relative clause. When the subjunctive is used in a relative clause, it can indicate finality (“*Viros misi qui munus peragerentur*” – I sent men to do the job – literally, “who might do the job”) or characteristic (“*Sunt viri qui fideles sint?*” – “Are there men who are of such a type as to be faithful?”; literally, “who might be faithful?”). Roman authors very often use the relative clause of characteristic in oratory, and it is often employed when discussing general theoretical situations. Thus, I can easily see why someone composing the Latin text might at first write “*persistat*”. But it doesn’t seem to me that a legal text would use a relative clause of characteristic. Law punishes actual deeds, not characters». To say «*puniatur qui [...] post monitum in inobedientia persistat*» would be stating «Let him be punished who [...] is of such a sort as to persist in disobedience after a warning». This is «an imagined type of character that the subjunctive implies, but not an actuality». Author’s interview with Kevin Keiser, 2 February 2014.

2.1.2 Subsequent drafts

General Schema VIII was drafted from 24-28 November 1969. We find that what was can. 76 in Schema VII (cf. 4.6.1 above) became can. 71. It reads:

Iusta poena puniri potest:

1° qui, praeter casum de quo in can. 67 §1, doctrinam a Romano Pontifice vel a Concilio oecumenico traditam impugnat vel damnatam docet, et ab Apostolica Sede vel ab Ordinario admonitus non retractat;

2° qui aliter Sedi Apostolicae, Ordinario, vel Moderatori legitime praecipienti vel prohibenti non obtemperat, et post monitum in inoboedientia persistat¹⁵⁰.

In n. 1°, the members simply chose the second of two options contained in the first draft, which is rendered «and having been warned by the Apostolic see or by the Ordinary does not retract».

Is there any meaningful difference between «*monitum*» (appearing in the April 1969 draft as part of the first option) and «*admonitus*», which found its way into the November 1969 draft? «*Monitum*» is generally accepted as meaning «warning» though other definitions can be attributed to it (advice, recommendation, admonition, reminder)¹⁵¹. «*Admonitus*» can be rendered at least twenty different ways (admonishment, admonition, advice, awakening, caution, caveat, command, commination, counsel, exhortation, monition, notice, prompt, rebuke, recommendation, reminder, reprimand, reproof, suggestion, urging, warning). In the present can. 1371, 2°, the word «*monitum*» appears; perhaps it was chosen given its narrower scope. There can be little doubt as to how the word is to be interpreted¹⁵², whereas «*admonitus*» allows a wider interpretation. There is no written record as to the reason the changes were made.

¹⁵⁰ PCCICR, *Acta et Documenta Coetus Studii «de iure poenalis»* II, Section G, 19. The title is «De delictis contra Ecclesiasticas auctoritates et Ecclesiae libertatem».

¹⁵¹ Cf. www.archives.nd.edu/words.html and www.glosbe.com. A Google search on «*monitum*» yielded several references to various times a «*monitum*» was issued by the Holy Office or CDF [accessed 21 July 2013].

¹⁵² It is the practice of some diocesan tribunals to place a «*monitum*» upon some parties whose marriages have been declared invalid. This is done to note that care is to be taken before allowing the person to enter into subsequent bond. This is not required by the CIC. Articles 250 and 251 of the Instr. *Dignitas Connubii* address when a *vetitum* is to be added, but are silent about a warning or «*monitum*». PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, instr. *Dignitas connubii*, 178-181.

In n. 2°, we observe that another category of competent authority is added. The inclusion of «moderator» in the text means that the foreseen persistent disobedience would be not only to the Apostolic See or Ordinary. An analysis of the moderator will be discussed later in this section.

On 12 January 1970 and also from Schema VIII, we find the same text, though the canon number changed to 69 and the canon referred to in the text of can. 69 changed to 65 §1 as a result of the rearranging or reordering of other canons¹⁵³. We may consider this to be the third draft.

In 1973, our canon of study appeared again with the exact same text. The only changes were in the numbering. Canon 69 became can. 52 and can. 65 §1 (referred to in can. 52) became can. 48 §1¹⁵⁴. The renumbering is likewise insignificant. This may be considered draft number four.

2.1.3 Specific feedback on the fourth draft

Even though can. 52 (now 1371) was in two parts, the comments are combined (not specified as to relating to 1° or 2°). One bishops' conference asked that the order be changed so that can. 52, 1° would read: «doctrinam a Concilio oecumenico vel a Romano Pontifice traditam...»¹⁵⁵. Apparently this particular conference was of the opinion that it is more important to obey doctrine emanated by an ecumenical council than to obey doctrine spoken or written by the Roman Pontiff.

Another conference of bishops asked that the canon be more precise and expound upon the penalty. Another suggested that the delinquent might be punished also with a privation of the *munus docendi* if

¹⁵³ PCCICR, *Acta et Documenta Coetus Studii* «de iure poenalis» II, Section E, 18. The title appearing at the beginning of revised schema VIII states the schema is «secundum emendationes a Consultoribus Secundi in sessione dd. 24-28 Nov. 1969 probatas». N.B. This later schema appeared in section E while the earlier schema appeared in section G.

¹⁵⁴ PCCICR, «Coetus Studiorum de iure poenali», *Communicationes* 9 (1977) 308. The italicized words do not appear in the 1980 draft. The text is also found in in PCCICR, *Schema documenti quo disciplina sanctionum seu poenarum in Ecclesia Latina denuo ordinatur (reservatum)*, Città del Vaticano, 1973, 28. Pighin considers the 1973 redaction to be phase 1 and the successive consultation to be counted as phase 2. B.F. PIGHIN, *Diritto penale canonico*, 55.

¹⁵⁵ PCCICR, *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section B, *Osservazioni particolari*, n. 52 (note that the pages are not numbered).

he were holding a teaching position. One comment attributed to this bishops' conference is that the cases of disobedience (in that era) were frequent¹⁵⁶.

Only one conference suggested that there is not a difficulty regarding «doctrina a Concilio oecumenico traditam» because in this case the doctrine is definite and limited to official documents. However, less clear would be when one challenges a point of doctrine pronounced by the Roman Pontiff in a speech¹⁵⁷. The conference seems to be asking whether such a person's actions would be in violation of the canon.

In total, in this set of observations, out of the twenty-eight responders, only five provided observations relative to today's can. 1371. Of these five, no one was calling for a softening of the contents of the canon.

2.1.4 Specific comments from the second group

Only six groups (one third of the total respondents) provided observations in regards to our canon in question (at the time n. 52). Since there are so few, we will list them as they appear in the *schema*.

1. Romanus Pontifex et Concilium non semper doctrinam tamquam partem revelationis proponunt, ideoque hic canon limitandus est – *Gaudium et Spes* n. 92, *Unitatis redintegratio* n. 4.
2. Totus canon 52 opportunus est ut magisterium Ecclesiae contra theologos urgeat et tueatur.
3. Quatenus doctrina est «tradita» quia plura sunt documenta, plures gradus oraculorum R. Pontificis et Conciliorum, etiam episcoporum. Proponitur: «Qui praeter casum de quo in can. 48 par. 1, Sedi Apostolicae, Ordinario vel Moderatori legitime praecipienti vel prohibenti non obtemperat et post monitum in inobedientia persistit, iusta poena puniatur atque, si de doctrina catholica agatur, opportuna declaratione etiam publica reprobetur».

¹⁵⁶ PCCICR, *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section B, *Osservazioni particolari*, n. 52.

¹⁵⁷ «Non si potrebbe specificare l'aggettivo "traditam"? Che cosa si dovrebbe dire di uno che si oppone ad un punto di dottrina pronunciato dal Romano Pontefice in un discorso? La difficoltà non sorge riguardo alla "doctrina a Concilio oecumenico traditam", perché in questo caso si tratta di dottrine definite e limitate a documenti ufficiali». PCCICR, *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section B, *Osservazioni particolari*, n. 52. The publishing of substantial parts of the daily homilies of Pope Francis can pose a challenge in regards to determining the level of authority the pope intends this preaching to enjoy.

4. Card. N. dicitur «qui, praeter casum de quo in can. 48 parl, [sic] doctrinam a Romano Pontifice ex cathedra loquente vel a Concilio Oecumenico traditam...» vel «...a Romano Pontifice et a Concilio traditam...».
5. «Doctrina tradita» est notio nimis complexa pro iure poenali.
6. Dicatur «ouniendi [sic] sunt» in initio¹⁵⁸.

Only one comment was received concerning n. 2° of our canon. One conference of bishops pointed out: «Utrum praeceptum sit legitimum necne iudicandum est etiam ex parte “inferioris” secundum futurum statutum iuridicum omnium fidelium (Syn. Episc. 1967) – ergo iudicium in casu aliunde statui debet. Secus facile erit abusus potestatis»¹⁵⁹. In other words, there is a need for a separation of the one who imposes the precept from the one who judges the case in order to avoid the abuse of power. The focus here appeared to be more on the protection of rights and promotion of justice.

2.2 17 March 1977 discussion

On 17 March 1977, our canon of study bore the number 52:

Iusta poena puniri potest:

- 1) qui, praeter casum de quo in can. 48, §1, doctrinam a Romano Pontifice vel a Concilio oecumenico *traditam impugnat vel* damnatam docet, et ab Apostolica Sede vel ab Ordinario admonitus non retractat;
- 2) qui aliter Sedi Apostolicae, Ordinario, vel Moderatori legitime praecipienti vel prohibenti non obtemperat, et post monitum in inoboedientia persistat¹⁶⁰.

The text indicates the facultative nature of the penalty: there is no obligation for competent authority to impose a penalty. However, sev-

¹⁵⁸ PCCICR, *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section B, *Animadversiones in Schema canonum iuris poenalis*, 19-20. Number 4 should state «par. 1» instead of «parl» (following «can. 48»). Cf. number 3 above. Moreover, the text found in number 6 should read: «Dicatur “puniendi sunt” in initio». The original text clearly contains a spelling error.

¹⁵⁹ PCCICR, *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section C, *Animadversiones in Schema canonum iuris poenalis*, 1.

¹⁶⁰ PCCICR, *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section C, *De iure poenali, pars secunda, de poenis in singula delicta*, 5. At this time, the text what was then can. 48 §1 (20 Dec. 1976) read thus: «Qui haeresim profert, et ab Apostolica Sede vel ab Ordinario admonitus non retractat, censura puniatur; clericus praeterea potest prohibitionibus vel etiam privationibus, de quibus in can. 21 §1, b et c, puniri». (The prohibitions and privations included privation of power of office, of privileges, etc.).

eral consultants suggested that the imposition of a penalty be obligatory, with agreement being reached that «*puniri potest*» would be replaced with «*puniatur*»¹⁶¹.

Concerning 1° of the canon, some consultants thought the expression «doctrina a Romano Pontifice vel a Concilio Oecumenico *tradita*» was too broad and could give place to abuses in producing or considering punishments¹⁶². However, they admitted that the expression «*traditam impugnatur*» was too wide and determined that it would be opportune to suppress it. The consultants wanted the sanction called for by this canon to be applied only to those who teach doctrine condemned by the Roman Pontiff or by an ecumenical council¹⁶³. We will see below that «*tradita impugnatur vel*» would remain in the following *schema*.

At a certain point, a modification to the canon occurred. The consultants proposed and then approved the following formula, which as we see concerned the first part of our canon: «Can. 52 bis: Qui contra Romani Pontificis actum ad Concilium Oecumenicum vel aliter ad Episcoporum Collegium recurrit censura puniatur»¹⁶⁴. The consultants called for a widening in the ambit of authority to which one would be held to obey, substituting the «college of bishops» for «ordinary» and for an obligatory punishment to include a censure, which would replace

¹⁶¹ «A pluribus suggestum est ut poena sit obligatoria. Suggestio Consultoribus placet et ideo dici debet in canone “iusta poena *puniatur*” loco “*puniri potest*”. PCCICR, «Coetus Studiorum de iure poenali», *Communicationes* 9 (1977) 308. It is also found in PCCICR, *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section C, *De iure poenali*, Pars Secunda, *De poenis in singula delicta* can. 52, 5.

¹⁶² «Nonnullis nimis lata visa est locutio “doctrina a Romano Pontifice vel a Concilio Oecumenico *tradita*”, quae abusibus locum dare potest in poenis ferendis». PCCICR, «Coetus Studiorum de iure poenali», *Communicationes* 9 (1977) 308 and ID., *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section C, *De iure poenali*, Pars Secunda, *De poenis in singula delicta* can. 52, 6.

¹⁶³ «Consultores admittunt locutionem esse nimis latam, quare opportunum omnibus videtur supprimendi verba “*traditam impugnatur*” ita ut sanctio huius canonis sit tantum contra eos qui doctrinam a Romano Pontifice vel a Concilio Oecumenico *damnatam* docent». PCCICR, «Coetus Studiorum de iure poenali», *Communicationes* 9 (1977) 308 and ID., *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section C, *De iure poenali*, Pars Secunda, *De poenis in singula delicta* can. 52, 6.

¹⁶⁴ PCCICR, *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section C, *De iure poenali*, pars secunda, *de poenis in singula delicta*, *adunatio diei 7 maii 1977*, 19; *Communicationes* 9 (1977) 321. Beginning on p. 19 (321 of *Communicationes*) we note that there was another meeting of consultants held on 4 June 1977. However, it did not include a general discussion or a proposal concerning our canon of study.

the hitherto «just penalty» terminology. We also note the introduction of «recurrat», which can mean to return or hasten back (third person active indicative tense).

2.3 *Next schema (undated)*

Section D of the *Acta et documenta series altera* includes an undated schema containing no comments. It reads thus:

Can. 61. – Iusta poena puniatur:

1° qui, praeter casum de quo in can. 54 §1, doctrinam a Romano Pontifice vel a Concilio Oecumenico damnatam docet et ab Apostolica Sede vel ab Ordinario admonitus non retractat;

2° qui aliter Sedi Apostolicae, Ordinario, vel Moderatori legitime praecipienti vel prohibenti non obtemperant, et post monitum in inobedientia persistat¹⁶⁵.

The most noticeable change affecting both n. 1 and n. 2 is that the just penalty becomes mandatory for one who is persistently disobedient to certain authorities in the Church. The phrase «iusta poena puniri potest» is changed to read «iusta poena puniatur». «Puniatur» is the passive present subjunctive: «let him be punished». The obligation to punish has become more noticeable than before. Competent authority was exhorted to punish culpable offenders.

We notice that n. 2 remained the same, but that three words were removed from n. 1: «tradita impugnat vel». The modifications recommended in the 17 March 1977 *coetus* were incorporated, and the canon was modified to read the way it does in this undated version. Note too that can. 54 §1, referred to in the canon, continued to refer to heretics, schismatics or apostates.

2.4 *1980 Schema*

The 1980 Schema numbers today's can. 1371 as can. 1323. It reads:

Iusta poena puniatur:

qui, praeter casum de quo in can. 1316 §1, doctrinam a Romano Pontifice vel a Concilio Oecumenico damnatam docet, et ab Apostolica Sede vel ab Ordinario admonitus non retractat; qui aliter Sedi Apostolicae, vel Modera-

¹⁶⁵ PCCICR, *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section D, 15.

tori legitime praecipienti vel prohibenti non obtemperat, et post monitum in inoboedientia persistat¹⁶⁶.

One difference concerned the changing of the canon numbers (n. 61 in the *schema* became 1323 while 54 §1 became 1316 §1). A second difference was the compressing of the canon, which hitherto contained two sections. The 1980 schema combined the sections, separating them with a semicolon.

Included as a general observation under can. 1326 we find this doubt presented: «Puniatur pertinax inoboedientia erga Romanum Pontificem aut proprium Ordinarium, vel qui fideles incitat ad inoboedientiam (Aliquis Pater)». The response: «*Haec omnia iam habentur in cann. 1323, 2° et 1325*»¹⁶⁷. What was can. 1326 in 1980 is now 1374 CIC and can. 1325 in the 1980 schema is now can. 1373¹⁶⁸.

2.5 Changes to the 1982 schema¹⁶⁹

The 1982 Schema indicates a change to the number of the canon (from 1323 to 1371) and its division. While both address persistent disobedience to doctrinal and disciplinary matters, the prior schema separated the two with a semicolon. The 1982 schema restored the division found in the first three versions. The first part remained exactly the same as in the 1980 Schema while the second part contained two changes, which I list in bold: 2° «qui aliter Sedi Apostolicae, Ordinario, vel **Superiori** legitime praecipienti vel prohibenti non obtemperat, et post monitum in inoboedientia **persistit**».

We notice the change from «*moderatori*» to «*superiori*». Both words appear often in the CIC 1983, to be sure, but the number of times the Code makes reference to a superior in the generic sense is 82. The «*superior competens*» is referred to thirty times. A «*superior maior*» is mentioned 46 times. There are another twelve categories of superiors, including superior of an institute, legitimate superior and religious superior, which account for another 44 times. The word «*superior*», with

¹⁶⁶ E.N. PETERS, ed., *Incrementa in Progressu*, 1184. This is considered phase 3. B.F. PIGHIN, *Diritto penale canonico*, 55.

¹⁶⁷ PCCICR, «De sanctionibus in Ecclesia», *Communicationes* 16 (1984) 49.

¹⁶⁸ E.N. PETERS, ed., *Incrementa in Progressu*, 1185.

¹⁶⁹ 1982 is counted as phase IV. The members of the Commission consented to the Secretary presenting the «Schema revisionato e perfezionato» to the Roman Pontiff on 22 April 1982. B.F. PIGHIN, *Diritto penale canonico* 55.

or without an adjective, appears 172 times¹⁷⁰. «*Moderator, oris*» in the generic sense is found 40 times in the CIC 1983 while «*moderator supremus*» is found thirty times. In total, there are 77 references to a moderator¹⁷¹.

This change, which may seem insignificant initially, widened the list of competent authority. The statistics above prove that «superior» is more widely used and referred to than «moderator». In practice, there are fewer moderators than superiors (a more generic term).

The second change involves the verb «*persistere*», defined as «to persist» or «to continue steadfastly»¹⁷². The 1980 Schema used the subjunctive form of the verb, or «*persistat*». The 1982 Schema, on the other hand, placed the word in the indicative («*persistit*). A commentary in regards to this doubt in is presented above (section 2.1.1 as noted in the 8 April 1969 draft).

No changes were made after the 1982 Schema; the final version, dated 1983, remained the same¹⁷³.

2.6 Other observations and comments

A. Urru points out that during the revision of the CIC, it was thought that penal law would be promulgated *ad experimentum*. In fact, the apostolic letter *m.p. Humanum Consortium* reordered the discipline on sanctions or penalties in the Church and called for an anticipated promulgation of penal law separate from the rest of the CIC. This *m.p.* was never promulgated nor published, but it was in the hands of the participants involved with the revision¹⁷⁴.

The revision of the penal section of the CIC was met with indifference by some and open hostility by others, who wanted penal law suppressed all together, perceiving it as lacking usefulness. In fact, some

¹⁷⁰ X. OCHOA, *Index Verborum et Locutionum*, 477-479.

¹⁷¹ X. OCHOA, *Index Verborum et Locutionum*, 280.

¹⁷² C. LEWIS – C. SHORT, *A Latin Dictionary*, 1355.

¹⁷³ Phase V included the promulgation of the Code, which incorporated Book VI as part of the rest of the CIC. Canon 1371, 1° kept this wording until 1998, at which time it was modified. This will be discussed at length in the following chapter.

¹⁷⁴ Cf. A. URRU, *Punire per salvare*, 28-29. The author concludes: «Probabilmente si pensò che una disciplina penale solo in via provvisoria e *ad experimentum* avrebbe potuto ingenerare ulteriore confusione e disorientamento tra il popolo di Dio». It is said that the content of the *m.p.* was the object of «esacerbata contrapposizione». B.F. PIGHIN, *Diritto penale canonico*, 52. Cf. G. DI MATTIA, «Sostanza e forma», 411 and S. NAPOLEONI, *La potestà coattiva nella Chiesa*, 85.

held its promulgation might even be counterproductive «for a community that intended to bring the good news to all and dialog even with people contrary to the Gospel and with hardcore delinquents, without further condemnation of anyone»¹⁷⁵. Now some thirty years later, Book VI is being revised.

Nor should statistics be ignored. There is a noticeable paucity of canons and penalties found in Book VI of the CIC 1983, *De sanctionibus in Ecclesia*¹⁷⁶. The abrogated CIC contained 220 penal canons while now there are only 89. The former Code treated listed 101 different penalties; the current one contains only thirty-six. The CIC 1917 contained 45 medicinal penalties while the current Code contains only five. Expiatory penalties were twenty in the abrogated Code while the CIC 1983 contains only three¹⁷⁷.

Having studied the fonts to can. 1371, 2°, including its CIC 1917 counterpart along with the development of the penal law section and our canon of study in particular, we will move to our next chapter, whose goal it is to look deeper into can. 1371.

¹⁷⁵ B.F. PIGHIN, *Diritto penale canonico*, 46. «Le critiche al sistema penale della Chiesa si fecero aspre durante il concilio Vaticano II, con echi interni ad esso e con accentuazioni dopo la sua conclusione, alimentate da un clima diffuso di indifferenza, se non di aperta ostilità, nei confronti del diritto canonico nel suo insieme. Si giunse a proporre la soppressione del diritto penale nella Chiesa, nella convinzione che esso fosse inutile, se non controproducente, per una comunità che intendeva portare la buona novella a tutti e dialogare anche con le persone contrarie al Vangelo e con i delinquenti incalliti, senza più condannare nessuno».

¹⁷⁶ Despite the title of the heading, the word «sanction» is not to be found in Book VI. In fact, the word appears only twice in the entire CIC: cann. 96 and 1457 §2. B.F. PIGHIN, *Diritto penale canonico*, 63.

¹⁷⁷ J. BERNAL, «Protección penal de las verdades propuestas por el magisterio», 119.

CHAPTER III

Analysis and interpretation of canon 1371, 2°, CIC 1983

1. Canon 1371, 2°

Canon 1371, 2°, CIC 1983, reads: «Iusta poena puniatur: 2° qui aliter Sedi Apostolicae, Ordinario, vel Superiori legitime praecipienti vel prohibenti non obtemperat, et post monitum in inoboedientia persistit». In English, «The following are to be punished with a just penalty: a person who otherwise does not obey a legitimate precept or prohibition of the Apostolic See, an ordinary, or a superior and who persists in disobedience after a warning»¹. We begin our examination with a study of the words contained in the canon.

¹ So as to avoid any semblance of incompleteness, we point out briefly that can. 1371, 1° reads: «Iusta poena puniatur: qui, praeter casum de quo in can. 1364 §1, doctrinam a Romano Pontifice vel a Concilio Oecumenico damnatam docet vel doctrinam, de qua in can. 750 §2 vel in can. 752, pertinaciter respuit, et ab Apostolica Sede vel ab Ordinario admonitus non retractat». That is, «The following are to be punished with a just penalty: in addition to the case mentioned in can. 1364 §1, a person who teaches a doctrine condemned by the Roman Pontiff or an ecumenical council or who obstinately rejects the doctrine mentioned in can. 750 §2 or in can. 752 and who does not retract after having been admonished by the Apostolic See or an ordinary». The canon, which concerns the *munus docendi*, applies to clerics, religious and laypeople. In general, to one with an office or mandate who teaches or preaches. The reader may wish to consult the following articles: CDF, *Profession of Faith and Oath of Fidelity*; ID., «Doctrinal Commentary»; JOHN PAUL II, ap. letter *m.p. Ad tuendam fidem*; B. FERME, «*Ad tuendam fidem*, some reflections»; J. RATZINGER, «Frank witness and docile obedience», 104-105; BENEDICT XVI, homily *In Missa Chrismali*, 5 April 2012, 331 and W.J. LEVADA, «Dissent and the Catholic Religion Teacher». The relationship between doctrine and discipline is not insignificant, and that the Supreme

1.1 Iusta poena puniatur

The phrase «iusta poena puniatur» can be translated as «to be punished with a just penalty». That is to say, the canon is preceptive (conveying a command; mandatory) in nature and therefore when moral certitude has been reached concerning the commission of the delict, competent authority is obligated to impose a penalty for the reparation of scandal, restoration of justice and reform of the offender as we see in can. 1341. According to V. De Paolis, the punishment is not the declaration of a sin, but the imposition of a penalty as a result of a delict (a violation of penal law, which is also a sin) or crime².

Since we have referred often to the word «scandal», we would do well to briefly define it. St. Thomas Aquinas defines scandal as «something that is less rightly done or said, that occasions another's spiritual downfall»³. The CCC (2284) defines scandal as «an attitude or behavior which leads another to do evil». R.L. Burke is more precise. He explains that there are two meanings of the word. The first and properly theological meaning of scandal is «to do or omit something which leads others into error or sin». The second is «to do or omit something which causes wonderment (*admiratio*) in others»⁴. Competent authority's lack of intervention might lead to scandal⁵.

Punishment is imposed for a reason, and has «the primary aim of redressing the disorder introduced by the offense» (CCC 2266). The

Legislator decided that the two areas should be brought together in one canon (as opposed to how the two appear in the CIC 1917) may point to similarities. According to DePaolis: «Lo spazio del diritto penale è in linea di principio non nel campo della fede, ma della disciplina, ossia di violazioni di norme penali che in linea generale non impongono un atto di fede». V. DE PAOLIS, «Il libro VI del Codice di Diritto Canonico», 105.

² «L'atto punitivo non è la dichiarazione di un peccato, ma l'irrogazione di una pena a causa di un delitto». V. DE PAOLIS, «Il libro VI del Codice di Diritto Canonico», 111. Also holding that the first and most important of the censures is excommunication is Pighin. B.F. PIGHIN, *Diritto penale canonico*, 191.

³ S.Th. II-II, q. 43, a 1. He explains «less rightly» comprises «both whatever is sinful in itself, and all that has an appearance of evil». S.Th. II-II, q. 3, a 1, r. 2.

⁴ R.L. BURKE, «Denial of Holy Communion», 23. On p. 47 of the same article, the author challenges the notion that scandal is culturally relative, as held by another commentator. «If a word, an action or an omission leads another into error or sin, there is scandal, whether the person who is led astray knows that he has been scandalized or not».

⁵ D.G. ASTIGUETA, «Lo scandalo nel CIC», 599. This comprehensive study analyzes scandal as understood in Sacred Scripture, as explained by St. Thomas and in the CCC and finally in the CIC 1983, especially can. 1399.

penalty should be fair or just, as is stated in the canon. The sense of *iusta* (just, fair, equitable; right, lawful, justified; regular, proper) is that the punishment should not be too strong nor too light, nor should it be unfair. It should fit the crime. Canons 1324⁶ and 1327⁷ allow the punishment to be mitigated under certain conditions. If competent authority deems that the accused meets at least one of the requirements found in can. 1324, he can temper the penalty or impose a penance. He may also punish certain people more gravely than the law or precept has established if other conditions listed in can. 1326 are met. Moreover, according to can. 1340 §3, an ordinary can add penances to a penal remedy of warning or correction, using his prudent judgment.

While the CIC 1983 gives no definition for *poena*, it does include canons that provide some clues as to the mind of the legislator in this regard. Canon 1312 §1, the second canon in Book VI, explains that there are different types of penalties, including medicinal (1°) and expiatory (2°). Medicinal penalties are for the correction, reformation or restoration of the offender⁸. On the other hand, when an expiatory penalty is imposed it is done with the intent to restore justice and the social order. It is inflicted to repair the damage inflicted on ecclesial society. While this is the primary end, an indirect end is the reform of the offender and the salvation of his soul⁹. Expiation is the same word used to describe the reason Christ died on the cross—to make amends or reparation for the sin of the world.

⁶ Canon 1324 §1 provides ten possible situations or factors that would temper a penalty or allow a penance to be substituted for a penalty, including if the one who committed the delict in question had only the imperfect use of reason (1°), if he lacked use of reason due to drunkenness (2°), if he was a minor between 16 and 18 years of age (4°), if he was coerced by grave fear (5°), if, without negligence he did not know there was a penalty attached to the law of precept (9°), if he acted without full imputability (10°) and several others.

⁷ «Lex particularis potest alias circumstantias eximentes, attenuantes vel aggravantes, praeter casus in cann. 1323-1326, statuere, sive generali norma, sive pro singulis delictis. Item in praecepto possunt circumstantiae statui, quae a poena praecepto constituta eximant, vel eam attenuent vel aggravent».

⁸ Cf. D.G. ASTIGUETA, «La medicinalità della pena canonica», especially 284 ff.

⁹ Cf. A. CALABRESE, *Diritto penale canonico*, 99, 122. While explaining that not all sanctions are penalties, Astigueta lists other ends of a penalty: a sanction *ad personam*, a sanction for a delict, a repressive sanction and a sanction *ad bonum commune directe ordinata*. D.G. ASTIGUETA, «La pena come sanzione: un contributo su questo concetto», 502-531.

The type of penalty foreseen in can. 1371, 2° is a single sanction for various types of persistent disobedience: one that is indeterminate but obligatory. It is applied *ferendae sententiae*. The punishment imposed would be based upon the nature and extent of the crime (in this case, persistent disobedience), taking into account both the subjective aspects and scandal caused as well as objective elements¹⁰. In short, «in using the phrase “a just penalty”, the legislator made available the entire range of ecclesiastical sanctions, whether censures (namely excommunication, interdict, or [clerical] suspension) or expiatory penalties, including deprivation of office (can. 1336, CIC 1983)»¹¹. At the same time, since the penalty called for in can. 1371 is indeterminate, the provisions of can. 1349 must be followed. That is to say, «the judge is not to impose graver penalties [...], especially censures, unless the seriousness of the case clearly demands it» and cannot impose perpetual penalties. We will now look at types of penalties in general that competent authority may choose to impose.

1.1.1 The censure of excommunication

Canon 1312 §1, 1° states that there are different types of medicinal penalties (to bring about the reform of the offender) or censures and that they are listed in cann. 1331-1333. Censures include excommunication (can. 1331), «the first and most grave of the medicinal penalties»¹² which consists of the prohibition to have any ministerial participation in the celebration of the Eucharist or other ceremonies of worship (1°)¹³; the prohibition against celebrating the sacraments or sacramentals or receiving the sacraments (2°); the prohibition against exercising any ecclesiastical offices or ministries or placing any powers of governance (3°).

While can. 1331 lists the effects of excommunication, the CIC 1983 refrains from providing a definition of the word. We turn to can. 2257 of the CIC 1917 to find that an excommunicated person is removed from communion with the faithful, which results in certain canonical

¹⁰ Cf. B.F. PIGHIN, *Diritto canonico penale*, 350.

¹¹ E.N. PETERS, «A canonical look at *Ad tuendam fidem*», http://www.canonlaw.info/a_adtuendam.htm [accessed 6 September 2013].

¹² V. DE PAOLIS, «Scomunica», 959.

¹³ Concerning how to determine whether or not a priest should be forbidden for a time from publicly celebrating the Eucharist, cf. W. WOESTMAN, «Restricting the Right to Celebrate the Eucharist», 155-178.

effects¹⁴. It is the only penalty that calls for this exclusion; moreover, its effects are indivisible – «*quique separari nequeunt*» – meaning that one who is excommunicated incurs each and every consequence (effect) listed in canons 2258-2267¹⁵.

1.1.2 Interdict

Canon 1332 uses the word «interdict» without providing a definition. Nor is one found elsewhere in the current CIC. We therefore turn to the corresponding canon in the CIC 1917. Can. 2268 §1 states: «Interdictum est censura qua fideles, in communione Ecclesiae permanentes, prohibentur sacris quae in canonibus, qui sequuntur, enumerantur». Canons 2269-2277, of which only one has a corresponding canon in the current CIC, list the sacred things referred to in can. 2268 §1. The canons state that there can be a general or local interdict, including on a city or community of clerics. Canon 2275 prohibits those who are personally interdicted from liturgical activities¹⁶.

Canon 1332 lists only two prohibitions that bind an interdicted person, referring the reader to can. 1331 §1, 1°, 2°. This means that one upon whom an interdict has been placed is subject to two of the same penalties that an excommunicated person is subject to: prohibition against any ministerial participation in the celebration of the Eucharistic sacrifice «*vel quibuslibet aliis cultus caerimoniis*» (1°); and prohibition against celebrating the sacraments or sacramentals and from receiving the sacraments (2°).

A. Calabrese explains that an interdicted person who wishes to act in the role of minister in either the offering of the Eucharistic sacrifice or

¹⁴ Canon 2257 §1. «Excommunicatio est censura qua quis excluditur a communione fidelium cum effectibus qui in canonibus, qui sequuntur, enumerantur, quique separari nequeunt. §2. Dicitur quoque anathema, praesertim si cum sollemnitatibus infligatur quae in Pontificali Romano describuntur». The nine canons that follow (2258-2267) list the effects of excommunication.

¹⁵ Cf. A. CALABRESE, *Diritto penale canonico*, 109, 111.

¹⁶ Canon 2275 lists can. 1332 CIC 1983 as its corresponding canon and states: «Personaliter interdicti: 1° Nequent divina officia celebrare eisve, excepta praedicatione verbi Dei, assistere; passive assistentes non est necesse ut expellantur; sed ab assistentia activa, quae aliquam secumferat participationem in divinis officiis celebrandis, repellantur interdicti post latam sententiam condemnatoriam vel declaratoriam, aut alioquin notorie interdicti; 2° Prohibentur Sacramenta et Sacramentalia ministrare, conficere et recipere, ad normam cann. 2260 §1, 2261; 3° Praescripto can. 2265 etiam ipsi adstringuntur; 4° Carent sepultura ecclesiastica ad normam can. 1240 §1, 2°».

in any other worship celebration is to be kept away from doing so. He defines a minister as one who is ordained or instituted¹⁷. By extension the same restriction would apply to those not formally instituted: one in the role of altar server, extraordinary minister of Holy Communion or reader¹⁸. Outside of the restrictions noted in can. 1109 (concerning the form of marriage), the prohibited actions would be valid but illicit, since can. 10 requires invalidating laws to expressly state that a given act is null¹⁹.

An interdict may be simple *latae sententiae*. Literally, this means «the sentence already passed». A simple *latae sententiae* interdict comes to be when one of the faithful engages in something prohibited by law and carries with it a *latae sententiae* penalty. In such a case, the interdict is automatic and does not demand that competent authority declare it. A *ferendae sententiae* («sentence to be passed») interdict binds only after competent authority declares it. An interdict does not deprive one of juridic communion with the Church and the effects thereof²⁰.

1.1.3 Suspension

The current CIC provides no definition of «suspension» but merely states its effects. We again refer back to the CIC 1917 to help clarify matters. Canon 2278 §1 states: «Suspensio est censura qua clericus officio vel beneficio vel utroque prohibetur». Canons 2278-2285 all address the subject of suspension.

Canon 1333 provides a list of prohibitions foreseen for a suspended cleric (note that as in the CIC 1917, only a cleric can be affected by a suspension). These prohibitions fully or partially restrict a cleric's exercise of liturgical, sacramental and governing *munera*. Depending upon the delict, the suspension is incurred *ipso facto* (*latae sententiae*) or

¹⁷ Cf. A. CALABRESE, *Diritto penale canonico*, 115.

¹⁸ Another author clarifies that active ministerial participation «refers to either formally installed lay ministries (can. 230 §1) or ordained ministry (cann. 1008-1009). T. GREEN, «Delicts and Penalties in General», 1550. Can. 230 §2 allows for lay people to fulfill the role of lector by «temporary designation» but does not consider such people ministers in the strict sense of the word.

¹⁹ «Irritantes aut inhabilitantes eae tantum leges habendae sunt, quibus actum esse nullum aut inhabilem esse personam expresse statuitur».

²⁰ Cf. A. CALABRESE, *Diritto penale canonico*, 115-116; A. URRU, *Punire per salvare*, 105-107.

imposed (*ferendae sententiae*)²¹. Canon 1334 §2 states that a precept may not establish a *latae sententiae* suspension, but that only a law can do so.

1.1.4 Expiatory penalties (cann. 1336-1338)

Canon 1312 §1, 2° refers the reader to can. 1336 for a list of expiatory penalties, which are imposed to remedy damage already done due to the commission of a delict or with the aim of deterring another from committing a similar delict in the future. Said penalties deprive one of a temporal or spiritual good. Expiatory penalties include prohibition against living in a certain place or territory or an order to live in a certain place or territory (1°), and privation of a power, office, function, right or privilege, even if honorary (2°). For example, a prelate of honor or honorary canon could lose his honorific title²² and be removed from office as part of the same penal sanction. Moreover, other prohibitions are foreseen in 3°, while the possibility of penal transfer to another office is the content of 4°. The transfer may be lateral, a demotion, or even a promotion, but is to be imposed as punishment for a delict²³. Finally, in certain cases, dismissal from the clerical state is possible (5°). Noteworthy is the fact that the list of expiatory penalties is shorter than the one appearing in the 1917 CIC. The current CIC contains only five penalties while the 1917 CIC contained twenty-four: twelve common penalties (applicable to all the faithful) and twelve reserved for clerics²⁴.

²¹ Care should be taken to distinguish the status of one upon whom precautionary measures are placed (for example, can. 1722) and one who is suspended. Suspension is a censure and is penal in nature; the imposition of precautionary measures is not. The latter is done to protect the integrity of an administrative penal process (can. 1720) or judicial penal process (can. 1721) as provided for in can. 1722 and art. 19 of the 21 May 2010 substantive norms governing the *m.p. Sacramentorum sanctitatis tutela*.

²² C.f. B.F. PIGHIN, *Diritto penale canonico*, 196. In November 2012, the Holy See declared that Helmut Schueller, head of an Austrian dissent group, was stripped of the title «Chaplain to His Holiness». His name does not appear in the 2014 *Annuario*.

²³ A. CALABRESE, *Diritto penale canonico*, 126.

²⁴ Canons 2291; 2298 CIC 1917. In number 8b of the *Essential Norms*, promulgated by the United States Conference of Catholic Bishops after having received a *recognitio* from the Holy See (Congregation for Bishops) on 5 May 2006, a cleric culpable of a *delictum gravius contra sextum* with a minor but not dismissed from the clerical state is foreseen to live a life of «prayer and penance» – permanent prohibi-

An expiatory penalty may or may not be perpetual. Canon 1336 §1 explains the possible length of a given penalty, which may be for an indeterminate period of time, for a fixed period of time or forever. Dismissal from the clerical state is a perpetual penalty. The majority, if not all, of the other penalties listed in the canon could fall under any of the three categories, often depending upon the decision of competent authority.

The introductory sentence to can. 1336 §1 indicates that the penalties listed in the canon are not meant to be exhaustive. By beginning «In addition to other penalties the law may have established», the legislator allows or even foresees the application of penalties not listed in the canon. This does not mean that the judge or superior can simply create penalties, however. The judge must apply a fitting penalty, within the parameters of the law, after having discerned well. But application of a law is quite different from creation of a law, which as stated above, is not within the competence of the judge or superior. Calabrese explains that particular law may choose among those already established in the law or even may create new penalties, ones which are more adapted to the local traditions and situations²⁵. According to can. 135 §2, both the supreme legislator and a legislator below the supreme authority «may establish different penalties in other laws»²⁶.

Moreover, expiatory penalties are considered «only» *ferendae sententiae* (cf. can. 1336 §2) and therefore are not linked with the cessation of contumacy on the part of the offender or his repentance. Calabrese explains that they can be applied without a warning²⁷ and even when the pertinaciousness on the part of the offender has ceased. Moreover, the competent superior is not obliged to remit said penalties even if the offender has ceased the contumacious behavior or when he is repentant²⁸.

tion from the public exercise of sacred ministry. Among the deprivations is the prohibition against wearing clerical garb, which mirrors can. 2298, 11° of the CIC 1917.

²⁵ Cf. A. CALABRESE, *Diritto penale canonico*, 122. «La legge particolare può scegliere tra esse quelle più adatte, oppure crearne delle nuove, più consone alle tradizioni e alle situazioni locali».

²⁶ Cf. G. DI MATTIA, «Expiatory Penalties», 344.

²⁷ While this is true in general, can. 1371 requires that a warning be given before the application or imposition of any penalties.

²⁸ A. CALABRESE, *Diritto penale canonico*, 123. «Il superiore competente non è tenuto a rimetterle [le pene espiatorie] nemmeno allora [quando il reo è receduto dalla contumacia], ossia quando il colpevole si è pentito».

In the case of a religious, he or she can be dismissed from his or her religious community for persistent or «stubborn disobedience to the legitimate prescripts of superiors in a grave matter (cann. 1371, 2°; 696 §1)». A religious who «stubbornly upholds or diffuses doctrines condemned by the Magisterium of the Church» can also be dismissed from his or her religious institute²⁹. Canon 695 calls for mandatory dismissal of members of religious institutes for various delicts³⁰.

Also to be kept in mind is can. 1344, which allows the judge to defer the imposition of a penalty (1°), to abstain from the same, to impose a lighter penalty or apply³¹ penance on the guilty party, (2°), or to suspend the obligation of the guilty party to observe the expiatory penalty (3°)³². The guilty party can be required to do penance, pray, fast or perform works of charity. Spiritual exercises may be required of the priest culpable of persistent disobedience. However, the flexibility offered by this canon does not relieve the judge of his duty to determine a penalty in a given case³³. A genuine concern for the *salus animarum* is to guide competent authority in making such a determination.

1.1.5 Making a determination

When determining whether one is to be punished or not, we must keep in mind can. 18, which states that «laws which establish a penalty, restrict the free exercise of rights, or contain an exception from the law are subject to strict interpretation». Since can. 1371 establishes a penalty, competent authority must take care not to go beyond the proper meaning of the words contained in the canon when applying the law.

²⁹ P. ARTNER, «Disciplinary measures outside book VI of the 1983 *CIC*», 480.

³⁰ Canon 695 §1. «A member must be dismissed for the delicts mentioned in cann. 1397, 1398, and 1395», though the superior has discretionary authority concerning the delicts mentioned in can. 1395 §2 (with the exception of delicts committed by religious clerics *contra sextum* with minors, whose treatment is under the exclusive competence of the CDF).

³¹ Though «adhibere» is translated as «employ» by the CLSA, the word «apply» would seem to be more fitting in the context of this canon.

³² «The *Code* is far from being a blind set of rules binding in every circumstance without a consideration of the needs of the people». W. WOESTMAN, *Ecclesiastical Sanctions and the Penal Process*, 71.

³³ For examples of possible just penalties for a cleric found culpable of a *delictum gravius*, cf. E. MIRAGOLI, «La “pena giusta” nei casi di *delicta graviora*», 360-368. In addition, cf. A. BORRAS, «Entre l’obsolescence de la norme et la vitalité de la doctrine: le sort actuel du livre VI du *CIC*: à propos d’un ouvrage récent», 139-149.

It is important for competent authority to be as precise as possible in the composition of a penal precept. The punishable actions should be listed along with the resulting penalty for having committed a crime or crimes.

Competent authority too is to keep in mind that, should one be found culpable of a crime and the penalty for the crime is indeterminate (as it is in can. 1371, 2°), the imposition of graver penalties such as censures is not foreseen unless the matter is serious enough to demand it (can. 1349). Nor are perpetual penalties to be imposed.

Moreover, can. 1341 implies that the application of a penalty is seen as a last resort. The canon also presumes that a prior investigation has already been undertaken by competent authority (the Ordinary or superior), «unless such an inquiry seems entirely superfluous» (can. 1717) and that attempts put in place in the hope of changing the offender have failed³⁴.

1.1.6 Penal remedies and penances

Canon 1339 allows an ordinary, either personally or by means of a delegate, to issue a warning to someone in the near occasion of committing an offense or when an investigation reveals serious suspicion that one has been committed. Canon 1339 §3 requires that a record of warnings should be kept in the secret archives of the curia.

Canon 1340 explains what a penance is: performing of a work of religion or piety. It is not to be imposed for an occult transgression (can. 1340 §2). Canon 1340 §3 allows the ordinary to add penances to a penal remedy of warning or correction. How this is to be interpreted remains an open question. Montini points out that one difficulty lies in the fact that at times penal remedies presuppose a certain and imputable delict. It is only in these cases that an ordinary may add penances. Sanchis holds the same line, while a 2008 STAS decision states that a delict must either have been committed or at least been attempted³⁵.

³⁴ D.G. ASTIGUETA, «Medicinalità della pena canonica», 281. Cf. L. GRAZIANO, «La *Praevia Investigatio* e la tutela dei diritti nell'ordinamento penale canonico», 491-510.

³⁵ Cf. SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, prot. n. 38962/06 CA, 13 June 2008, n. 7. According to Montini: «A mio parere la soluzione della difficoltà interpretativa sta nella rilevazione che a volte i remedi penali suppongono un delitto (certo e imputabile). In questi casi, e solo in questi, vi si può aggiungere da parte dell'Ordinario delle penitenze. Viene salvaguardata in tal modo la necessità di un delitto perché si dia penitenza». G.P. MONTINI, «I remedi penali e le penitenze», in Z. SUCHECKI, *Il processo penale canonico*, 95.

1.1.7 Other considerations

Canon 1315 permits those with legislative power (for example, diocesan bishops³⁶) to issue penal laws and, with those laws, to «strengthen with an appropriate penalty a divine law or an ecclesiastical law issued by a higher authority»³⁷. Therefore, if disciplinary norms have been established by an authority higher than the diocesan bishop, the canon allows him to make these norms stronger, in a sense, by attaching a penalty to the non-following of such norms³⁸.

Moreover, can. 1319 §1 allows those with legislative power to threaten determined (established by law) penalties by way of precept. §2 of the same canon foresees that precepts not be issued before the matter in question is seriously considered and the contents of cann. 1317 (that the establishment of penalties take place only if they are truly necessary) and 1318 (that the legislator, in general, is not to threaten *latae sententiae* penalties «nisi maxima cum moderatione et in sola delicta graviora») have been observed.

Finally, let us examine how «*iusta poena puniatur*» compares with the words «*congruis poenis, pro gravitate puniatur*» of the CIC 1917. Differences may appear to be minimal, but upon closer reflection, we see that there are distinctions that should be made. «*Congruis*», as mentioned in the previous section, has the sense of being harmonious, corresponding to, according, appropriate, consistent, fit, and suitable. The legislator's choice of the word «*congruis*» seems to demand that the penalty be thought out and taken seriously. It might be said that «*congruis*» is more precise and somewhat stricter than «*iusta*», though both provide latitude for competent authority upon whom it falls to implement the penalty (and admittedly any nuance between the two words would be considered slight). An unjust penalty could be too light or too heavy. In either case,

³⁶ Canon 391 §1 states that the diocesan bishop has legislative power while §2 says that the bishop exercises legislative power himself.

³⁷ «[...] potest autem suis legibus etiam legem divinam vel legem ecclesiasticam, a superiore auctoritate latam, congrua poena munire [...]».

³⁸ For example, the CDF established disciplinary norms concerning prayers for healing, including who may pray over those in need of healing, what is to be avoided, the use of certain texts, the role of ordained and non-ordained, etc. CDF, *Instruction on prayers for healing*, 14 September 2000. Article 10 on p. 17 states that «authoritative intervention by the diocesan Bishop is proper and necessary when abuses are verified in liturgical or non-liturgical healing services, or when obvious scandal is given to the community of the faithful, or when there is a serious lack of observance of liturgical or disciplinary norms».

the goal of the imposition of a penalty may be placed in jeopardy due to negative effects on the offender (if he too harshly punished or too lightly punished) and/or for the people of God, who could be deprived of spiritual goods unfairly (even in the case of their pastor being harshly punished unjustly) or could be scandalized when competent authority does not, in their opinion, punish harshly enough.

1.2 Qui

«*Qui*» was translated in chapter one as «everyone who», because it appeared in the plural form. Here the word is used in the singular form, as is evident by the verbs appearing in the text. Canon 11 explains to whom can. 1371, 2° applies: those who have been baptized in the Catholic Church or have been received into the Catholic Church and who possess the sufficient use of reason and are at least seven years of age (unless the law expressly provides otherwise)³⁹. The same can. 11 addresses who is bound to merely ecclesiastical laws⁴⁰, and the contents of can. 1371, 2° are of ecclesiastical rather than divine origin. Therefore, one who is a validly baptized Christian but not Catholic would not be subject to can. 1371, 2°.

The requirement that one subject to this canon possess sufficient use of reason has its roots in divine natural law, «and refers to the ability to conceptualize, make abstractions, and take responsibility for one's own actions»⁴¹. Canon 1031 §1 speaks of the need for sufficient maturity (concerning ordination to the presbyterate) while 1095, 1° states that those who lack the sufficient use of reason are incapable of contracting marriage. Having less than sufficient use of reason could prevent one from «the performance of numerous juridical acts that require a higher and specific level of capacity or aptitude»⁴².

While canon 11 states that one over the age of seven is held to ecclesiastical laws, «nisi aliud iure expresse caveatur», can. 1323, 1° says

³⁹ «Legibus mere ecclesiasticis tenentur baptizati in Ecclesia catholica vel in eandem recepti, quique sufficienti rationis usu gaudent et, nisi aliud iure expresse caveatur, septimum aetatis annum expleverunt».

⁴⁰ Obligations established by human ecclesiastical laws are always «legate alle esigenze derivanti dalla struttura ontologico-strutturale dell'uomo, della società e della Chiesa». J. SANCHIS, *La legge penale e il precetto penale*, 79-80.

⁴¹ J. HUELS, «Subjects of the Law», 62.

⁴² J. OTADUY, «General Norms», 292. Concerning the maturity required of a candidate for priestly ordination, cf. R.J. GEISINGER, *On the Requirement of sufficient maturity (c. 1031 §1)*.

that one under the age of sixteen is not subject to a penalty when he violates a law or precept⁴³. Therefore, strictly speaking, the obligation (to follow a precept or obey a prohibition) does not bind, under pain of penalty, anyone fifteen years or under.

Schismatics and heretics who were baptized in the Catholic Church are held to the norm of can. 1371, 2°⁴⁴. Likewise, one who strays away from the Church or leaves it by means of a formal act would also seem to be subject to ecclesiastical laws and therefore our canon. The *m.p. Omnium in mentem*⁴⁵ removes the phrase «and left it [the Catholic Church] by a formal act»⁴⁶ from cann. 1086 §1, 1117 and 1124, all found in the section of the CIC 1983 concerning the sacrament of marriage. Canon 1117 requires parties to follow the canonical form of marriage so long as at least one party to the marriage is baptized (and now, after the promulgation of the *m.p.*, even if one or both formally left the Church) while can. 1124 concerns disparity of worship and states that a dispensation is required if one party is not baptized Catholic (now, after the promulgation of the *Omnium in mentem*, even if the Catholic party formally left the Church, he is still considered Catholic and therefore held to canonical form).

To summarize, those addressed by this canon are the same as those held to penalties in general (unless otherwise specified in a given canon): one who has already freely adhered to the faith and of whom certain behaviors proper to a Christian are asked⁴⁷.

1.2.1 Clerics held to a higher standard

Since can. 1371, 2° does not make any distinction between laity, religious or clerics, it is applicable to everyone who meets the requirements of can. 11. Yet more is expected of religious and clerics. Clerics

⁴³ «Nulli poenae est obnoxious qui, cum legem vel praeceptum violavit: 1° sextum decimum aetatis annum nondum explevit».

⁴⁴ «La norma non si applica quindi agli eretici e agli scismatici, anche se sono validamente battezzati. Ma si applica a quegli eretici e scismatici che dalla Chiesa cattolica, dopo il battesimo, si sono allontanati». A. CALABRESE, *Diritto penale canonico*, 107. Cf. V. DE PAOLIS, *De sanctionibus in ecclesia*, 120.

⁴⁵ BENEDICT XVI, ap. letter *m.p. Omnium in mentem*, 26 October 2009.

⁴⁶ «Auferenda proinde decernimus in eodem Codice verba: “neque actu formali ab ea defecerit” canonis 1117, “nec actu formali ab ea defecerit” canonis 1086 §1, et “quaeque nec ab ea actu formali defecerit” canonis 1124». BENEDICT XVI, ap. let. *m.p. Omnium in mentem*, 9.

⁴⁷ Cf. D.G. ASTIGUETA, «La medicinalità della pena canonica», 270.

are expected to be obedient to their ordinary⁴⁸. Consecrated members of religious institutes make sacred vows of chastity, poverty and obedience while secular priests and deacons make promises, one of which is obedience, in addition to having ministerial responsibilities⁴⁹. Priests and religious undergo a lengthy process of formation where they have ample time to learn what the Church expects of them.

Pastors of parishes likewise owe obedience to their bishop. It might be possible to remove a pastor who disobeys a precept issued by his ordinary «if his disobedience results in a disturbance of ecclesiastical communion by leading the faithful to question or reject the bond of hierarchical governance»⁵⁰.

The connection between the making of vows or promises and the resulting higher degree of accountability in the areas of poverty, chastity and obedience is not a novel idea. Therefore, there is no reason the legislator would have had to include such a precision in the canon⁵¹.

1.3 Sedis Apostolicae

Canon 361 states that the Apostolic See or Holy See includes the Roman Pontiff, the Secretariat of State, the Council for the Public Affairs of the Church and dicasteries of the Roman Curia. John Paul I provided this explanation in regards to the agencies of the Roman Curia: «[They] provide the Vicar of Christ with the concrete means of giving the apostolic service that he owes the entire Church [...]»⁵². «Roman Curia» has become synonymous with «Apostolic See». Vatican City State is not tantamount to the Apostolic See, even though in popular speech the two are used interchangeably. In fact, Vatican City State was established as a geographic and political reality only on 11 February 1929 with the signing of the Concordat or Lateran Treaty.

⁴⁸ The primacy of obedience of a cleric to his ordinary is highlighted in CONGREGATION FOR THE CLERGY, *Directory on the ministry and lives of priests, new edition*, 11 February 2013, especially 56-59. A reference is made to PO 15.

⁴⁹ Cf. B.F. PIGHIN, *Diritto penale canonico*, 355.

⁵⁰ J.A. GRAY, *Causes and Proofs for the Removal of a Pastor*, 48.

⁵¹ According to Robert Bellarmine, «If the ordinary faithful must simply trust their pastors in the things which appertain to God, and render them corresponding obedience and respect, much more should religious obey and be subject to their superiors, perfectly and simply, and *in that sense* blindly, in whatever does not manifestly contravene the law of God». N.M. LE BACHELET, ed., «Tractatus de obedientia», 385.

⁵² JOHN PAUL I, *Allocution to the College of Cardinals*, 30 August 1978, 703.

1.3.1 Roman Pontiff

Canon 331 attributes various titles to the Roman Pontiff: bishop of the Roman Church, head of the college of bishops, the Vicar of Christ and pastor of the universal Church on earth. By virtue of his office, the Roman Pontiff possesses supreme, full, immediate and universal ordinary power in the Church, which he may always freely exercise.

The pope possesses ordinary power by virtue of his office, not as a physical person but rather as holder of the highest office of governance in the Church. Canon 333 §1 states that the Roman Pontiff obtains the primacy of ordinary power over all particular churches and groups of them by virtue of his office. He does not possess this power as a private person or one of the faithful. With the resignation of Pope Benedict XVI⁵³, the necessity of making such a distinction has become more real⁵⁴.

The Roman Pontiff also enjoys supreme power, being subordinate to no other human power «be it ecclesiastical or temporal, and therefore enjoys the highest rank in the human order»⁵⁵. Examples may be found in can. 333 §3, which says that a sentence or decree of the Roman Pontiff admits of no appeal or recourse, while can. 1404 explains that «Prima Sedes a nemini iudicatur». The pope is, moreover, the «supreme judge for the whole Catholic world», according to can. 1442. This truth is further illustrated in can. 1372, which establishes penal sanctions against anyone «who appeals from an act of the Roman Pontiff to an Ecumenical Council or to the College of Bishops».

The Supreme Pontiff also enjoys full power. By full is meant all the power (*potestas*) needed to govern the Church «in all orders and spheres of the ecclesiastical realm», including the all the power of orders, of jurisdiction and in fact the power over all the functions of *sacra potestas*, i.e. the *munus sanctificandi*, *munus docendi* and *munus regendi*. His power also includes that of governance as listed in can. 135 §1: legislative, executive and judicial⁵⁶.

⁵³ Cf. BENEDICT XVI, *Declaratio*, 10 February 2013. The Pope verbally expressed his intention to resign on the following day.

⁵⁴ Cf. G. GHIRLANDA, «Cessazione dall'ufficio di Romano Pontefice». In footnote 6 on p. 447, the author explains that no one is held to obey a doubtful pope: «il Papa dubbio è Papa nullo».

⁵⁵ E. MOLANO, «The Roman Pontiff», 594.

⁵⁶ Cf. E. MOLANO, «The Roman Pontiff», 594.

We find in *CD 2* that power enjoyed by the Roman Pontiff is for the care of souls. He is to provide «for the common good of the universal Church and for the good of the individual churches». The power he enjoys, then, is to serve the Church; the pope must respect the divinely instituted Church, which includes «faith, the sacraments and the ecclesiastical system itself, with the existence of the episcopate, of particular churches, the rights of the faithful, etc.»⁵⁷. Therefore, the pope is subject to some limitations⁵⁸.

By immediate power is meant that the pope has no need for any type of permission or authorization from a bishop or ordinary to exercise his power in relation to the faithful. The faithful also have a right to directly approach the pope (though exercise of this right may go against the principle of subsidiarity). This right may be exercised, for example, during a trial (can. 1417 §1). The pope may reserve cases to himself (cann. 1405 §1, 1°, 4° and 1444 §2). He is the only one who may grant a dispensation from the obligation of celibacy (can. 291).

By universal power means that the Roman Pontiff may exercise his power in all areas of the Church provided they «fall within the ecclesiastical order». Areas include territories, persons or matters⁵⁹.

«*Quam semper libere exercere valet*» means that the pope is not impeded from exercising his power at any time and in any place. The general praxis of the popes is to allow bishops to govern; however, there are times when the Roman Pontiff concludes that he must intervene for the good of the Church. For example, Pope Benedict XVI on a few occasions and *pro bono Ecclesiae* relieved some relatively young bishops of their duties⁶⁰.

⁵⁷ E. MOLANO, «The Roman Pontiff», 594-595.

⁵⁸ In 1996 the CDF explained that there is a limit to the power enjoyed by the pope, especially when it comes to matters of a divine nature. «Il Romano Pontefice è – come tutti i fedeli – sottomesso alla Parola di Dio, alla fede cattolica ed è garante dell'obbedienza della Chiesa e, in questo senso, *servus servorum*. Egli non decide secondo il proprio arbitrio, ma dà voce alla volontà del Signore, che parla all'uomo nella Scrittura vissuta ed interpretata dalla Tradizione; in altri termini, la *episkopé* del Primato ha i limiti che procedono dalla legge divina e dall'inviolabile costituzione divina della Chiesa contenuta nella Rivelazione». CDF, «Il primato del successore di Pietro nel mistero della Chiesa» n. 7. In the same document, the CDF also noted that «per il carattere supremo della potestà del Primato, non v'è alcuna istanza cui il Romano Pontefice debba rispondere giuridicamente dell'esercizio del dono ricevuto: “prima sedes a nemine iudicatur”». ID., 500.

⁵⁹ E. MOLANO, «The Roman Pontiff», 595.

⁶⁰ On 2 July 2012, Pope Benedict XVI removed 52 year old Robert Bezak, then Ordinary of the Archdiocese of Trnava, Slovakia. On 19 May of the same year, Pope

1.3.2 Dicasteries of the Holy See

Canon 1371, 2° lists the Apostolic See as another competent authority to which one is bound to obey. Dicasteries are in place to assist the pope in his role of governing the Church and is directed towards the *salus animarum*.

The apostolic constitution *Pastor bonus*, promulgated by John Paul II in 1988, lists all the dicasteries and the matters for which each is competent. In order it lists: the first and second sections of the Secretariat of State; the Congregations, including the Congregation for the Doctrine of the Faith, the Congregation for the Oriental Churches, the Congregation for Divine Worship and the Discipline of the Sacraments, the Congregation for the Causes of Saints, the Congregation for Bishops, the Congregation for the Evangelization of Peoples, the Congregation for the Clergy, the Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life, and the Congregation of Seminaries and Educational Institutions. This last congregation was given the name «Congregation for Catholic Education» instead of the name foreseen in *PB*⁶¹. Tribunals, according to artt. 117-130, include the Apostolic Penitentiary, the Supreme Tribunal of the Apostolic Signatura and the Tribunal of the Roman Rota. Pontifical Councils (PC) include the PC for the Laity, PC for Promoting Christian Unity, PC for the Family, PC for Justice and Peace, PC *Cor Unum*, PC for the Pastoral Care of Migrants and Itinerant People, PC for the Pastoral Assistance to Health Care Workers, PC for the Interpretation of Legislative Texts, PC for Inter-religious Dialogue, PC for Dialogue with Non-Believers, PC for Culture and PC for Social Communications. A number of changes have been introduced over the past twenty-five years⁶². An addition is

Benedict relieved 69 year old Bishop Francesco Micciché of Trapani of his duties. On 2 May 2011, Bishop William M. Morris, only 67 years of age, of Toowoomba, NSW Australia was removed from his position by the same Pontiff. On 31 March 2011, Benedict relieved Bishop Jean-Claude Makaya Loembe, Ordinary of Pointe-Noire in the Congo and 57 years of age, of his duties.

⁶¹ A transfer in competence is found in BENEDICT XVI, ap. letter *m.p. Ministrorum institutio sacrorum*, 16 January 2013. The *m.p.* transfers responsibility for seminaries, including promotion and governance, from the Congregation for Catholic Education to the Congregation for the Clergy. Article 1 states that the *Congregatio de Institutione Catholica (de Seminariis atque Studiorum Institutis)* takes the name of *Congregatio de Institutione Catholica (de Studiorum Institutis)*.

⁶² For the most current structure of the Roman Curia, cf. *Annuario Pontificio*, 2014.

Benedict XVI's establishment of the PC for Promoting the New Evangelization⁶³.

Each dicastery is led by a Cardinal Prefect (or an Archbishop President), along with a Secretary⁶⁴ and Undersecretary (*PB* 4). These three are superiors of a given dicastery and exercise ordinary vicarious power⁶⁵. Considering that the publication of administrative acts (sometimes having been submitted to members of the dicastery and approved by the pope⁶⁶) of a general character is signed by either the Prefect, President or Secretary, the offices of Prefect and Secretary of single dicasteries include particular features consistent with those of an ordinary⁶⁷. For example, the mentioned dicasterial prelates exercise both judicial and executive power as do ordinaries (can. 135). When they speak in the name of the dicastery, the statement carries more authority than when they simply give their opinion on a matter⁶⁸.

⁶³ Cf. BENEDICT XVI, ap. letter *m.p. Ubiquumque et semper*, 21 September 2010.

⁶⁴ *PB* 3 §1: «Dicasteria, nisi ob peculiarem ipsorum naturam aut specialem legem aliam habeant structuram, constant ex Cardinali Praefecto vel Archiepiscopo Praeside, coetu Patrum Cardinalium et quorundam Episcoporum, adiuvante Secretario». When the one named to the position of prefect is not yet an archbishop, he is given that title once he is nominated. If he is not yet a cardinal, he would normally be created one at a subsequent consistory.

⁶⁵ G. GHIRLANDA, *Il diritto nella Chiesa*, 732. Cf. JOHN PAUL II, *Regolamento generale della Curia Romana*, 1 July 1999, art. 118 §3, 677.

⁶⁶ *PB* 18; JOHN PAUL II, *Regolamento generale della Curia Romana*, art. 131 §6, 682.

⁶⁷ Cf. J. GARCÍA MARTÍN, «Ordinario e ordinario del luogo ai sensi del can. 134». The author holds that even though the examination and approval of certain administrative acts includes its submission to an examination and approval by members of the dicastery and even the presentation to the Holy Father for his approval, the publication is signed by the Cardinal Prefect, President or Secretary. The author adds, «da qui si può desumere che gli uffici del Prefetto e del Segretario dei singoli Dicasteri comprendono le caratteristiche proprie dell'Ordinario». Moreover, he considers the mentioned offices to be under the heading «uffici di carattere sia territoriale sia personale di ambito universale», as mentioned on p. 147 of the same article.

⁶⁸ At the time of this writing there is continuing debate concerning reception of Holy Communion on the part of those who are divorced and remarried (outside of the Catholic Church). Cardinal Walter Kasper's discourse delivered on 21 and 22 February 2014 at the Consistory of Cardinals has been well publicized; it was translated into five languages, published and distributed. His conclusions go against what has long been established doctrinal understanding. He has contradicted writings of the Prefect of the Congregation for the Doctrine of the Faith, Gerhard Card. Müller, who in turn responded thus: «I am not involved [in the Kasper debate] as a private theologian, but in the function of the Congregation for the Doctrine of the Faith, which is

1.3.3 Limits in the exercising of authority

While the Roman Pontiff has supreme, full, immediate and universal ordinary power by virtue of his office, his vicars or delegates do not⁶⁹. However, as can. 360 succinctly states, the pope normally «conducts the affairs of the universal Church through the Roman Curia which performs its function (*munus*) in his name and by his authority for the good and service of the churches⁷⁰. This means that the power exercised by the Curia is ordinary vicarious power⁷¹. The Holy Father simply cannot involve himself in every small matter that might arise in the Church and the supreme legislator may have considered this when broadening the scope of authority in can. 1371, 2°⁷². (The reader will

indeed the only one of the Roman Congregations which has the duty to inform, without mediation, the Magisterium of the Pope, while others who take part, even if they have the cardinalial rank, speak personally, only for themselves, and do not make official statements.

The Congregation for the Doctrine of the Faith has a clear mandate to promote the Catholic faith, but also to protect it. But that includes no other task than the one the Pope himself received from Jesus Christ, and here I must mention that I do not just sit back in comfort and ease to flirt with public opinion. It is quite fine when you have the wind on your back and are then inflated perhaps excessively. But I believe that this temptation must be resisted by every bishop and by every priest, whether one wants to hear it or not». Interview with Vatican Radio, 24 March 2014, <http://rorate-caeli.blogspot.com/2014/03/very-relevant-exclusive-for-la-stampa.html> [accessed 19 June 2014]. Cf. G.L. MÜLLER «Indissolubilità del matrimonio» and W. KASPER, *The Gospel of the Family*.

⁶⁹ Cf. can. 331, which states that the pope may freely exercise this power. He still is to follow the provisions of cann. 7-8 CIC when introducing new laws. The proper promulgation of a law helps to avoid confusion and to maintain transparency.

⁷⁰ «Curia Romana, qua negotia Ecclesiae universae Summus Pontifex expedire solet et quae nomine et auctoritate ipsius munus explet in bonum et in servitium Ecclesiarum [...]».

⁷¹ Cf. G. GHIRLANDA, *Il diritto nella Chiesa*, 732. Ghirlanda explains that the power is vicarious «per il fatto che non agisce per diritto proprio o per propria iniziativa, ma a nome del Romano Pontefice, dalla cui volontà dipende tutto il suo operare, con una potestà ordinaria vicaria, in genere amministrativa, nel caso dei Dicasteri, o giudiziale, nel caso dei Tribunali».

⁷² The power enjoyed by dicasteries of the Roman Curia has long since been a source of contention. To wit, we consider a writing from 1964, where a theologian states that due to the size of the Church, the pope necessarily must entrust certain matters to his staff. «We then meet the well-known dilemma that this staff shares in the papal power but does not possess it by divine law, even though it rules the bishops who do hold their office by divine law. The pope is further physically incapable of treating every case with such competence and knowledge of the individual circum-

recall that the CIC 1917 limited the disobedience to the «Romano Pontifici» instead of to the «Sedi Apostolicae»).

Article 18 of *PB* illustrates that there are limits to the authority and power enjoyed by dicasteries of the Roman Curia. It states that «decisions of major importance are to be submitted for the approval of the Supreme Pontiff», that dicasteries «cannot issue laws or general decrees having the force of law or derogate from the prescriptions of current universal law, unless in individual cases and with the specific approval of the Supreme Pontiff» and that the pope is to be informed of grave and extraordinary matters before they are transacted by a dicastery⁷³.

Not all of the above-mentioned dicasteries are competent to issue binding commands. However, some of them do have the authority to do so, for example in matters involving a hierarchical recourse (*PB* 19 §1). Those with exclusive competence in various matters and those with tribunals (*PB* 19 §2) are considered to have more authority, at least relative to matters concerning our canon. For example, the main role of the CDF is to promote and safeguard the integrity of faith and morals throughout the Church. If the CDF warns a theologian that his or her writings contain objectionable material and the theologian does nothing to change or clarify the problems, the Congregation may impose a just penalty. Likewise, decisions made concerning *graviora delicta* are binding, after any appeal or recourse is presented and decided upon⁷⁴.

It is outside the scope of some dicasteries to issue precepts or prohibitions. For example, the verbs used in art. 3 of the *motu proprio* establishing the Pontifical Council for Promoting the New Evangelization

stances as could be possessed by decentralized commissions under episcopal authority. Thus the problem is both practical and theological, for those who truly possess apostolic authority must leave decisions to delegates, often with detrimental results. The great true problem of centralized government is that it appears to make it impossible, or at any rate very difficult, to arrive at the best decisions, even though the authorities themselves may not be to blame». A. MÜLLER, *Obedience in the Church*, 153-154.

⁷³ The common form of approval is recognized with the words, «Romanus Pontifex (...) approbavit et confirmavit». «Las aprobaciones en forma común suponen un control que otorga al acto aprobado una mayor autoridad y firmeza, pero sin cambiar su naturaleza, autoría ni responsabilidad, que corresponde solamente al dicasterio que publica el acto. La aprobación en forma común no elimina ni sana los posibles defectos del acto o norma publicada y frente a él caben los recursos ordinarios y extraordinarios que la legislación reconoce frente a las disposiciones de la curia romana». A. VIANA, «Sobre el recto ejercicio de la potestad de la curia romana», 535.

⁷⁴ Cf. JOHN PAUL II, *m.p. SST*, 30 April 2001; Cf. CDF, *Normae de gravioribus delictis*, 21 May 2010 artt. 27-28.

are: promoting, fostering, studying and encouraging⁷⁵. Nothing is mentioned about governing or legislating. However, the transfer of competence for Catholic education to this pontifical council means that it now handles recourses⁷⁶.

1.3.4 Concerning bishops

There are times when a dicastery of the Roman Curia is called to intervene in a matter in which it enjoys competence. If the Congregation for the Clergy upholds a recourse against the closure of a parish or a church (cf. *PB* 98), the bishop may present recourse to the Apostolic Signatura (cf. *PB* 123). If the latter confirms the decision, the bishop is held to keep the parish or church open.

Similarly, if the CDF determines that a priest is to be removed from ministry (or given other penalties) as a result of grave doctrinal errors or the commission of a *delictum gravius*, the bishop or religious superior must implement that decision unless there are serious reasons not to do so⁷⁷. We can interpret our canon of study to mean that should the bishop ignore the above-mentioned decisions, he is to be warned and, if he does not comply, be punished with a just penalty. The Congregation for Bishops has the authority to intervene when needed (cf. *PB* 79), and the pope always enjoys that right⁷⁸.

1.3.5 Summary

Dicasteries of the Roman Curia, then, make up the Apostolic or Holy See. Its establishment goes back to the time of the apostles; hence the name. The role of the dicasteries is to assist the pope in the governing of the Church in matters spiritual or at least touching upon the spiritual⁷⁹. Some dicasteries would be more likely to issue precepts or prohi-

⁷⁵ Cf. BENEDICT XVI, ap. letter *m.p. Ubicumque et semper*.

⁷⁶ Cf. BENEDICT XVI, ap. letter *m.p. Fides per doctrinam*, artt. 1-3.

⁷⁷ «Riguardo all'osservanza incomoda dobbiamo dire che non significa che la legge non obbliga quando prescrive qualcosa di oneroso, ma che non obbliga quando c'è una grave difficoltà nel soggetto che deve osservare la legge [...]. Se in una circostanza particolare dovesse venire un determento alle anime, la legge non obbligherebbe». G. GHIRLANDA, *Il diritto nella Chiesa*, n. 601.

⁷⁸ Cf. A. VIANA, «The Roman Curia», 686.

⁷⁹ Though there can be times when temporal matters must be considered, such as alienation or the closing of a church, there is still the spiritual aspect because an eventual decision would touch upon the spiritual well being of the Christian faithful in the diocese in question.

bitions as mentioned in our canon: this depends upon the competences granted them by the Supreme Pontiff. These competencies are listed and explained in *PB*, which has been the governing legislation since 1988. Popes have transferred various competencies over the centuries. The pope is free to change the structure of the Roman Curia as he wills.

1.4 Ordinatio

«Ordinatio» is found in our canon of study and also in its 1917 predecessor. There is no adjective modifying or describing the word «ordinary». Therefore, can. 1371, 2° refers to all of those defined as an ordinary in can. 134 §1 (which will be discussed in the next section). It is important to note that religious who live in a diocese are subject to their local superior as well as the diocesan bishop. Likewise, one in a personal prelature is subject to both the ordinary of the prelature and the local bishop as is a member of an ordinariate. A layperson may be subject to the local ordinary when he or she is in another territory.

1.4.1 Definition

Canon 134 §1, found in Book I of the CIC 1983 under the heading «the power of governance», states the following concerning Ordinaries:

Nomine Ordinarii in iure intelleguntur, praeter Romanum Pontificem, Episcopi diocesani alique qui, etsi ad interim tantum, praepositi sunt alicui Ecclesiae particulari vel communitati eidem aequiparatae ad normam 368, necnon qui in iisdem generali gaudent potestate executiva ordinaria, nempe Vicarii generalis et episcopales; itemque, pro suis sodalibus, Superiores maiores clericalium institutionum religiosorum iuris pontificii et clericalium societatum vitae apostolicae iuris pontificii, qui ordinaria saltem potestate executiva pollent.

The *potestas* enjoyed by an Ordinary can be proper, when it is exercised in connection with an autonomous office such as the Roman Pontiff or a diocesan bishop. It is vicarious when it is exercised in the name of someone else or if the *potestas* is connected to a subordinate or other (stable) office, such as a vicar general, episcopal vicar or vicar of a supreme moderator of an institute of consecrated life⁸⁰.

⁸⁰ Cf. G. GHIRLANDA, *Il diritto nella Chiesa*, 577. An ordinary can also possess delegated *potestas* in a matter delegated to him by higher authority. A diocesan bishop might be delegated to undertake a visitation of a seminary outside his territory. In 2010

J. García Martín attempts to provide a succinct definition of Ordinary. He states «the Ordinary is the person who has at least general executive ordinary power attached to an office that has a general or generic character in reason of the matter, of the people or of the territory»⁸¹. The offices found in can. 134 §1 are those of the Roman Pontiff, that of the diocesan bishop and his vicars, major superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right. Noteworthy, according to García Martín, is that the only vicars mentioned are those of the diocesan bishop but not of the Roman Pontiff nor of major superiors. However, there is no reason to believe can. 134 §1 is less than complete when one considers that can. 360⁸², which defines «Apostolic See», amply addresses the *potestas* of superiors of the Roman Curia⁸³.

1.4.2 Differences appearing in the CIC 1983

A noticeable difference between the two codes is that there is no adjective modifying «ordinary» in the CIC 1983. Can. 1371, 2° does not restrict competent authority to one's proper ordinary, but states simply «ordinario» as one who is to be obeyed⁸⁴. As already noted, our present

Pope Benedict XVI wrote the following to Cardinal Velasio De Paolis, prefect emeritus of the Prefecture for Economic Affairs of the Holy See: «by means of this letter, I am naming you my Delegate for the Congregation of the Legionaries of Christ, and I confer on you the task of governing this religious institute in my name for as long as it takes to carry out the path of renewal». BENEDICT XVI, «Papal Appointment», 16 June 2010.

⁸¹ «Ordinario è la persone che ha potestà almeno esecutiva ordinaria generale annessa a un ufficio che ha carattere generale o generico in ragione della materiale, delle persone e del territorio». J. GARCÍA MARTÍN, «Ordinario e ordinario del luogo», 146. Also, according to can. 143 §1, once one is deprived of an office, he consequently loses the ordinary power connected with it.

⁸² Canon 360: «Curia Romana, qua negotia Ecclesiae universae Summus Pontifex expedire solet et quae nomine et auctoritate ipsius munus explet in bonum et in servitium Ecclesiarum, constat Secretaria Status seu Papali, Consilio pro publicis Ecclesiae negotiis, Congregationibus, Tirunalibus, aliisque institutis, quorum omnium constitution et competentia lege peculiari definiuntur».

⁸³ Cf. J. GARCÍA MARTÍN, «Ordinario e ordinario del luogo», 147-148.

⁸⁴ Cf. B.F. PIGHIN, *Diritto penale canonico*, 354: «Nel novero delle autorità – cui si deve evitare la disobbedienza pertinace – figura pure qualsiasi Ordinario, anche non proprio, ovvero ogni titolare di potestà che nel CIC può fregiarsi di tale denominazione (cfr. can. 134 §1), purché i suoi comandi e i suoi divieti siano “*legittimi*”, ossia “*non eccedano la competenza propria del loro autore e che questi si attenga alle norme stabilite dal diritto*”». (Italics in the original).

canon also changed «Roman Pontiff», to «Apostolic See». These two examples illustrate that authority to be obeyed has been increased in the CIC 1983.

There are also new juridic concepts to note. Canon 134 §1 specifies that an Ordinary enjoys general ordinary executive power. The possession of said power is required for one to be considered an ordinary, something that the prior legislation had not resolved⁸⁵. No longer are there various distinctions of power mentioned in the canon. For example, *potestas dominativa*⁸⁶ no longer is mentioned.

There are also new subjects under the name «ordinary» in the new canon, namely those who are placed over a particular church or community equivalent to it, according to the norm of can. 368⁸⁷. New are episcopal vicars and major superiors of clerical institutes of pontifical right.

Canon 368 speaks of particular churches, which first of all include dioceses and likewise a territorial prelature, a territorial abbacy, an apostolic vicariate, an apostolic prefecture, and finally an apostolic administration «stabilter erecta». There are also other particular churches with a specific mission such as the military ordinariate⁸⁸, which is limited to a particular nation.

1.4.3 Anglican Ordinariate

By means of his 2009 apostolic constitution *Anglicanorum coetibus*, Benedict XVI provided «for personal ordinariates for Anglicans entering into full communion with the Catholic Church». Subsequent ordinariates are foreseen to be erected «within the confines of the territorial boundaries of a particular Conference of Bishops»⁸⁹. The pope explains

⁸⁵ Cf. J. GARCÍA MARTÍN, «Ordinario e ordinario del luogo», 141-142. The author goes into more detail, including concerning the distinctions between major superiors of religious orders as compared to those of religious congregations.

⁸⁶ To translate *dominativa* as «dominative» does not give a full explanation. *Potestas dominativa* «denotes domestic authority within a monastic community; it is not true jurisdiction. It is vested in superiors and chapters by the constitutions of the various orders and the universal laws governing members of the community». W. HÄRLE, «Potestas Dominativa», 1.

⁸⁷ «Ecclesiae particulares, in quibus et ex quibus una et unica Ecclesia catholica existit, sunt imprimis dioeceses, quibus, nisi aliud constet, assimilantur praelatura territorialis et abbatia territorialis, vicariatus apostolicus et praefectura apostolica necnon administratio apostolica stabilter erecta».

⁸⁸ Cf. JOHN PAUL II, ap. cons. *Spirituali militum curae*, 21 April 1986, 482.

⁸⁹ BENEDICT XVI, ap. cons. *Anglicanorum coetibus*, 4 November 2009, 987.

in I §3 of the same apostolic constitution that *ipso iure* an ordinariate possesses juridic personality and that it is juridically comparable to a diocese. Moreover, the ordinariate consists of clerics, laypeople, members of religious institutes which were formally part of the Anglican communion but are presently in full communion with the Catholic Church (I §5). The power of an ordinary in this ordinariate (as in a military ordinariate) is considered personal in nature⁹⁰.

Part V of the apostolic constitution explains that the power of the Ordinary in a Personal Ordinariate is ordinary, vicarious and personal. Here the pope states that the Ordinary exercises personal *potestas* over all who belong to the Ordinariate. The *potestas* of the ordinary is not as wide as that of a diocesan bishop⁹¹. «This power is *to be exercised jointly* with that of the local Diocesan Bishop, in those cases provided for in the Complementary Norms»⁹². Time will tell how the joint exercise of power works in practice.

1.4.4 Personal Prelature

Would a personal prelature be considered a particular church, even though it is not included in can. 368? No. A particular church is made up of a diocesan bishop, of clerics and of a portion of the people of God, as we read in can. 369. A personal prelature is made up of only priests and deacons but not laypeople (can. 294)⁹³. And, the prelature needs the previous consent of the diocesan bishop before its priests may exercise pastoral or missionary works in a particular diocese (can. 297). However, the prelate who presides over the prelature is considered the *Ordinarius proprius*⁹⁴.

⁹⁰ Cf. J. GARCÍA MARTÍN, «Ordinario e ordinario del luogo», 149.

⁹¹ For example, art. 12 of the *Complementary Norms* states that the ordinary needs the permission of the governing council in order to admit a candidate to Holy Orders. CDF, *Complementary Norms*, artt. 6 §1; 12 §2 a.

⁹² BENEDICT XVI, ap. cons. *Anglicanorum coetibus*, 987. For a comprehensive examination of the apostolic constitution and the *Complementary Norms*, cf. J.I. ARIETA, «Personal Ordinariates for Former Anglicans», 378-383; ID., «Ordinariato personal para fieles anglicanos», 814-819.

⁹³ Cf. J. GARCÍA MARTÍN, «Ordinario e ordinario del luogo», 150. Since laypeople are cooperators only, «ciò risulta dalla necessità che detti fedeli laici conservino inalterata la loro necessaria appartenenza alla rispettiva Chiesa particolare di domicilio». C. TAMMARO, «Riflessioni sul senso e l'ambito di applicazione del can. 294 CIC», 689.

⁹⁴ Canon 295 §1. A reader who desires a deeper analysis of the personal prelature may wish to refer to G. GHIRLANDA, *Il diritto nella Chiesa*, 175 and ID., «Natura delle prelature».

1.4.5 A list of ordinaries

The following are considered ordinaries, possessing general executive ordinary power:⁹⁵

1. The Roman Pontiff: Ordinary of all the particular churches (can. 333 §1) and supreme superior of members of institutes of consecrated life and societies of apostolic life (can. 590 §2).
2. The (Cardinal) Prefect (or President), the Secretary and Under-secretary of a dicastery, who, due to their office, may issue general administrative acts.
3. The Diocesan Bishop and those equivalent to him according to can. 381 §2, those entrusted with a particular church⁹⁶, including a territorial prelate, territorial abbot and the vicar of an apostolic vicariate (can. 371 §1). A titular archbishop who is the Secretary or prefect in a dicastery of the Roman Curia is considered an ordinary in virtue of the office he possesses.
4. The Apostolic Administrator *ad nutum Sanctae Sedis* during an impeded or vacant see. A coadjutor bishop, auxiliary bishop, vicar general and episcopal vicar who are Ordinaries by law (in virtue of their office) are considered such during an impeded see. In virtue of his election, a priest acting as diocesan administrator also is considered an ordinary during an impeded see, enjoying the same *potestas* as the law grants to a vicar general (can. 426).
5. The episcopal vicar and vicar general, including the coadjutor bishop and auxiliary bishop (can. 406 §1). All possess general executive ordinary power.
6. Major superiors of religious institutes and their vicars and major superiors of clerical and lay societies of apostolic life of pontifical right (can. 620)⁹⁷.

⁹⁵ The reader will notice that this list is more complete than what is contained in can. 134 §1. Cf. J. GARCÍA MARTÍN, «Ordinario e ordinario del luogo», 166-170; G. GHIRLANDA, *Il diritto nella chiesa*, 466.

⁹⁶ Cf. PAUL VI, *m.p. De Episcoporum muneribus*, 15 June 1966, III, 468-469. «Episcopi dioecesani intelleguntur non solum Episcopi residentiales, sed etiam alii ipsi in iure equiparati. Id postulat paritas iurium, quibus Episcopi dioecesani et alii fruuntur...». Diocesan bishops «are vicars of Christ in their respective dioceses, and their power proceeds directly from God». *LG* 27; E. MOLANO, «The Roman Pontiff», 593.

⁹⁷ «It could be argued that in these institutes the superiors are ordinaries in as much as they have been granted by the legislator an ordinary executive power over

7. The prelate of personal prelature, who is its «proper ordinary» (can. 295 §1) and his vicar.
8. The ordinary of an ordinariate.

We note that the metropolitan is not mentioned. The CIC considers him an ordinary inasmuch as he is the bishop of the diocese to which he was nominated. However, can. 436 §1 affords him certain competencies in suffragan dioceses, including vigilance over the faith and ecclesiastical discipline (1°)⁹⁸, conducting of a canonical visitation if a suffragan has neglected it and the Apostolic See has approved the visitation (2°)⁹⁹ and designation of a diocesan administrator in certain cases (3°)¹⁰⁰. In the situations foreseen in 1°, the metropolitan is authorized only to inform the Roman Pontiff if there are abuses. In 2°, he would simply report the results of the visitation he made to a particular suffragan diocese with either the Roman Pontiff or competent dicastery of the Apostolic See.

1.4.6 Local ordinaries

Local ordinaries have an «office of a territorial character such as an ecclesiastical circumscription and as a result have territorial power to exercise over the faithful who find themselves in the said territory»¹⁰¹. The local ordinary exercises his *potestas* not only over people, but also over places and things. The local ordinary may or may not be in charge of a territory. The episcopal vicar for religious or for the Order of Virgins in a diocese is considered a local ordinary, but his competence is primarily personal and secondary, and there is a limit to his exercise of

the members of their religious order in the material sphere of competence that the legislator assigns to ordinaries». H. FRANCESCHI, «The Power of Governance», 844.

⁹⁸ Canon 436 §1: «In dioecesibus suffraganeis Metropolitae competit: 1° vigilare ut fides et disciplina ecclesiastica accurate servantur, et de abusibus, si qui habeantur, Romanum Pontificem certiores facere».

⁹⁹ Canon 436 §1, 2°: «canonicam visitationem peragere, causa prius ab Apostolica Sede probata, si eam suffraganeus neglexerit».

¹⁰⁰ Canon 436 §1, 3°: «deputare Administratorem dioecesanum, ad normam cann. 421, §2 et 425, §3».

¹⁰¹ «Per essere Ordinario del luogo è necessario avere un ufficio di carattere territoriale come una circoscrizione ecclesiastica e, quindi, avere potestà territoriale da esercitare sui fedeli che si trovano in detto territorio». J. GARCÍA MARTÍN, «Ordinario e ordinario del luogo», 170.

administrative and territorial *potestas*¹⁰². Therefore, the power is more ample than that of one who has power only over people, such as Superiors of various types of institutes and a prelate of a personal prelature. If the power the law grants to a superior may be exercised only over people (usually those members who make up the institute), said superior cannot be considered a local ordinary¹⁰³.

A requirement for a local ordinary is that his *potestas* of ordinary and executive governance be strictly territorial or that the *potestas* can be exercised in places especially subject to his jurisdiction, such as in the case of a military ordinary. His *potestas* is strictly personal and not territorial, because the military ordinariate is devoid of a proper canonical territory. There is dependence upon the diocesan bishop; military chaplains minister to members who find themselves in various dioceses and only in the absence of the former would diocesan priests be expected to serve the members of the ordinariate¹⁰⁴.

All ordinaries (can. 134 §1) are local ordinaries, with the exception of major superiors of religious institutes and superiors of societies of apostolic life (can. 134 §2). All of them have a duty not to act outside their competence and with concern for the *salus animarum*.

1.5 Superior

The final competent authority mentioned in can. 1371, 2º, is a «superior». This word appears many times in the CIC, and with various modifiers. According to Ochoa, «*Superior-oris*» appears 81 times; «*superior communitas*» one time; «*superior competens*» 30 times; «*superior congregationis monasticae*» four times; «*superior domus*» one time; «*superior ecclesiasticus*» two times; «*superior hierarchicus*» three times; «*superior instituti*» ten times; «*superior legitimus*» six times; «*superior localis*» twice; «*superior maior*» 46 times; «*superior monasterii sui iuris*» twice; «*superior proprius*» three times; «*superior provincialis*» twice and «*superior religiosus*»

¹⁰² Cf. A. VIANA, «Ordinario del lugar», 823. «Pero el adjetivo *local* aplicado al sustantivo ordinario no siempre expresa un criterio territorial estricto. No todo ordinario local está al frente de un territorio canónico como ámbito especial de competencia. Así, por ejemplo, el vicario episcopal para las religiosas de la diócesis es ordinario local, pero su competencia es primariamente personal y secundariamente, como límite de ejercicio de su potestad administrativa, territorial».

¹⁰³ Cf. J. GARCÍA MARTÍN, «Ordinario e ordinario del luogo», 170.

¹⁰⁴ Cf. J. VIANA, «Ordinario del lugar», 824; ID. «Ordinariato militar», 808.

eight times¹⁰⁵. The majority of superiors in the CIC are those who head religious institutes or societies of apostolic life¹⁰⁶. Sometimes a superior is also an ordinary.

Canon 620 indicates who are considered to be major superiors («those who govern an entire institute, a province of an institute or part equivalent to a province, or an autonomous house, as well as their vicars») and those who are comparable to major superiors (for example, abbot primate and a superior of a monastic congregation). However, those in this second category do not possess «all the power which universal law grants to major superiors». The supreme moderator, inasmuch as he or she «holds power over all the provinces, houses and members of an institute», is also considered a superior (can. 622).

Superiors are mentioned elsewhere in the CIC. Canon 241 §3, which concerns admission to a major seminary of one who was dismissed from another seminary or religious institute, states that «testimony of the respective superior is also required, especially concerning the cause for their dismissal or departure». In this case, a rector or vice-rector or possibly one assigned to the formation of the dismissed seminarian would fall under the category of superior. Such a superior would not be an ordinary as a result of his position as a rector or vice-rector. If the diocesan bishop names himself rector, his ordinary power would stem from his office of diocesan bishop and not from his position in the seminary.

In the case of a superior in a seminary, only those in the seminary would be subject to him. He would have no authority over the faithful who live across the street from the seminary. For the good ordering of the seminary, the rector may find it necessary to issue warnings, precepts, etc. upon those subject to him (clerical and lay). However, the decision to ask a seminarian to leave formation would not be considered a penalty, especially in light of the fact that no one enjoys the right to sacred ordination (cf. can. 1025).

Canon 561 mentions the rector of a church «or another legitimate superior» as those who may give permission to administer the sacraments, etc. Therefore, both would be considered superiors according to the CIC.

Yet as many times as the word appears, «superior» is not defined by the CIC, though there are some canons that clarify who is considered a

¹⁰⁵ Cf. X. OCHOA, *Index verborum ac locutionum Codicis iuris canonici*, 477-479.

¹⁰⁶ The majority are listed in Book II, Chapter II of the CIC.

superior. We can conclude that in the context of can. 127, which discusses juridic acts, a superior falls into the category of «any competent ecclesiastical authority»¹⁰⁷.

1.5.1 What about the pastor (parish priest)?

Even though the CIC does not list him as a superior, the pastor (*parochus*) is responsible for governing, which is exercised under the authority of the diocesan bishop, according to can. 519. The Church realizes that at times a pastor will need assistance, especially if the parish to which he is entrusted is a large one. In such a case, one or more parochial vicars may be assigned (can. 545 §1).

A parochial vicar, according to can. 545 §1, is considered a «coworker» with the pastor and a «sharer in his solicitude». He is to «offer service in the pastoral ministry by common counsel and effort with the pastor and under his authority». It is for the pastor to list the obligations and rights of his parochial vicar(s) by means of a mandate (can. 548 §1). Can. 548 §2 states that a parochial vicar «is obliged to assist the pastor in the entire parochial ministry by means of office [...]».

There are limits to the pastor's authority over his parochial vicar¹⁰⁸. Canon 552 says that the diocesan bishop or diocesan administrator may remove a parochial vicar for a just cause. The canon does not give this same right to the pastor. Therefore, the pastor could not impose as a just penalty for the vicar's persistent disobedience to a legitimate precept or prohibition his removal from the parish, though it seems that he may issue disciplinary measures (a just penalty) upon the vicar in line with can. 1371, 2°, given that the vicar is under the authority of the pastor, which is implied in the CIC and explicit in *CD* 30.

The pastor may also impose punishments on laypeople working in the parish, since he is considered their superior and since they «are bound to follow with Christian obedience (*«christiana oboedientia»*) those things which the sacred pastors, inasmuch as they represent Christ, declare as teachers of the faith or establish as rulers of the Church» (can. 212 §1). He would be wise to also follow civil law when it comes to the discipline of lay employees.

¹⁰⁷ M. THÉRIAULT, «Juridical Acts», 809.

¹⁰⁸ This topic continues to be debated by canonists. Cf. A.F. SÁNCHEZ-GIL, «Parishes, Parish Priests and Assistant Priests», 1282-1283.

1.6 Legitime

«*Legitime*», as it appears in can. 1371, 2°, modifies both «*praecipienti*» and «*prohibenti*». Though there are several possible meanings (lawful, right, legitimate, real, genuine, just, proper), the word is usually translated «legitimate» or «lawful». «*Legitime*» appears in scores of canons in the CIC, but only one time in Book VI. What is being precepted or prohibited may not go beyond what divine or merely ecclesiastical law allows nor may it be contrary to the law. A precept is expected to be lawful: the one who issues or imposes a precept must be competent (over the person and the matter) and «whatever is demanded in the precept must be within the scope of the duties imposed by canon law on the person or persons to whom the precept is directed»¹⁰⁹.

A 2001 Instruction¹¹⁰ from the Congregation for the Evangelization of Peoples concerns priests from missionary countries who are sent abroad for further studies by their bishop or superior but who decides to remain in the developed country to which he was sent after the completion of his studies. The Instruction makes clear the authority of the bishop from the priest's diocese of incardination to legitimately call the priest back to the diocese. Citing can. 1371, 2°, the Instruction states that a just penalty is to be imposed upon the priest if he does not obey his superior after having been warned¹¹¹.

1.7 Praecipienti vel prohibenti

The participial verb «*praecipienti*» is commonly translated «precept». Other renderings of the word include «to take or receive in advance», «to anticipate», «to warn», «to order» or to «teach or instruct». In one English version, the word «*praecipienti*» appears as a noun and is translated «command»¹¹². In this case, «precepts», a third person sin-

¹⁰⁹ P. LOMBARDIA, «Singular Administrative Acts», 64.

¹¹⁰ An instruction clarifies prescripts of laws and does not go beyond what is already in the law (can. 34 §1) nor does it derogate from laws (can. 34 §2).

¹¹¹ Cf. CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, *De vitanda quorundam clericorum vagatione*, 25 April 2001, 646. «Il sacerdote che si rifiuti ostinatamente, anche dopo l'ammonizione prescritta, di obbedire alla decisione del proprio Vescovo di rientrare in diocesi, venga punito con giusta pena, secondo le norme del diritto. Prima di procedere, il Vescovo che invia informi debitamente il Vescovo ospitante». We note the Congregation's hesitancy to suggest possible just penalties.

¹¹² E. CAPARROS – M. THÉRIAULT – J. THORN, ed., *Code of Canon Law Annotated*, 1068.

gular verb, would seem most faithful to the text. That is to say, one is to be punished with a just penalty who does not obey the competent authority who legitimately precepts (or prohibits)¹¹³.

Canon 49 provides a definition of a singular precept: «Praeceptum singulare est decretum quo personae aut personis determinatis aliquid faciendum aut omittendum directe et legitime imponitur, praesertim ad legis observantiam urgendam». The precept is singular inasmuch as it is addressed to one or several persons. It is a direct order commanding one to do something (for example, observe a law) or to refrain from something (for example, from violating a law)¹¹⁴.

Interestingly enough, «praecipiens – entis» appears only one other time in the CIC. Canon 58 §2 reads: «Praeceptum singulare, legitimo documento non impositum, cessat resoluto iure praecipientis». In English «praecipientis» is translated «issued», in Italian «emanato» and Spanish «ordenó»¹¹⁵. This canon is useful for our study since it tells us that if a singular precept was not imposed by means of a legitimate document (in the external forum¹¹⁶), the precept ceases when the authority of the one who issued it ceases. Therefore, if a superior wishes a precept to endure, he must avoid giving it orally, as once the one who gave the precept leaves office (for whatever reason), the one to whom the precept was given is no longer held to its contents. This is an exception to can. 46¹¹⁷. Whichever way one translates the Latin in this case,

¹¹³ There are at least two Italian translations: can. 1371, 2°: «chi, in altro modo, non obbedisca alla Sede Apostolica, all'Ordinario, o al Superiore, che legittimamente gli danno un comando o un divieto, e dopo l'ammonizione, persista nella disobbedienza». L. CHIAPPETTA, *Il Codice di Diritto Canonico*² II, 665. The second: «chi in altro modo non obbedisce alla Sede Apostolica, all'Ordinario o al Superiore che legittimamente gli comanda o gli proibisce, e dopo l'ammonizione persiste nella sua disobbedienza». The Spanish translation is closer to the Italian than the English: «quien de otro modo desobedece a la Sede Apóstolica, al Ordinario o al Superior cuando mandan o prohíben legítimamente, y persiste en su disobediencia, despues de haber sido amonestado». (Italics are mine). www.vatican.va/archive/cdc/index.htm [accessed 20 April 2013].

¹¹⁴ A diocesan bishop may include in a precept: «the prohibition of one of his clergy from running for office, a forceful reminder to a lax diocesan official to carry out his or her duties, or the prohibition against an unauthorized liturgical innovation». J. HUELS, «Singular Administrative Acts», 110.

¹¹⁵ www.vatican.va/archive/cdc/index.htm [accessed 20 April 2013].

¹¹⁶ Cf. L. CHIAPPETTA, *Il Codice di Diritto Canonico*² II, 105.

¹¹⁷ «Actus administrativus non cessat resoluto iure statuentis, nisi aliud iure expresse caveatur».

what is clear is that the canon concerns disobedience to something precepted or to the issuing of a precept, command or mandate on the part of competent authority.

The participial verb «prohibenti» (prohibition) likewise appears only one other time in the CIC 1983: in can. 26, where the form «prohibentem» is used. The second part reads: «[...] contra legem vero canonicam, quae clausulam contineat futuras consuetudines prohibentem, sola praevalere potest consuetudo centenaria aut immemorabilis». «Prohibentem» is rendered «prohibiting» in the translation found on the Vatican website.

1.8 Non obtemperat

The phrase «*non obtemperat*» was examined in detail in chapter one; here it is enough to note that as in the CIC 1917, «*obtemperat*» appears infrequently. It appears a total of five times in the former CIC and only twice in the present CIC. In addition to can. 1371, 2°, the word is found in can. 260, which states: «Rectori, cuius est cotidianum moderamen curare seminarii, ad normam quidem institutionis sacerdotalis Rationis ac seminarii ordinationis, omnes in propriis muneribus adimplendis obtemperare debent».

The Congregation for Catholic Education explained in a 1993 directive that the rector represents the bishop; «he is the one who is primarily responsible for the life of the seminary, in addition to representing [the bishop] in the ecclesial, as well as the civil, arena»¹¹⁸. Since the rector is the primary collaborator with the bishop in regards to the formation of future priests, the candidates owe their obedience to him¹¹⁹.

Understanding «*obtemperat*» as meaning obedience in the strictest sense, however, would be going too far. A vow or promise of obedience made to one's legitimate superior or ordinary is stronger than simply submitting or yielding to one's rector. When taking into account that even the rector is responsible to the bishop (or conference of bishops, depending upon where the seminary is located or how it is struc-

¹¹⁸ CONGREGATION FOR CATHOLIC EDUCATION, *Direttive sulla preparazione degli educatori nei seminari*, 4 November 1993, n. 18.

¹¹⁹ Cf. D. CITO, «Office of the rector», 289. Cito says that «the members of the seminary community owe their obedience» to the rector. In addition to seminarians, these members would seem to include priests and lay people who make up the staff of the seminary. Cf. G. GHIRLANDA, *Il diritto nella Chiesa*, 112.

tured)¹²⁰, we conclude that obedience is required but in a different sense¹²¹.

«*Obtemperare*»¹²² is understood etymologically as moderating oneself in front of someone. It is a way of obeying laws, rules, a precept, an obligation or a desire. Yet it involves more than the person merely executing what is prescribed or required of him. This obedience goes further. There is a certain solemnity associated with «*obtemperare*» that expresses an attitude of conscious, spontaneous and respectful adherence of the will without the notion of compulsion or servility¹²³. While in can. 1371, 2° the verb «*obtemperare*» is towards the precept or command, in can. 260, it is in regards to the seminary rector¹²⁴.

1.8.1 Why not *oboedire*?

A brief look at some of the eight canons where «*oboedientia*» appears shows that three canons (273, 590 §2 and 705) address obedience

¹²⁰ Cf. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Program for Priestly Formation*⁵, 103-104 (nn. 318-323). Number 318 states, in part: «The rector, always a priest, serves as the pastor of the seminary community. He sets the direction and tone of the seminary program. By creating a climate of mutual confidence and trust, he elicits the full cooperation and involvement of faculty and students».

¹²¹ The seminary rector may only prohibit those things within his competence. We consider a situation concerning a rector who informed the transitional deacons that it was he who would give them the faculty to preach at Mass on a case by case basis. This well-intentioned initiative (put in place to ensure the deacons were not overextending themselves) went beyond the competence of the rector, who could have used more precise language in his written prohibition. He might have stated «before accepting any invitations to assist at a Mass outside the seminary, a deacon is expected to ask the rector for permission».

¹²² In the English version found on the Vatican website «*deben obtemperare*» is translated «must obey» in can. 260 and «*non obtemperat*» as «does not obey» in 1371, 2°. For can. 260, the Italian translation is «*devono obediare*» and for can. 1371, 2° «*non obedisce*». In Spanish are used «*deben obedecer*» and «*desobedece*» respectively. We also keep in mind the various definitions offered in chapter one, including «yield» in the context of can. 260 (concerning the seminary rector).

¹²³ «*Obtemperare* viene da: “temperare” = moderarsi davanti (ob) qualcuno. È un modo di obbedire: eseguendo quanto è prescritto o richiesto (è verbo di una certa solennità che esprime un atteggiamento di cosciente, spontanea e rispettosa adesione della volontà senza l’idea della costrizione o del servilismo). *Obtemperare*: alle leggi, alle disposizioni, a un precetto, a un obbligo a un desiderio». <http://www.treccani.it/vocabolario/ottemperare/> [accessed 8 November 2015].

¹²⁴ For an in depth study of a related word, *obsequium*, in Church documents, papal teachings, liturgy, etc., cf. J.M. WACHS, *Obsequium in The Church*.

to the Supreme Pontiff while another three (273, 573 §2, 598 §1) are in regards to obedience to one's ordinary or religious superior (can. 273 concerns a cleric's obedience to both the ordinary and pope). Canon 601 speaks of the evangelical counsel of obedience and can. 199, 7° concerns obedience to ecclesiastical authority. Canon 1470 §2 mentions «respect and obedience» due the tribunal¹²⁵.

Why did the legislator choose the word «*obtemperare*» instead of «*oboedire*»? The easy answer is that the word appearing in the CIC 1983 also appeared in the previous edition of the CIC. As we noted in the second chapter, the members of the commission for the revision of the Code presented very few observations; indeed there is no written record of anyone suggesting a modification in this regard. Perhaps the members knew the true sense of «*obtemperare*» and saw no reason to either change the verb or explain the reason for not recommending a different word choice.

1.9 Monitum

We have already discussed the clear requirement that a warning first be given to an offender before his behavior could be considered persistently disobedient. We noted that in the CIC 1917, can. 2331 §1 was not explicit in this regard, but that canonists were in agreement that, by definition, one could not be considered persistently disobedient were he not first informed that his behavior needed to change. Our canon of study is explicit, using the phrase «*post monitum*», which can be translated «after a warning» or «after having been warned».

In fact, outside of can. 1371, the need for a warning is stated several other times in Book VI. Canon 1339 §1 says that an Ordinary may warn – «*monere potest*» – «qui versatur in proxima delinquendi occasione». Likewise, after a preliminary investigation (can. 1717) has been conducted, the Ordinary may warn one upon whom falls grave suspicion that he has committed a delict. Note that a warning is not required (though it is not forbidden either) in the above two cases. Canon 1347 §1 requires an offender to be warned before a censure is imposed upon him. The warning, coupled with a reasonable amount of time to withdraw from contumacy, is required *ad validitatem*¹²⁶. The other canons

¹²⁵ Cf. H. ZAPP, *Codex Iuris Canonici, Lemmata Stichwortverzeichnis*, 439.

¹²⁶ «Censura irrogari valide nequit, nisi antea reus semel saltem monitus sit ut a contumacia recedat, dato congruo ad resipiscentiam tempore».

in Book VI that mention the need for a warning are 1394 §1 (concerning a cleric who attempts marriage), 1395 §1 (concerning a cleric who lives in concubinage or persists in another sin *contra sextum*) and 1396 (concerning one who gravely violates the obligation of residence «*cui ratione ecclesiastici officii tenetur*»).

How is the warning to be administered? Canon 1339 §3 states that a warning should be documented and stored in the secret archives so as to serve as proof that the warning was indeed given. If a penal process is later required, competent authority could simply visit the curial archive to retrieve the needed document(s)¹²⁷.

We recall that it is for competent authority (the Apostolic See, Ordinary or superior) to use good judgment in determining when it is appropriate to give a warning. *CD* calls for mercy on the part of bishops, who should follow or accompany priests who are in danger and those who have failed in some way. The same bishops must balance oversight with a special love for their priests, whom bishops should regard as sons and friends and be ready to listen to them (*CD* 16). In his relationship with his priests, a bishop might also wish to consider the principles of truth, communion, cooperation, respecting the competence of others, and justice and legality, as indicated in *Apostolos Suos*¹²⁸.

1.10 Inoboedientia

In our canon, «*inoboedientia*» (disobedience, failure to comply with) is used as a noun. This same word does not appear in can. 2331 §1 of the CIC 1917. We noted in chapter one that authors commenting on the Pio-Benedictine Code used «*inoboedientia*» interchangeably with «*non obtemperat*». «*Inoboedientia*» appears only two other times in the CIC 1983 and is found in only three canons in the CIC 1917. In the present CIC, can. 696 §1 gives as one reason a member of a religious institute may be dismissed «*pertinax inoboedientia legitimis praescriptis Superiorem in materia gravi*». The other appearance is in Book VI, can. 1373 and concerns one who provokes others to disobey the Apostolic See or an ordinary.

¹²⁷ Cf. can. 489 §1: «*Sit in curia dioecessana archivum quoque secretum, aut saltem in communi archivio armarium seu scrinium, omnino clausum et obseratum, quod de loco amoveri nequeat, in quo scilicet documenta secreto servanda cautissime custodiantur*».

¹²⁸ Cf. CONGREGATION FOR BISHOPS, *Directory on the Pastoral Ministry of Bishops* «*Apostolos Successores*», nn. 57-60, 62

Though «*inoboedientia*» is specifically mentioned in only three canons, disobedience can happen in more than only a few instances. An examination of the canons reveals that there are not a few areas in which a priest is expected to obey his bishop so long as the bishop is acting within his competency. Accepting and fulfillment of assignments (can. 274 §2), returning from assignment in another diocese (can. 283 §1), celibacy (can. 277), finances, business and trade (can. 286), running for political office (can. 287) and avoidance of unbecoming activity (can. 285) are a few examples of the areas in which a priest is held to be obedient¹²⁹, even if «*oboedientia*» does not appear in the text.

1.11 Persistet

The last word found in can. 1371, 2° pertains to one who remains constant or persists in his disobedience. This particular verb appears only two other times in the CIC: once in Book VI and once in Book VII. Canon 1395 §1 has already been discussed above in the *monitum* section. Canon 1741 addresses the removal of pastors and provides five reasons a pastor may be removed from his parish, the fourth of which is «*gravis neglectus vel violatio officiorum paroecialium quae post monitionem persistet*» (4°). A warning must first be given to the gravely neglectful pastor who has violated his duties. A *violatio* is an action contrary to an obligation while *neglectus* is a failure to meet an obligation. *Neglectus vel violatio* encompasses action committed (the positive sense) and omitted (the negative sense)¹³⁰.

One is persistently disobedient when he: a) disobeys a precept or prohibition; b) is warned in some manner by competent authority about this disobedience; and c) disobeys the precept or prohibition again *ex dolo* (cf. following section). A superior may decide to first issue the offender a verbal warning or two (usually memorialized) before proceeding to a written warning. If neither of these actions bears fruit, he would then impose a just penalty. To be sure, can. 1371, 2° does not require verbal warnings to be issued¹³¹.

¹²⁹ Cf. F. SCHNEIDER, *Obedience to the Bishop by the Diocesan Priest*, 258-278.

¹³⁰ Cf. J.A. GRAY, *Causes and Proofs for the Removal of a Pastor*, 23.

¹³¹ We will notice a different interpretation in the jurisprudence section appearing in the next chapter. Some ordinaries retain that once a precept or prohibition is issued to an offender or near offender, it is considered a warning in itself. Any subsequent disobedience, therefore, would render the recipient persistently disobedient.

1.12 *Imputability*

Canon 1321, already discussed above, states that «no one is punished unless the external violation of a law or precept, committed by the person, is gravely imputable *ex dolo vel ex culpa*». «*Dolus*», generically translated as «malice», «is the positive will to act against the law, humanly and freely, whatever the reasons may be that lead to violating the law or precept, provided that freedom continues during the act»¹³².

In regards to «*culpa*» (negligence, omission of due diligence, inadvertence, error), one who does not use reasonable diligence to ensure that his action is not a violation of the law or precept may find the delict imputed to him *ex culpa*. It is not unreasonable to demand necessary diligence on the part of the faithful¹³³. The person is expected to know the law, and in the case of can. 1371, 2°, competent authority is required to impose a warning first upon the person. It would seem, therefore, that most people punished under can. 1371, 2° are punished as a result of their imputability for a crime committed *ex dolo* rather than *ex culpa* (cf. can. 1321 §3, which states that, unless otherwise apparent, imputability is presumed when an external violation has occurred).

Imputability refers to «legal responsibility for the offense and the basis for deserving punishment»¹³⁴. The law requires that the offense be gravely imputable by deliberate violation or omission of due diligence. «It must be a truly human act that is conscious and freely committed»¹³⁵.

In the case of can. 1371, 2°, whichever competent authority imposes a warning upon someone, this authority has presumably already determined that a certain behavior is an offense; that is to say, that the offense is imputable to the recipient of the warning. «At the moment in time when the penal norm becomes effective, that behavior is considered to merit penal sanction because it causes grave social harm»¹³⁶.

1.13 *Other considerations*

It is to be noted that penal law in the Catholic Church is directed at public acts that affect the community and the individual person; that is to

¹³² V. DE PAOLIS, *De sanctionibus in ecclesia*, 57. Translated in A. MARZOA, «Those Who Are Liable to Penal Sanctions», 271.

¹³³ Cf. V. DE PAOLIS, *De sanctionibus in ecclesia*, 57.

¹³⁴ M. BARTCHAK, «Child pornography», 345.

¹³⁵ A. MARZOA, «Those Who Are Liable to Penal Sanctions», 269.

¹³⁶ A. MARZOA, «Those Who Are Liable to Penal Sanctions», 270.

say, external acts and not one's relationship with God in the person's conscience. The concern is with the external forum, though the law also encompasses «some relatively private acts such as solicitation in the sacrament of penance, because of the potential harm to the community»¹³⁷.

A person enjoys the presumption of innocence; competent authority cannot capriciously punish one who claims innocence when there is not enough proof to determine guilt. In this regard, we might wish to consider St. Thomas Aquinas' teaching that it would be better to consider a bad person good than a good person evil¹³⁸.

We have seen that though our canon of study is succinct, its interpretation requires analysis of the meanings of various words and terms. What is clear is to whom the canon applies and who is competent to impose penalties; both of these areas encompass a wide ambit. Perhaps more difficult is how to determine a just penalty.

2. CCEO¹³⁹

The CCEO counterpart to can. 1371, 2° CIC, can. 1446, states: «Qui proprio Hierarchae legitime praecipienti vel prohibenti non obtemperat et post monitionem in inoboedientia persistit, ut delinquens congrua poena puniatur». In English: «A person who does not obey the legitimate order or prohibition of his own hierarch and who, after a warning, persists in disobedience, is to be punished as an offender with an appropriate penalty»¹⁴⁰.

2.1 Qui

We first consider who is subject to can. 1446. Canon 1413 §1 states that one under the age of 14 is not subject to any penalty while §2 of the same canon lessens the severity of the penalty for those 14-17 years of age¹⁴¹. Canon 1490, concerning merely ecclesiastical laws, is essen-

¹³⁷ B. DALY, «Sexual Abuse and Canon Law», 33-34.

¹³⁸ Cf. THOMAS AQUINAS, *Summa Theologiae*, II-II, q. 60, a. 4 ad. 1, as found in M. CARRAGHER, «The raison d'être of punishment», 460.

¹³⁹ A reader seeking a good introduction to the Eastern Churches might find the following book to be of assistance: R. ROBERSON, *The Eastern Christian Churches*.

¹⁴⁰ English translations for each canon found in the CCEO 1990 taken from CLSA, *Code of Canon Law of the Eastern Churches*, 507.

¹⁴¹ Canon 1413 §1. «Nulli poenae est obnoxiosus, qui decimum quartum aetatis annum non explevit. §2. Qui vero intra decimum quartum et duodevicesimum aetatis

tially the same as can. 11 of the CIC 1983, with only a few minor changes¹⁴². Merely ecclesiastical laws bind those who were baptized in or received into the Catholic Church, who possess sufficient use of reason and who have completed their seventh year of age. These requirements are consistent in both canons¹⁴³. Therefore, the CCEO envisions those subject to can. 1446 in the same way as can. 1371, 2°, CIC 1983 does, including that laity, religious and clerics are all subject to its norms.

2.2 Proprio Hierarchae

We first must define who the CCEO considers to be a hierarchy. Canon 984 §1 indicates that hierarchs include: the Roman Pontiff, a patriarch, a major archbishop, a metropolitan who presides over a *sui iuris* Church, an eparchial bishop and those who succeed the aforementioned in governance¹⁴⁴. Canon 984 §2 explains who is considered a local hierarchy: the Roman Pontiff, eparchial bishop, the exarch, the apostolic administrator and those who legitimately succeed the aforementioned in governance in their absence, the protosyncellus and syncellus. Others are considered local hierarchs only for the eparchy they govern: the patriarch, the major archbishop, the metropolitan head of a *sui iuris* Church and those who succeed them in governance¹⁴⁵. Finally, §3 of

annum delictum commisit, puniri potest tantummodo poenis, quae privationem alicuius boni non includunt, nisi Episcopus eparchialis vel iudex in casibus specialibus aliter melius consuli posse censet eiusdem emendationi».

¹⁴² «Legibus mere ecclesiasticis tenentur baptizati in Ecclesia catholica vel in eandem recepti, quique sufficientem usum rationis habent et, nisi aliter iure expresse cavetur, septimum aetatis annum expleverunt».

¹⁴³ One commentator points out that even if one is baptized in the Catholic Church by a non-Catholic or non-Christian minister (provided the baptizer had the right intention), he is held to merely ecclesiastical laws. Cf. G. NEDUNGATT, «Title 29: Law, custom and administrative acts», 813.

¹⁴⁴ «Hierarchae sunt praeter Romanum Pontificem imprimis Patriarcha, Archiepiscopus maior, Metropolita, qui Ecclesiae metropolitanae sui iuris praeest, atque Episcopus eparchialis necnon illi, qui eis interim in regimine ad normam iuris succedunt». Pinto notes: «Poco opportunamente si aggiunge in calce al citato paragrafo “necnon illi, qui eis interim in regimine ad normam iuris succedunt”. Forse una dimenticanza di ordine redazionale ha posto quell’“eis”, che sintatticamente, include anche il Romano Pontefice». P. PINTO, «La potestà di governo», 829.

¹⁴⁵ «Hierarchae loci, praeter Romanum Pontificem, sunt Episcopus eparchialis, Exarchus, Administrator apostolicus, ii, qui, si praedicti desunt, interim legitime succedunt in regimine, itemque Protosyncellus et Syncellus; Patriarcha vero, Archiepi-

the same canon also identifies as hierarchs (but not local hierarchs) those major superiors in institutes of consecrated life with ordinary power of governance¹⁴⁶. We note that the adjective «proper» is not present in the corresponding canon in the CIC.

2.2.1 *Patriarcha*

The roots of the definition for patriarch¹⁴⁷ stem back to the First Synod of Nicea (can. 6), the First (can. 3) and Fourth (can. 21) Councils of Constantinople as well as the Fourth Lateran Council (can. 5)¹⁴⁸. Can. 56 says: «Patriarcha est Episcopus, cui competit potestas in omnes Episcopos non exceptis Metropolitans ceterosque christifideles Ecclesiae, cui praeest, ad normam iuris a suprema Ecclesiae auctoritate approbati». A patriarch in an Eastern Catholic Church is a bishop. He has *potestas* over the laity, over religious, clergy and bishops. He has this same *potestas* over metropolitan archbishops of his Patriarchal Church. He is first among equals («prima inter pares») among the bishops of his proper patriarchal Church¹⁴⁹. There is no canonically equivalent title in the CIC.

Canons 78-101 explain the rights and obligations of patriarchs. We will limit our study to the first canon, concerning the *potestas* of a patriarch, which is ordinary (as it is joined with his office), proper («exercised in his own right and not vicariously on behalf of the Roman Pontiff or the bishops of his Church»¹⁵⁰) and personal¹⁵¹. By personal is

scopus maior, Metropolita, qui Ecclesiae metropolitanae sui iuris praeest, necnon illi, qui eis interim in regimine ad normam iuris succedunt, sunt Hierarchae loci tantum circa eparchiam, quam regunt, firmo can. 101».

¹⁴⁶ «Superiores maiores in institutis vitae consecratae, qui potestate regiminis ordinaria praediti sunt, etiam sunt Hierarchae, sed non loci». «Though protosyncellus and syncelli are presented as local hierarchs in the Eastern code, they are not presented in it explicitly as hierarchs. Nevertheless we do not see any reason why they should be excluded from the list of hierarchs». Indeed «one cannot be a local hierarch without being a hierarch. The formulation of CCEO can. 984 is illogical in this regard». J.M. PAMPARA, *The Specific Characteristics of the Penal Law*, 18.

¹⁴⁷ Cf. OE 79. 7b states «Nomine vero Patriarchae orientalis venit episcopus, cui competit iurisdictio in omnes episcopos, haud exceptis metropolitans, clerum et populum proprii territorii vel ritus, ad normam iuris et salvo primatu Romani Pontificis».

¹⁴⁸ Cf. OE 79, fn. 9.

¹⁴⁹ Cf. D. SALACHAS, «Le Chiese patriarcali», 71.

¹⁵⁰ G. NEDUNGATT, ed., «The Patriarchal Churches», 163.

meant that the *potestas* «is bound to the person of the patriarch and cannot be delegated in its entirety» and therefore a vicar (who would represent the patriarch in every matter and «exercise patriarchal power over the entire patriarchal church») may not be appointed by the patriarch¹⁵². The patriarch validly exercises his *potestas* within the territorial boundaries of the patriarchal Church, unless a common or particular law, approved by the pope, establishes otherwise¹⁵³.

Finally, the CCEO states that the patriarch has the same rights and obligations as the eparchial bishop, as found in cann. 190-211. Canon 101 states where the patriarch exercises immediate authority: in his own eparchy, in Stauropegial monasteries (meaning subject to a patriarch rather than to a local bishop) and in «other places where neither an eparchy nor exarchy is established»¹⁵⁴. In the case of a *sede vacante* inside the territory of the Patriarchal Church, the Patriarch possesses immediate authority until such time as an administrator is appointed¹⁵⁵.

2.2.2 *Archiepiscopus maior*

According to can. 151, «*Archiepiscopus maior est Metropolitae Sedis determinatae vel agnitae a suprema Ecclesiae auctoritate, qui toti cuiusdam Ecclesiae orientali sui iuris titulo patriarchali non insignitae praeest*». That is, «A major archbishop is the metropolitan of a see determined or recognized by the Supreme Authority of the Church, who

¹⁵¹ Canon 78 §1. «Potestas, quae Patriarchae ad normam canonum et legitimarum consuetudinum in Episcopos ceterosque christifideles Ecclesiae, cui praeest, competit, est ordinaria et propria, sed ita personalis, ut non possit Vicarium pro tota Ecclesia patriarchali constituere aut potestatem suam alicui ad universitatem casuum delegare».

¹⁵² J. FARIS, *Eastern Catholic Churches*, 241.

¹⁵³ Canon 78 §2. «Potestas Patriarchae exerceri valide potest intra fines territorii Ecclesiae patriarchalis tantum, nisi aliter ex natura rei aut iure communi vel particulari a Romano Pontifice approbato constat». For further reading, cf. I. ŽUŽEK, «Canons Concerning the Authority of Patriarchs over the Faithful of Their Own Rite Who Live Outside the Limits of Patriarchal Territory», *Nuntia* 6 (1978) 3-33.

¹⁵⁴ «Patriarcha in propria eparchia, in monasteriis stauropegiacis itemque in locis, ubi nec eparchia nec exarchia erecta est, eadem iura et obligationes habet ac Episcopus eparchialis».

¹⁵⁵ Cf. can. 220. «Circa sedes eparchiales vacantes intra fines territorii Ecclesiae patriarchalis sitas praeter cann. 225-232 et firmis cann. 222 et 223 haec servanda sunt: 2° usque ad nominationem Administratoris eparchiae potestas ordinaria Episcopi eparchialis transit ad Patriarcham, nisi aliter iure particulari Ecclesiae patriarchalis vel a Romano Pontifice provisum est».

presides over an entire Eastern Church *sui iuris* not endowed with the patriarchal title». Even though he does have the title of patriarch, one with major archiepiscopal status has all the rights and obligations of a Patriarchal Church (unless common law or supreme authority expressly indicates otherwise)¹⁵⁶. The major archbishop has power also over metropolitans¹⁵⁷. There is no equivalent title defined in the CIC 1983.

2.2.3 *Metropolita, qui Ecclesiae metropolitanae sui iuris praeest*

Metropolitan Churches *sui iuris* are immediately subject to the Roman Pontiff. Canon 155 states that the metropolitan is appointed by the Roman Pontiff and assisted by a Council of Hierarchs. The office of a metropolitan is attached to a determined see¹⁵⁸. The metropolitan possesses ordinary, proper and personal (but not supreme, universal or immediate) *potestas* which may be exercised only in the determined territorial boundary¹⁵⁹. The metropolitan is subject to the Supreme Authority.

2.2.4 *Episcopus eparchialis*

An eparchy corresponds to a diocese in the Latin Church. It is a portion of the People of God entrusted to the bishop who is assisted by priests¹⁶⁰. Canon 178 defines the eparchial bishop as both a vicar and legate of Christ. In his own name this bishop governs the eparchy entrusted to him. He exercises the *potestas* personally and it is defined as proper, ordinary and immediate. The exercise of his *potestas* is, how-

¹⁵⁶ Cf. OE 10. «Quae de Patriarchis sunt dicta, valent etiam, ad normam iuris, de Archiepiscopis maioribus, qui universae cuidam Ecclesiae particulari seu ritui praesunt».

¹⁵⁷ Cf. G. NEDUNGATT, ed., *A guide to the Eastern Code*, 203.

¹⁵⁸ Cf. can. 155 §1. «Ecclesiae metropolitanae sui iuris praeest Metropolita sedis determinatae a Romano Pontifice nominatus et a Consilio Hierarcharum ad normam iuris adiutus».

¹⁵⁹ Cf. can. 157 §2. «Potestas Metropolitae et Consilii Hierarcharum valide exercetur solummodo intra fines territorii Ecclesiae metropolitanae sui iuris». Cf. G. NEDUNGATT, ed., *A guide to the Eastern Code*, 210.

¹⁶⁰ Cf. can. 177. «Eparchia est populi Dei portio, quae Episcopo cum cooperatione presbyterii pascenda conceditur ita, ut Pastori suo adhaerens et ab eo per Evangelium et Eucharistiam in Spiritu Sancto congregata Ecclesiam particularem constituat, in qua vere inest et operatur una, sancta, catholica et apostolica Christi Ecclesia». Note that this canon follows CD 11, substituting «eparchia» in place of «dioecesis».

ever, regulated by the supreme authority of the Church and may be limited in certain cases¹⁶¹.

2.2.5 *Illi, qui eis interim in regimine ad normam iuris succedunt*

Canons 127, 173 and 220 each contribute to understanding who would govern a patriarchal see in the case of a *sede vacante*. Canon 127 defers to the particular law of a church *sui iuris*. If particular law is silent, the senior bishop (based upon date of ordination) in the patriarchal curia is to govern. Should the patriarchal curia lack bishops, the senior bishop of the permanent synod is to assume the role governance of the *vacante* patriarchal see¹⁶².

In the case of a vacant or impeded see, the senior eparchial bishop (again, according to date of episcopal ordination) is to be the administrator of the Metropolitan Church¹⁶³. In general, he has all the powers of the metropolitan, but is bound by the norm *sede vacante, nihil innovetur* (can. 173 §1, 2^o). Whoever assumes the role is foreseen to maintain what is in place and to manage everyday, ordinary affairs while avoiding the introduction of new initiatives.

2.2.6 *Administrator apostolicus*

Canon 234 tells us only that sometimes the Roman Pontiff, for special and grave reasons, may decide to appoint an administrator to a vacant eparchy. The pope determines the rights, obligations and privileges that belong to the apostolic administrator in his letter of appointment to him¹⁶⁴.

¹⁶¹ «Episcopus eparchialis, cui scilicet eparchia nomine proprio pascenda concredita est, eam ut vicarius et legatus Christi regit; potestas, qua ipse nomine Christi personaliter fungitur, est propria, ordinaria et immediata, etsi a suprema Ecclesiae auctoritate exercitium eiusdem potestatis ultimatim regitur et certis limitibus intuitu utilitatis Ecclesiae vel christifidelium circumscribi potest».

¹⁶² Cf. can. 127. «Nisi ius particulare aliud fert, Sede patriarchali vacante Administrator Ecclesiae patriarchalis est Episcopus ordinatione episcopali senior inter Episcopos curiae patriarchalis vel, si desunt, inter Episcopos, qui membra sunt Synodi permanentis».

¹⁶³ The relevant part of can. 173 §1, 1^o states «Administrator Ecclesiae metropolitanae sui iuris est Episcopus eparchialis eiusdem Ecclesiae ordinatione episcopali senior».

¹⁶⁴ Cf. can. 234 §1. «Eparchiae regimen sede eparchiali sive plena sive vacante aliquando Romanus Pontifex gravibus et specialibus de causis Administratori apostolico committit. §2. Iura, obligationes et privilegia Administratoris apostolici desumuntur ex litteris suae nominationis».

2.2.7 *Protosyncellus*

A protosyncellus in the Oriental Church is the Latin Church equivalent of a vicar general¹⁶⁵. The CCEO requires that one be appointed in each eparchy, which is equivalent to a diocese in the CIC (CD 27). The protosyncellus enjoys ordinary vicarious power and assists the eparchial bishop in governing the eparchy¹⁶⁶. Only one protosyncellus can be constituted per eparchy, though for pastoral reasons the eparchial bishop may establish one or more *syncelli*, just as the CIC 1983 allows for more than one vicar general (can. 475 CIC).

The *potestas* possessed by the protosyncellus is both ordinary (since it is attached to his office) and vicarious (since it is exercised on behalf of the eparchial bishop). However, he has fewer powers of governance than does the eparchial bishop. Moreover, his executive authority may be limited either by the law (cf. can. 987¹⁶⁷) or by the eparchial bishop himself. He enjoys no legislative authority¹⁶⁸ nor can it be delegated to him¹⁶⁹. Finally, the protosyncellus would only possess judicial authority if he were also the judicial vicar, which is not foreseen in the governing canon¹⁷⁰.

Canon 248 §1 explains that the protosyncellus enjoys the same executive powers of governance as does the eparchial bishop, with the exception of those things the eparchial bishop has reserved to himself and those

¹⁶⁵ Cf. J. FARIS, *Eastern Catholic Churches, Constitution and Governance*, 517 and G. NEDUNGATT, *A guide to the Eastern Code*, 851.

¹⁶⁶ Cf. can. 245. «In unaquaque eparchia constituendus est Protosyncellus, qui potestate ordinaria vicaria ad normam iuris communis praeditus Episcopum eparchialem in totius eparchiae regimine adiuvet».

¹⁶⁷ «Quae iure communi et iure particulari Ecclesiae sui iuris nominatim Episcopo eparchiali in ambitu potestatis regiminis executivae tribuuntur, intelleguntur competere soli Episcopo eparchiali et Exarcho exclusis Protosyncello et Syncellis nisi de mandato speciali».

¹⁶⁸ Cf. can. 191 §2. «Potestatem legislativam exercet Episcopus eparchialis ipse per se; potestatem executivam exercet sive per se sive per Protosyncellum vel Syncellos; potestatem iudicalem sive per se sive per Vicarium iudicalem et iudices».

¹⁶⁹ Cf. can. 985 §2. «Potestas legislativa exercenda est modo iure praescripto et ea, quam in Ecclesia habet legislator infra supremam Ecclesiae auctoritatem, delegari valide non potest, nisi aliter iure communi cavetur; a legislatore inferiore lex iuri superiori contraria valide ferri non potest».

¹⁷⁰ Cf. can. 1086 §1. «Episcopus eparchialis tenetur Vicarium iudicalem constituere cum potestate iudiciali ordinaria a Protosyncello distinctum, nisi parvitas eparchiae aut paucitas causarum aliud suadet».

which by law require the eparchial bishop's special mandate. An act of the protosyncellus is null if the required mandate was not obtained¹⁷¹.

2.2.8 *Syncellus*

Canons 246-251 contain material related to the syncellus. The syncellus is the equivalent of an episcopal vicar in the 1983 CIC¹⁷². The eparchial (diocesan in the CIC) bishop is free to appoint a syncellus as required or useful for the eparchy. His governance is territorial in nature, either geographically, by sector (for example, youth ministry, education, ministry to the poor) or personally (including to language group or members of another autonomous church)¹⁷³. The text in can. 246 comes directly from CD 27.

As stated in can. 248 §1, syncelli exercise the same executive powers of governance as eparchial bishops (within the limits of the office entrusted to them). They both enjoy ordinary *potestas*, which is connected to their office, and which they exercise in a vicarious manner. Where the nature of the *potestas* exercised by protosyncellus is general, that of the syncellus is particular¹⁷⁴. Other limitations, as explained in the above section, apply as well to the syncellus¹⁷⁵.

2.2.9 *Superiores maiores in institutis vitae consecratae*

Canon 984 §3 also lists as hierarchs major superiors in institutes of consecrated life. They enjoy ordinary power of governance. Major su-

¹⁷¹ «Nisi aliter iure communi expresse cavetur, Protosyncello in tota eparchia, Syncellis vero intra ambitum officii sibi collati eadem competit potestas regiminis executiva ac Episcopo eparchiali eis exceptis, quae Episcopus eparchialis sibi vel aliis reservavit aut quae ex iure requirunt ipsius mandatum speciale, quo non obtento actus, ad quem huiusmodi mandatum requiritur, est nullus».

¹⁷² Cf. J. FARIS, *Eastern Catholic Churches, Constitution and Governance*, 517.

¹⁷³ Cf. can. 246. «Quoties rectum eparchiae regimen id requirit, constitui possunt unus aut plures Syncelli, qui nempe ipso iure in determinata eparchiae parte aut in certo negotiorum genere aut circa christifideles alii Ecclesiae siue iuris ascriptos certive personarum coetus eandem habet potestatem ac ius commune Protosyncello tribuit».

¹⁷⁴ Cf. L. SABBARESE, «Le eparchie e i Vescovi», 221.

¹⁷⁵ The reader may wish to refer to the following canons for more specific information concerning both the protosyncellus and syncellus, including can. 247 (concerning the appointment and qualifications of the protosyncellus and syncellus); can. 249 (concerning their relationship to the eparchial bishop); can. 250 (concerning their honorary privileges) and can. 251 (concerning cessation of office).

periors are not, however, local hierarchs¹⁷⁶. Canon 418 §1 provides a list of major superiors, including: a) the president of a monastic confederation; b) the superior of a monastery *sui iuris*; c) the superior general of an order or congregation; d) the provincial superior, their vicars and others who have power corresponding to provincials; e) those who legitimately succeed the above-mentioned superiors if they are missing («si praedicti desunt»)¹⁷⁷. Canon 418 §2 tells us that neither a patriarch nor local hierarch is to be considered a superior of monks or other religious¹⁷⁸. Therefore, neither the patriarch nor local hierarch is the proper hierarch of a monk or other religious. Canon 1446 does not seem to require a monk or religious to obey a patriarch or local patriarch.

2.3 Post monitionem

Whereas canon 1371, 2° of the CIC 1983 uses the word «monitum», here we see that «monitionem» was chosen by the legislator. The meaning of both is essentially the same, that is to say, «after a warning». «Post monitum» (can. 1371, 2°) can mean «after having been warned». Elsewhere in the penal section, the CCEO requires a warning to be given in the cases foreseen in can. 1436, whose CIC 1983 companions are cann. 1364 and 1371, 1° (concerning the first two levels of faith)¹⁷⁹, can. 1437 (refusal of subjection to Supreme Authority)¹⁸⁰ and

¹⁷⁶ «Superiores maiores in institutis vitae consecratae, qui potestate regiminis ordinaria praediti sunt, etiam sunt Hierarchae, sed non loci».

¹⁷⁷ «Superiores maiores sunt Praeses confoederationis monasticae, Superior monasterii sui iuris, Superior generalis ordinis vel congregationis, Superior provincialis, eorundem vicarii alique ad instar provincialium potestatem habentes itemque ii, qui, si praedicti desunt, interim legitime succedunt in officium».

¹⁷⁸ «Nomine Superioris monachorum ceterorumque religiosorum non venit Hierarcha loci nec Patriarcha firmis canonibus, qui Patriarchae vel Hierarchae loci potestatem in ipsos tribuunt».

¹⁷⁹ Cf. can. 1436 §1. «Qui aliquam veritatem fide divina et catholica credendam denegat vel eam in dubium ponit aut fidem christianam ex toto repudiat et legitime monitus non resipiscit, ut haereticus aut apostata excommunicatione maiore puniatur, clericus praeterea aliis poenis puniri potest non exclusa depositione. §2. Praeter hos casus, qui sustinet doctrinam, quae a Romano Pontifice vel Collegio Episcoporum magisterium authenticum exercentibus ut erronea damnata est, nec legitime monitus resipiscit, congrua poena puniatur».

¹⁸⁰ «Qui subiectionem supremae Ecclesiae auctoritati aut communionem cum christifidelibus eidem subiectis detrectat et legitime monitus oboedientiam non praestat, ut schismaticus excommunicatione maiore puniatur».

can. 1438 (intentional omission of the name of the hierarch in the Divine Liturgy or Divine Praises (Liturgy of the Hours))¹⁸¹.

It must be stressed that simple disobedience is not a delict and therefore it not punishable. Should the superior wish to proceed with an eventual punishment, he must first warn the person or impose a penal precept. Should the warned person not follow the warning or order given, he is then considered an offender and subject to an obligatory penalty¹⁸².

2.4 Congrua poena puniatur

Canon 1426 §1 provides a glimpse into the mind of the legislator, who expresses concern for the spiritual well being of the offender and recommends that pious works and prayers be imposed over other penalties whenever a specific canon does not contain a determined penalty for an offense. In such a case, should the delinquent be willing to recite certain prayers, make a pious pilgrimage, undertake a fast, give alms to the poor or make a spiritual retreat, one or a combination of the above is to be imposed upon him¹⁸³. It is only when the offender is not willing to accept the undertaking of a pious practice that another penalty is to be imposed¹⁸⁴; the legislator, however, offers no suggested penalties. Note also that penalties of a pious nature may be imposed without a penal process first having been undertaken so long as the offender is in agreement¹⁸⁵.

¹⁸¹ «Qui consulto omittit commemorationem Hierarchae in Divina Liturgia et in laudibus divinis iure praescriptam, si legitime monitus non respiscit, congrua poena puniatur non exclusa excommunicatione maiore».

¹⁸² Cf. V. DE PAOLIS, «Le sanzioni penali nella Chiesa», 1139. «In caso di persistenza, il disobbediente è considerato reo e in quanto tale è soggetto ad una pena obbligatoria anche se indeterminata».

¹⁸³ «Nisi alia poena iure determinata est, irrogari possunt secundum antiquas Ecclesiarum orientalium traditiones poenae, quibus imponitur aliquod grave opus religionis vel pietatis vel caritatis peragendum veluti preces determinatae, pia peregrinatio, speciale ieiunium, eleemosynae, recessus spirituales».

¹⁸⁴ Cf. can. 1426 §2. «Illi, qui has poenas non est dispositus acceptare, aliae poenae irrogentur».

¹⁸⁵ Under the title «the imposition of penalties by extra-judicial decree» can. 1486 §1 states some requirements, including the right of defense of the accused. §2 is willing to dispense from these requirements: «Poenae autem, de quibus in can. 1426, §1, sine hac procedura imponi possunt, dummodo de earum acceptatione ex parte rei scripto constet».

Canon 1402 §1 states that a penal trial is necessary before imposing penalties, though there are some exceptions¹⁸⁶. There might be legitimate reasons to avoid a trial, especially when the accused confesses to the crime(s). Canon 1402 §2 states that certain penalties may not be imposed without a penal trial: deprivation of office, loss of honorary titles, demotion, suspension of over one year, dismissal from the clerical state (deposition) and absolute exclusion from the church (major excommunication)¹⁸⁷. Canon 1402 §3 limits who may issue the extrajudicial decree to the patriarch, major archbishop, eparchial bishop and superior of an institute of consecrated life who enjoys ordinary governing power. Anyone not included on this list may not validly issue such a decree¹⁸⁸.

Canon 1403 §1 allows the hierarchy to refrain from initiating a penal process provided the accused is repentant, confesses the crime to the hierarchy in the external forum and harm and scandal is repaired¹⁸⁹. A benign interpretation of the law is foreseen in can. 1404 §1¹⁹⁰.

2.5 Ut deliquens

Returning now to our examination of can. 1446, we undertake to study the meaning of «ut delinquens», terminology not found in the corresponding canon in the CIC 1983. «Ut delinquens» may be ren-

¹⁸⁶ «Poena canonica per iudicium poenale in cann. 1468-1482 praescriptum irrogari debet firma potestate coercitiva iudicis in casibus iure expressis et reprobata contraria consuetudine».

¹⁸⁷ «Si vero iudicio auctoritatis, de qua in §3, graves obstant causae, ne iudicium poenale fiat, et probationes de delicto certae sunt, delictum puniri potest per decretum extra iudicium ad normam cann. 1486 et 1487, dummodo non agatur de privatione officii, tituli, insignium aut de suspensione ultra annum, de reductione ad inferiorem gradum, de depositione vel de excommunicatione maiore». There is no CIC counterpart.

¹⁸⁸ «Hoc decretum praeter Sedem Apostolicam ferre possunt intra fines suae competentiae Patriarcha, Archiepiscopus maior, Episcopus eparchialis atque Superior maior instituti vitae consecratae, qui potestatem regiminis ordinariam habet, ceteris omnibus exclusis».

¹⁸⁹ «Etsi de delictis agitur, quae poenam secumferunt iure obligatoriam, Hierarcha audito promotore iustitiae a procedura poenali, immo a poenis irrogandis prorsus abstinere potest, dummodo ipsius Hierarchae iudicio haec omnia simul concurrant: delinquens in iudicium nondum delatus suum delictum Hierarchae in foro externo sincera paenitentia motus confessus est necnon de reparatione scandali et damni congrue provisum est».

¹⁹⁰ «In poenis benignior est interpretatio facienda».

dered: «as a delinquent», «as delinquent», «in order that the delinquent» or «inasmuch as he is a delinquent»¹⁹¹. The CLSA translation renders the entire canon thus: «One who disobeys his own hierarchy when the latter legitimately issues orders or prohibitions, and who after a warning persists in such disobedience, is to be punished as delinquent with an appropriate penalty»¹⁹².

«Delinquens» appears only two other times in the CCEO, and both times in the penal section (title XXVII). In canon 1403 §1 (explained above), the word is not preceded by «ut» and is translated «delinquent» (it appears as «delinquente» in Pinto's commentary) or «offender» in the CLSA English translation. However, «delinquens» is translated «offender» in can. 1407 §1, and «delinquente» in Italian.

«Delinquens» appears four times in the CIC 1983, but not in can. 1371, 2°. The CLSA translation consistently renders the word as offender, the same definition it provides for «reus». In English it is difficult to make distinctions between «reus» and «delinquens», which translate more easily into Italian. With each appearance of «delinquens» in the CIC 1983, the mentioned English translation renders the word «offender» while the Italian renders it «delinquente»¹⁹³.

2.6 Observations

Following the title «penal sanctions in the Church», where can. 1446 is found, is «The procedure for imposing penalties». This sequence underlines the continuity between the two areas. In contrast, the CIC has 317 canons on processes that appear between the end of Book VI and can. 1717, which explains the preliminary investigation.

¹⁹¹ At least one author expresses perplexity with the choice of words: «Può destare una certa perplessità l'espressione "*ut delinquens*..." in quanto potrebbe significare che propriamente non si tratta di un delinquente, ossia di uno che ha commesso un delitto. In realtà il significato non può essere altro che "in quanto delinquente"». V. DE PAOLIS, «Le sanzioni penali nella Chiesa», 1139. Cf. fn. 182 where De Paolis uses the word «reo» instead of «delinquens».

¹⁹² CLSA, *Code of Canon Law of Eastern Churches, Latin-English Edition*, 689.

¹⁹³ Cf. cann. 1345, 1352 §2, 1355 §2, 1356 §1. The phrase «ut delinquens» appears one time in the CIC 1917, and, in the context in which it appears, must be translated «in order that the offender»: can. 2312 §1: «Poenitentiae in foro externo imponuntur ut delinquens vel poenam effugiat, vel poenae contractae absolutionem aut dispensationem recipiat». In addition to appearing in can. 2312 §1, «delinquens» is found in four other canons in the CIC 1917, including cann. 2218 §1; 2232 §1; 2241 §1; 2248 §2.

Already noted is the preference of the CCEO for a judicial process as illustrated in can. 1402 §1. In the Latin Church, the option to follow an administrative process tends to be preferred by superiors and other authority largely because it can be completed in much less time. Canon 1402 §2 does allow for the preclusion of a judicial penal process in certain cases provided the requirements of can. 1486 (which calls for the right of defense for the accused) and can. 1487, which makes provision for recourse to be presented against the decree imposing a penalty, are respected.

Though there are significant differences between the two Codes, both employ a «juridic-pastoral» approach. This means that intervening with penal sanctions is a participation in the pastoral character proper to all the activity of the Church. In both Codes, application of sanctions is to be resorted to only after all other pastoral solicitude has failed¹⁹⁴. For its part, the CCEO is explicit from the outset about the ends of penal law.

3. Summary

Canon 1371 concerns persistent disobedience on the part of the baptized to competent ecclesiastical authority. The first part of the canon, concerning doctrinal matters, calls for a just punishment to be inflicted upon one who teaches certain condemned doctrines or rejects other doctrine and, after a warning, continues in his or her ways. The second paragraph calls for a just penalty to be imposed on anyone who is persistently disobedient to the apostolic see, ordinary or other superior.

While can. 1371 applies to all baptized members of the Church who have reached the age of reason, in practice the canon would be invoked more regularly upon those ordained or having professed religious vows. A cardinal or bishop could be punished by the apostolic see for persistent disobedience. For just reasons, a diocesan bishop could impose disciplinary measures upon a local superior of a religious order. A persistently disobedient bishop, priest, religious or layperson may be subject to the imposition of disciplinary measures by competent authority.

¹⁹⁴ Pighin explains the juridic-pastoral approach: «l'intervento di tipo sanzionatorio partecipa dell'indole pastorale propria di tutta l'attività della Chiesa. Esso deve trovare applicazione solo quando ogni altra misura dettata dalla sollecitudine dei Pastori si sia dimostrata inefficace [...]». B.F. PIGHIN, *Diritto penale canonico*, 67.

The canon clearly states the need for a warning to first be given. By definition, one cannot be pertinacious or contumacious the first time he does something wrong. His erroneous ways need to be pointed out to him, eventually if not initially in writing, and he is to be given an opportunity to reform. It is only when he fails to reform (by continuing to disobey or to be dissident) that he is subject to a just penalty.

The value of vigilance on the part of competent authority is not to be underestimated when it regards concern for the salvation of souls. Competent authority's failure to intervene in matters that clearly require intervention can have and has had grave consequences for the good of souls¹⁹⁵. Nor is the value of obedience to the Church to be minimized. These and other relevant topics will be discussed in our next chapter, which examines jurisprudence of selected dicasteries of the Roman Curia. This study will permit us to arrive at additional conclusions.

We will finish this section with centuries old sage advice, which does not require comment:

Those, then, who are in a position of authority must look after their brothers as conscientious teachers look after the young children who have been handed over to them by their parents. If both disciples and masters have this loving relationship, then subjects will be happy to obey whatever is commanded, while superiors will be delighted to lead their brothers to perfection. If you try to outdo one another in showing respect, your life on earth will be like that of the angels¹⁹⁶.

¹⁹⁵ To be sure, there are often times when people of good will disagree on how much oversight should be exercised by a superior. There are different leadership styles, and the Church recognizes legitimate diversity concerning approaches taken in this regard.

¹⁹⁶ GREGORY OF NYSSA, «Liber de instituto christiano», 339. In Latin, the second sentence of the quotation reads: «Si ita invicem affecti fueritis, cum subiecti, tum magistri, illi quidem cum gaudio iussis ac mandatis **obtemperantes**, hi vero cum volupte fratres ad perfectum status provehentes» (emphasis mine). *Id.*, 277 (Latin Breviary).

CHAPTER IV

Case studies

1. Introduction

Having studied the history and analyzed the content of can. 1371, we now consider recourses made to various dicasteries of the Apostolic See against decrees issued by competent authority. In many of the cases, competent authority decided to impose a penalty due to the recurrent's disobedience to a command or prohibition; in a few of the cases, explicit reference is made to can. 1371, 2°. Other cases were selected due to the fact that a diocesan bishop would not execute a decision of the Apostolic See. We will consider aspects of each case in light of what was already discussed in chapters one, two and three of this work.

Cases will be presented under various headings; the first five cases concern disobedience to the Apostolic See. The following six cases involve disobedience to one's ordinary. The subsequent five cases consider matters illustrating how the intervention of competent authority can be a pastoral instrument for the salvation of souls. Four cases illustrating possible negligence on the part of competent authority and the consequent delictual nature of this negligence will then be examined. The study will close by considering another four cases, all treated by the Congregation for the Clergy and illustrating the preference of employing conciliatory methods when useful and possible. Based upon the above cases and the material presented, the chapter will end with universal conclusions in regards to the importance of obedience and proper governance¹. Finally, at

¹ Many of these cases could have been placed under one or another heading. I attempted to place each case under the most appropriate one.

the end of each heading will be conclusions based upon the cases themselves and the material already presented in the first two chapters. Many will be based upon themes running through the fonts presented in chapter one and material studied in chapter two.

First we will consider various definitions of the word «jurisprudence». Canon 19 includes the word jurisprudence without providing a definition, stating that «if a custom or an express prescript of universal or particular law is lacking in a certain matter» canonists are to resolve the matter considering, among other principles the «jurisprudence and practice of the Roman Curia». *PB* 26 mentions the Roman Rota as a source of jurisprudence: «by virtue of its own decisions, [it] provides assistance to lower tribunals». Not only is jurisprudence «the science of law that develops from actual judicial cases», but the jurisprudence of dicasteries of the Roman Curia often «develops a common approach to the various kinds of cases falling under its competence»². Therefore, decisions reached and reasoning used in the sampling of cases that follow can be considered indicative of what would be found in similar cases considered by the same dicastery that rendered a given decision.

One law dictionary defines jurisprudence as «the study of the general or fundamental elements of a particular legal system, as opposed to its practical and concrete details»³. R.L. Burke suggests the following in regards to Rotal jurisprudence: «a means of judging which is consistent in many decisions during a given period of time»⁴. As we begin our study of various cases we will keep these definitions in mind.

2. Cases involving disobedience to the Apostolic See

We now look at various cases that can best be listed under the category «value of obedience to the Apostolic See», including a brief analysis at the end of the study of individual cases followed by a more in depth examination at the end of each section⁵. It is noted that each dicastery included in this chapter enjoys the authority to issue decrees.

² J. HUELS, «Cases involving lacunae», 79.

³ B. GARNER, ed., *Black's Law Dictionary*⁸, 871.

⁴ R.L. BURKE, *Lack of discretion of judgment*, 141.

⁵ The analysis offered is based upon what is contained in the *acta*. It is not the intent of the author to unfairly criticize competent authority which, for whatever reason, did not follow the decision(s) of a dicastery of the Apostolic See. Rather, the motivation is to bring to the readers' attention examples of how one could be disobedient to the Apostolic See along with the consequences of such a choice.

Since the cases in this chapter concern recourse to a hierarchical superior against a decision made at a lower level, both/all parties are held to follow or be obedient to the final decision, rendered after competent authority has considered any subsequent recourse. One's failure to do so would likely be an indication of some type of disobedience.

2.1 *A decision of the Apostolic Signatura concerning a priest's sustenance*

This first case will look at the *iter* of a case which made its way through various dicasteries.

2.1.1 Step 1: diocesan stage

This case involves a priest who was ordained in the 1960's. Having served in a parish in his home diocese (diocese A) for four years, he was then assigned to the archdiocesan regional seminary for the following nine years (diocese B). Returning to his diocese of ordination, the priest then served in several parishes over a four-year period, experiencing problems in each assignment. Due to what appeared to be interpersonal issues, in 1989 the priest was sent for an evaluation at a treatment center; the bishop concluded that the priest would not be given a new assignment until he successfully completed the program recommended by the treatment center. The priest did not comply with this order but instead found an assignment in a third diocese, (diocese C) where he served in multiple parishes over the next seven years. When two men reported to the bishop of diocese A, where the priest was still incardinated, that when they were minors the priest committed sins *contra sextum* with them, the bishop of diocese A contacted the bishop of diocese C and asked him to impose «administrative leave» upon the priest and to advise him to return to diocese A⁶.

The bishop of diocese A subsequently imposed upon the priest restrictions permitted by can. 1722 CIC (even though there is no indication that a decree opening the penal process had been issued). The ordinary told the cleric that he would need to undergo a psychological evaluation before a determination could or would be made concerning the entrustment of any future ministry to him⁷. The priest refused to participate; the

⁶ CONGREGATION FOR THE CLERGY, letter, 23 December 1996, prot. n. 97 000 028.

⁷ In regards to mandatory psychological testing, cf. CONGREGATION FOR THE CLERGY, *Letter Concerning the Licit Psychological Testing of a Priest*, 8 October 1999 and

bishop responded by withdrawing all financial support to the cleric, who protested this decision in writing. In response to one of the priest's several letters to the bishop, the latter replied: «I will not give you financial support until the time that you are willing to go for a psychological evaluation at [name of institution]. If you do decide to go, it would be with the understanding that I will receive a complete report of the results of the evaluation». The priest refused to submit to psychological testing with the expert chosen by the bishop (although the same priest submitted reports from two other psychologists who concluded he was not a danger to children). Since he was getting nowhere with the bishop and receiving no sustenance, he presented recourse to the same bishop, who swiftly rejected it⁸.

2.1.2 Step 2: recourse presented to the Congregation for the Clergy

Having received a negative response from his ordinary, the priest presented, within the peremptory time limit, the same complaint to the Congregation for the Clergy, asking that the bishop's decree be overturned. The matter was contentious from the beginning; the bishop was clear in a letter to the prefect of the Congregation that no assignment would be forthcoming to the priest until he underwent therapy⁹. The Congregation solicited the help of the Apostolic Nuncio. Despite the efforts of the Nuncio, a peaceful resolution was not reached. To a letter from the Nuncio the bishop responded thus:

I am fully aware that can. 281 stipulates that clerics are deserving of remuneration as long as they dedicate themselves to ecclesiastical ministry. A priest who stubbornly refuses to accept any and all assignments from his bishop cannot insist on the right to receive sustenance since he is not dedicating himself to the ecclesiastical ministry. This is especially so when a cleric has been accused of culpably committing criminal acts which render him inadequate for future assignment to ministry, yet who refuses to apply for laicization and insists on remaining a priest of the diocese. Canon 273 states a cleric has a special obligation to show reverence and obedience to his Ordinary. I have not heard from him in several months¹⁰.

CONGREGATION FOR CATHOLIC EDUCATION, *Guidelines for the use of psychology in the admission and formation of candidates for the priesthood*, 29 June 2008.

⁸ CONGREGATION FOR THE CLERGY, *acta*, 23 December 1996, prot. n. 97 000 028.

⁹ CONGREGATION FOR THE CLERGY, letter, 12 February 1997, prot. n. 97 000 028.

¹⁰ We can detect from the tone of his response the frustration of the bishop. On the other hand, also clear is that he already concluded that the priest was guilty as charged. Finally, the argument that the priest was disobedient because he refused to

The Congregation accepted the argument presented by the ordinary and as a result rejected the priest's recourse. The following reasons were provided: 1. The priest refused to cooperate with the bishop; 2. A priest must be dedicated to ecclesiastical ministry (c. 281); 3. The right to reimbursement is not an absolute one; 4. There is a concomitant responsibility of obedience to one's ordinary (c. 273)¹¹.

2.1.3 Step 3: recourse presented to the Apostolic Signatura

The priest presented recourse to the Apostolic Signatura¹²; two sections of the decree are devoted to the matter of disobedience. The definitive sentence of the Apostolic Signatura indicates that the Congregation for the Clergy's decision to reject the priest's recourse and to uphold the bishop's decree was motivated by three factors: 1. That the Ordinary requested the priest to undergo an evaluation in order to ascertain his suitability for ministry; 2. That the priest refused to cooperate with the bishop and therefore was given no assignment; 3. That a cleric must be dedicated to ministry, the right to reimbursement is not an absolute one and that «there is a concomitant responsibility of obedience to one's Ordinary (c. 273)»¹³.

The matter was considered by the cardinal and bishop members who, in pointing out that a cleric must be obedient to his Ordinary, laid out parameters of obedience promised by the cleric on the day of his ordination. A cleric is held to live a life worthy of the priesthood, avoiding things that are immoral or not congruous with the priesthood. A cleric is to observe both positive law and divine law and is to accept and follow legitimate precepts in accordance with the law. The bishop does not control every aspect of the priest's life, however. In this regard, the

ask to be «laicized» (a non-canonical term), is not a valid one as the bishop's command (that the priest ask that he lose the clerical state) was not a legitimate one. CONGREGATION FOR THE CLERGY, decree, 5 May 1998, prot. n. 97 000 028, n. 7, p. 4.

¹¹ CONGREGATION FOR THE CLERGY, decree, 5 May 1998, prot. n. 97 000 028. This decision was rendered in 1997, before the CDF was granted exclusive competence for matters concerning *graviora delicta*. Any delicts the priest might have committed had long fallen into prescription; therefore, the allegations were not taken into consideration by the Congregation.

¹² To learn more about the particular law governing the Apostolic Signatura, cf. BENEDICT XVI, *m.p. Antiqua ordinatione*, 21 June 2008; K. MARTENS, «Brief Note on the Apostolic Signatura», 228-235.

¹³ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, definitive sentence, 6 May 2000, prot. n. 29240/98 CA.

object of the obedience must be legitimate. In the case of the priest in question, his right to privacy also had to be taken into consideration (cf. can. 220 CIC)¹⁴. Obedience is not required to an illegitimate command, which could include a matter over which the bishop cannot or should not require obedience.

In this regard, the same cardinal and bishop members concluded that the decision of the Congregation for the Clergy contained violations of the law *in decernendo* in regards to cann. 271 §2¹⁵, 281 §2¹⁶, 384¹⁷ and 220¹⁸ but not can. 281 §1¹⁹. The priest was owed a just reparation of damages. While the bishop had the right and the duty to use legitimate means to ascertain the suitability of the priest before giving him an assignment, he could not require the priest against his will to undergo a

¹⁴ «Subintelligit autem decretum Congregationis pro Clericis in casu adfuisse inobedientiae actum ex parte sacerdotis coram sui Ordinarii voluntate. Quapropter videdum est, imprimis, quid, idest quonam ambitu, oboedientia clerici erga suum Episcopum importet, atque dein utrum necne obiectum iussus Episcopi, in casu, legitimum fuerit necne, idest omnino a clerico exigendum.

«Iamvero nemo infitias ibit obiectum oboedientiae clerici suo Episcopo in actu ordinationis promissae et lege positiva canonica praeceptae coarctari debere intra ambitum vitae ducendae sacerdotali dignitati congruentis necnon ministerii iuxta normas legitimas ecclesiasticas acceptandi atque exercendi.

«Sane utique iure atque officio obstringitur dioecesanus Episcopus inquirendi super habilitate suorum sacerdotum ad munera ecclesiastica obeunda atque exercenda: omnino tamen denegandum est eiusmodi legitimum finem consequendum esse mediis quae violant “ius cuiusque personae ad propriam intimitatem tuendam” (can. 220). Quin insuper haud desunt et alia legitima et congruentia media quibus usus Episcopus, vel adhibita prudentia atque consilio proborum et vitae experientia praedictorum potissimum ex viris ecclesiasticis – non excluso, si casus ferat, voto periti super actis – certum iudicium adipisci valet de subiecti particularis habilitate ad exercendum ministerium seu officium ecclesiasticum». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, definitive sentence, 6 May 2000, prot. n. 29240/98 CA.

¹⁵ Canon 271 §2 states that a diocesan bishop can grant priests permission to serve outside the diocese and when such priest returns to the diocese, he possesses all the rights he would have had if he had been dedicated to sacred ministry in the diocese of incardination.

¹⁶ Canon 281 §2 says that social assistance must be provided to clerics.

¹⁷ The applicable section of can. 384 says that the diocesan bishop is to ensure that provision is made for the decent support and social assistance of clerics, according to the norm of law.

¹⁸ Canon 220 states that «no one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy».

¹⁹ Canon 281 §1 addresses remuneration for clerics.

psychological examination and reveal the results. The bishop was not forced, then, to offer the priest an assignment, but he also could not give the priest nothing at all because he had refused to submit to the evaluation and thus had no assignment²⁰. The members decided that the diocese was to provide the priest a just reparation of damages based upon what he should have been receiving according to diocesan policy (health insurance, disability payments)²¹.

2.1.4 Follow up on the status of the case

Even though the Apostolic Signatura rendered its decision, the case was far from being resolved as the bishop decided that he would not implement said decision, citing different reasons, including «evidence which points to the truth of the allegations» and that he was aware that some wealthy Catholics were providing money to the priest and that as a result he (the bishop) had no further obligation to do so²². The Congregation for the Clergy had earlier entrusted to the metropolitan archbishop the duty of computing the amount due the priest, in line with the decision of the Apostolic Signatura (cf. fn. 21). The same cardinal archbishop, after one and a half years of effort, communicated to the Congregation that the bishop of diocese A refused to cooperate in any way, thus making it impossible for him to carry out the task²³.

Seven years after the notification of the Signatura decree, the Secretary of the Signatura wrote to the prefect of the Congregation for the Clergy, stating that, according to the priest, the contents of the decree still were not being carried out²⁴. By this time the diocesan bishop had retired, and a new bishop had been nominated. The Congregation then

²⁰ «Ad primum: *AFFIRMATIVE*, seu constare de violatione legis in decernendo, sed tantum quoad cann. 271 §2 et 281 §2 una cum can. 384, necnon can. 220 CIC – non autem can. 281 §1 [...]». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, definitive sentence, 6 May 2000, prot. n. 29240/98 CA, 11.

²¹ «Ad tertium: *AFFIRMATIVE ET AD MENTEM*; mens autem est concedendam esse aequam reparationem damnorum: quod importat aequam sustentationem (ex §2 can. 281) computandam inde a die 27 octobris 1996, additis quidem fœnoribus legalibus, iuxta dioecesis N. taxationes; huius tamen decisionis executioni provideat Congregatio pro Clericis committens pecuniae debitae computationem Em.mo Metropolitae A». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, definitive sentence, 6 May 2000, prot. n. 29240/98 CA, 11.

²² CONGREGATION FOR THE CLERGY, letter, 10 September 2003, prot. n. 97 000 028.

²³ CONGREGATION FOR THE CLERGY, letter, 24 November 2003, prot. n. 97 000 028.

²⁴ CONGREGATION FOR THE CLERGY, letter, 31 October 2008, prot. n. 097 000 028.

wrote to the new ordinary, who communicated that the matter was resolved. The Congregation then wrote to the priest, giving him another opportunity to explain if he was satisfied that contents of the decree were being executed properly. The priest did not respond, and the case was archived²⁵.

One could conclude that the bishop's failure to execute the decree was a form of disobedience to the Apostolic See. Even though there were many letters going back and forth between the Congregation for the Clergy and the bishop, never did the Congregation warn the bishop that he had to implement the decree, nor is it the praxis of Congregations in general to do so. The lack of any warning would preclude one from concluding that the bishop was persistently disobedient, even if the mind of the Congregation regarding the matter was clear. The Congregation for the Clergy is free to inform the Congregation for Bishops about problematic behavior on the part of a particular bishop. This latter dicastery is competent to examine «the exercise of the episcopal office in the Latin Church» unless the bishop is in a missionary country, in which case the CEP would be competent (*PB* 75). Certain matters regarding particular bishops must be brought to the attention of the Supreme Pontiff for his consideration and ultimately his decision (cf. can. 1405 §1, 2°-3°, which states that it is the sole right of the pope to judge cardinals and bishops in regards to spiritual matters, the violation of ecclesiastical laws, «those matters in which there is a question of sin», and the imposing of ecclesiastical penalties).

2.1.5 Brief analysis

This case illustrates that one is not held to follow an illegitimate precept; in this case, submitting oneself to a psychologist and permitting his report to be provided to the bishop. We note also that the bishop was not forced to offer the priest an assignment, but on the other hand, he could not simply cut off all sustenance to the priest (can. 281 §2).

²⁵ CONGREGATION FOR THE CLERGY, letter, 20 November 2009. While it is true that the Congregation for the Clergy considers the case to be closed, in fact in 2004 the Ordinary sent the *acta* of the case to the CDF since there were allegations that the priest had committed delicts *contra sextum* with minors (which led to his removal from ministry to begin with). As of this writing, the case bearing the prot. n. 609/2004 is being studied in second instance. The priest is receiving only health benefits, as the bishop apparently determined that the family inheritance along with social security benefits is enough to sustain the priest.

Therefore, the Apostolic Signatura recognized the bishop's obligation to make a prudent decision, while still ensuring that the priest would not lack decent support, even if he was not in an assignment (cf. can. 384). Moreover, there may have been a perception of injustice, and scandal might have been caused among those who were aware of the bishop's actions. At the same time, the bishop would have had his share of supporters, including those unaware of the concept of sustenance for clerics as well as those of the opinion that the People of God should not be supporting a priest possibly culpable of delicts *contra sextum* with minors. Finally, there could be the appearance of a double standard inasmuch as the bishop considered disobedient the priest's refusal to undergo psychiatric treatment, yet the bishop himself manifested an unwillingness to carry out a legitimate decision of the Apostolic See.

2.2 *A decision of three dicasteries concerning a cleric's employment*

The following case includes a possible unjust removal from ministry, an illegitimate command, a recurrent who pursued every legal avenue to seek justice (including in the civil realm) and a diocesan bishop who has determined not to implement the decision in favor of the recurrent rendered by three various dicasteries of the Roman Curia.

2.2.1 Diocesan stage

Several years after ordination, a priest was accused of actions *contra sextum* with a minor dating back to when the accused was a layman. The accusation was presented not only to the priest's diocese of incardination but also in the civil forum. As the case was going to trial the priest, while admitting no guilt and under much pressure (he later stated that he feared that if he was sent to prison, his life would be in grave danger), agreed to a «plea bargain» agreement, which would settle the matter civilly. Given the nature of the allegations, the case was referred to the CDF, which responded to the bishop that the allegations were serious but not reserved delicts²⁶; the matter was left to the ordinary to resolve²⁷.

Though the priest continued to vigorously maintain his innocence, he and the then-ordinary agreed that the priest would refrain from exercis-

²⁶ CDF, *acta*, (16 January 2004) prot. n. 14/2004. The violation of the sixth commandment of the Decalogue with a minor constitutes a canonical delict only when the perpetrator is a cleric (can. 1395 §2).

²⁷ CDF, 11 January 2012, prot. n. 14/2004.

ing public ministry. He was allowed to celebrate Mass in private for his family, with whom he lived while working a secular job halfway across the country. For the following eight years the priest retained this employment, which had a connection with the local diocese. His salary was that of a layman and presumably much more than the average priest would earn.

With the retirement of one ordinary and the arrival of another the situation was reevaluated. In fact, only ten days after the new bishop was installed the priest received a decree, signed by the same diocesan bishop, barring the cleric from the exercise of any priestly ministry whatsoever, including the celebration of any of the sacraments²⁸. The priest, apparently aware of his canonical rights, presented recourse to the same ordinary within the peremptory time limits²⁹. The bishop responded, asking that he wished to hold the decree «in abeyance» until he could provide the priest with a formal response to his petition for reconsideration. «In the meantime, you must abide by the conditions in the original decree», the newly nominated bishop responded³⁰. The following day, the priest presented recourse to the Congregation for the Clergy³¹.

Just before submitting the recourse to the Congregation for the Clergy, the recurrent was fired from his job based upon stipulations set out in the decree written by the priest's ordinary of incardination. The bishop's decree, sent to the priest's employer and to at least one diocese, stated that the priest was to be «excluded employment».

2.2.2 Congregation for the Clergy stage

In his letter presenting recourse to the diocesan bishop's hierarchical superior and having followed the norm of can. 1737, the priest explained that the accusations against him were false and the decree of the ordinary unlawful. He asked that it be revoked and, in the meantime, that he be provided remuneration since he had been fired from his job due to the bishop's actions. Moreover, the priest argued that the bishop imposed penalties upon him without having instructed any sort of penal process³². Many letters went back and forth; it was over one

²⁸ CONGREGATION FOR THE CLERGY, decree, 18 September 2008, prot. n. 2008-3400.

²⁹ CONGREGATION FOR THE CLERGY, letter, 24 September 2008, prot. n. 2008-3400.

³⁰ CONGREGATION FOR THE CLERGY, letter, 27 October 2008, prot. n. 2008-3400.

³¹ CONGREGATION FOR THE CLERGY, letter, 28 October 2008, prot. n. 2008-3400.

³² CONGREGATION FOR THE CLERGY, letter, 28 October 2008, prot. n. 2008-3400.

year from the first time the Congregation asked the bishop to respond and when the bishop finally did provide a response. In his lengthy correspondence, the bishop stated, «the complexities of Fr. X's case highlight the fact the written law cannot provide for every case in which the competent authority can and must act for the welfare of the Church and of individuals by punishing offenders when appropriate»³³.

The bishop also argued that the priest in fact acted in a malicious manner by not informing anyone during priestly formation that, as an adult, he ha sinned *contra sextum* with a teenage boy. «The ordaining bishop did not possess the requisite freedom to make an informed decision as to whether or not to ordain Mr. X a priest». Moreover, the bishop stated «our hands are tied civilly» due to an order by the bankruptcy court that no priest ever accused of abusing a child (whether proven or not) could receive any financial support whatsoever from the diocese. The bishop asked that instead the priest be dismissed from the clerical state³⁴.

The Congregation for the Clergy decided to uphold the priest's recourse. The bishop was to provide sustenance (decent support, in accordance with can. 384) to the priest in accord with the diocesan scale. At the same time, however, «the bishop may choose to disallow any public celebration of the Mass or sacraments, even when the recurrent is requested by family and friends». The decree notes the lack of canonical basis for withdrawing sustenance from the priest or imposing suspension equivalent to expulsion from the clerical state, given that no penal process was instructed. Moreover, the decree states that a perpetual penalty cannot be applied as a result of an administrative act, but only at the conclusion of a judicial penal process. «In the absence of a trial, a perpetual penalty cannot be applied». Just the same, a bishop may «administratively limit the faculties of an accused priest, but only for a determined time». Moreover, «every incardinated priest must be furnished with sustenance and residence by the bishop in accord with the approved diocesan scale». The conclusion: «The administrative recourse made by the Rev. X against the dispositions of the Bishop of W is upheld because the Decree is invalid *in procedendo* and *in decernendo*».

³³ CONGREGATION FOR THE CLERGY, letter, 6 November 2009, prot. n. 2008-3400.

³⁴ The bishop was able to arrive at moral certitude as to the culpability of the priest without the benefit of a canonical penal process. There is no documentation in the *acta* of the case that the bishop undertook a penal process of any type. CONGREGATION FOR THE CLERGY, letter, 6 November 2009, prot. n. 2008-3400.

do». Therefore, «The Bishop of W should provide the recurrent with any recompense left unpaid since the Decree of 18 September 2008 as well as provide living expenses, health and other benefits normally provided according to the scale used for priests of the Diocese of W»³⁵. The decree was dated 11 April 2012.

The priest presented recourse to the Apostolic Signatura, asking for a revocation of the part of the decree stating that the bishop could limit the priest's exercise of ministry³⁶. The bishop likewise presented recourse to the Apostolic Signatura concerning the part of the decree that called for him to provide the priest with compensation and also wrote again to the Congregation for the Clergy, expressing his inability to comply with the decision:

As a loyal son of the Church I am distressed to be unable to conform to the wishes of the Congregation for the Clergy because of an injunction by the federal court. However, I cannot risk harm to this Diocese by ignoring the court's prohibition. Therefore, I earnestly request that we engage in some type of discussion in order to find a resolution to this dilemma and great burden³⁷.

The Congregation's reply to the same ordinary states that since he had already presented recourse to the Apostolic Signatura, it would be for that dicastery to render a decision³⁸.

2.2.3 Apostolic Signatura stage

On 25 September 2012, the Apostolic Signatura rejected the bishop's request for a suspension of the effects of the decree issued by the Con-

³⁵ CONGREGATION FOR THE CLERGY, decree, 11 April 2012, prot. n. 2008-3400.

³⁶ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, letter, 24 April 2012, prot. n. 42529/09 CA. The reason for the 2009 protocol number is that the priest had filed recourse to the Apostolic Signatura late in 2009 since a response did not appear to be forthcoming from the Congregation for the Clergy. We note that the bishop did not provide his formal response to the priest's recourse to the Congregation for over one year and after several reminder letters. Of course, this greatly slowed down the process.

³⁷ CONGREGATION FOR THE CLERGY, letter (from the bishop), 10 May 2012, prot. n. 2008-3400. Not to be overlooked is that the bishop himself withdrew the diocese's legal challenge to the bankruptcy court's determination that no priest with any type of allegation of sexual abuse of a minor could receive any financial assistance from the diocese. This seems to go against can. 22, which states «Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise». In this case, canon law does provide otherwise regarding a cleric's sustenance.

³⁸ CONGREGATION FOR THE CLERGY, letter, 3 August 2012, prot. n. 2008-3400.

gregation for the Clergy, noting that the bankruptcy clause did not necessarily close the door to any payment for the priest. The bishop could have looked for another way to execute the decree³⁹. After two attempts by the priest to effect the dicasterial decision, the bishop still would not provide the priest with sustenance. The bishop asked that the decision be suspended, but the Apostolic Signatura rejected this recourse⁴⁰. The bishop's response to the Apostolic Signatura was that the only thing standing in the way of his executing the decision was the decision of the bankruptcy court forbidding it. On 15 October 2012 the priest again wrote to the Apostolic Signatura stating that the bishop would not comply with the decree. On 3 January 2013, in response to yet another recourse presented by the recurrent priest, the Apostolic Signatura declared that competence regarding the execution of the decree was that of the Congregation for the Clergy⁴¹.

In the meantime, the priest hired a lawyer who argued in civil court that the provision of the bankruptcy agreement prohibiting the diocese from providing any financial assistance to any priest accused of sexual abuse of minors, whether the abuse is credible or not, is unlawful. The court found in favor of the priest on 18 December 2012. The priest informed the Apostolic Signatura, which then declared on 15 January 2013 that the case was closed («litem finitam»)⁴².

The bishop had hitherto asked the priest on several occasions to provide a detailed account of his assets, sources of income and expenses. The priest repeatedly declined to provide this information, using the argument that since the Congregation was specific that the bishop was to provide sustenance in accord with the diocesan pay scale; he was in no way obliged to provide the requested information.

³⁹ «Certo in casu haud constat decoctionis decretum *nullam* statuisset adistentiam ex quocumque fonte hauriendam *in perpetuum* Rev.do X dari posse; quapropter incongruum fuisset obligationem in decreto impugnato statutam adistentiam Rev.do X dandi suspendere». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 25 September 2012, prot. n. 47101/12 CA.

⁴⁰ «Instantiam pro decreti suspensione reiciendam esse et facto reici». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 25 September 2012, prot. n. 47101/12 CA.

⁴¹ «Exsecutionem decreti de quo Congregationi pro Clericis competere». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 3 January 2013, prot. n. 47101/12 CA.

⁴² SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 15 January 2013, Prot. n. 47101/12 CA.

2.2.4 Congregation for Bishops stage

Obviously frustrated by the refusal of his diocesan bishop to provide any sustenance to him, on 30 January 2013, the priest presented recourse to the Congregation for Bishops, pleading with the prefect to intervene in the manner. The priest, citing can. 1371, 2° CIC, argued that the bishop was persistently disobedient to the Apostolic Signatura⁴³. After an intensive study of the matter, the prefect wrote to the Apostolic Nuncio, asking him to inform the bishop that the Dicastery deemed that the bishop was obligated to furnish economic sustenance to the priest according to the level established by the diocese (for similar cases) regardless of the priest's economic situation⁴⁴. The bishop responded to the Nuncio, who furnished the information to the Congregation, again stating that the priest continued to refuse to provide economic information request⁴⁵. The priest again presented recourse to the Congregation for the Clergy and then to the Apostolic Signatura, arguing that the Congregation would not force the bishop to execute the decision (in favor of the priest). The case seemed to be put to rest with the Apostolic Signatura's decree dated 24 March 2014 rejecting the recourse as it was presented outside of the peremptory time limits⁴⁶. The priest again presented recourse, but on 16 July 2015, renounced it as he and the bishop were able to arrive at a peaceful agreement.

2.2.5 Commentary

It should be pointed out that after the Apostolic Signatura rejected the bishop's recourse, the Congregation for the Clergy wrote five let-

⁴³ The priest's reasoning was not accurate. The Apostolic Tribunal upheld the decision of the Congregation for the Clergy by rejecting the bishop's recourse (on 25 September 2012) but it was for the Congregation to enforce the execution of the decree.

⁴⁴ «Questo Dicastero ritiene che S.E. Mons. Y sia obbligato a fornire un sostegno economico al Rev.do X, secondo il livello stabilito dalla Diocesi di W. Cioè, il Presule deve agire in forma egualitaria, indipendentemente dalla situazione economica dell'interessato». CONGREGATION FOR BISHOPS, letter, 15 September 2013, prot. n. 972/2008.

⁴⁵ The bishop states that the priest was asked on several occasions to provide tax returns from 2008-2012 but that he refuses to. The bishop continues, «still, we have instructed our legal counsel to initiate serious discussion with Rev. M's attorney in an effort to reach a financial settlement». CONGREGATION FOR THE CLERGY, letter 8 October 2013, prot. n. 2008-3400.

⁴⁶ «Rekursus peremptus». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 24 March 2014, prot. n. 47914/13 CA.

ters to the bishop to try to persuade him to execute the decree. Also to be noted is the persistence of the priest, who went so far as to challenge what he deemed was an unjust decision on the part of the bankruptcy judge. Yet even though he had received a positive decision on the part of the civil court and three positive decisions from Roman Dicasteries, his bishop continued to resist.

Here we have a case of a serious disagreement between the Holy See and the local bishop. The bishop remained convinced that the priest should receive no sustenance whatsoever. On the one hand, it is understandable why the bishop would ask the priest for certain economic information. If the priest is asking for living expenses, the bishop should be able to know how much the priest is spending on rent, for example. However, once the Congregation for Bishops confirmed that the bishop was to provide sustenance to the priest without considering the priest's economic situation, the bishop's decision not to execute the decision was a disobedient act.

2.2.6 Brief analysis

Here we see note an apparent disregard for decisions of the Apostolic See on the part of the bishop in question. He might be accused of having violated can. 392 §1, which places upon the diocesan bishop the additional responsibility of promoting the common discipline of the Church, urging the faithful to observe all ecclesiastical laws.

One might also conclude that the bishop had no desire to provide any economic aid to the priest from the beginning; certainly he offered several reasons explaining why he was prevented from executing the decree. Of course there may be more to the story than is indicated in the *acta*. And as noted above, in the end, the matter was resolved peaceably.

2.3 *A decision of the Congregation for the Clergy to return a priest to ministry with commensurate remuneration*

We will now examine the first of two cases that resulted in the rendering of formal decisions on the part of the Congregation for the Clergy. Neither decision was carried out at the diocesan level.

The first concerns a priest who filed recourse to the Congregation in 2004, claiming he was forced to leave the parish to which he was assigned as pastor after only one year due to the complaints of a small number of «troublemakers» with few ties to the parish. The priest was hired by a Catholic charitable organization only to have the job fall

through right before it was scheduled to begin. The priest found himself with no assignment and the diocese was in no hurry to find him one, but it did provide letters of suitability. The priest served in another diocese for a time. Eventually he was assigned to a parish in his home diocese, but he abandoned his position of parochial vicar after only a few weeks (according to the bishop and for unstated reasons). As a result, in 2003 the bishop determined that he would receive no pay but only health insurance⁴⁷.

The Congregation wrote to the bishop for information. In July 2005, the bishop explained the situation (summarized in the preceding paragraph) and provided his *votum*: «I am unable to assign him. I recommend he continue to study the classified ads in Catholic newspapers». In December of the same year, the Congregation wrote to the bishop, asking him to regularize the priest's situation:

Your Excellency should provide some priestly ministry for this priest and ensure that he is henceforth to be provided with an adequate means of livelihood and the appropriate necessities as envisioned in cann. 281 §1; 384 CIC and that which is established by Diocesan particular law regarding the sustenance of clergy⁴⁸.

Several months having passed and no action having been taken by the bishop, the priest secured the services of a civil lawyer, who threatened civil action against the bishop. In September of the following year, the priest's canonical advocate wrote to the Secretary of the Congregation, lamenting that the bishop had done nothing to implement the recent request of the dicastery, despite the many inquiries made on behalf of the priest by the same canonical advocate⁴⁹. Finally in August 2007, the priest was offered an assignment. He refused to accept it until the issue of his past remuneration was resolved, which amounted to six years of back wages. The priest claimed that the bishop refused to discuss the matter of back pay with him.

Exasperated by the bishop's lack of action, the priest decided he would write to the pope, which he did in December of 2007. The letter

⁴⁷ CONGREGATION FOR THE CLERGY, *acta*, 15 April 2004, prot. n. 2004-1282.

⁴⁸ CONGREGATION FOR THE CLERGY, letter, 5 December 2005, prot. n. 2004-1282.

⁴⁹ The advocate pointed out that while the bishop did not respond to the canonical advocate's letters, it took diocesan authorities only ten days to respond to the letter written by the civil lawyer. CONGREGATION FOR THE CLERGY, letter, 13 September 2006, prot. n. 2004-1282.

was forwarded to the Congregation, which asked the bishop for information. In February 2008, the bishop wrote a very short letter, explaining that the priest would not accept assignments offered him. «Allowing a priest to determine what assignments he will accept and dictating the terms would be scandalous and have a negative impact on the morale and required obedience of other members of the presbyterate»⁵⁰.

In response to the bishop's explanation, the Congregation sent a letter to the bishop reminding him that, «once ordained or incardinated, a priest is "idoneous" for ministry and thus dependent upon the diocese for an assignment and sustenance». The letter closed informing the bishop to refer all further correspondence in the matter to the Secretary of State, since the Holy Father would now be deciding the matter⁵¹.

There appear to be no incidents of persistent disobedience on the part of any of the parties, including by the priest, who declined to accept an assignment until the matter of his back pay was resolved. While one might sympathize with the priest's reaction, given the amount of time that had passed without any apparent attempt on the part of the bishop to address the matter, at the same time one might also question whether the priest indeed wanted to work. He could have accepted the assignment offered him and then tried to resolve the matter of back pay, even if this meant a further recourse to the Apostolic See.

What about the bishop? We recall that he was asked twice by higher authority to provide for the priest according to the norms found in the CIC. The bishop took over eighteen months from the time he received the first letter to even offer the priest an assignment of any type. He did nothing to address the issue of back pay, though admittedly the letter he received from the Congregation did not specifically require him to do so. It seems both sides could have been more willing to understand the position of the other and that both likewise should have been more concerned with the *salus animarum* or at least with the common good rather than merely with their own interests⁵².

⁵⁰ CONGREGATION FOR THE CLERGY, letter, 8 February 2008, prot. n. 2004-1282.

⁵¹ CONGREGATION FOR THE CLERGY, letter, 17 April 2008, prot. n. 2004-1282. There is no indication that this case went any further nor that it was eventually resolved. No communication was sent to the Congregation for the Clergy, nor is there any record that the Apostolic Signatura studied the matter.

⁵² One fact not mentioned above is that the priest had spent almost no time in the diocese. He had served only six of his first 40 years of ordination in his diocese of incardination. Previous bishops were content to give the priest permission to serve out-

2.4 *A decision of the Congregation for the Clergy regarding a priest's public exercise of sacred ministry*

In this case we will note a possible lacuna in the practical application of can. 1371, 2° when it concerns the refusal of an ordinary to implement a decision of the Apostolic See (Congregation for the Clergy).

2.4.1 Background

The case in question concerns a priest who was ordained only three years before being accused of imprudence with minors, behavior that did not rise to the level of a *delictum gravius* but was problematic nonetheless. The priest was apologetic for any harm his actions might have caused and wrote letters to the complainants expressing remorse. The priest resigned as pastor of the parish at the bishop's request. He underwent psychological counseling, again at the order of the bishop. He even moved in with his parents on a farm since no housing was forthcoming from the diocese⁵³.

After the CDF had notified the bishop of its determination that the allegations were not under its exclusive competence and that he, as ordinary, was authorized to deal with the matter, the bishop opened up an administrative penal process (can. 1720 CIC). Even though no canonical delict had been committed, the priest's actions were determined to be offenses against chastity (can. 277) and even possible grooming of young men (though not minors). Though one might question how well founded the bishop's conclusions were, in any case he found the priest culpable for having committed at least one crime against the sixth commandment of the Decalogue. The bishop decided that the priest was not to be reassigned. «This decree is not to be revoked until it can be proven that he is not a danger to children and that no scandal will be caused by reinstating him to active ministry»⁵⁴. In the decree, the bishop allowed the priest to celebrate Mass at home with family members present. The priest pre-

side the diocese. Part of the current bishop's rationale for not wanting to provide support to the priest included his lack of service in the past. Important too is that the priest was accused of no criminal wrongdoing which would have prevented him from being assigned to active ministry.

⁵³ The priest's advocate even stated, «[Fr. T's] prompt cooperation with his bishop has been to his disadvantage and has been the occasion of his priestly ministry being restricted». CONGREGATION FOR THE CLERGY, *acta*, 23 April 2007, prot. n. 2007-0203.

⁵⁴ CONGREGATION FOR THE CLERGY, decree, 1 October 2010, prot. n. 2007-0203.

sented recourse to the bishop, who rejected it. The priest then turned to the Congregation for the Clergy with the same recourse⁵⁵.

The psychological reports concluded that the priest was not a danger to minors. However, the bishop elected not to follow the opinion of a psychologist he selected, but instead to execute the determination of the «Review Board»⁵⁶. After the Congregation notified him that the recourse had been presented, he replied, «I do not believe that I can go against the advice of my expert Review Team, which is not to assign Fr. T. in [sic] any future ministry whatsoever»⁵⁷. One might ask why the bishop would even send the priest to undergo psychological testing if he had no intention of returning him to ministry to begin with. Is it possible that the bishop was hoping the psychological report would be in line with his own conclusions?

In any case, in its decree, the Congregation observed that the penalty imposed at the end of the administrative penal process in fact was unlawful, because it included the imposition of a perpetual penalty applied as a result of an administrative act (can. 1342 §2). Moreover, the process had been completed, so precautionary measures applied using can. 1722 had run their course: «Temporary measures used to limit the priest's ministry during evaluation have long since exceeded their practicality, especially in light of findings that he is not a danger to minor children». The administrative recourse presented by the priest was upheld because the decree was in violation of the law, both *in procedendo* and *in decernendo*⁵⁸. As is the practice, a copy of the decree was sent to the recurrent and his bishop.

2.4.2 Decree not executed

Two months later, the bishop wrote to the Congregation stating his intention to appeal the decision and asking on what grounds the priest's

⁵⁵ CONGREGATION FOR THE CLERGY, *acta*, 23 April 2007, prot. n. 2007-0203.

⁵⁶ A «review board» is a common feature in the United States and is finding its way into other parts of the world as well. Composed of members with various backgrounds, many of them professional, this group, composed mainly of laypeople, seeks to assist the bishop in determining there exists a semblance of truth to individual allegation of delicts against the sixth commandment of the Decalogue with a minor perpetrated by a cleric. Members also provide their opinions on related matters, including safeguarding programs. Inasmuch as a review board is mentioned in included in norms having received a *recognitio* from the Holy See (for example the United States), it is canonically grounded.

⁵⁷ CONGREGATION FOR THE CLERGY, letter, 11 December 2007, prot. n. 2007-0203.

⁵⁸ CONGREGATION FOR THE CLERGY, decree, 1 June 2012, prot. n. 2007-0203.

recourse was upheld⁵⁹. A copy of the original decree was once again sent to the bishop, since all the information he needed was contained in it⁶⁰. He elected not to present recourse.

Seven months after the date of the decree, the recurrent priest sent a letter to the Cardinal Prefect of the Congregation, explaining that he had written to the bishop eight weeks prior to inquire about his return to ministry, but that the bishop did not respond⁶¹. The Congregation wrote back to the bishop, explaining that if he had not yet appealed to the Signatura, his right was extinguished some months back. The letter also asked the bishop to indicate how he plans to execute its decree⁶².

The bishop responded, stating that since «perpetual removal from ministry is not a penalty but rather a decision on my part for the good of the Diocese, a penal process is not appropriate». He also stated that he had in fact offered pastoral ministry to the priest⁶³. The Congregation responded in part:

You are to be commended for any efforts made to find a pastoral solution. Unfortunately there is little record in the acts of these attempted pastoral solutions. Inclusion of some record of those could have made the study of this Dicastery more complete. For example, indications that Fr. Tizio rejected any assignment offered to him which, given Your Excellency's concerns, would have ensured that he had no contact with minors, are not found in the file⁶⁴.

Here we notice that the bishop did not avail himself of the opportunity to present recourse to the Apostolic Signatura. He of course may disagree with the decision of one dicastery, but instead of simply refusing to implement it, he could have presented recourse to the Apostolic Signatura. But he did not. As a result, one might conclude that the bishop disregarded the law and displayed little concern for the rights of others⁶⁵.

⁵⁹ CONGREGATION FOR THE CLERGY, letter, 1 August 2012, prot. n. 2007-0203.

⁶⁰ CONGREGATION FOR THE CLERGY, letter, 22 August 2012, prot. n. 2007-0203.

⁶¹ CONGREGATION FOR THE CLERGY, letter, 31 December 2012, prot. n. 2007-0203.

⁶² CONGREGATION FOR THE CLERGY, letter, 6 February 2013, prot. n. 2007-0203.

⁶³ Here we note that the bishop wrote this letter before having received the 6 February 2013 letter from the Congregation. The bishop's interpretation of «perpetual removal from ministry» as not being a penalty is perplexing as is his conclusion that a penal process is not appropriate given the circumstances. CONGREGATION FOR THE CLERGY, letter, 31 January 2013, prot. n. 2007-0203.

⁶⁴ CONGREGATION FOR THE CLERGY, letter, 20 March 2013, prot. n. 2007-0203.

⁶⁵ Canon 41 foresees that there could be instances where the execution of a decree may be inopportune; in such a case, «the executor is to inform immediately the authority who

2.5 *A decision of the Holy Father to impose the loss of the clerical state upon a priest who participated in the attempted ordination of a woman*

In 2008, a religious priest participated in the attempted ordination of a woman. The priest admitted to delivering the homily, imposing hands on the woman attempting to be ordained and concelebrating with the same woman who also attempted to offer the Holy Sacrifice of the Mass. The provincial superior canonically warned the offending priest to withdraw from contumacy and from his disregard for the teaching of the Church on the matter of women's ordination (can. 1347 CIC). The priest then presented recourse against this decision, which was considered by the Council (cann. 627; 127), which decided that it was to be referred to the CDF.

The CDF concluded that the priest had committed several canonical offenses, including advocating for the ordination of women in his homily (cf. cann. 750 §2; 1371, 1°), illegitimately performing a «priestly act» by imposing hands on the woman and *ex analogia* simulating the Eucharist sacrifice. Also noted was his lack of repentance for his actions, which he continued to justify in the public arena. Finally, the scandal caused to the faithful could not be overlooked⁶⁶.

Noting that a canonical warning had already been given, which specified that the priest was to withdraw from contumacy, the Congregation determined to strengthen that warning with a penal precept (can. 1319 §1, CIC). The CDF gave the priest thirty canonical days «to recant the public statements he has made on the matter and state his acceptance of the Church's teaching on the matter of ordination of women to Sacred Orders» and that failure to observe the requirements of this penal pre-

issued the act». «Exsecutor actus administrativi cui committitur merum exsecutionis ministerium, exsecutionem huius actus denegare non potest, nisi manifesto appareat eundem actum esse nullum aut alia ex gravi causa sustineri non posse aut condiciones in ipso actu administrativo appositas non esse adimpletas; si tamen actus administrativi exsecutio adiutorum personae aut loci ratione videatur inopportuna, exsecutor exsecutionem intermitat; quibus in casibus statim certiore faciat auctoritatem quae actum edidit».

⁶⁶ CDF, letter, 27 September 2008, prot. n. 270/2008. At the time of the offense, the offense was not listed as a *delictum gravius*, though only months before the mentioned attempted ordination, a general decree from the CDF explained that the one who attempts to confer upon a woman and the woman attempting to receive «ordination» are both excommunicated *latae sententiae*, reserved to the Holy See. CDF, *Decretum generale. De delicto attentate sacrae ordinationis mulieris*, 19 December 2007. As of 21 May 2010, art. 5 of the *Substantive norms* defines the attempted ordination of a woman as a more grave delict.

cept will result in the priest's excommunication *latae sententiae*, reserved to the Apostolic See⁶⁷. Not only did the priest not recant his position, he appeared to take a more forceful approach, even protesting on the Via della Conciliazione. Pope Benedict XVI dismissed the priest from the clerical state after several attempts to persuade him to accept the teachings of the Church failed⁶⁸.

The priest's failure to obey extended beyond disobedience to his superior; he also disobeyed the Apostolic See. His public speaking out contravened what had been made clear by Popes Paul VI and John Paul II⁶⁹. His actions likely produced scandal and confusion and caused no little disquiet in his religious institute. And the resources that were spent dealing with the matter could have been better allocated towards evangelization efforts, putting forth authentic Catholic teachings. Sadly, no reformation of the offender seems to be in sight.

2.6 *Analysis of some effects of obedience to the Apostolic See*

We will consider exhortations found in directories addressed to priests and bishops before proposing conclusions based upon the above cases and fonts from our first chapter.

2.6.1 Exhortations found in two directories

Worthy of note is the 2004 Directory for the Pastoral Ministry of Bishops, including the section concerning cooperation with the Apostolic See. A bishop is bound to the Holy Father and is called to «carry out faithfully the instructions of the Holy See and of the different Dicasteries of the Roman Curia, which assist the Roman Pontiff in his mission of service to the particular Churches and to their Pastors»⁷⁰.

⁶⁷ CDF, letter, 27 September 2008, prot. n. 270/2008.

⁶⁸ CDF, decree, 4 October 2012, prot. n. 270/2008. The priest even scanned his dismissal letter from the Congregation and posted it on line at <http://www.scribd.com/doc/119804600/The-official-Latin-document-regarding-Roy-Bourgeois>. The five members of the religious institute who voted on the matter were not able to reach a majority as three of them abstained. This may explain why, *pro bono Ecclesiae*, the matter was presented to the Holy Father.

⁶⁹ PAUL VI, *Response to the Letter of His Grace the Most Reverend Dr. F.D. Cogan, Archbishop of Canterbury, concerning the Ordination of Women to the Priesthood*, 30 November 1975; JOHN PAUL II, *Ordinatio sacerdotalis*.

⁷⁰ CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishops* «Apostolos Suos», 14.

A revised and updated directory authored by the Congregation for the Clergy likewise addresses Ordinaries and other superiors:

In order for the observance of obedience to be facilitated and able to nourish ecclesial communion, those constituted in positions of authority – Ordinaries, religious Superiors, Moderators of Societies of apostolic life –, in addition to offering the necessary and constant personal example, must exercise their institutional charism with charity, both anticipating and requesting, in due times and ways, adhesion to each norm in the *ambit of the Magisterium and discipline*⁷¹.

2.6.2 Respect for the law

In all but the last case presented above one might note an apparent lack of respect for the law on the part of various ordinaries. Even after the rendering or confirming of decisions on the part of dicasteries of the Apostolic See, the bishops in question made conscious decisions not to execute them.

In chapter one (section 2.7.2) we noted that in 863 Pope Nicholas called for excommunication for those who manifested disdain or had contempt for a dogma, mandate, interdict, sanction or decree issued by the pope. In the cases above, a prefect, making use of vicarious *potestas*, issued a decree in which a decision was rendered. While it could be unfair to conclude that certain ordinaries had a disdain or contempt for a decision of the Apostolic See, there is evidence of deliberate disobedience, though strictly speaking not persistent disobedience, as warnings had not been issued. The ordinaries were aware of the decision rendered, disagreed with it, in some cases tried to argue their case and, in the end, when the Apostolic See would not modify the decision, they simply would not implement it.

We might consider part of a speech delivered by R. Burke in regards to the Church's handling of accusations of delicts *contra sextum* with minors perpetrated by clerics:

It is often asserted that the scandal was caused by the absence of a proper discipline in the Church to deal justly with such abhorrent situations [...].

⁷¹ The section concludes: «This adhesion is a source of liberty since it stimulates and does not hamper the mature spontaneity of the priest, who will be in a position to assume a serene and even-minded pastoral position, creating the harmony in which personal genius merges in a higher unity». CONGREGATION FOR THE CLERGY, *Directory for the ministry and the life of priests*, 58.

The Church had dealt with such crimes in the past [...] and had in place a carefully articulated process by which to investigate accusations, with full respect for the rights of all parties involved, including the protection of potential victims during the time of the investigation; to reach a just decision regarding their truth, and to apply the appropriate sanction. The discipline in place was not followed because it was not known and, in fact, was presumed not to exist⁷².

Here the Cardinal directly addresses respect for the law and indirectly the importance that those in authority (and others) be aware of laws and processes found in the CIC. There may be ordinaries and judicial vicars who would take exception to the Cardinal's observations, and in fact Pope John Paul II eventually provided other avenues to adjudicate and resolve certain cases. Yet the Cardinal's general comments are worthy of consideration.

2.6.3 Respect for those subject to the law

Though not presented in the above referenced cases, there is a thread that runs throughout the recourses presented by the above-mentioned priest recurrences: that they have many reasons to conclude that their bishop simply does not care for them, and that he does not regard all of his priests as sons and friends nor does he wish to listen to them⁷³. Other priests conclude that their bishop is more concerned with finding the most expedient solution irrespective of the decision of the Apostolic See in a particular matter. They see this as a clear indicator that he puts himself above the law and hold that the bishop's obstinate refusal to implement a decision, confirmed by the Apostolic Signatura, is indicative of, among other things, his lack of respect for others and the rights the CIC affords them.

Also important to keep in mind is that the Church views the relationship between bishop and priest differently than does a business model governing a company or corporation. A priest has more rights than does an «at will» employee, at least in his diocese of incardination and the relationship between priest and bishop should normally be more profound than a supervisor and employee at a secular business. It is not

⁷² R.L. BURKE, *Canon Law at the service of justice and freedom in the Church as the people of God*, 28 August 2014. Card. Burke held the position of Prefect of the Apostolic Signatura at the time he delivered this talk.

⁷³ Cf. CD 16.

based on mere convenience and should be more pointed toward a covenant relationship as opposed to a contractual one, not unlike the difference between a sacramental marriage and a merely natural marriage devoid of sacramental aspects.

2.6.4 Prevention of confusion among the faithful

In some of the above referenced cases there are indications of frustration among the faithful. Some of this arises from lack of full knowledge of the facts and intricacies of the matters, as evidenced in letters, some more respectfully written than others, indicating from parishioners who request that their pastor be reinstated, for example. Those who are privy to the *iter* of a situation sometimes express bewilderment as to why, for example, a bishop has not executed a decision in favor of the priest.

2.6.5 Maintaining of the proper authority of the Apostolic See

Competencies of each dicastery of the Apostolic See are presently defined in *PB*. These dicasteries have authority to make decisions within their competence. Such authority can be eroded when *de facto* enough people, especially clerics and even more so bishops, do not follow legitimate decisions of the Apostolic See. If repeatedly bishops do not execute certain decisions on the part of one or more dicasteries, trust in the juridical system may lessen. It would seem that the concept of subsidiarity, which foresees decisions being made, where possible, by those at a lower level, could be abused when recourses that find in favor of the recurrent are not executed.

2.6.6 Good example to the faithful

There are parallels among the cases just considered and some cases presented in chapter 1. In section 2.6.2, chapter 1, we read that bishop candidates were to pledge special vows. In section 2.7.1, we observed that bishops were called to follow the precepts of the Apostolic See and warned that those who might be papal candidates were at least not to be disobedient to the precepts. It seems fair to conclude that if those called to lead cannot be obedient, they should not expect others to be obedient to them.

3. Cases involving disobedience to one's ordinary

The promise of obedience to one's ordinary is so important that the liturgical rites call for this promise to be made at the time of a man's

ordination to both the diaconate and to the presbyterate (CCC 1567). It is therefore not to be taken lightly by the candidate. However, all but one of the following cases concerns a priest not being obedient to his ordinary. It is only the final case that concerns a laywoman's disobedience to her ordinary.

3.1 *A decision of the Holy Father to dismiss a priest for graviora delicta and a subsequent decision of the CDF concerning the dismissed priest's persistent disobedience to penal precepts*

After five years of ministry and a myriad of problems with various pastors under whom he was assigned as a parochial vicar, the archbishop forbade Fr. T from publicly exercising sacred ministry due to the priest's refusal to obey his ordinary's legitimate commands. The prohibition was eventually lifted, and for the following eleven years the priest was in and out of ministry. At that time the archbishop again forbade the priest from publicly exercising sacred ministry «because of allegations of sexual misconduct with boys, conflicts with parishioners and other priests, refusing to undergo psychological counseling and refusing to comply with the orders of the archbishop»⁷⁴. The priest left the country and presented himself elsewhere, finding a job as a school-teacher in a public school.

In 1988, Fr. T was questioned at length by civil authorities for suspected wrongdoing with minors; the authorities, however, decided not to proceed with the case. His teaching contract was not renewed, at which time the priest began soliciting his ordinary of incardination to reinstate his faculties so that the cleric might undertake functions proper to a priest. The archbishop not only refused to do so, he also informed several apostolic nuncios of the priest's status⁷⁵.

In 2002, after having been informed that the priest was seen performing various ministries, the archbishop communicated to him that he was not permitted to do so:

It appears that you have recently continued to present yourself as a priest in good standing, able to undertake work as a Catholic chaplain to pilgrimage groups, and that you offer these services to travel companies both in the

⁷⁴ CDF, letter, 18 April 1986, prot. n. 114/2004.

⁷⁵ We recall that at this time the CDF did not enjoy exclusive competence in regards to this type of *delictum gravius*. CDF, letters, 4 November 1992; 28 July 1993; 25 August 1993, prot. n. 114/2004.

[Country 1] and in [Country 2]. If you do this you are misrepresenting your position in relation to the Church and breaking the conditions of your suspension. In these circumstances this Diocese will inform relevant parties of your suspension⁷⁶.

The priest presented recourse to the Congregation for the Clergy, which asked the bishop for clarification of the priest's status and informed him: «By letter to Fr. X of this same date, we direct him to your attention. We trust that his return to his Archdiocese of incardination will be an occasion for his canonical status to be determined according to the proper processes provided by the Code of Canon Law». The Congregation sent a letter with the same date to the priest:

This dicastery has been informed that your faculties were suspended by a letter from the Most Reverend Y, the former archbishop. A condition of your suspension being lifted was the completion of a psychological evaluation and treatment. We redirect you to the archbishop to clarify the fulfillment of the conditions established for the lifting of your suspension⁷⁷.

Likely as a result of this letter from the Congregation for the Clergy, the bishop soon declared the opening of the preliminary investigation. There were several indications of various acts of disobedience on the part of the priest to successive ordinaries since shortly after the accused's ordination to the priesthood. The archbishop concluded that not only was the priest contumaciously disobedient, but that there was at least a semblance of truth to allegations of delicts *contra sextum* with minors presented against him over a period of time by several accusers. The bishop reported these allegations to the CDF.

Due to the gravity of the allegations, quantity of presumed victims and scandalous nature of the case, the priest was soon dismissed from the clerical state *ex officio*⁷⁸. Attempts were made to present the decree of dismissal to the man, but he would not acknowledge invitations extended to him to visit the chancery. The dismissal was eventually communicated to the dismissed priest via post. It was done again on a second occasion after the priest wrote twice to the CDF asking his status⁷⁹.

⁷⁶ CDF, letter, 18 September 2002, prot. n. 114/2004.

⁷⁷ CONGREGATION FOR THE CLERGY, letter, 3 October 2003, prot. n. 20030754.

⁷⁸ CDF, decree of dismissal, 12 November 2004, prot. n. 114/2004.

⁷⁹ CDF, letter, 22 December 2006, prot. n. 114/2004. Paragraph seven of the decree states that if for legitimate reasons it is not possible to present the decree to the priest, it may be sent by means of registered mail («epistulas perscriptas»).

The CDF wrote to the priest, explaining to him that his case admits of no recourse and that he is to contact his archbishop for more direction. Several months later, the CDF received a letter from the bishop where the dismissed priest was domiciled, stating that former cleric was attending the extraordinary form of the Mass dressed as a priest and had celebrated Mass on several occasions for a prayer group in the diocese. The CDF directed the ordinary of the place (where the dismissed priest was domiciled) to impose a penal precept. The CDF also communicated the same information to two other archdioceses where the priest had spent time in the past, inviting them to send it any relevant information. The CDF included a «notice» to be made public so that the faithful would be aware of the man's status⁸⁰. That notice can be found on parish websites to this day.

Shortly after receiving the Congregation's letter, the archbishop imposed a penal precept upon the disobedient layman, who refused to present himself at the archdiocesan chancery to meet with competent authority. The offender was mailed the precept, which read:

I, Most Reverend X, Archbishop of Y, having been mandated by the Congregation for the Doctrine of the Faith in a [recent] communication, hereby impose on you, Mr. T, the following Penal Precept, namely: 1. You are not to exercise the power of Orders except in the situation of a penitent in danger of death as outlined in canon 976 of the CIC. In the event that you violate this prohibition you will incur the censure of excommunication *latae sententiae* reserved to the CDF. 2. Moreover, you are reminded that the right to wear clerical dress was lost with those rights proper to the clerical state when you were dismissed from it (canon 292). Equally, you are not to present yourself as a priest. Insofar as you may have described yourself as a priest in telephone directories, correspondence and any other format, these are to be rectified forthwith⁸¹.

Two years afterwards, the archbishop again wrote to the CDF, explaining that the priest was not obeying the precept. Upon further investigation, the bishop presented substantial proof that the priest had disobeyed several provisions of the precept. Moreover, in order to warn the priest, a lay delegate was sent to the priest's residence. Tizio treated the delegate with disdain, even slamming the door in his face. He did mention to the delegate that «the [local] archbishop has no authority

⁸⁰ CDF, letter, 12 February 2008, prot. n. 114/2004.

⁸¹ CDF, precept, 10 April 2008, prot. n. 114/2004.

over me». Letters attesting to the fact that Tizio was presenting himself as a priest were included in the correspondence. As documentary proof, relevant pages of a telephone book where Tizio's name appeared as «Father» were included in the acts⁸². The matter was discussed at the CDF, which decided that the archbishop was to declare the priest's excommunication in line with the archbishop's latest decree⁸³. Had the priest been docile to the archbishop's commands from the beginning, he likely would have remained a cleric and saved the faithful from enduring much scandal. Clearly, the priest in question manifested little desire to follow the CIC in regards to the obligations of clerics, as mentioned in Chapter III of Book II, especially cann. 273, 275, 276 and 277.

This case provides an example of disciplinary measures an ordinary may impose upon non-clerics. All diocesan bishops have a responsibility to address disciplinary matters such as one falsely presenting himself as a priest. The bishop of incardination is responsible to ensure that what is mentioned in the decree of dismissal is observed (for example, that the dismissed priest may not teach theology or serve as a lector). The priest's dismissal from the clerical state means that he is no longer incardinated in any diocese nor does he enjoy those rights proper to a cleric.

3.2 *A decision of the Holy Father to dismiss a priest for graviora delicta and concubinage*

A certain priest was accused of delicts *contra sextum* with a minor dating back more than twenty years. He had earlier admitted to prolonged sexual relationships with multiple women during his priesthood. Only later did a daughter of one of the women present an accusation against the priest for various violations of the sixth commandment of the Decalogue against her when she was a minor. When the latest allegation was presented, competent authority forbade the accused priest from any exercise of public ministry. Though the priest staunchly denied the truth of the allegations, he agreed to retire early and not present himself as a priest again and to celebrate Mass only privately. With the knowledge and agreement of competent diocesan authority, the priest moved to another state. He took up residence with a woman with whom he had been sexually involved years before. When the same accuser presented the same allegations eight years later, the bishop or-

⁸² CDF, letter, 23 March 2013, prot. n. 114/2004.

⁸³ CDF, decree, 10 January 2014, prot. n. 114/2004.

dered the priest, first orally and then via penal precept, to return to the diocese and live in a retirement home for priests so that he could be supervised. The bishop stated that the priest appeared to be in violation of can. 1395 §1 (concubinage). The priest refused to comply with what was demanded in the precept, and in fact responded that no scandal should be caused as he and the woman in question were living together as brother and sister. The bishop sent the case to the CDF, asking that the priest be dismissed *ex officio* from the clerical state for the suspected violation *contra sextum* with a minor, his concubinage and persistent disobedience. If the priest had complied with the bishop's order to return to the diocese and reside in the retirement home, where the bishop could have ensured that the priest was supervised (while forbidden from the exercise of public ministry), his clerical status might have been spared. He was dismissed from the clerical state *ex officio*⁸⁴.

As discussed in chapter three, a just penalty for offenses against can. 1371 is not foreseen to be perpetual in nature since the penalty is indeterminate (cf. can. 1349 CIC). In the case above, however, a perpetual penalty was imposed due to the priest's commission of a more grave delict, which is allowed by *SST* (art. 21 §2, 2^o). It was the aggravating factor (persistent refusal to return to the diocese) that warranted the stiffest penalty possible. The bishop could better ensure the protection of minors if the priest were living under close supervision. Once the priest refused to cooperate, the matter became more complicated. This is an example of persistent disobedience which, while on the one hand might be considered secondary to the main issue at hand, in fact aggravates the situation, thereby inviting competent authority to make the penalty more severe. Had the priest in question obeyed his ordinary his clerical status likely would have been preserved, including the possibility of licitly celebrating private Mass each day.

3.3 *A decision of an abbot to dismiss a priest from his religious institute for unlawful absence*

Accusations concerning possible *graviora delicta* dating back two decades having been presented against a religious priest, the cleric agreed to submit to a four-week psychological evaluation. The assessment revealed serious concerns; this may have influenced the priest's decision not to return to the religious house where he had lived his entire religious life. The

⁸⁴ CDF, decree, 10 November 2006, prot. n. 312/2003.

superior of the house sent the priest six letters during the subsequent two months, each time inviting him to return. He did his best to try to convince the priest that he would be best served in the environment present at the religious house. The priest responded to only one letter by leaving a voice mail for the superior and stating that he did not feel welcome in the community. Three months later, and in his seventh written correspondence with the priest, the superior informed him that «sometime before the end of [the present month] I regret that I'm going to have to begin the dismissal process officially if you do not return by then»⁸⁵.

After seven warnings had been sent, a subsequent letter was mailed to the priest:

I now hereby declare that you will be dismissed from the order unless you return to [the monastery] within fifteen (15) days of receipt of this canonical warning to take up immediately religious life as a member of the house. If you fail to respond to the second canonical warning, I will issue a third canonical warning. If you then fail to respond again, I will proceed with dismissal by submitting the evidence of your absence to the [local] President of the Congregation and his council, which will decide the case and submit it to the Apostolic See⁸⁶.

Five weeks later, the superior notified the priest again, with substantially the same language:

I hereby warn you that you will be dismissed from the order unless you return to [the abbey] within fifteen (15) days of receipt of this second canonical warning to take up immediately religious life as a member of the order. If you fail to comply within fifteen (15) days of receipt of this second canonical warning, I will send you a third canonical warning. If you do not return after that, I will proceed with the process of dismissal by submitting the evidence of your absence to the [local] President and his council which will decide the case and submit to the Apostolic See⁸⁷.

Exactly six months to the day after the second warning was issued, the superior issued the third warning. Recall that all the while the priest was illicitly absent. Moreover, the superior did not know the member's whereabouts and sent the warnings instead to the office of the priest's canonical advocate. The third warning stated (once again) that the priest would have fifteen days to return to the religious house. It concluded:

⁸⁵ CDF, letter, 2 December 2012, prot. n. 597/2013.

⁸⁶ CDF, precept, 22 January 2013, prot. n. 597/2013.

⁸⁷ CDF, precept, 28 February 2013, prot. n. 597/2013.

If you fail to abide by this final warning in the form of a precept, I will proceed with submitting your case to the Congregation for the Doctrine of the Faith and Congregation for Institutes of Consecrated Life and Societies of Apostolic Life requesting that you be dismissed from the clerical state and as a [member of this religious institute]. Be advised of the seriousness of this penal precept⁸⁸.

Nine weeks later, not having received a response from the priest or his canonical advocate, the local president, having properly convened the council according to canon law and the statutes of the institute, dismissed the priest from the order⁸⁹. The grounds for the dismissal were illegitimate absence and did not mention canonical crimes, and cann. 665 §2 and 696 §1 were cited as the legal bases⁹⁰.

The same superior was the author of each of the invitations and the same person who later ordered the priest to return to the religious house. There is no evidence that can. 1371, 2° was cited, though admittedly its citation was not necessary as dismissal from a religious institute is not a penalty. In any case, there is no question that the priest was persistently disobedient to the orders of his superior, who seemingly did his best to treat the accused and disobedient priest as a brother. The superior was clear that the priest's returning to the religious house would be for his benefit and that he would receive the support he needed. The repeated warnings produced no fruit, however. The decision was made to invite the priest to seek a dispensation from the obligations connected with priesthood or to return immediately to the religious community. The decision was properly communicated⁹¹. Soon afterwards the priest presented recourse to the above-mentioned dicasteries asking that the decree of dismissal not be confirmed but rather that he be granted exlaustration for a period of three years.

⁸⁸ CDF, precept, 28 August 2013, prot. n. 597/2013. This was an erroneous conclusion concerning competencies. In judging *graviora delicta* under its competence, the CDF (cf. art. 8 §2, *m.p. SST*) «judges other delicts of which a defendant is accused by the Promotor of Justice, by reason of connection of person and complicity».

⁸⁹ CDF, decree, 17 October 2013, prot. n. 597/2013. The priest was part of a *sui iuris* monastery. His dismissal from the abbey was equivalent to dismissal from the order.

⁹⁰ Canon 665 §2 states that an illegitimately absent member of a religious institute is to be encouraged to return. Canon 696 §1 allows a member of a religious institute to be dismissed for several reasons, including «stubborn disobedience to the legitimate precepts of superiors in a grave matter» and for illegitimate absence of six months. It was illegitimate absence that motivated the decree of dismissal and not stubborn disobedience.

⁹¹ CDF, letter, 19 December 2013, prot. n. 597/2013.

In the recourse the priest offers a different light on the events. Through his canonical advocate, he requested that he not be dismissed as a monk and that the decree of dismissal not be confirmed. He «hopes and prays that his case can be amicably resolved»⁹².

We learn from the recourse that the priest does not deny that he was illegitimately absent for more than six months. He admits that he received all the warning letters but failed to respond to all but one of them. He also admits that he failed to inform the abbot of his whereabouts. But «these were not acts of defiance or insolence». He claims that a hostile environment exists at the monastery. He states that over one and one half years passed from the time the first allegation of wrongdoing was presented and a preliminary investigation (to determine the credibility of the accusations of delicts *contra sextum* with a minor presented against the priest and in accordance with can. 1717) was initiated. By this point, the priest concluded that he had already been judged guilty as charged⁹³.

The accused priest may have had good reason to come to the above conclusion. This is because the abbot publicly declared the priest's guilt before any process began. The abbot's written comments to the operator of a blog remain on the blog as of this writing. For example: «Make no mistake about it, what Father X did to the first one [...] was heinous, evil, sick and emerging from the psyche of a defective conscience». The priest's advocate argued that Father X «was horrified that this kind of injustice could be perpetrated by his superior. Father could only conclude that he could not return to his monastery that was clearly hostile to him». The abbot, for his part, already addressed these unfortunate comments to the priest in writing, describing them as having been taken out of context. Nonetheless, «Father could not see how he could submit himself in obedience to the one who had so boldly betrayed him», according to the religious' canonical advocate⁹⁴.

The accused cleric also lamented that another priest of the abbey, in a communication with one of the accusers, stated, «I sincerely apologize for Fr. X's unpardonable behavior towards you» and «Thank you again for making us aware of his outrageous conduct toward you». Other correspondences made by e-mail from abbey personnel to accusers are al-

⁹² CDF, letter, 7 December 2013, prot. n. 597/2013. The information contained in the CDF's 19 December 2013 decree had not yet been communicated to the accused priest.

⁹³ CDF, letter, 7 December 2013, prot. n. 597/2013.

⁹⁴ CDF, letter, 7 December 2013, prot. n. 597/2013.

so readily accessible on the Internet⁹⁵. The priest went on to explain that he was initially forbidden from returning to the monastery but that there was no decree memorializing this decision. Then the abbot changed his mind and even apologized to the priest for «any hurts you may have felt because of us»⁹⁶.

The accused priest explains that lawyers and others told him the monastery was unsafe for him and that he should not return. Yet he also rejected the offer to transfer to other monasteries, a suggestion that was presented to him by the abbot when the latter rejected the priest's request for a medical leave of absence. The accused retains that he declined these offers due to the public nature of the accusations, which caused him to conclude that «it would be unfair to bring all the notoriety and publicity to another place of prayer». He feared that a certain group would begin picketing outside of the new monastery, which would only cause disruption to the monks in residence. In addition to asking for a revocation of the decree of dismissal, the priest asks that CICLSAL «issue a decree of exlaustration for a period of three years, renewal (sic)»⁹⁷.

The above case illustrates that persistent disobedience is often linked with other issues or problems. Illegitimate absence was the reason for the priest's dismissal. Yet his refusal to return was an example of his persistent disobedience to the abbot's orders. Also noteworthy is the importance of hearing all sides of a story when adjudicating a matter.

3.4 *A decision of the Apostolic Signatura concerning a priest's persistent disobedience to a decree of his bishop of incardination*

This case concerns a priest who was deemed to be persistently disobedient to his diocesan bishop by the Apostolic Signatura. The priest joined a religious community, still seeking canonical recognition, outside of his country of origin. Having completed the required studies and formation, he was ordained a transitional deacon and soon afterwards a priest by the diocesan bishop of the diocese in which the religious community was located (hereafter, «diocese 1»). The intent was that

⁹⁵ This is an example of how careful one must be when making use of modern technology. Nothing should be considered private or privileged. Anything put into writing might appear later for the public to see.

⁹⁶ CDF, letter, 7 December 2013, prot. n. 597/2013.

⁹⁷ CDF, letter, 7 December 2013, prot. n. 597/2013.

the priest would eventually incardinate in the religious community. For various reasons, the priest discontinued his affiliation with the religious community.

Since the priest did not speak the language of the people of diocese 1, the diocesan bishop gave him permission to work in various dioceses where he would promote a devotion. In 1989, his diocesan bishop provided him a signed letter of excardination (cf. can. 267 §1) so that he might eventually incardinate into a diocese in his native country. However, also in 1989, the Congregation for the Clergy wrote to the priest (after the intervention of the Pro-Nuncio to his country of origin):

This Congregation has been following for a long time your case which arouses serious preoccupation. We have tried in the first place to define your juridical position which, at this time, is that of a cleric who *de facto* eludes the effective jurisdiction of both the Bishop *a quo* and the Bishop *ad quem*. Furthermore, this Congregation hereby imposes on you the obligation to meet with the Apostolic Pro-Nuncio within 15 days from the reception of this letter, in order to coordinate a clear and definitive solution of your case with the deadline of September 30th, 1989, which cannot be put off, either through the incardination in [a diocese in his country of origin] or by returning to diocese 1.

The priest was eventually called back to diocese 1 by the new bishop, who restricted his exercise of sacred ministry to the boundaries of the diocese⁹⁸. The priest presented recourse against this decision first to the bishop who called him back and, once that was rejected, to the Congregation for the Clergy, which also rejected it. The priest then presented recourse to the Apostolic Signatura on 7 June 1994⁹⁹.

The recurrent explained that in 1993, a certain bishop appeared disposed to incardinate the priest, but the bishop changed his mind after the intervention of the Congregation for the Clergy, which wrote to the then-bishop of diocese 1, who ordered the priest to return to the diocese within 30 days of receipt of the letter. The priest presented recourse to the Apostolic Signatura, which decided not to admit the recourse, «*quatenus ipse manifeste caret quolibet fundamento*»¹⁰⁰.

⁹⁸ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 15 May 1995, prot. n. 25250/94 CA.

⁹⁹ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 15 May 1995, prot. n. 25250/94 CA.

¹⁰⁰ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 15 May 1995, prot. n. 25250/94 CA.

Shortly after the Apostolic Signatura rejected the priest's recourse, a different diocesan bishop expressed interest in incardinating the priest; as a precaution the bishop wrote to the bishop of diocese 1 asking for a decree of excommunication. However, with a letter dated 26 January 1996, the bishop of diocese 1 rejected the request and ordered the priest back to the diocese within thirty days, threatening the penalty of suspension in the case of disobedience to the order. The priest wrote back informing the bishop that he no longer had jurisdiction over him since the priest had been incardinated in this other diocese¹⁰¹.

The bishop of diocese 1 then consulted with the Congregation for the Clergy, and, with a letter of 16 May 1996, declared *inexistens* the rescript of incardination from the other diocese and ordered the priest back to his diocese within thirty days. In the event of non-compliance, the priest would be suspended from all acts contained in can. 1333 §1, 1°; 2°. The priest petitioned the bishop to revoke the decree; the bishop instead confirmed the decree in a 12 July 1996 letter. The priest presented recourse to the same Congregation on 20 September 1996; it was rejected on 17 October 1996, resulting in the confirmation of the bishop's decree. The Congregation's letter to the priest also admonished him to be obedient to the bishop's decree and return to the diocese, citing can. 1371. On 27 November 1996 the priest presented recourse to the STAS against the bishop's decision to suspend him. On 20 January 1998, the recourse was rejected, and the decree included: «Rev.dus G, Episcopo suo legitime praecipienti non oboedivit et post monitum in inoboedientia perstitit, ideoque ad normam can. 1371 iusta poena puniendus erat»¹⁰².

The defense was long and many arguments were presented. The priest's advocate pointed out that the priest found three different bishops who were willing to incardinate him and that successive bishops of diocese 1 consented to the priest's absence from the diocese for sixteen years; moreover the priest was getting no sustenance, as was agreed from the beginning. In addition, John Paul II's private secretary even congratulated the priest on a certain appointment he had recently received. The College of judges pointed out that the pope's private secretary was unaware of the priest's canonical status when the letter was

¹⁰¹ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 20 January 1998, prot. n. 27338/96 CA.

¹⁰² SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 20 January 1998, prot. n. 27338/96 CA.

written. The defense also cited as official support from the Apostolic See two Papal Blessings which were signed by the then Apostolic Almoner. The Apostolic Signatura responded that the almoner was unaware of difficulties the priest was experiencing and of the involvement of the Congregation for the Clergy¹⁰³.

The defense argued that the Congregation for the Clergy had overstepped its competence with its 30 September 1989 letter (mentioned above) and in fact that its actions «were illicit, unprecedented and indefensible». The advocate added that in 1993 the then bishop of diocese 1 responded to the priest that his case was in the hands of the CC and that he was not able to act¹⁰⁴.

Moreover, the recurrent insisted: «the Bishop [of the priest's diocese of ordination] had no intention or desire to recall Father back, because, in fact, he had no legitimate grounds to do so and was acting at the "instance" of the Congregation». The recurrent presented a 13 January 1994 letter written by the then bishop of diocese 1 who stated that the only reason excommunication was not yet forthcoming was due to the intervention of the Secretary and Prefect of the Congregation for the Clergy¹⁰⁵.

The defense also invoked the principle *ad impossibilia nemo tenetur*, holding that it was impossible for the priest to be obedient to the order to return to diocese 1 because of the strictness of the immigration laws of that country. Moreover, the priest had also begun an orphanage in a different diocese; he had grave obligations in this regard. Calling him away from his life's work amounted to a penalty¹⁰⁶.

The College responded to each argument, concluding that the CC did not overstep its bounds, that the argument presented concerning that no

¹⁰³ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 20 January 1998, prot. n. 27338/96 CA. One might question whether the priest indeed believed the Holy Father was fully aware of his situation when the papal blessings were given. To include this line of argumentation, in my opinion, weakens the defense. His advocate would have done better had he limited his observations to those at least touching upon canon law.

¹⁰⁴ «Il suo caso è nelle mani della S. Congregazione del Clero. La domanda rivolta dal Vescovo [dal paese I], passata alla Congregazione, mi ha messo in condizioni di non poter agire. E attendo indicazioni da Mons. X. Le cose sono andate così per tutti i precedenti che lei sa». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, definitive decree, 10 July 1999, prot. n. 27338/96 CA.

¹⁰⁵ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 20 January 1998, prot. n. 27338/96 CA.

¹⁰⁶ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 20 January 1998, prot. n. 27338/96 CA.

one is held to the impossible is foolish and that calling the priest back to the diocese was not a penalty but rather an obligation. The College decreed that its 20 January 1998 decree was not to be reformed because the argument presented lacked all foundation¹⁰⁷.

3.5 *A decision of two dicasteries of the Apostolic See
to uphold a decree of a diocesan bishop prohibiting a laywoman
from worshiping at a particular parish*

While for reasons already mentioned in the second chapter a cleric is more likely to be the recipient of a just penalty for persistent disobedience to competent authority, in the case about to be examined the recipient of a just penalty in fact was a laywoman.

3.5.1 Archdiocesan level

The arrival of a new pastor brought with it the introduction of substantial liturgical innovations at a particular parish. The priest's apparent lack of fidelity to the liturgical books was a cause of concern for not a few of the faithful. A certain parishioner and her husband were among the more outspoken complainants, having presented grievances to both to the pastor himself and later to the archbishop. Adding to the drama was that the archbishop seemed to approve of the liturgical innovations. The same archbishop, while first indicating to the pastor his intent to find a peaceful resolution to the conflicts, instead communicated a written warning to the parishioner in question, admonishing her and other members of the faithful to stop disrupting choir practice, a pattern that began after the group was expelled from the choir. On several other occasions the ordinary warned the accused to cease disrupting liturgical services, citing can. 1371, 2° in the decree. Since the misbehavior continued, the archbishop prohibited this particular parishioner from attending her local parish church for one year. The decree stated that if the woman ceased her behavior, the penalty would be revoked and she would again be allowed to peacefully worship at her home parish. She asked the archbishop to revoke the decree, but she received a negative response¹⁰⁸.

¹⁰⁷ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, definitive decree, 10 July 1999, prot. n. 27338/96 CA.

¹⁰⁸ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 30 October 1990, prot. n. 18881/87 CA.

3.5.2 Recourse presented to the Apostolic See

The woman was aware of the rights afforded her by canon law, and within the peremptory time limits made recourse to the Congregation for Divine Worship and the Discipline of the Sacraments. This Dicastery asked the archbishop for information in the matter. Having studied the matter, the Congregation confirmed the archbishop's decree, citing can. 1371, 2° and other canons, which are described in the following section. The recurrent then filed recourse with the Apostolic Signatura, which instructed her to present the recourse first to the author of the decree. The mentioned Congregation rejected the recourse. Within the peremptory time period, the recurrent presented recourse to the Apostolic Signatura¹⁰⁹.

3.5.3 Recourse to the Apostolic Signatura

The Apostolic Signatura rejected the recurrent's recourse in its *Congresso*. The decree was signed by the Cardinal Prefect and Secretary on 30 October 1990¹¹⁰. The decree explains that the woman's dissent lacked moderation and dismisses as secondary the alleged violations of liturgical laws and even doctrinal errors on the part of the mentioned pastor. The decree further focuses on the woman's failure to obey the legitimate precept of the archbishop, who imposed it to stop her disruption of Mass. The conclusion was that as a result, she «persisted culpably in disobedience after a warning (cf. can. 1371, 2°)»¹¹¹. To be sure, the archbishop did not arbitrarily impose this harsh penalty. The archbishop himself or a delegate heard the woman, both face to face and in writing. She had the opportunity to defend herself. Two assessors along

¹⁰⁹ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 30 October 1990, prot. n. 18881/87 CA.

¹¹⁰ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 30 October 1990, prot. n. 18881/87 CA. The decision of the Apostolic Signatura is also published, complete with names and locations, in CDWDS, *Notitiae* 26 (1990) 711-713. The reader is invited to refer to the proper law of the Apostolic Signatura, found in BENE-DICT XVI, *m.p. Antiqua ordinatione*, 21 June 2008. A succinct summary in Spanish is available in G. NÚÑEZ, «Notas a propósito de dos decretos recientes de la Signatura Apostólica», 295-309.

¹¹¹ «[...] non obtemperavit et post monitionem in inobedientia perstitit (cfr. Can. 1371, 2°), quod absque culpa fieri non poterat». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 30 October 1990, prot. N. 18881/87 CA in W. DANIEL, tr., *Ministerium Iustitiae*, 605. All translations concerning this decree are taken from W. Daniel.

with the archbishop weighed the matter, in accord with can. 1720. For these reasons, the *Congresso* members decided that the case was not to be admitted to the Cardinal Fathers «since it manifestly lacks foundation»¹¹². The recurrent's procurator then presented recourse to the College of the Apostolic Signatura.

The College, in its 8 May 1993 decision, rejected the recourse for the following reasons. First, the College decided that, according to the norm of c. 1371, 2°, one who does not comply with a legitimate precept of an ordinary who legitimately issues it (and) who obstinately (stubbornly) persists in disobedience after a warning can be punished with a just penalty¹¹³. The second reason given for the rejection is «that, taking c. 1358 §1 together with c. 1336 §1, penalties imposed for a predetermined time are to be considered expiatory»¹¹⁴.

The third and final reason is «that the prohibition to enter a certain church or to participate in liturgical celebrations is an expiatory penalty to be joined to those which are articulated in c. 1336 §1, 3°»¹¹⁵. The

¹¹² SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 8 May 1993, prot. n. 18881/87, 607-615. «Cum nullum novum validumque motivum allatum sit e parte recurrentis quod decretum Congressus conculcare valeat vel cuius vi illud emendandum sit», «recursus non admittitur ad disceptationem coram Em.mis ac Exc.mis Patribus» (614-615); ID., 606.

¹¹³ «quod ad normam can. 1371, 2° iusta poena puniri potest qui Ordinario legitime praecipienti non obtemperat vel post monitum pervicaciter persistit in inoboedientia». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 8 May 1993, prot. n. 18881/87, 613. I would prefer the translation «precepting» or «warning» (more commonly used in everyday parlance) over «prescribing» for the Latin «praecipienti». The reader will recall back to chapter one where we traced the development of our canon and recall that in the first schema, the penalty for persistent disobedience was facultative («puniri potest»). The optionality of imposing a penalty or not was modified when «puniri potest» became «puniat». Yet we see that the College did not intend to quote the canon word for word; its interpretation makes sense in consideration of other mitigating canons in Book VI such as cann. 1321-1324.

¹¹⁴ «quod, conlatis can. 1358, par. 1 cum can. 1336, par. 1, poenae impositae ad praefinitum tempus habendae sunt expiatoriae». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 8 May 1993, prot. n. 18881/87, 613. We recall that when an expiatory penalty is imposed it is done with the intent to restore justice and the social order. It is inflicted to repair the damage inflicted on ecclesial society. While this is the primary end, an indirect end is the reform of the offender and his salvation. Cf. A. CALABRESE, *Diritto penale canonico*, 99; 122.

¹¹⁵ «quod prohibitio ingrediendi certam ecclesiam aut interveniendi celebrationibus liturgicis poena est expiatoria illis accensenda quae in can. 1336, par. 1, 3°

canon allows, as a penalty, one to be prohibited from exercising a right in a certain place; in this case the right to enter a church to exercise divine worship (can. 1214). The penalty imposed by the archbishop, then, was deemed within the law.

3.5.4 Observations and commentary

The above case is an example of a canonically correct imposition of a penalty. More than one warning was given, which, even though not required by can. 1371, 2°, is a sign that the archbishop was using a canonical penalty as a last resort. The penalties were in accord with the CIC, imposed in hopes that the person would cease her contumacious behavior. Since the behavior continued, the penalty remained in place¹¹⁶.

If we consider the matter from the point of view of the recurrent, we might express a concern that the bishop did not ensure that abuses not creep into the liturgy, as is called for in can. 392. It is his duty to protect the unity of the Church. While the bishop did intervene inasmuch as he attempted to keep in line certain laypeople who may have been unreasonable, there are no indications that he encouraged or demanded that the pastor follow proper liturgical law. Therefore, while there is no doubt that the laywoman in question was persistently disobedient to

enuntiantur». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 8 May 1993, prot. n. 18881/87, 613.

¹¹⁶ Could this situation have been avoided? The pastor, perhaps, would do well to consider: «As they fulfill the role of the Good Shepherd, in the very exercise of their pastoral charity [priests] will discover a bond of priestly perfection which draws their life and activity to unity and coordination. This pastoral charity flows out in a very special way from the Eucharistic sacrifice. This stands as the root and center of the whole life of a priest. What takes place on the altar of sacrifice, the priestly heart must make his own. This cannot be done unless priests through prayer continue to penetrate more deeply into the mystery of Christ.

In order to measure and verify this coordination of life in a concrete way, let priests examine all their works and projects to see what is the will of God – namely, to see how their endeavors compare with the goals of the Gospel mission of the Church. Fidelity to Christ cannot be separated from faithfulness to his Church. Pastoral charity requires that priests avoid operating in a vacuum and that they work in a strong bond of union with their bishops and brother priests. If this be their program, priests will find the coordination and unity of their own life in the oneness of the Church's mission. They will be joined with the Lord and through him with the Father in the Holy Spirit. This will bring them great satisfaction and a full measure of happiness». *PO* 14.

competent authority, it seems the matter might have been avoided or mitigated had the priest been content to simply follow the rubrics¹¹⁷.

3.6 *Decision of a bishop not to grant excommunication to a priest*

This case concerns a priest from Asia who in 1989 was sent to a Pontifical University in Rome to pursue further studies. He earned a doctoral degree in 1994 and returned to the diocese. In December 1996, with permission of his bishop, he undertook service in a diocese in a European country. By 2005 the priest requested excommunication from his bishop and at about the same time began the application process to gain citizenship in country X. The parties sent many letters back and forth and engaged conversations with each other over the phone; sometimes the Vicar General acted on behalf of the bishop. Though in February 2006 the bishop's negative decision was communicated in writing to the priest, the latter allowed the application process to continue. In September 2006, the priest was granted citizenship in country X and concurrently forfeited citizenship in his native country. (Had he stopped the application process for citizenship in country X when he had received the archbishop's negative decision, there would have been no change in his status of citizenship). In 2007 the bishop called the priest back to the diocese, assigning him as rector of the seminary. The priest again petitioned for excommunication and the bishop once more denied the request.

3.6.1 Recourse presented to the CEP and the STAS

Against the bishop's negative response the priest decided to present recourse to the CEP. The bishop defended his decision to insist on the priest's return with the argument that the priest in question was one of the few in the diocese with an advanced degree. He also said «for using unlawful and unbecoming means to get his excommunication he should not only be called back but also be punished so that it will not be a bad precedence in the diocese». The CEP rejected the recourse on 8 July 2008. The Apostolic Signatura also rejected the recourse *in limine* on 1

¹¹⁷ «Each [minister of the Eucharist] should also remember that he is responsible for the common good of the whole Church [...]. He cannot consider himself a “proprietor” who can make free use of the liturgical text and of the sacred rite as it were his own property, in such a way as to stamp it with his own arbitrary personal style». JOHN PAUL II, ap. letter *Dominicae Cenaе*, 24 February 1980, 144.

September 2008¹¹⁸. This rejection was confirmed on 18 June 2009 in *Congresso*, where it was concluded that the decree was not unlawful¹¹⁹.

3.6.2 Further dialogue and additional warnings

The bishop again called the priest back on 6 May 2009 (before the Apostolic Signatura's confirmation of its first rejection). The priest responded that he would not «be able to serve in the Diocese of R due to various difficulties, especially because of the problems of visa and passport. Sadly, this situation is unchangeable and irreversible». Not convinced by the priest's response, the bishop retorted, «my advice to you is that if you could get a [country X] Citizenship it is possible to get back your [native country] Citizenship also; I know that you are clever enough to do that also»¹²⁰.

The bishop, following the advice of the CEP, issued two warnings to the priest, ordering him to return or face suspension. The first warning was issued on 10 November 2009; the priest was given until 15 December 2009 to return and threatened with an unspecified canonical sanction for failure to return to his diocese of incardination. The priest responded on 11 December, stating that he was able to obtain a temporary visa to return home to at least meet with the bishop. During this meeting, the archbishop informed the priest in writing of his assignment at the seminary, to be effective in January. The priest then returned to the European country. The bishop's second warning to the priest was communicated via a letter dated 28 January 2010 in which the priest was ordered to return to the archdiocese by 31 March 2010 or face the penalty of suspension and possible dismissal from the clerical state *in poenam*. (The bishop threatened to petition CEP to present the dismissal request to the Holy Father for his signature)¹²¹.

Given the celebration of the «Year for Priests»¹²², the bishop decided to extend the deadline to the end of July. On 12 August, another letter

¹¹⁸ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 1 September 2008, prot. n. 41703/08 CA.

¹¹⁹ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree of the *Congresso*, 18 June 2009, prot. n. 41703/08 CA.

¹²⁰ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, *Votum pro rei veritate*, 8 October 2012, prot. n. 45545/11 CA.

¹²¹ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, *Votum pro rei veritate*, 8 October 2012, prot. n. 45545/11 CA.

¹²² BENEDICT XVI, «Letter Proclaiming a Year for Priests», 16 June 2009.

was sent, giving the priest until 1 December 2010 to return, again under the pain of suspension. The priest again responded that it would be impossible for him to return given the visa issues. The bishop did not accept such an argument and after one more attempt to get the priest to return, decreed the priest's suspension on 4 February 2011¹²³.

3.6.3 Second recourse to the CEP and the STAS

The priest presented recourse to the CEP against the bishop's decision to suspend him; the dicastery was not sympathetic to the priest's dilemma, and rejected the recourse on 16 April 2011. The priest subsequently presented recourse to the Apostolic Signatura. The *Congresso*, while rejecting the recourse in regard to the alleged violation of the law *in decernendo*, did accept it in regard to the alleged grounds of procedural violations. The decree was dated 2 March 2012¹²⁴. The priest then presented recourse to the College of Judges against the rejection *in decernendo*.

The matter was then considered by the cardinal and bishop members, who had to decide two questions: first, whether the alleged violation of the law *in procedendo* had been established; and second, whether to uphold the decision of the *Congresso* to reject the alleged violation of the law *in decernendo* for a clear lack of foundation.

In regard to the first question, the priest's advocate argued that the bishop failed to consult with two assessors before issuing a decree of suspension, required by can. 1720, 2°. It was only at this phase in the process that the bishop produced proof that indeed two assessors had been appointed and heard and that the three of them weighed the evidence. Apparently it was a matter that easily could have been clarified by the CEP but, for whatever reason, was not. On this basis the cardinal and bishop members decided that no violation of the law *in procedendo* had been established.

In regard to the alleged violation of the law *in decernendo*, the priest's advocate argued that the suspension was illegitimate because the priest's visa difficulties constituted a *grave incommodum* as referred to in can. 1323, 4°. The cardinal and bishop members found that

¹²³ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, *Votum pro rei veritate*, 8 October 2012, prot. n. 45545/11 CA.

¹²⁴ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 2 March 2012, prot. n. 45545/11 CA.

the *incommodum* was of the priest's own making, and had been created without the permission or even knowledge of the bishop. Therefore the priest was obliged to do all in his power to remove the obstacle which he himself had created, as the bishop had urged the priest to do. The bishop had exercised patience, but despite a more than sufficient number of warnings the situation had not changed and the threatened penalty was imposed. Considering this and other information, the members decided to confirm the decree of the *Congresso* rejecting the recourse for a clear lack of foundation in this regard¹²⁵.

3.6.4 Observations and commentary

This case illustrates that while the general principle holds that something impossible may not be required of someone, there are times when the person himself created the impossibility. In such a case, the person is obliged to do everything in his power to remove the impossibility. Since the College of Judges decided that the priest had not done so, the penalty imposed was deemed legitimate. The implication, then, is that had the priest demonstrated to his bishop that he had taken every step possible to remove the obstacle preventing the priest's legitimate return to his diocese and country of origin, the priest's case would have been much stronger. In fact, if subsequently he were able to demonstrate that he had done all within his power to remove the obstacle, manifesting his remorse, the bishop would seem to be obliged to remove the medicinal penalty imposed¹²⁶. This would include the presentation of official responses received from the government in question along with documentation of other steps the priest took, since the burden of proof lies with the recurrent. If the bishop were not to remove the penalty, the priest would be within his rights to present another recourse to the CEP. The same would be true if the priest were able to regain citizenship in his native country. The penalty would need to be lifted since the priest's contumacy would have ceased.

Though some might argue that there are no winners here, I would argue that a precedent has now been set. That the bishop's decision to

¹²⁵ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 27 November 2012, prot. n. 45545/11 CA.

¹²⁶ Canon 1347 §2 states that when an offender has «truly repented of the delict and has also made suitable reparation for damages and scandal or at least has seriously promised to do so must be considered to have withdrawn from contumacy».

suspend the priest (which resulted in his inability to licitly celebrate Mass or to validly confect other sacraments) might act as a deterrent for other priests in the diocese; that is to say, realizing the seriousness of the matter, they might avoid acting in a similar way as their brother priest. Priests will know that the bishop is not afraid to take canonical action when needed.

3.7 *Cooperation between the bishop, priest and faithful*

There are cases of priests who have formally left the Catholic Church to join «traditional» sects¹²⁷. Some have implied or stated that they almost felt forced to do so since their bishop forbade them from doing something already allowed by law, specifically, to follow a provision contained in the *m.p. Summorum Pontificum*, which foresees that a priest may celebrate the extraordinary form of the Roman Rite freely on his own (art. 2) and that Mass in the extraordinary form should be offered to the faithful if a stable number of them request it (art. 5)¹²⁸. Some of these priests have an attraction to the *usus antiquior*, and being forbidden or severely restricted from celebrating it publicly is difficult for them. All parties are called to be reasonable; diocesan bishops should not deny rights afforded by law while priests must remember that their preference for a particular form of the Mass should not be imposed upon others.

3.8 *Analysis of some effects of obedience to one's ordinary*

Before making conclusions and providing an analysis of the effects of obedience to one's ordinary, we first consider the matter from the point of view of a priest and his bishop. In this regard, the Directory for the Ministry and the Life of Priests, authored by the Congregation for the Clergy, reminds the priest of his «special obligation to show reverence and obedience to the Supreme Pontiff and his Ordinary» (can. 273

¹²⁷ Cf. CDF, prot. nn. 643/2011; 331/2011.

¹²⁸ BENEDICT XVI, ap. letter *m.p. Summorum Pontificum*. The referred to cases are at the CDF and were presented by priests ordained in the Catholic Church and who later abandoned the Church and began exercising orders in another church. Others have been ordained bishops for these communities. In any case, these priests, now in schism, have asked the Apostolic See to lift the irregularity for the exercise of Holy Orders (can. 1041 §1, 2^o) so that they might return to the Catholic Church and serve as a priest in good standing.

CIC). A priest, since he is a member of a presbyterate «charged with the service of a particular Church» is to remember that the «principle and foundation of unity is the bishop»¹²⁹.

3.9 Benefits of obedience to one's ordinary based upon the cases examined in section 3

Based upon the cases we have hitherto examined and discussed, we now offer some observations concerning benefits of one being obedient to his or her ordinary.

3.9.1 Protection of the common good, the offender and the faithful

In addition to the facts and conclusions of the above-mentioned cases, we also can turn to can. 223, which seems to provide support for the conclusion that obedience to one's ordinary protects the common good, the offender and the faithful. According to §1 of the canon, the faithful «must take into account the common good of the Church, the rights of others and their own duties toward others». By not obeying their ordinary, who is reasonable in his approach and who has a genuine concern for the well being of each of the faithful, offenders display an inordinate concern with their own rights and less of a concern with those of others individually or collectively. This conclusion presumes reasonableness on the part of both parties and the objectively sound matter at hand.

This protection is illustrated in the cases that included the placement of precautionary measures placed upon an accused cleric. When a cleric disregards these measures, the public might be put at risk, especially if the priest's past actions have caused competent authority to conclude that he could inflict moral or physical harm (cf. 3.1-3.3). When one of the faithful is prohibited from attending a certain parish (3.6 above) part of the consideration is the good of the other faithful, who have a right to worship. The prohibition is often also in the best interests of the offender.

3.9.2 Decreased likelihood of scandal

When one is obedient to his ordinary, there is less of a likelihood that eventual scandal would result. On the contrary, one who is disobedient in certain matters can be hailed as a hero by certain special interest groups.

¹²⁹ CONGREGATION FOR THE CLERGY, *Directory for the Ministry and the Life of Priests*, 57. Cited in the footnote is LG 23.

Especially today, when information (as well as misinformation) is diffused rapidly and widely, disobedience can become public quickly.

The case above of the dismissed priest who continued to present himself as one could understandably be a cause of grave concern to the people of God and cause scandal. Likewise the priest who would not return to the diocese and was living with a woman could have created scandal had the matter become publicly known. The perception that the Church has no control over her cleric members could cause wonderment to the average Christian faithful.

3.9.3 Promotion of harmony

Had the laywoman mentioned in the case above been more docile to the archbishop's decision or simply changed parishes, the result would have been more harmony in the parish. Harmony is also at risk in a religious institute when members abandon the community and refuse to heed precepts ordering them to return. While the mere promotion or preservation of harmony would not be sufficient for one to be compelled to return if there were other grave issues present at the religious house, harmony can still be considered a factor in matters of obedience, especially in a religious institute.

4. Cases illustrating how the intervention of competent authority can be a pastoral instrument for the salvation of souls

Though it may be difficult at times for competent authority to intervene or even to know whether intervention is opportune in a given situation, the following cases illustrate the importance of such intervention for reasons including concern for the *salus animarum*.

4.1 *A decision of a diocesan bishop to impose progressive measures upon a priest due to persistent disobedience*

On several occasions in a certain country various faithful claim to have witnessed the sacred host turning into bloody flesh on the tongue of a presumed visionary. For his part, the archbishop was less convinced as to the authenticity of such events and imposed a general prohibition against any of the faithful to visit certain unauthorized shrines connected with the phenomena surrounding the presumed seer. In the early 1990's, the same ordinary also imposed prohibitions against a particular priest's involvement with the seer, including from offering Mass at the already erected pilgrimage site. In 1995, the

then-archbishop wrote a letter of warning to the priest, expressing regret that the priest had failed to obey the prohibitions initially imposed a few years earlier. The archbishop included in the same letter that he had warned the priest several times prior. «Whenever I warned you, you admitted your fault and gave me written promises that you would follow my instructions. Nevertheless, you participated recently once again in planning and organizing special events concerning N. against my instruction [...]». He later added «hereby, I strictly warn you not to take part in the affairs of N. and I issue an instruction again that you should devote yourself to the pastoral care of the parish entrusted to you, taking appropriate action to stop all activities against my instruction [...]». The letter closed, «on this occasion I would like to inform you of my firm resolution that I will have to execute a countermeasure if you disobey my instruction again»¹³⁰.

In his letter dated 25 September of the same year, the priest in question wrote to the same archbishop (his Ordinary), admitting that he had in fact violated the archbishop's warning and requesting forgiveness. The priest explained that he joined a visiting Eastern Rite bishop for lunch one day and «I went to a place to celebrate an open-air Mass, because Bishop X insisted on my concelebration, even though I was not prepared for that». He continued explaining that at the Mass the so-called seer began to cry loudly. The priest turned to her and «could see the Eucharist in her mouth was changing into the flesh and blood of Jesus». The letter closed, «Your Excellency, I have been obeying your instruction, but I could not help being with N., so please forgive me for my fault»¹³¹.

There is no evidence of any correspondence having been exchanged between the ordinary and the priest for the next six years. Then in 2001, the new archbishop issued a «Penal Remedy of Warning (cf. can. 1339)» to the priest. He explains in the warning that on several occasions since the first admonition in 1995, the priest has displayed a «spirit of disobedience», providing specific examples. The Ordinary in-

¹³⁰ CDF, letter, 26 April 1995, prot. n. 94/2008. The archbishop's original correspondences with the priest and sent to the CDF were written in Korean with a translation into English. Therefore it is possible that some nuances present in the original language did not make their way into the English language documents.

¹³¹ CDF, letter, 25 September 1995, prot. n. 94/2008. One might presume that by using the word «forgive» the priest more precisely wanted the bishop to simply overlook the fault and to pretend it never took place.

cludes two specific prohibitions. The document closes, «If you, as a priest, disobey this instruction, I inform you that I will consider it a sign that you are disobeying the pastoral instruction of your Ordinary, and that I am ready to apply more severe sanctions against you in accordance with Canon Law»¹³².

On 3 June 2002, the archbishop again warned the priest. In a decree titled «Warning of Penalty (cf. can. 1340 §3)», the archbishop summarized the priest's transgressions against the warnings imposed ten months prior and asks the priest to be faithful to the following: «1. You should not celebrate any Sacrament outside your district; 2. You should lead N. and her followers to obey the Church and to practice a proper faith life, and admonish them to stop the activities of propagation, publicity and the internet site, which are already prohibited». The warning concluded by stating that the priest will face a more severe penalty if he does not «positively obey this instruction»¹³³.

The cleric was suspended from the exercise of priestly ministry in February 2003. In a letter dated 18 May 2003, the priest explained that he had been faithful to the restrictions placed upon him. He ended the letter stating, «I will lead a life of a normal priest, cutting off the relationship with N., as you have admonished me before. Hereby, I pledge that I will obey you with prudence as a diocesan priest for the rest of my life in obedience and humility»¹³⁴. With another letter of 9 August of the same year, the priest again pledged obedience to the archbishop¹³⁵.

On 14 August 2003, the archbishop remitted the penalty imposed six months prior. The bishop noted that the priest «humbly accepted the penalty of suspension from priestly ministry and obeyed the archbishop's instruction while acknowledging his fault»¹³⁶.

The priest appears to have been obedient for the next four years. Then in November 2007 he apologized to the archbishop for granting an interview to a television reporter and of speaking favorably to him of the phenomena relating to N. The priest admitted that he told the television reporter about the power of so-called «miracle water» and, in response to a question about N.'s urine, he stated, «the urine of N is the divine gift for the healing of N herself». The priest then told the arch-

¹³² CDF, precept, 13 August 2001, prot. n. 94/2008.

¹³³ CDF, precept, 3 June 2002, prot. n. 94/2008.

¹³⁴ CDF, letter, 18 May 2003, prot. n. 94/2008.

¹³⁵ CDF, letter, 9 August 2003, prot. n. 94/2008.

¹³⁶ CDF, decree, 14 August 2003, prot. n. 94/2008.

bishop that he brought the same woman's urine to his house and drank it after having sung a hymn. However, he indicated that much of the television report was inaccurate and malicious. He regreted having given the interview without first asking the archbishop's permission¹³⁷.

On 21 January 2008, the priest again had his «common faculties attached to Diocesan priest in Korea» revoked. In a letter to all the faithful, this priest's name was specifically mentioned: «Fr. X no longer retains the status and rights of a priest who belongs to the K Archdiocese, and all of the special faculties for diocesan priests, which are uniform nationwide, bestowed on him at his ordination are withdrawn (cf. cann. 194, 1333, 1336 and 1371)». Prohibitions imposed upon the priest remain in place as the recourse presented on his behalf was not accepted¹³⁸.

Here we have a glimpse into the difficulties faced by bishops, who wish to ensure proper worship and prevent innocent people from being hurt or fooled by imposters. We also learn of the conflict of certain priests and laypeople, who are convinced that they are correct and that the bishop and his delegates are too close-minded or simply wrong.

Canonically speaking, the bishop cannot be accused of failing to warn the priest and of forgiving him and taking him back on several occasions when it seemed that the priest had repented and retrieved from his contumacious behavior. The actions of both archbishops give indications that they wished for a peaceful resolution. The priest, for his part, desired the same, at least if we consider his many written requests for forgiveness. His actions, on the other hand, point to someone who wanted peace on his own terms, which would happen only if the

¹³⁷ CDF, letter, 25 November 2007, prot. n. 94/2008.

¹³⁸ CDF, decree, 21 January 2008, prot. n. 94/2008. Recourse presented on behalf of the aggrieved priest focused more on the phenomena themselves and the legality of the decree rather than on the disobedience of the cleric. The advocate, a staunch supporter of the presumed seer and of the events happening to her, made many statements in favor of the supernaturality of the events, holding them to be miracles. «When we are faced with miracles wrought through God's omnipotent power, we ought to give gratitude, praise, glory and worship to God who worked the amazing miracles. Justice between God and us demands this. Thus, to deny the Eucharistic miracles, which are the works of God, condemning them as contradicting the Catholic Church's teaching, is to deny God gratitude, praise, glory, and worship due to him, who wrought the amazing works, and seriously offends God's justice (that is, giving God his due)». CDF, letter, 14 February 2008, prot. n. 94/2008. Thus we see the struggle between a group who truly believes in the miraculous nature of the events and continues to conclude that local competent authority is misguided. Sadly, often such situations are never fully resolved.

archbishop either turned his head to the priest's disobedience or determined the events in the place to be of supernatural origin.

On a practical level, we might wish to consider that the priest in question was expected to faithfully fulfill his assignment as pastor of the parish to which he was assigned. Time he spent with the presumed seer may have resulted in time taken away from his duties at the parish. The souls entrusted to the priest's care were to be his first priority. In so far as he was not giving 100% to his duties as pastor he could be considered disobedient to expectations of the ordinary, at least in a wider sense. He might also be accused of failing to respect explicit expectations of pastors as defined in cann. 528-535, CIC 1983.

4.2 A declaration of a diocesan bishop that those who participate in the sacraments or sacramentals at an unauthorized shrine incur automatic excommunication

A local archbishop (the same one referred to in the immediately preceding case) deemed it necessary to decree that the faithful were no longer allowed to visit a shrine located in the same archdiocese. The archbishop was not convinced of the authenticity of the so-called unexplainable events that the alleged seer is said to have experienced. As a result, he decreed in 2008 that the shrine was not to be visited by the faithful nor was Mass to be celebrated there. Those would be considered disobedient who, knowing of the decree (which was distributed to every diocese in the country), nonetheless went ahead and visited the unapproved shrine. The archbishop cited can. 1371, among other canons, in the decree, which reads, in part:

I declare that the clergy, religious, or lay people who hold or participate in the administration of the Sacraments or the celebrations of the Sacramentals, which I have prohibited, at the unauthorized "chapel" or the "Blessed Mother's Mountain" incur the penalty of automatic excommunication (Cf. Cann. 1336, 1364). As these are acts of disobedience against the Ordinary's pastoral directives and judgments, violations of Canon Law (cf. Cann. 1369; 1371 and 1373), and refusals to form unity as well as inflictions of damages to the fellowship in the Church community, this (penalty) applies not only to the faithful who belong to the Kwangju Archdiocese but also to any of the clergy, religious and lay people in the Catholic Church. Andreas Choi Chang-mou, Archbishop of Kwangju, Korea¹³⁹.

¹³⁹ CDF, decree, 21 January 2008, prot. n. 112/1993. The original decree is in Korean. The Archdiocese provided an English translation.

Here we see that the archbishop is addressing all of the faithful throughout the world. One would expect the priests of the archdiocese to be quite aware of their ordinary's position on the matter and subsequent prohibitions. On the other hand, a layperson, especially one from outside of the country, who visits in good faith, while still held to follow the contents of the decree, would seem to have less culpability than not only the archdiocesan priests but also than other priests. To be sure, the decree makes no such distinctions. It is possible that the intent of the archbishop was to protect the faithful from being fooled or from donating money to a less than authentic cause.

An examination of the decree would seem to conclude that the archbishop went against the intention of can. 1318, which states that a legislator is to avoid threatening *latae sententiae* penalties unless they are for matters that are grave by reason of scandal or cannot be adequately punished by *ferendae sententiae* penalties. Was scandal being caused by those attending the shrine? Indeed, one could be scandalized in the future if he discovers that he donated money to a fraudulent cause. This needs to be weighed against the final part of can. 1318, which states that censures, especially excommunication, should be constituted only «with the greatest moderation and only for the more grave offenses». To penalize with excommunication someone from outside the nation whose intent is little more than to make a pious pilgrimage is not only too harsh and unjust, it very well could be unlawful and therefore invalidate the decree. *Peregrini* can be held to territorial law only if the law is in place to provide for public order¹⁴⁰.

On the other hand, priests incardinated in the archdiocese would be held to higher accountability in regards to following the orders of the archbishop. They are presumably quite aware of the seer, the shrine and everything that results from the phenomena. Likely the archbishop and his predecessors had spoken and written at length about their concerns and reservations in this regard. The contents of the decree likely came as no surprise to the majority of them. It would be safe to presume that priests from outside the archdiocese but from the same country would also be better informed than the average priest or layperson when it comes to the events in question.

¹⁴⁰ Canon 13 §2, 2°: «Travelers are not bound by the laws of the territory in which they are present, with the exception of those laws which provide for public order, which determine the formalities of acts, or which regard immovable goods located in the territory». Also, a traveler could claim ignorance (can. 1323, 2°) or be under the age of sixteen (can. 1323, 1°) or both. He would not be liable to a penalty.

Priests from other countries or continents might be ignorant of the fact that there is a controversy surrounding the seer and would be less accountable than priests from the country or archdiocese itself.

This is not to minimize the seriousness of the matter, as deemed by the archbishop. He needs to be able to threaten penalties; he might consider, then, making distinctions as to the intended recipients.

In a subsequent notification (2012), the archbishop removed the censure of *latae sententiae* excommunication, in accord with can. 1318. This may have been in response to a 2011 letter from the CDF¹⁴¹. The prohibitions contained in the 21 January 2008 decree remained in place, including prohibition against celebrating the sacraments at any oratory or «hill of Our Lady» as well as the prohibition against the dissemination of material promoting the phenomena. The final point in the 2012 notification (n. 4) states: «Those who knowingly violate the above-mentioned prohibitions are guilty of serious disobedience and will be subject to canonical sanctions found in the *Code of Canon Law* (cann. 1371, 2°; 1373)»¹⁴². The more canonically sound 2012 notification also explains the motivations underlying its issuance.

4.3 *A decision of a diocesan bishop to impose a penal precept upon two priests*

Due to some doctrinal problems with messages given by a presumed visionary, the Bishop of G decided to place a penal precept upon two priests who had leadership positions in a group they claimed was configured as a type of private association of the faithful¹⁴³; this group of not a few faithful promoted devotion to the seer. The bishop motivated the decree with reasons (grave errors of faith and morals) and threatened suspension *a divinis* for failure to leave the pious association¹⁴⁴. The priests

¹⁴¹ CDF, letter, 30 March 2011, prot. n. 112/93.

¹⁴² CDF, notification, 30 April 2012, prot. n. 112/93. The archbishop asked the CDF for permission to publish the notification. The CDF made some corrections to the proposal.

¹⁴³ The priests cited can. 215 CIC: «The Christian faithful are at liberty freely to found and direct associations for purposes of charity or piety or for the promotion of the Christian vocation in the world and to hold meetings for the common pursuit of these purposes». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 10 November 1997, prot. nn. 27308/A/96; 27308/B/96, 1.

¹⁴⁴ «Dopo avere esaminato attentamente, nella mia responsabilità di Pastore di questa Chiesa, tutto il materiale dal 1988 ad oggi relativo ai cosiddetti “messaggi mariani” pronunciati dalla Signora X in [nome del luogo], tenuti segreti al tuo Vescovo

then spoke with the bishop, who issued another decree imposing a time limit of one day for the priests to depart the association¹⁴⁵. Three days afterwards, the bishop notified the faithful of his decision, warning them too to avoid getting involved with the presumed seer¹⁴⁶.

Both priests presented recourse to the Congregation for the Clergy on 8 June 1996. Having heard nothing, they wrote again on 10 August of the same year. The Congregation responded that the decree amounted to no more than a «canonical admonition» and therefore the Congregation could not admit it to hierarchical recourse. The response concluded by exhorting the priests to be obedient to the directives of the bishop¹⁴⁷. The priests presented recourse to the Apostolic Signatura, which reject-

fin dall'inizio e contenenti errori in cose di fede e gravi intimidazioni [nome del gruppo] e di abbandonarne la sede in [nome] e di interrompere ambedue ogni rapporto con la detta Signora Y e con la Signorina Z, pena, in caso di vostra disobbedienza, della SOSPENSIONE A DIVINIS». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 10 November 1997, prot. n. 27308/A/96; 27308/B/96, 2. Note that the term *a divinis* («from divine things») is not found in the CIC 1983, though it appeared in ten canons in the CIC 1917 (2177, 1°; 2279 §2, 2°; 2315; 2359 §1; 2366; 2372; 2399; 2400; 2401; 2409).

¹⁴⁵ «L'ingiunzione da me fattavi nel decreto del 25 maggio u.s. è motivata, oltre che dalla gravità oggettiva dei fatti rilevati nella vicenda dell'Associazione [...] con sede a [...], anche dal motivo di aiutarvi a distaccarvi, con un atto deciso e totale di obbedienza, dalla esperienza da voi intensamente e per lungo tempo vissuta. Attuire la ingiunzione o procrastinarne l'esecuzione sarebbe ricadere in quel pericoloso e vano «tira e molla» che si è protratto da vari anni. Pertanto ne ribadisco l'obbligatorietà, legata all'avvertimento della pena canonica in caso di disubbidienza. Entro e non oltre domani, 29 maggio (1996), il caso deve essere definitivamente chiuso». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 10 November 1997, prot. nn. 27308/A/96 CA; 27308/B/96, 3.

¹⁴⁶ The bishop wrote of the «pericolosa credulità a locuzioni e messaggi ritenuti come manifestazioni mariane» and indicated «per tutto questo ed altro ancora, ho richiesto ai sacerdoti coinvolti la forte obbedienza per un totale distacco dall'esperienza che hanno, pure in buona fede, intensamente vissuto». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 10 November 1997, prot. nn. 27308/A/96 CA; 27308/B/96, 2.

¹⁴⁷ «[...] tale Decreto non può essere interpretato in altro modo che una *ammonizione canonica*, con minaccia di infliggere in futuro la pena prevista dal can. 1333 §1, 1°, questo Dicastero non può ammettere il ricorso gerarchico. Nella speranza che il vostro senso sacerdotale vi aiuti a comprendere l'urgenza della doverosa obbedienza alle precise direttive impartite in modo legittimo dall'Ordinario [...]». SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 10 November 1997, prot. nn. 27308/A/96 CA; 27308/B/96, 3. The date of the decree issued by the Congregation for the Clergy is listed as 21 August 1996.

ed their argument that the bishop had imposed a penalty without having conducted any type of penal process. The precept was deemed to be legitimate. The decree of the *Congresso* refused to admit the priests' recourse¹⁴⁸. The priests presented recourse against this decree, but for the same reasons the cardinal and bishop members too rejected it¹⁴⁹.

We learn from the above decision that while competent authority may legitimately issue a precept threatening a penalty, this is nothing more than a penal precept. No penal process need be undertaken for the bishop to exercise his authority in this way. The bishop who issued the precept seemed to have concern for all the faithful and wished to ensure that what he determined to be unsound doctrine not be spread, at least by the priests in question.

4.4 *A decision of a diocesan bishop to suppress a public association of the faithful*

On 29 September 1992, the then-archbishop of a certain archdiocese established a certain group of faithful as a private association of the faithful. Subsequently, on 27 May 1998 his successor established the same group as a public association of the faithful¹⁵⁰. The community consisted of brothers, priests and women religious. Members lived on the same grounds, with the exception of some of the priests, who, since they were incardinated in the archdiocese, resided in rectories connected with the parishes to which they were assigned. For nearly thirty years, the charismatic community led retreats, provided discernment and gave teachings; the foundress' many instructions were used around the English-speaking world.

By 2008 the foundress decided that it was time to seriously examine the association's canonical status, in part with the goal of being less dependent upon the archdiocese to incardinate its priests. The foundress was hoping to take care of this matter before the expected retirement of the then-ordinary, who was approaching 75 years of age (can. 401 §1).

Shortly after the new ordinary arrived the foundress approached him, seeking assistance and support in the modification of the community's

¹⁴⁸ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 10 November 1997, prot. nn. 27308/A/96 CA; 27308/B/96, 5.

¹⁴⁹ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, definitive decree, 28 February 1998, prot. nn. 27308/A/96 CA; 27308/B/96 CA, 6.

¹⁵⁰ E.F. CURTISS, decree, 27 May 1998 (no prot. n.).

canonical status from a public association of the faithful to a religious institute of pontifical right. She correctly pointed out that the number of lay associates was growing rapidly in many parts of the world. The archbishop was open to considering the request, but indicated that it would first be necessary to have a canonical visitation so that he could be certain that everything was in order. To ensure impartiality, the archbishop appointed an outside canonist to undertake the mentioned visitation.

The canonist's visitation included interviews with each member. His findings are contained in a less than favorable report, which was presented to the archbishop, who concluded that reforms were necessary. The archbishop decided that a change of leadership was in order; in this regard, he asked the foundress to step down and live as a regular hermitess. She initially agreed, but quickly changed her mind. The archbishop intended to implement needed changes so that the group could refocus and continue on; he was met, however, with resistance and a lack of cooperation on the part of the foundress and the group's civil board of directors. In the end, the archbishop decided to suppress the group¹⁵¹. The archdiocese assisted some of the religious (whose vows were not recognized) in starting up a new community. Others simply left. The foundress stayed on the property along with some followers¹⁵².

The above situation provides us with a good example of the following: First, sometimes the intervention of competent authority is necessary for the salvation of souls. The archbishop's duty to govern his diocese calls for vigilance, either personally or by means of a delegate. He is given this right in duty by virtue of can. 305 («all associations of Christ's faithful are subject to the supervision of competent ecclesiastical authority»)¹⁵³. While some people may be offended because they perceive a lack of trust on the part of the archbishop, in reality the bishop is responsible for the souls of all in his diocese. He might have to make difficult decisions, but he could use the difficulty as an opportunity to teach and correct if necessary.

¹⁵¹ G.J. LUCAS, decree of suppression, 15 October 2010.

¹⁵² The archbishop stated: «What began as a desire for pastoral solicitude and an effort at positive reform resulted in the refusal to accept the assistance and jurisdiction of the Church by a majority of the lay board members». K. SWANSON, «Archbishop Suppresses», 15 October 2010.

¹⁵³ The canon goes on to explain that the reason for the supervision is to ensure the preservation of the integrity of faith and morals in associations as well as to prevent abuse from «creep[ing] into ecclesiastical discipline. The same authority «therefore has the duty and right to inspect them according to the norm of law and the statutes».

In the above case, the visitor found many problems; these were not only theological issues, but also financial and even legal. Second, without intending to unfairly judge the archbishop's predecessors, we might conclude that they could have been more vigilant in their oversight; it is possible that friendship and a great respect for the community, which admittedly was doing good work, may have clouded the archbishops' judgment and hindered integral vigilance on the part of competent archdiocesan authority. This apparent lack of oversight resulted in some sloppy practices and possible abuse of authority by the foundress. Some of the former followers of the group are still wounded over the sequence of events.

We might also note the importance of obedience to one's ordinary. Such was not the case with the foundress. Once accountability was put into place, her desire to be obedient evidently waned. In regards to obedience to other superiors, we note that the members were obedient to the foundress for years. However, once she stepped down and leadership was transferred to archdiocesan authority, some members continued their loyalty to the foundress. She was no longer a legitimate superior; obedience was owed no longer to her but instead to the priest who was placed in charge of the public association of the faithful.

4.5 *A decision of an ecclesiastical tribunal to dismiss a priest from the clerical state for graviora delicta*

Cases concerning accusations of delicts against the sixth commandment of the Decalogue with a minor or any delict alleged to have been committed by a cleric in the context of the sacrament of penance can be difficult to prove as often there are no eyewitnesses to the presumed criminal behavior. Our case under discussion concerns an allegation against a cleric of delicts *contra sextum* with a minor said to have occurred fifteen years before the accusation was presented. Though there were no eyewitnesses to the alleged event itself, the acts contained much documentary evidence proving that the cleric had been warned on repeated occasions, both verbally and in writing, to refrain from having guests spend the night in the rectory without the express consent of the pastor¹⁵⁴. Only eleven days prior, the diocese had issued a policy stating that in general priests were not to be alone with minors¹⁵⁵.

¹⁵⁴ CDF, memorandum, 21 June 1994, prot. n. 128/2009.

¹⁵⁵ CDF, policy, 10 June 1994, prot. n. 128/2009.

There is evidence that the priest in question was less than obedient to these directives and that he regularly found excuses to violate them. Some members of the parish presented general complaints that the priest's behavior did not seem right, even though specific delictual behavior could not be substantiated.

The case was heard in a judicial penal process; judges in both the first and second instances noted the priest's persistent disobedience to the warnings (precepts). Other factors, of course, had to be weighed, but the judges argued that they were justified in imposing a harsh penalty due to the fact that warnings had been given time and time again. The priest's insistence that he was totally innocent of any wrongdoing seemed shallow. There were abundant proofs that the priest had not adhered to imposed admonitions.

In this case, persistent disobedience dating back over fifteen years was used as a type of proof of the priest's lack of credibility. Even though any disobedience would have long been prescribed according to can. 1362 §1, it was a no small factor in the judges' decision. Warnings had been issued to this priest, who failed to heed them. Though he was not punished for persistent disobedience to his ordinary, his pattern of disobedience was incriminating and played a factor in determining his culpability¹⁵⁶. In this case, persistent disobedience to precepts provided indications as to the truth of the initial accusation presented against the priest (which he denied).

4.6 *Analysis of intervention on the part of competent authority in view of the salus animarum*

We now make conclusions as to the above four cases, considering them in light of the fonts and the material studied in chapter 2.

4.6.1 Prevention of eventual more grave offenses

This category includes protection of the offender or one in the near occasion of offending. In the first case examined in this section, the priest offended and reoffended. One motivation behind the archbishop's strong vigilance in this matter was to protect the priest from following and supporting what appeared to be less than authentic pious practices.

¹⁵⁶ CDF, sentence, 10 October 2014, prot. n. 128/2009.

4.6.2 Protection of the faithful in general

Clear in the above cases is a concern for the good of the faithful. An ordinary is obliged to protect the faithful from practices that are foreign to popular piety, or even dangerous to their physical health, as in the case described in 4.2 above¹⁵⁷. Other examples also lead us to conclude with certitude that protection of the faithful is a positive by-product of proper vigilance on the part of competent authority.

We recall the issue of the building of a monastery as presented in chapter one and that the pope required that the bishop at least be informed of one's intention to build a monastery in his diocese. Included among many reasons for this decision was the good of the faithful. While there could have been practical issues, including financial, the pope may also have foreseen that issues could manifest later that might touch upon someone's faith¹⁵⁸.

Vigilance on the part of competent authority is not always warmly embraced by those who are being watched over. They may accuse the bishop of being unfair and of not being open to supernatural events. They see «protection» as detrimental. Cases 4.1 and 4.2 are good examples of situations where for years the faithful have been begging competent authority, both local and at the Holy See, to reconsider the matter so that they may fully participate in what they believe is authentic and helpful for their spiritual lives¹⁵⁹.

Therefore we might conclude that competent authority must be concerned with the human reality, both from a legal and moral point of view. He must balance the spiritual benefits that might result from one's devotion to a particular seer, for example with the potential downside (possible fraud, practices that seem foreign to what is seen as usual or normal). A bishop should do his best to avoid squashing possible growth in one's spiritual life, one's return to the faith or even conversions.

4.6.3 Protection of the Faith

Documents studied in chapter two allow us to arrive at the conclusion that protection of the faith is another benefit of proper vigilance. In

¹⁵⁷ For example, drinking of a presumed seer's urine due to its alleged power to heal would seem to be contrary to normal pious practices.

¹⁵⁸ C. 18, q. 2, c. 10 (chapter 1, section 2.3).

¹⁵⁹ Local and universal oversight in regards to the presumed apparitions in Medjugorje is another example where some of the faithful have not embraced decisions restricting who may lead pilgrimage groups, for example.

this context, «faith» is defined as not only a set of beliefs, but how those beliefs are lived out. One could retain his belief in God and in the deposit of faith but could lose trust in church leaders. This is true even more so when those in positions of leadership or governance misuse their authority either in the disciplinary realm or in the doctrinal realm (for example, as foreseen in can. 1371, 1°)¹⁶⁰.

Cases examined above also illustrate attempts by competent authority to protect the authentic faith of the people by prohibiting them from following a less than authentic presumed seer. In the case concerning the foundress of the public association of the faithful (cf. section 4.4.) who was called to obedience, the overall welfare of the members was at risk and was taken into serious consideration by the current archbishop.

Competent authority's actions (or lack of them) can affect how a person views his ecclesial belonging. Even if one cannot point to any Church teaching with which he disagrees, he might lose confidence or trust in its leadership when he concludes that a lack of intervention on the part of the hierarchy is a sign that it is not concerned about the *salus animarum* nor the common good. In this regard, competent authority should intervene when necessary to protect ecclesial communion.

5. Cases illustrating possible negligence on the part of competent authority and the consequent delictual nature of this negligence

These next cases point to the possibility of negligence on the part of competent authority¹⁶¹. In each of the first three cases, seminary staff expressed concerns to a bishop regarding matters that led the staff to conclude that a particular seminarian was unsuitable for ministry. In each case the ordinary at the time might be accused of negligence, sometimes grave negligence, for ignoring the opinion provided by the seminary staff, while the current ordinary might be praised for his proactivity and vigilance in helping to ensure that only suitable candidates for holy orders are advanced.

¹⁶⁰ Cf. JOHN PAUL II, ap. letter *m.p. Ad tuendam fidem*.

¹⁶¹ The reader is asked to keep in mind that, in each case here presented, there is more to the story than is found in the acts. It is not my intention to harshly judge any bishop's decision or second-guess his judgment. The reason for presenting these cases is to bring some examples to the attention of competent authority as a reminder of the need for prudence and even caution in regards to the promotion of candidates for Holy Orders who display problems serious enough to be pointed out by seminary formators.

In addition, the three following cases all concern matters where a priest upon whom precautionary measures were placed either failed to follow them or downright disobeyed them. Note well that in line with art. 19 of the *m.p. SST* and can. 1722 CIC, a superior may exclude a cleric from ministry from the outset of a preliminary investigation. The exclusion from ministry is considered a precautionary measure and is not a penalty.

5.1 *A decision of the CDF to impose penalties upon a priest for persistent disobedience*

T. was accepted as a seminarian for a certain diocese and entered a seminary after high school. After a couple of years he was asked to leave for what appear to be well-founded reasons. He went on to find a benevolent bishop who would receive him and subsequently entered the seminary for this diocese, which was not his diocese of origin. For reasons not found in the file, the young seminarian then entered a third seminary to study for a third diocese. The bishop of this third diocese ordained the candidate even before he finished formal studies. The file contains neither report cards nor information indicating where the seminarian undertook theological studies. Indications are that the bishop was desperate for priests and as a result his expectations were not high nor was he looking to uncover potential warning signs. The priest's lack of proper academic formation along with his evident lack of desire to continue learning after ordination became a costly combination. The priest in question was removed from active ministry, as a precautionary measure, shortly after several adults presented accusations against him, claiming solicitation in the context of confession and other delicts during healing and deliverance ministry. After a delegate of the archbishop undertook a preliminary investigation, the determination was made that there was at least a semblance of truth to the allegations. As a result, the same archbishop decreed that the priest was forbidden from the exercise of sacred ministry while the allegations were being considered. The case was sent to the CDF, in line with *SST* art. 16¹⁶². The CDF authorized the undertaking of an administrative penal process (can. 1720 CIC and art. 21 §1, 2^o *SST*)¹⁶³.

The archbishop and his assessors concluded that the priest was culpable of having committed several delicts. The acts included several letters from concerned faithful who explained that the priest was not adhering

¹⁶² CDF, letter, 2 July 2007, prot. n. 240/2006.

¹⁶³ CDF, letter, 28 February 2011, prot. n. 240/2006.

to all of the restrictions imposed upon him at the beginning of the process. In fact, he was visiting people's homes and providing healing and deliverance ministry¹⁶⁴. Given that the accusations were of the same nature (violations of various types during prayer ministry), the priest's failure to follow the restrictions imposed upon him was all the more grave.

In examining the *acta* and the decree issued by the archbishop, it became clear that in fact the priest was persistently disobedient under can. 1371, 2° not only because there were documents forbidding him from any public ministry and from presenting himself as a priest, precisely the actions he undertook, but also because he had received a verbal warning on one occasion before again undertaking healing ministry in someone's house without the permission or knowledge of competent authority. The decree was presented to the priest who protested the bishop's decision in writing, asking him for reconsideration¹⁶⁵. The bishop determined that the decree would not be changed. The entire *acta* were then sent to the CDF as required by law¹⁶⁶.

For various reasons, the CDF did not uphold the decision of the archbishop but instead directed him to rewrite the decree since many of the conclusions reached were not supported by the facts. In the letter of the CDF to the archbishop, the latter was directed, among other things, to reference in the decree can. 1371, 2° – specifically, that the priest violated the archbishop's 2006 decree forbidding him from any priestly ministry. Though he was not found culpable of any *graviora delicta*, he was found to have violated cann. 1376 and 1399, in addition to 1371, 2°. Concerning can. 1371, 2°, the conclusion was that he «disobeyed the prohibitions that were imposed on him»¹⁶⁷. What is more, the priest exercised his own type of prayer ministry, not bothering to learn what is acceptable according to the Church. This behavior seemed to be attributable to *culpa* rather than *dolus*.

There was not a specific penalty inflicted due to the priest's persistent disobedience. The penalties imposed due to other delicts com-

¹⁶⁴ CDF, *acta*, 31 August 2012, prot. n. 240/2006.

¹⁶⁵ CDF, letter, 16 August 2012, prot. n. 240/2006.

¹⁶⁶ «With due regard for the right to appeal to this Supreme Tribunal, once an instance has been finished in any manner before another tribunal, all of the acts of the case are to be transmitted *ex officio* to the Congregation for the Doctrine of the Faith as soon as possible». CDF, *Normae*, art. 26 §1.

¹⁶⁷ «Que ha desobedecido a las prohibiciones que le fueron impuestas (cfr. can. 1371, 2° CIC)». CDF, letter, 17 October 2012, prot. n. 240/2006.

mitted by the priest were considered strong enough: the priest was forbidden to receive confessions or preach or to perform any act of sacred ministry and, if the priest failed to adhere to the decisions of the Congregation, further penalties could be imposed, not excluding excommunication¹⁶⁸.

While one might sympathize with the ordaining bishop's desire to provide priests to the faithful in a diocese that was experiencing a severe shortage, hindsight would question his wisdom in accepting a candidate who was likely dismissed from two other seminaries. Moreover, his apparent failure to properly oversee the man's formation and his eventual decision to ordain him without verifying proper educational credentials illustrates grave negligence on the bishop's part as well as his failure to properly exercise his power of governance.

5.2 *A decision of the CDF to impose loss of the clerical state upon a priest for graviora delicta*

A preliminary investigation pointed to a semblance of truth to allegations presented against a priest accused of various *graviora delicta*. The Ordinary placed precautionary measures upon the priest, who was removed as pastor of the parish to which he was assigned and limited to celebrating Mass only privately; he likewise was not to present himself as a priest¹⁶⁹. An administrative penal process followed, undertaken at the diocesan level at the direction of the CDF¹⁷⁰. The penal process took nearly three years to complete, partly due to the large number of witnesses. While the matter was being considered, a seminary rector informed the accused's ordinary that the accused priest decided to concelebrate a Mass at the seminary. The rector included photos as proof. The accused priest's decision to concelebrate the Mass appeared to be an act of disobedience. When questioned by the bishop about his apparent failure to adhere to the measures set forth in the decree, the priest responded in writing to the bishop with assurances that he was faithful to the restrictions, even though the photos, which were not presented to the priest, proved otherwise (can. 1541)¹⁷¹.

¹⁶⁸ «La advertencia al Rev. X de que la desobediencia a las decisiones tomadas podrá ser motivo de la imposición de nuevas penas, no excluida la excomuniación». CDF, letter, 17 October 2012, prot. n. 240/2006.

¹⁶⁹ CDF, *acta*, 6 February 2011, prot. n. 547/2010.

¹⁷⁰ CDF, letter, 1 March 2011, prot. n. 547/2010.

¹⁷¹ CDF, *acta*, 7 September 2013, prot. n. 547/2010.

The accused cleric was found culpable of some *graviora delicta* for which he was accused. The penalty applied was dismissal from the clerical state. In judging credibility, the bishop and assessors noted that since the priest was not truthful in a relatively small matter (public concelebration), he likely was not truthful in regards to the bigger issues. Concerning can. 1371, 2°, the decree states that while the priest's behavior in regards to celebrating Mass with the seminary community certainly constitutes disobedience, it does not meet the requirements set forth in can. 1371, 2°, since no warning was given after the offense¹⁷². The written precautionary measures were not considered a warning likely because the decree containing said measures contained no indication that failure to obey the measures would result in further disciplinary action.

Though (persistent) disobedience was not the original reason for the matter being brought to the attention of the CDF (in fact, the disobedience occurred long after the accusations of *graviora delicta*), that the apparent disobedience was addressed made a difference in the outcome of the case. Had the bishop simply ignored the priest's contravening of the precautionary measure, there would have been one less element of proof to be considered during the penal process. And since certain alleged delicts were witnessed by no one else besides the complainant and respondent, other indications, as small as they might appear to be, helped the bishop and his assessors to arrive at moral certitude in regards to the priest's culpability in other areas. That the priest told a verifiable lie in one matter put the rest of his testimony in doubt.

Yet the situation might have been avoided had proper oversight been in place *ab initio*. The file of the priest in question contains several letters written by a seminary rector and one other person explaining why the then-seminarian was asked to leave his first seminary. The semi-

¹⁷² «Aunque se puede comprender la inquietud del sacerdote con que vivió el tiempo que fue necesario para completar el proceso penal administrativo, ha quedado demostrado que el acusado concelebró la Misa en el Seminario en — contravi- niendo el decreto de — de marzo de — del mismo obispo que le prohibía celebrar la Misa públicamente. Aunque ello no constituya una desobediencia persistente *ex* can. 1371, 2°, es una indicación de que el sacerdote no quería sujetarse a la autori- dad de su ordinario y, sobre todo, una razón más para dudar de su credibilidad, vis- to que luego ha negado el hecho». CDF, decree, 22 November 2013, prot. n. 547/2010. The priest presented recourse against the decision; the recourse was up- held in the Congregation's Ordinary Session of 29 October 2014 where it was con- cluded that the original allegations were not sufficiently proven.

nary rector cautions heavily against lightly accepting the candidate in the future¹⁷³. The candidate was successful in finding a benevolent bishop who accepted and later ordained him. The bishop who in the end accepted this man into the seminary and later ordained him a deacon and priest appeared to have ignored several problems that had been brought to his attention. His successor was left to deal with a difficult situation that called for immediate attention.

5.3 *A decision of the CDF concerning a priest's violations of the sixth commandment of the Decalogue*

Accusations of violations against the sixth commandment of the Decalogue with a minor were presented against a priest. During the penal process, the priest admitted to the substance of the allegations, which were grave¹⁷⁴. He also continued to have contact (at times inappropriate) with various young women. Even though the priest expressed remorse for having committed various *graviora delicta* and later apologized for not following the restrictions placed upon him (in this case, from having contact with women under twenty-five years of age)¹⁷⁵, it appeared that there was little hope that his behavior would change for the better. He was dismissed from the clerical state, and one of the reasons included his persistent disobedience as a result of failing to adhere to the imposed restrictions¹⁷⁶. The disobedience in itself would not have been enough to warrant the perpetual expiatory penalty, but it was a factor in helping the bishop to determine a just penalty for the *graviora delicta* for which he was found culpable.

In this case, the guilty priest himself showed signs of lack of suitability, but was ordained just the same. To be sure, there should be a place for mercy and forgiveness, but if a candidate is not suitable for sacred ministry, especially when objective criteria are considered, he

¹⁷³ CDF, letters, 31 August 1994; 21 August 1996, prot. n. 547/2010.

¹⁷⁴ CDF, *acta*, 3 November 2011, prot. n. 100/2012.

¹⁷⁵ CDF, letter, 17 October 2013, prot. n. 100/2012.

¹⁷⁶ The CDF issued the decree of dismissal, which cited can. 1371, 2° in the *In iure* section of the decree since there was no question that the priest was disobedient to prohibitions imposed upon him by the ordinary even after he was warned (though only verbally), after a violation was reported to competent authority. CDF, decree, 29 November 2013, prot. n. 100/2012. The priest presented recourse against the penalty imposed, arguing that it was too harsh. A decision is pending.

should not be ordained. No one has a right to be ordained (cf. especially can. 1029)¹⁷⁷.

5.4 *A decision of a diocesan bishop not to investigate complaints presented against a priest incardinated in his diocese*

A case from the CDF provides an unambiguous example of the danger involved when a bishop neither investigates an apparently legitimate complaint nor presents the accusations to the one denounced. In 2000¹⁷⁸, 2003¹⁷⁹ and 2005¹⁸⁰, allegations of problematic behavior were presented against a priest. They all would have been difficult to substantiate given that they were presented either anonymously or by a third person, but at least some investigation could have been undertaken. The allegations pointed to a troubled priest with little ability or desire to live a life of chastity or simplicity. The then-ordinary, acting upon the suggestions of his advisors, decided to simply archive the written complaints without presenting any of the matters to the denounced priest.

Several years later the priest was formally accused of sinning against the sixth commandment of the Decalogue in the presence of minors¹⁸¹.

¹⁷⁷ There are also examples of due diligence on the part of competent authority. In one case, a seminary rector wrote, on two occasions, to the former ordinary of a seminarian expressing concerns and asking the same bishop for his opinion as to the suitability of the seminarian in question. The bishop replied that he had serious concerns with the candidate: he was dismissed as a seminarian for his diocese of origin due to problematic behavior and had an association with others in the diocese who were accused of serious crimes. When this bishop learned that the seminarian in question had been ordained a deacon and was soon to be ordained to the priesthood, he wrote to the ordinary of the diocese in which the deacon was incardinated, explaining the problematic behavior that should prevent the candidate's ordination to the presbyterate. Not hearing back from the ordinary in a reasonable period of time, the bishop then wrote a letter to the Congregation for the Clergy, to which competence for seminaries had been transferred months prior, to express his persisting grave concerns about the deacon's suitability for priestly ministry and indicating that the Holy See would do well to intervene in the matter. The Congregation wrote to the deacon's Ordinary, informing him not to proceed with the ordination until the serious doubts, which another dicastery was to study, were dispelled. CONGREGATION FOR THE CLERGY, letter, 30 October 2013, prot. n. 2013 3243.

¹⁷⁸ CDF, letter, 1 September 2000, prot. n. 456/2012.

¹⁷⁹ CDF, letter, 15 September 2003, prot. n. 456/2012.

¹⁸⁰ CDF, declaration, 8 February 2005, prot. n. 456/2012.

¹⁸¹ CDF, declaration, 5 April 2012, prot. n. 456/2012.

During the investigation, others came forward stating they saw the priest leaving an adult movie theatre on two occasions¹⁸². The new bishop searched the archives only to find the existence of older complaints. The priest denied wrongdoing in these older cases, bringing up the fact that if there were merit to the accusations, the former bishop would have presented them to the priest.

The actions of the priest caused scandal to not a few people. It is possible that the former bishop's failure to address the grave concerns resulted not only in continued immoral behavior on the part of the priest, but also in the scandalizing of even more people, including teenagers, when the priest again sinned in a public way. Even if the then-bishop had done no more than simply presented the accusations to the priest, which in hindsight appear to have been true, the priest might have taken the steps necessary to correct the behavior in question. Likewise, the imposition of a penal precept similarly might have motivated the priest to correct his (at least perceived) problematic behavior¹⁸³.

5.5 Analysis of the possible delictual nature of negligence on the part of competent authority

Negligence now can lead to an overreaction later. What appear to be problems or concerns can and should be addressed early on. This is one of the beauties of can. 1371, 2°. It foresees a proactive approach on the part of competent authority and its proper implementation can drastically reduce bigger problems in the future, problems that occurred largely because the seeds of a situation were not addressed early on.

Moreover, the situation is such in several countries is such that disciplinary matters (especially concerning certain *graviora delicta*) are receiving much attention at the expense of important doctrinal matters that may appear to be less urgent. Competent authority necessarily must tackle urgent disciplinary matters, which tends to take their attention away from other important matters, for example in the area of catechesis, which is no doubt important from the point of view of the *salus animarum*.

¹⁸² CDF, declaration, 16 April 2012, prot. n. 456/2012.

¹⁸³ It is also possible that the bishop was culpably negligent by omitting various acts of ecclesiastical power which resulted in harm to others. According to can. 1389 §2, such a one is to be punished with a just penalty. In the case at hand, however, the matter would have fallen into prescription long ago.

5.5.1 Urgent creation of particular law (US *Essential Norms*)

The *Essential Norms* governing delicts *contra sextum* with minors on the part of clerics received a *recognitio* from the Holy See in 2002¹⁸⁴, having been approved by the USCCB at a special meeting that took place earlier that same year. Though drafted relatively quickly and while the bishops were facing heavy public pressure, the norms for the most part are canonically sound. However, they also have their share of critics, perhaps due to the lack of canonical distinctions where needed and silence concerning gradations of violations. For example, while stating that a priest is to be permanently removed from any ecclesiastical ministry for even one act of sexual abuse of a minor either admitted to or proven, the document is silent about the fact that if the abuse took place before the perpetrator was a cleric the CIC does not consider the sinful behavior to be a canonical delict. Moreover, no distinction is made as to the canonical definition of a minor, defined as under 16 years of age in can. 1395 §2 CIC but universally raised by Pope John Paul II on 30 April 2001 to 18 and raised in the United States of America to 18 on 25 April 1994¹⁸⁵. In regards to gradations of violations, a cleric found culpable of having committed a single more grave delict that otherwise would be prescribed could face the same penalty as one guilty of years of serious delicts *contra sextum* with minors. Continued public pressure is likely resulting in an understandable hesitation on the part of bishops to make these important clarifications¹⁸⁶.

¹⁸⁴ CONGREGATION FOR BISHOPS, *Recognitio of the Holy See for the Essential Norms approved by the United States Conference of Catholic Bishops*, 8 December 2002.

¹⁸⁵ «When even a single act of sexual abuse by a priest or deacon is admitted or established after an appropriate process in accord with canon law, the offending priest or deacon will be removed permanently from ecclesiastical ministry, not excluding dismissal from the clerical state, if the case so warrants». USCCB, *Essential Norms*, 15 May 2006, art. 8. The bishops approved the norms again in 2011. The only changes are in the footnotes section, where the 21 May 2010 *Normae de delictis Congregationi pro Doctrina Fidei reservatis seu Normae de delictis contra fidem necnon de gravioribus delictis* are integrated. USCCB, *Charter for the Protection of Children and Young People*, 16 June 2011, 1.

¹⁸⁶ While any sins *contra sextum* on the part of adults with minors are unacceptable, article 8 of the norms can be seen to run contrary to the CIC inasmuch as it prohibits the return to ministry of a cleric who committed a delict *contra sextum* with a minor (presumably under 18 years of age) even before he entered the seminary. The CIC does not include as a delict sins *contra sextum* on the part of non-clerics and, as result, foresees the imposition of no penalties in such cases. It may be possible to reconcile this disparity or ambiguity if one considers the removal or exclusion from ministry not to be a penalty.

5.5.2 Danger of the loss of the salvation of the offender's soul

We recall back to the first chapter and the concern that Pope Gregory the Great had for the woman who left the monastery (2.6.1). The religious woman should have been prevented from leaving, but was not, in part due to the bishop's poor oversight. The pope determined that she was to be brought back to the monastery so that she might resume living again as a religious.

In the cases we just considered, had competent authority redirected the candidates out of the seminary, even if the decisions might have been difficult for the expelled seminarians to accept at the time, eventually they could have returned to the secular world to live as pious laymen rather than take on a way of life that could not be sustained.

5.5.3 Deprivation of spiritual goods to the faithful when a cleric commits a graver crime that might have been prevented with proper supervision

As suggested in the fourth case (section 5.4), had a proper warning been placed upon the priest soon after allegations were presented, the priest might have responded positively. He also might have admitted that he had a problem and was in need of further care. The ordinary would have been in a position to respond accordingly, including undertaking a penal process depending on the gravity of the matter. The priest may have been motivated to get the help he needed or, if found culpable after a penal process, the bishop would have been able to impose a just penalty on him. If the bishop had investigated the matter, regardless of the results, justice would have been served both juridically and morally. Once the priest was publicly accused of grave misconduct, the people were scandalized; due to the gravity of the actions, the priest was removed. Hence there is one fewer priest in the diocese to serve the people of God.

6. Cases illustrating the preference of employing conciliatory methods when useful and possible

Since the Supreme Legislator expresses a preference for conciliation over litigation, it is opportune to consider a few cases in which this option was proposed.

6.1 *General comment on praxis of the Congregation for the Clergy*¹⁸⁷

At times, a recourse presented to the Congregation for the Clergy does not receive a formal decision on the part of the dicastery. The Congregation desires to be helpful to bishops and clerics, hoping that matters might be resolved in a peaceful manner. There are examples of cases where the priest, not aware of peremptory time limits, presents recourse years after his bishop made a decision which, in the view of the cleric, has a negative effect on him or is in violation of his canonical rights. The Congregation could outright reject such a recourse; in fact, there are times when justice would not be served if the time limits were overlooked. For example, if former parishioners of a church closed by the bishop or relegated to profane use waited five years before presenting recourse, the Congregation's acceptance of it could cause much upheaval. On the other hand, in the case of a cleric presenting recourse outside of the peremptory time limits, the dicastery may be able to involve itself to a point. Even if it will not formally decide upon a matter due to the lack of observance of time limits by the recurrent, it can point out matters to both parties and encourage them to work together as much as possible to resolve the matter¹⁸⁸.

There are times when a reading of the acts will be enough for the Congregation to initially determine that one party or the other is at fault and that it would probably be prudent for the matter to be handled between the parties with some assistance from the Congregation. In a particular case, a priest's canonical advocate presented recourse to the dicastery. Having heard the bishop's side and having examined the documentary proofs, clarity was reached as to the priest's unwillingness to cooperate with the bishop, even after having arrived at what appeared to be an amicable agreement in the recent past. A kind but direct letter sent to the advocate was enough for the cleric to agree to work with the bishop. The case was resolved and both parties appeared to be satisfied¹⁸⁹.

¹⁸⁷ Conciliation as foreseen in the CIC will be discussed in the next chapter.

¹⁸⁸ In the case of prot. n. 2009-2991, the priest waited three years before presenting recourse through his canonical advocate. The recourse was rejected at the outset. In the case bearing prot. n. 2009-0923, treated in the next section, the priest waited ten months to present recourse but the Congregation decided to involve itself.

¹⁸⁹ CONGREGATION FOR THE CLERGY, letter, 6 February 2010, prot. n. 2008-1463. The letter was written thus: «The Congregation again reminds you that agreements seem to have been reached in the past, which have been disregarded by Rev. Z. This

6.2 *Unsuccessful attempts made by the Congregation for the Clergy to resolve in a conciliatory way a priest's recourse against a decree of his bishop removing his ministerial faculties*

Our next case illustrates that conciliatory efforts are not always fruitful. It concerns a priest who was removed from ministry in April 2007 due to interpersonal problems he encountered or created with three different pastors (the only three to whom he was assigned) and, as a result, division that ensued in two of the parishes. Having been forbidden from exercising public ministry by the pastor at the parish to which he was assigned as parochial vicar, the priest's assignment at the parish was officially terminated by decree of the bishop¹⁹⁰. Precautionary measures were placed upon the priest and he was assigned to a different rectory while the matter was being investigated (can. 1722), all the while receiving a full salary. The priest was told that he would eventually need to see a psychologist, approved by the bishop, and that the priest would need to permit the psychologist to release the information needed for the bishop to make an informed decision as to whether or not the priest had grave psychological problems. After one year, the priest had participated in sessions with a psychologist of his choosing but whom the bishop had not approved. In April 2008, the priest stopped receiving any salary, though his health benefits were maintained and he was provided room and board in a rectory. The priest apparently made phone calls and tried to resolve the matter verbally with the diocesan bishop, but his situation did not change¹⁹¹.

Only in March of 2009 did the priest present recourse to the Congregation for the Clergy. The following month he filed a lawsuit in the civil forum, naming as defendants the diocesan bishop and five priests from the same diocese¹⁹². Once the judge dismissed the civil lawsuit, the canonical recourse was examined.

Dicastery is always hopeful that these matters can be resolved by the parties outside of a canonical context, and urges you and your client to cooperate with the Bishop of Y in a resolution of this matter. It would, perhaps, move the process forward if a reasoned proposal from your client could be forthcoming».

¹⁹⁰ The pastor overstepped his authority by suspending the priest from any ministerial activities at the parish.

¹⁹¹ CONGREGATION FOR THE CLERGY, *acta*, 26 March 2009, prot. n. 2009-0923.

¹⁹² The civil lawsuit was filed on Holy Thursday and made public in local newspapers on Good Friday. CONGREGATION FOR THE CLERGY, letter, 9 April 2009, prot. n. 2009-0923.

In response to concerns presented by the Congregation, the bishop determined: «I will not allow Fr. T. to exercise public ministry so long as he persists in his obstinacy». Later in the same letter he writes, «When it became glaringly clear that Fr. T. had no desire to comply with my wishes, I decided that he could no longer receive full salary, but that his health benefits and room and board would continue». The bishop further concluded that the priest suffers from a psychological infirmity, rendering him impeded from the exercise of orders (can. 1044 §2, 2°). And without an integral psychological report as to the mental state of the priest, the bishop could not put the people of God at risk by placing him back into ministry¹⁹³.

The bishop also responded to a different concern presented by the Congregation that the priest's removal had the appearance of a penalty:

I do not consider the action taken against Fr. T. to be a penalty applied without the necessary canonical process. His actions indicate that indeed psychological infirmities are present in him. Without an integral and substantial report from a reputable psychologist (due to Fr. T.'s lack of cooperation), I make my judgment that there are psychological disorders present in the priest based upon the preliminary analysis given by Dr. S.¹⁹⁴

Though the priest gave some indication that he might be willing to visit a psychologist of the bishop's choice, he remained firm that no information could be released unless he was able to read and approve the contents before they were released to the bishop. These terms were not acceptable to the bishop.

In the middle of 2012 the bishop wrote to the Congregation stating that it appeared that some progress was being made¹⁹⁵. As of this writing, the case still has not been resolved. There will be no formal ruling on the part of the Congregation since the recourse was never formally accepted (due to missed time limits). Its goal from the outset was to try to facilitate a resolution to the matter in a pastoral way.

Was the priest in question indeed culpable for persistent disobedience? We would have to conclude that he was not. As already stated on

¹⁹³ The bishop also explained that he decided to provide the priest with only sustenance and not remuneration, based upon particular law in the same diocese. That the priest stopped receiving any salary whatsoever was due to a clerical error. The mistake was corrected once it was brought to the bishop's attention, and the priest was provided with back pay. CONGREGATION FOR THE CLERGY, letter, 25 June 2010, prot. n. 2009-0923.

¹⁹⁴ CONGREGATION FOR THE CLERGY, letter, 25 June 2010, prot. n. 2009-0923.

¹⁹⁵ CONGREGATION FOR THE CLERGY, letter, 15 June 2012, prot. n. 2009-0923.

multiple occasions, one cannot be forced to submit to psychological testing or to agree that part or all of the results will be released to diocesan authority. At the same time, the bishop was within his rights to limit the priest's exercise of ministry, inasmuch as he had «objective reasons to question [the] priest's suitability for ministry»¹⁹⁶.

From this case we learn that the Congregation for the Clergy will sometimes act as a mediator when prescription has passed. The dicastery would have been well within the norms of canon law to have rejected *in limine* the recourse. Instead, attempts were made to resolve the matter peacefully. Though the priest is apparently still in no different position than he was beforehand, at least there is now no doubt as to what he must do to be considered for return to active ministry, which is to undertake a psychological exam under the care of an approved psychologist and make available to his bishop the relevant parts of the psychological assessment. Said assessment need only provide an appraisal of the areas necessary in order for the bishop to be in a better position to assess the priest's fitness for ministry. The bishop and others involved would need to take care that the priest's right to privacy is protected¹⁹⁷.

6.3 *Successful attempts made by the Congregation for the Clergy to resolve in a conciliatory way a priest's recourse against a decree of his diocesan bishop prohibiting his public exercise of sacred ministry*

While attempts at conciliation at times appear to be unsuccessful, in the following case the result was positive for all involved. A priest was removed from his parish assignment due to substance abuse. Based on accounts of the priest's behavior and reports provided by psychological experts who treated him, the bishop decreed Fr. X irregular for the exercise of orders based on can. 1044 §2, 2°. In the same decree (dated 26 May 2006), the bishop placed restrictions upon the priest:

[...] specifically, you are not to celebrate the sacraments. Any failure to observe this precept shall be considered a grave violation of your obligation to obedience to your Ordinary as provided for by can. 1371, 2° and, in virtue of this warning and in accord with can. 1347 §1, any such violation will

¹⁹⁶ CONGREGATION FOR THE CLERGY, letter, 13 July 2010, prot. n. 2009-0923.

¹⁹⁷ Cf. CONGREGATION FOR THE CLERGY, *Letter Concerning Licit Psychological Testing of a Priest*, 8 October 1999, 960-961. It is noted that the priest cannot be forced to undergo psychological testing or to permit that results be released.

render you immediately liable to the imposition of the ecclesiastical censure of suspension, removing all rights, privileges and faculties¹⁹⁸.

The priest obeyed faithfully the restrictions for at least two years. When the priest's cousin died, and the priest was asked to be the celebrant at the funeral, he dutifully asked competent authority for permission to be allowed to participate as requested by his family; permission, however, was denied. The priest attempted to contact someone in the diocesan chancery, but was not able to speak to anyone in a position of authority. He then took it upon himself to celebrate the Mass in April 2008. On 19 June of the same year, the bishop, quoting the above-mentioned restriction, concluded that, as a result of his disobedience, «I now notify you of the imposition on you of the censure of suspension. This decree of suspension removes all rights, faculties and privileges connected to your ordination to the priesthood»¹⁹⁹.

The priest presented recourse in a timely manner to the Congregation for the Clergy. Following can. 50, the dicastery contacted the bishop, asking him to provide pertinent information. The bishop noted the priest's alleged remorse and that the priest had made progress in therapy sessions. The bishop also expressed his intention to eventually reassign the priest to a parish. Sensing that the matter could be peacefully resolved at the local level, the Congregation wrote a letter to the recurrent, encouraging him «to approach your Ordinary in a spirit of willing cooperation and filial obedience so this matter can be resolved, as seems eminently possible, outside the canonical forum. Your Ordinary has shown willingness to arrive at a resolution»²⁰⁰. The case was resolved within a couple of months, and the priest was returned to active ministry.

6.4 *Successful attempts made by the Congregation for the Clergy to resolve a priest's recourse against a decree of his diocesan bishop to close the parish at which the recurrent was pastor*

Due to a shortage of priests, changing demographics and fewer Catholics attending Mass, a diocesan bishop, having made the proper consultations, determined to suppress some parishes, close others and merge others. In a decree dated 14 August 2008, he ordered the closure of the parish

¹⁹⁸ CONGREGATION FOR THE CLERGY, decree, 26 May 2006, prot. n. 2008-3375.

¹⁹⁹ CONGREGATION FOR THE CLERGY, decree, 19 June 2006, prot. n. 2008-3375.

²⁰⁰ CONGREGATION FOR THE CLERGY, letter, 5 February 2009, prot. n. 2008-3375.

of St. M. effective 1 September 2008²⁰¹. The pastor and parishioners ignored the decree, and Mass was celebrated as before on Sunday, 7 September. On 13 September the bishop forbade the priest from celebrating Mass at St. M. by means of a written canonical warning²⁰². This decree did not have its desired effect either, as the priest continued to celebrate Sunday Mass at the parish for the following four consecutive Sundays.

The patient bishop attempted unsuccessfully to reason with the priest. He warned the priest in a decree dated 7 October 2008: «Fr. O. leaves me no alternative but to proceed against him in virtue of can. 1371, 2°. Accordingly, I suspend him of acts of power of orders listed in can. 1333 §1, 1° [...]». The bishop continued, «I now formally warn you canonically that if you continue in this disobedience then you will leave me no option but to take penal administrative measures against you which may result in your canonical suspension»²⁰³. A few months later, the bishop decreed the priest suspended and prohibited from exercising public ministry.

The priest presented recourse to the Congregation for the Clergy, invoking article 10 of the *m.p. Summorum Pontificum*²⁰⁴ and can. 1638 CIC. He explained to the prefect that «an appeal suspends the execution of the sentence». While the recourse was being studied, the priest continued to celebrate Mass against the orders of his ordinary. The Congregation sent a strongly worded reprimand to the priest, which not only pointed out the priest's error in interpretation: «the execution of a decree is *not* automatically suspended in the case of an administrative procedure» according to cann. 1734 and 1736 but also highlighted the same cleric's «manifest disobedience to the bishop and prohibition to exercise ministry [...]». The priest was told clearly «you are hereby encouraged to cooperate with your bishop»²⁰⁵.

²⁰¹ CONGREGATION FOR THE CLERGY, decree, 14 August 2008, prot. n. 2008-3373.

²⁰² CONGREGATION FOR THE CLERGY, decree, 13 September 2008, prot. n. 2008-3373.

²⁰³ CONGREGATION FOR THE CLERGY, letter, 7 October 2008, prot. n. 2008-3373. In reality, the bishop did have an option to choose not to «take penal administrative measures». For sake of canonical precision, the bishop could have decreed: «continued disobedience in this regard will lead to the imposition of penal measures not excluding suspension».

²⁰⁴ «The local Ordinary, should he judge it opportune, may erect a personal parish in accordance with the norm of Canon 518 for celebrations according to the older form of the Roman rite, or appoint a rector or chaplain, with respect for the requirements of law». BENEDICT XVI, ap. letter *m.p. Summorum Pontificum*, 7 July 2007, art. 10.

²⁰⁵ CONGREGATION FOR THE CLERGY, letter, 2 September 2009, prot. n. 2008-3373.

Soon after, the priest sent a letter to his bishop, renewing his «promises of obedience and respect» and stating «I will never enter into rebellion again»²⁰⁶. The priest also wrote to the dicastery formally retracting the «substance and content» of the recourse²⁰⁷. The case was formally closed when the bishop wrote a letter in which he expressed his profound thanks to the Congregation for its intervention and for how it handled the matter. The bishop explained that the priest was living outside the diocese for a time due to the scandal that was caused²⁰⁸. The matter was resolved without the need for a formal decision from the Congregation.

This contentious situation appears to have been resolved mainly due to the patience and understanding of the diocesan bishop. While some bishops have resorted to calling the police to prevent a Mass from taking place in a closed church, this ordinary did not. The priest also came to realize the errors of his ways and repented himself along with some parishioners, who apologized in writing to the bishop for their behavior and thanked him for his professional and Christ like comportment.

6.5 Analysis and reflection concerning the use of conciliatory methods

While our next chapter will address the essentials of conciliation, we now will make some conclusions based upon the cases just presented. First, cooperation is preferred whenever possible. Each party should calculate the costs and benefits of entering into a formal dispute.

Conciliation also offers each party the possibility to really hear the other. Sometimes it is enough for one to know he is being heard, even if ultimately there are no substantial changes as a result. But both parties need to be willing to actively participate and not merely go through the motions, doing their best to be reasonable.

We also see in the above cases examples of patience. Sometimes it takes time to arrive at a proper solution or for one side or both to come to realize the need to compromise, bend or change their behavior or outlook.

7. Universal conclusions regarding obedience and proper governance

We now propose some universal conclusions concerning obedience and proper governance. These include avoidance and reparation of

²⁰⁶ CONGREGATION FOR THE CLERGY, letter, 4 October 2009, prot. n. 2008-3373.

²⁰⁷ CONGREGATION FOR THE CLERGY, letter, 5 October 2009, prot. n. 2008-3373.

²⁰⁸ CONGREGATION FOR THE CLERGY, letter, 8 October 2009, prot. n. 2008-3373.

scandal, upholding of justice, protection and promotion of the common good, protection of the person himself, protection of faith and truth, the safeguarding of tradition and the salvation of souls.

7.1 *Avoidance and reparation of scandal*

We briefly review the definition of scandal. The CCC (2284) defines scandal as «an attitude or behavior which leads another to do evil». R.L. Burke is more precise. He explains that the word has two meanings. The first and properly theological meaning of scandal is «to do or omit something which leads others into error or sin». The second is «to do or omit something which causes wonderment (*admiratio*) in others²⁰⁹. The word scandal appears 28 times in the CIC²¹⁰. Once scandal has been caused, steps are to be taken so that it be repaired, as foreseen in can. 1341.

When one is obedient to legitimate commands or prohibitions it is likely that there is no reason that scandal would result or likewise that there would be any scandal to repair. Proper oversight and governance likewise should help to prevent scandal, though not always. One might be scandalized for wrong reasons²¹¹.

7.2 *Upholding of justice*

Proper governance/oversight on the part of competent authority helps to promote and uphold justice. The CCC states that the virtue of justice consists «in the constant and firm will to give their due to God and neighbor. Justice toward God is called the “virtue of religion”. Justice toward men disposes one to respect the rights of each and to establish in

²⁰⁹ R.L. BURKE, «Denial of Holy Communion», 23. On p. 47 of the same article, the author challenges the notion that scandal is culturally relative, as held by another commentator. «If a word, an action or an omission leads another into error or sin, there is scandal, whether the person who is led astray knows that he has been scandalized or not». Astigueta gives as an example of omission (competent) authority's lack of intervention («il mancato intervento dell'autorità»). D.G. ASTIGUETA, «Lo scandalo nel CIC, 599.

²¹⁰ D.G. ASTIGUETA, «Lo scandalo nel CIC», 617.

²¹¹ A current issue of concern is how poorly formed Catholics react to decisions on the part of competent authority concerning matters they do not agree with, such as requiring teachers in a Catholic school to formally state that they will uphold all Church teachings, including ones that are currently controversial, such as the requirement to live Church teachings by not entering into a same sex union.

human relationships the harmony that promotes equity with regard to persons and to the common good» (CCC 1807). In a strictly legal sense, justice is defined as «the fair and proper administration of laws»²¹².

Whenever competent authority follows the relevant norms laid out in the CIC (in a reasonable manner), justice is in some way being upheld. For example, warnings, the undertaking of a penal process if necessary and the eventual decision as to the culpability of the accused all contribute to the carrying out of justice. Even if one party is unhappy with the outcome, he or she would hopefully recognize that the norms of the CIC were followed and competent authority was fair and just.

7.3 Protection/promotion of the common good

While not providing a definition of «common good», can. 223 §1 CIC 1983 speaks of the need for the faithful to consider the common good of the Church, the rights of others and their own duties towards others when exercising their rights. Moreover, §2 allows competent authority to «direct the exercise of rights which are proper to the Christian faithful» in view of the common good. We can consider the common good as «the sum total of social conditions which allow people [...] to reach their fulfillment more fully and more easily» (CCC 1906). The common good seeks to protect the rights of individuals, the right to life, the right to worship and the right to education. The private individual is to contribute to the common good.

When one is obedient to competent authority acting in a reasonable and lawful fashion, this action contributes to the good of the whole. When competent authority properly exercises its duty to govern, there is «stability and security of a just order» (CCC 1909).

7.4 Protection of the faithful

When competent authority exercises proper vigilance over matters in his diocese or religious institute, the same competent authority helps to ensure that the faithful are protected. This has been shown in several cases in this chapter. An ordinary cannot not have in mind the good of the faithful, including their being protected from everything from innovative liturgies and doctrinal errors to unscrupulous groups looking for financial contributions.

²¹² B.A. GARNER, *Black's Law Dictionary*, 881.

7.5 *Protection of the person himself*

Canon 1341 mentions the reform of the offender as one reason for a penalty to be applied. Sometimes one is so caught up in a situation that he is unable to perceive that he might be in proximate danger of sinning, perhaps gravely. The CIC foresees only external actions as punishable, not internal thoughts. When competent authority discerns that a penal precept should be imposed, this assessment would normally be based upon an external action of the person in question.

Sometimes a warning either goes unheeded, is ignored or is rejected by the intended recipient. Should the person's future behavior contravene what is contained in the precept (warning), competent authority has the duty to further analyze the situation and impose a penalty if he deems it useful. The superior's primary motive should be care and concern for the person, even though the recipient may not immediately recognize that the imposition of a warning, penalty or punishment (each of which appear in can. 1371, 2°) can in the long run be beneficial.

7.6 *Salus animarum*

Concern for the salvation of souls has been a consistent thread running throughout this entire work. It was observed when examining the fonts in chapter one that popes consistently concerned themselves with the salvation of souls in general, not limited to an offender himself but to the entire community, small or large.

Different people may understand the phrase *salus animarum* in different ways. One should keep in mind that every decision concerning comportment, how one lives out his faith and how one decides to govern should be made with a concern for the salvation of souls. A nice bishop who avoids conflict at any cost and as a result calls no one to task for wrong doctrine or in disciplinary matters cannot be accused of being overly concerned with the salvation of others. To say that the *salus animarum* is the motivation behind a decision when in reality the action will only bring others further from God is a mistaken notion and is to be avoided. Indeed the three *munera* of the diocesan bishop – teaching, governing and sanctifying – are all to be undertaken with a genuine concern for the eternal salvation of all.

CHAPTER V

A contemporary reading of canon 1371, 2°

This chapter aims to take a contemporary look at can. 1371, 2° by bringing together, applying, and expounding upon much of what has been presented in the first four chapters of this work, with the aim of assisting competent authority to properly implement the canon when necessary. The chapter also contains new material concerning conciliation; this is intended to complement examples of conciliation we studied in section 6 of the previous chapter. In addition, this final chapter will discuss the proper use of precepts, building upon what already has been mentioned in this regard in chapters 2 and 3. Moreover, there will be a demonstration of how warnings should be issued along with a checklist intended to assist competent authority in properly implementing the canon. The chapter will conclude with open questions.

1. Conciliation: the preferred method

Before an Ordinary or other superior decides to proceed with the imposition of a just penalty or perhaps even before a precept is composed, he or she may wish to employ a preferred method found in the CIC: conciliation. Based upon biblical principles¹, the canon states that litigation should be avoided if at all possible. Various canons address conciliation, as will be illustrated in this section.

¹ For example, Mt 5, 23-24; Mt 18, 15-17; 1 Cor 6, 1-7.

1.1 *Canon 1446 CIC*

Book VII dedicates the first canon under Title III («The discipline to be observed in tribunals») to conciliation. Canon 1446 §1 puts the onus upon bishops as well as the entire Christian faithful to take the efforts needed to avoid litigation. This is to be done «without prejudice to justice» and also *quam primum*. For purposes of our canon, then, we see the duty of the bishop, religious superior and anyone else involved to seek to avoid a trial when possible, «regardless of how much the litigation is directed towards the search for truth»².

Whereas in a trial concerning the nullity of marriage a bishop would not often find himself directly involved in the judicial process, in matters where he is likely to be dealing directly with a priest, he could be the one to take the initiative and encourage that a disputed matter be presented to a mediator, whose role it is to bring those involved in a conflict to an agreement. The priest could also suggest that the matter be submitted to a mediation process.

Canon 1446 §2 expects the judge to intervene when he observes or senses «quotiescumque spem aliquam boni exitus». This intervention can take place at the beginning of the trial or at any other time. The canon foresees encouragement on the part of the judge as well as his assistance of the parties to collaborate in order to seek a just solution and his recommending of qualified people to serve as mediators.

Canon 1446 §3 concerns when the issue to be resolved is about the private good of the parties. In such cases, the judge must discern whether the involvement of an arbitrator might help to resolve the controversy. For example, a bishop might order a priest to sell property which he received under questionable circumstances. An arbitrator could help to make suggestions as to how this might be carried out; on the other hand he might arrive at a different conclusion from the bishop. If both sides are willing to cooperate, the active involvement of a qualified arbitrator could help to resolve the matter³.

² P.A. BONNET, «Commentary», 858.

³ Cases have arisen in which an elderly parishioner wills property to her favorite pastor but where the transferring of the property causes scandal, for example, if the priest is accused (sometimes by disgruntled family members) of taking advantage of the person or even of applying moral pressure.

1.2 *The spirit of conciliation elsewhere in the CIC*

While the canons addressing conciliation are found in the part of the CIC dedicated to the avoiding of a trial, the idea of a reconciliatory approach is implied in other canons in Book VI. Already we have examined can. 1341, which foresees penalties as a last resort. Elsewhere in the CIC two canons make mention of the use of conciliation in regards to petitions of marriage nullity, including 1676 (the duty of the judge to encourage the parties to save their union before accepting a petition of marriage nullity, using pastoral means when possible), and 1695 (same as can. 1676 but related to separation of the spouses). It would be fair to say that the imposition of a warning can be an opportunity for at least informal conciliation, even without the intervention of a third party. If a dialogue begins at this stage, differences might be settled and the matter resolved without going any further.

1.3 *Canons concerning «methods of avoiding trials»*

Book VII, title III is entitled «Methods of Avoiding Trials». Four canons point out other ways to resolve a dispute outside of a formal trial. Canon 1713 indicates the legislator's preference that judicial disputes be avoided by means of «*transactio*» (settlement or agreement⁴) or «*reconciliatio*» (reconciliation or reuniting). «*Transactio*» can also be «an agreement by which a controversial matter is settled without a formal trial»⁵. Here «*reconciliatio*» does not refer to the sacrament of reconciliation⁶.

There is another possibility foreseen in can. 1713: entrusting the controversy to the judgment of one or more arbitrators, an independent person appointed to settle a dispute. In voluntary arbitration, both parties agree to abide by the arbitrator's decision. It is for the arbitrator to resolve the dispute by deciding *ad normam iuris* or «not on a juridical technical aspect of the question but on the sound learning and understanding of the arbitrators, "looking at the circumstances of every case"»⁷.

Canon 1714 explains the process to be followed for such a judgment while can. 1715 explains that not all matters are subject to an agreement or arbitration (those pertaining to the public good or sometimes

⁴ C. LEWIS – C. SHORT, *A Latin Dictionary*, 1888.

⁵ L.F. STELTEN, *A Dictionary of Ecclesiastical Latin*, 326.

⁶ C. LEWIS – C. SHORT, *A Latin Dictionary*, 1535; Cf. T.J. PAPROCKI, «Methods of Avoiding Trials», 1804.

⁷ R. RODRÍGUEZ-OCAÑA, «The ways of avoiding trials», 1964.

concerning temporal goods). Canon 1716 speaks of the civil and canonical effects of arbitration.

In regards to our canon of study, a dispute would involve a superior of some sort and either a cleric or a lay member of the faithful. As in all disputes, both parties would need to be open to cooperating and even moving from their original position. In a case involving the ordinary and a cleric, the bishop might ask a priest acceptable to both parties (perhaps the vicar for clergy) to intervene and speak with the cleric in question in hopes of resolving the problem quietly. A priest who perceives that his bishop is treating him unfairly might meet with the vicar for clergy and ask him to be the peacemaker or to help reconcile the parties. Most of this is common sense and requires no special canonical knowledge on the part of either party, but it sometimes calls for humility and trust⁸.

1.4 *Alternative Dispute Resolution*

Canon 1733 could fall under the heading «alternative dispute resolution». The canon expresses a desire that before one who considers himself injured by a decree presents recourse against the decree, mediation and/or the involvement of wise persons should be sought in order to help avoid contention between the involved parties to the dispute. The CIC is silent about the use of mediation or the involvement of wise persons before a decree is issued; it does not recommend this approach nor does it forbid it.

1.4.1 Mediation

What is mediation? It «is a process in which a neutral third party assists the disputant parties in negotiating a settlement of their differ-

⁸ A book entitled *Getting to yes: negotiating agreement without giving in*, authored by R. Fisher and W. Ury, was first published in 1981 and remained on the best-seller list for years. The authors list five different principles: 1. Separate the people from the problem; 2. Focus on interests, not positions; 3. Invent options for mutual gain; 4. Insist on knowing objective criteria; 5. Know your BATNA (best alternative to negotiated agreement). Now over three decades later, some commentators observe that while many people say they agree with the principles set forth by the authors, the principles are not put into practice largely due to distrust of the other side. While one party to the dispute might consider himself open to negotiating in a fair manner, this openness is mitigated if the same party suspects that the second party is looking to gain an unfair advantage at the expense of the first party. K. JENSEN, «Why Negotiators Still Aren't Getting To Yes», *Forbes*, 5 February 2013, 1.

ences»⁹. A mediator is to help the parties to understand each other's points of view. However, his role does not include suggesting specific solutions but rather to assist the parties in reaching viable solutions on their own¹⁰.

Another purpose or goal of mediation is the reconciliation of the parties' interests instead of determining who is right or wrong. According to Picard et al., a noteworthy difference between mediation and other forms of alternative dispute resolution is mediation's «capacity to reorient the parties towards each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and disposition toward one another»¹¹. Also along these lines is the desire to improve communication between the parties. According to Mayer, «the heart of the process is the work a mediator does to help people in conflict to communicate about the conflict in a constructive way»¹².

The mediator would do well to have a structure in place. There are four stages that are generally followed. In the first stage, entitled «stories», the mediator will ask many questions of each party so as to learn about their version of the facts, their perceptions, feelings and expectations in the matter and process. The second involves coming to an understanding of the issues to resolve. The third, entitled «options», includes problem solving by the parties with the help of the mediator. The goal is to reach a settlement in the fourth stage. It is not uncommon for a mediation process to go back and forth between the various stages¹³.

1.4.2 Arbitration

Mediation is not the same as arbitration. In the latter, the parties will consent to have their dispute resolved by an agreed upon third party (an arbitrator) and to be bound by his or her decision. That is to say, arbitration imposes solutions while mediation proposes them. It is generally agreed that with arbitration a matter is resolved more quickly than

⁹ D. ROSEMAN, «Mediation in the Church», 146.

¹⁰ Cf. D. ROSEMAN, «Mediation in the Church», 146; 150.

¹¹ C. PICARD ET AL., *The Art and Science of Mediation*, 43 in D. ROSEMAN, «Mediation in the Church», 150.

¹² B. MAYER, *The Dynamics of Conflict*, 271 in D. ROSEMAN, «Mediation in the Church», 151.

¹³ V. VINDELØV, *Mediation*, 101, in D. ROSEMAN, «Mediation in the Church», 154-155.

when it is decided making use of traditional methods, such as an ecclesiastical or civil court.

Some point out a concern that there exists the potential for power imbalances in the process. The party with more authority is the stronger power and could dominate the process. Yet if the goal is more to facilitate communication and to help each party understand better the view of the opposing party, this uneasiness may be reduced.

1.4.3 The ecclesiastical realm

Canonically speaking, there are limits to alternative dispute resolution. For example, for matters in which only ecclesiastical authority is competent, the case is not to be submitted to a process of binding arbitration but is to be resolved by the hierarchical superior¹⁴. In the case of the judging of *graviora delicta*, presently reserved to the CDF, no official role is foreseen for a mediator or arbitrator. However, within a process itself, the participation of people with even informal roles might bring about the resolution of a matter in a conciliatory way while in no way compromising canon law or other promulgated legislation¹⁵.

Concerning can. 1371, 2°, there is nothing standing in the way of solutions being proposed and eventually adopted that bring about the result(s) competent authority desires. Indeed the issuing of a warning can result in the outcome hoped for by competent authority provided the warning is obeyed. Other remedies could include the transfer of the person in question from one place or position to another (agreed to by both parties and not considered a penalty), the adoption of new policies or the person's voluntarily withdrawal from a certain responsibility (again if it is agreed to by both parties).

¹⁴ Cf. J. MIRAS, *Commentary*, 2063.

¹⁵ In a case concerning a *delictum gravius*, the involvement of a trusted individual could bring about cooperation on the part of the accused cleric and his ordinary. An accused priest who is at or near retirement age might come to realize that it is better to quietly retire than to fight to the end in a judicial penal process which could cover the span of many years. This would seem to be the case especially if the priest trusts that his ordinary is concerned about his well-being and/or if other provisions are made for the benefit of the priest, including sustenance. There are limits to this option, however, when a judicial process has already been initiated: «once a case has been legitimately introduced, the judge can and must proceed even *ex officio* in penal cases and other cases which regard the public good of the Church or the salvation of souls» (can. 1452 §1).

Some dioceses have procedures in place with the goal of settling contentious matters expeditiously (cf. can. 1733 §2)¹⁶. While this objective is laudable and could allow competent authority more time to deal with matters considered more important, at the same time care must be taken not to limit the right of an aggrieved party to hierarchical recourse¹⁷.

1.5 Ecclesiastical realm being informed by the secular realm

When it comes to dispute resolution, what is effective in the secular realm could inform the way matters are handled in the Catholic Church, provided canon law is respected. This is the case in the Archdiocese of Chicago, USA, where various workshops, based upon biblical principles, complement canon law. Workshops include: «communication climate», «dealing with criticism», «elements of gracious dialogue», «good and Godly leader», «on listening» and «qualities that promote peace»¹⁸.

2. The proper use of precepts

This section will attempt to examine various aspects of precepts so as to assist competent authority in its use of them. We observe that a precept is a subset of a decree (cf. can. 49); therefore, everything the CIC states about a decree applies to a precept but not everything in the CIC governing a precept is applicable to a decree in general.

2.1 Singular decrees and precepts

As mentioned in chapter three (section 3.7), a precept is defined in can. 49 as «a decree by which an obligation is directly and lawfully imposed on a specific person or persons to do or to omit something, especially in order to urge the observance of a law». Those who possess executive power may issue a precept which, once lawfully imposed, obliges the recipient everywhere (not only in his diocese or religious house), unless expressly stated otherwise (can. 52). A precept «obliges directly a specific individual or several specific individuals»¹⁹.

¹⁶ For example, the Archdiocese of Chicago, USA has an «Office of Conciliation». <http://www.archchicago.org/conciliation/> [accessed 16 March 2015].

¹⁷ Cf. C.J. SCICLUNA, «Recourse against singular or particular administrative acts», 45.

¹⁸ <http://www.archchicago.org/conciliation/Workshops.aspx> [accessed 16 March 2015].

¹⁹ W. WOESTMAN, *Ecclesial Sanctions and the Penal Process*, 20.

Canon 50 indicates that before issuing a decree (and therefore a penal precept) competent authority is to gather necessary information and proofs and, if possible, consult those whose rights might be harmed. Though not required for validity, following these steps can help to ensure good governance.

Canon 51 makes clear that a decree (and therefore precept) is to be in writing and should include the reasons, at least in summary form, motivating it. The bishop or his delegate should ensure that the decree is presented to the offender, either in person or by mailing it to him or her. Canon 56 states that a decree is considered to have been communicated to the recipient if the recipient, having been properly summoned, either refuses to appear at the session or refuses to sign a decree that has been communicated to him.

Canon 1319 addresses penal precepts. §2 of the canon expresses a preference that a precept be issued only when truly necessary; the same preference is expressed in can. 1317. The threatened penalty for non-compliance should normally be *ferendae sententiae* in nature and is not to include a censure (can. 1318). The penalty established in a precept may include dismissal from the clerical state (can. 1317).

2.2 *Attributes/qualities of precepts*

We now consider important attributes and qualities of precepts.

2.2.1 The precept is to be legitimate

What competent authority commands one to do or to avoid must be within his scope of competence or authority. One may not be ordered to do something contrary to divine law or that is sinful²⁰ nor may one be forbidden from doing something he specifically has a right to do according to the CIC or based upon decisions of the Apostolic See. For example, a priest cannot be forbidden from celebrating Mass everyday (cf. can. 904), from praying the Liturgy of the Hours (which he has a duty to pray since he promised to do so on his ordination days and in line with can. 276), from celebrating the extraordinary form of the Mass (since 14 Sept. 2007)²¹ or from allowing only boys to serve at the altar²².

²⁰ THOMAS AQUINAS, II-II, q. 104, a. 5.

²¹ Cf. BENEDICT XVI, ap. letter *m.p. Summorum Pontificum*, artt. 1-2.

²² CDWDS, *Litterae Congregationis*, 27 July 2001, prot. n. 2451/00/L, 397-399.

Laypeople's rights are likewise to be respected. They are not to be forbidden from, for example, «vindicat[ing] and defend[ing] the rights they enjoy in the Church» (can. 221 §1) which could include presenting recourse to hierarchical authority (for example, can. 1737). Nor is competent authority to coerce one to choose a particular state of life (can. 219). A layperson otherwise properly disposed to receive Holy Communion is not to be denied the sacrament because he or she approaches the minister on his or her knees²³.

A prohibition that may appear to be too restrictive may still be legitimate. Competent authority has the duty to be concerned with the salvation of souls. Ordinaries and superiors who observe that a cleric does not appear to be seeking holiness in his life, as can. 276 §1 obliges, could require the cleric to undertake certain pious practices or forbid him from engaging in activity that could threaten his holiness of life. For example, competent authority could enforce can. 287 §2 if a cleric decides to run for political office or act as head of a labor union.

Concerning doctrinal matters falling under the umbrella of can. 1371, 1°, superiors in their vigilance may legitimately prohibit teachers in a Catholic school from teaching matters which go against Church teaching. The same prohibition would be called for if a teacher's witness of life were lacking (can. 804 §2). While the Ordinary would need to be mindful of civil law, his decision to eventually remove a teacher from his or her position (after the proper warnings have been given) would be within canonical regulations (can. 805).

It is not possible to list every possible legitimate or illegitimate precept that might ever be considered or imposed. Competent authority should keep in mind that the matter being addressed must be within the competence of the author of the decree, should be for the good of the individual himself, and should consider also the common good²⁴.

2.2.2 The precept should be specific (example)

The author of a precept should ensure that it is specific and that the facts contained in it are accurate (cf. can. 50). The precept may order a person or group of people to do something or to avoid doing something

²³ CDWDS, *Litterae Congregationis*, 1 July 2002, prot. n. 1322/02/L, 582-584.

²⁴ Cf. can. 223 §1: «In exercising their rights, the Christian faithful, both as individuals and gathered together in associations, must take into account the common good of the Church, the rights of others, and their own duties towards others».

else. The documentation of misconduct or unfortunate behavior should include dates and the number of times it was observed as having occurred. For example, «part of your homily at the 8, 10 and noon Masses on Sunday, 12 January 2014, included criticism of the diocesan bishop's decision to undertake a capital campaign». The precept should mention the expectations of the author: «such matters are not to be aired in a public way». It should have a clear conclusion:

Further public criticism of the bishop, whether during a homily or any other occasion that provides an audience to the priest, will be interpreted as persistent disobedience (cf. can. 1371, 2°) and may result in the eventual imposition of a just penalty, not excluding removal from your office as pastor (can. 1336 §1, 2°), or other consequences, including removal of your faculties to preach (can. 764).

2.2.3 The precept should be specific (example 2)

Another way to ensure that the precept is specific is for the author to avoid generalities such as: «Fr. Tizio is to demonstrate zeal for souls or will be subject to canonical penalties». Zeal for souls can be difficult to measure, so the precept should be more specific²⁵. Indeed there should be no doubt as to what is expected of the recipient. The decree, after stating the facts, should conclude similarly to the following:

From this date forward, Fr. Tizio is to: 1. Be present to the faithful after all morning Masses on Sundays; 2. Be in his office or on campus for no fewer than three hours in the morning, two hours in the afternoon and two hours in the evening on each workday; 3. Visit twice a month each classroom of students enrolled in religious education classes on Sundays; 4. Spend three hours per week at the parish school; 5. Respond to requests for anointing of the sick by the end of the day; 6. Attend parish council and finance council meetings, which are held once per month. Failure to fulfill the above-mentioned expectations may result in the eventual imposition of just penalties or other consequences, not excluding transfer or eventual removal from ministry and commensurate reduction in salary in accord with particular law (decree 17-2010, 11 June 2010).

The author of the precept must be sure to be objective when listing expectations. Note that the above precept contains specific commands/expectations that are measurable. The pastor, who is to lead by exam-

²⁵ Even so, «zeal for souls» is included as an attribute that is required in candidates for the episcopate (can. 378 §1, 1°) and is to be found in pastors (can. 521 §2).

ple, should also be present after Sunday Masses and as a result would know whether Fr. Tizio is doing the same. The school principal could be asked to write a brief report to the pastor or bishop memorializing the priest's visit to the school on a particular week. A form could be created for incoming sick calls, including the time the call was received and when the priest responded to it. Finally, the priest's attendance (or lack of it) at meetings could be known based upon the minutes of the meetings of the councils mentioned in n. 6 of the decree immediately above.

2.2.4 The precept should be detailed enough

We now consider another hypothetical penal precept, noting its detail in regards to dates, to the memorializing of a past meeting, and to the use of canons. It also explains how recourse against the precept (decree) may be presented. Moreover, a canonical warning is included in the precept. Here competent authority is commanding something, to be sure, after having already taken the initial step of meeting with the pastor. This meeting is memorialized at the beginning of the decree.

Penal precept imposed upon Rev. Tizio Bianco

Whereas, on 3 January 2014, the Vicar General and Diocesan Bishop met with Rev. Bianco concerning his failure to transmit the parish tax to the Diocese in a timely manner (cf. can. 1266) for the following months of 2013: January, March, May, July, September, October and December;

Whereas, during the same conversation, the definition of «ordinary» and «extraordinary» income was discussed and Rev. Bianco indicated his understanding of the distinctions;

Whereas, Rev. Bianco expressed his full understanding of the expectation of the Diocese of San Leone that the tax be transmitted to the diocesan account electronically on the 2nd of each month;

Whereas the taxes due for April and May 2014 have yet to be transmitted;

Whereas, the pastor is bound to fulfill his *munus* «with the diligence of a good householder» (can. 1284);

Decree

1. Rev. Bianco is hereby formally warned that the mentioned tax is to be transmitted to the Diocesan Chancery no later than the 2nd of each month;
2. Should the tax not be received in a timely manner beginning next month (July 2014), Rev. Bianco shall be considered persistently disobedient (can.

1371, 2°) and therefore subject to a just penalty, not excluding removal from his office of pastor (can. 1336, §1, 2°);

3. This decree is effective immediately.

Recourse against this decree may be presented in accord with the norm of law (can. 1734 §1 CIC); that is to say, within ten canonical days from the legitimate notification of this decree.

Given on this 6th day of June 2014

Signature of the priest

Signature of the Bishop

Signature of Notary

The bishop might first consider ordering a financial audit of the parish finances to see if there is a deeper problem, which may be related more to incompetent personnel at the parish than to any malfeasance on the part of the pastor.

2.2.5 Other considerations

It is important to note that the consequences for one's failure to follow a precept are not necessarily defined as penal in the CIC. For example, an ordinary's decision to remove a priest's faculty to hear confessions (can. 970) or to restrict or remove his faculty to preach (can. 764) or a diocesan bishop's refusal to grant delegation to a parochial vicar to witness marriages (can. 1108 §1) are not generally understood to be penalties. A bishop's decision to administratively remove a pastor (cf. cann. 1740-1752) or parochial vicar from a parish is likewise not penal in nature²⁶. Privation from the office of pastor, on the other hand, is considered an expiatory penalty (can. 1336 §1, 2°).

2.3 *How to impose canonical warnings*

It is worth mentioning again that one may be warned when there is serious suspicion that he has committed an offense or if he is in the near occasion of committing an offense (can. 1339 §1). A penal process may indicate a strong *fumus* of wrongdoing, but those involved in judging or assessing the matter are unable to reach moral certitude as to the

²⁶ Cf. J.A. GRAY, *Causes and Proofs*, 10. «The removal of a pastor is not a penal act».

accused's culpability in the matter. Or, while proven that the person committed a given offense, his imputability in the matter is uncertain; likewise, mitigating circumstances could lessen imputability. Warnings might also be given when competent authority, having received notice from different sources indicating questionable behavior on the part of a priest, concludes that if such behavior continues, the priest may eventually commit a serious offense. A penal remedy (including a warning) may be imposed upon one who has not committed a canonical delict; in this regard it is not a penalty. Penal remedies and penances might be considered «quasi-penal measures designed to protect the community against illegal behavior»²⁷.

Depending upon the gravity of the situation, competent authority should impose either a verbal or written warning upon the person. Unsubstantiated rumors that are brought to the attention of the bishop, a scathing anonymous letter for example, could give rise to the complaint being looked into if there is a serious suspicion of wrongdoing. When there is grave suspicion that one has committed a delict or is very close to doing so, or if a verbal warning had previously been given for the same matter, a written warning would be in order.

Before proceeding to issue a warning, competent authority should first verify to the best of his or her ability that a warning is called for. The written warning is to include an explanation of the suspected offense, the command to refrain from committing it again in the future, followed by the penalty foreseen for failure to obey the precept. The following written warning would be given after a precept had been imposed and when competent authority has reason to believe the commands included in the precept were not followed:

By decree of 17 June 2010, I ordered you, Rev. Tizio, to celebrate Mass only in an approved church or chapel. Recently competent authority received notice that you were seen in the local park celebrating Mass using a makeshift altar. Since none of the people accusing you would leave their names, it is impossible to verify with moral certitude the truth of the accusations. However, if, subsequent to your signing of this written warning it can be proven that you have not followed/observed/obeyed the mentioned decree, a just penalty shall be imposed, not excluding privation from your office of pastor at St. Francis Parish (cf. can. 1336 §1, 2°; 4°).

²⁷ T. GREEN, «Penal remedies and penances», 1556.

2.4 Non-canonical resources

Competent authority, while being faithful to the expectations of CIC, would do well to undertake a study of various materials available which address the topic of effective leadership. Effective leaders do not wait for things to happen or allow themselves to regularly do no more than react to situations; rather, they are proactive in their approach. By setting expectations verbally, in writing or through precepts or prohibitions, they leave little room for doubt in the mind of others as to what is expected and what will not be tolerated.

To illustrate the complementarity that often exists between ethical principles of management and principles of canon law, we can turn to a best selling leadership book entitled *The Seven Habits of Highly Successful People*. The author, Stephen Covey, defines these habits as: 1. «Be proactive» (including taking responsibility for decisions and their consequences); 2. «Begin with the end in mind»; 3. «Put first things first»; 4. «Think win-win» (look for mutually beneficial solutions); 5. «Seek first to understand, then to be understood» (use of empathetic listening); 6. «Synergize» (interaction and cooperation); 7. «Sharpen the Saw» (leaders should keep up to date on developments in their field but also renew themselves spiritually through, for example, prayer and recreation)²⁸.

Competent authority must not be fearful of adopting best management practices into the everyday running of a religious order or diocese, taking care to employ a balanced approach and to respect canonical and biblical principles²⁹. Expert Catholic laypeople might be approached for guidance.

2.5 Other considerations

A command or prohibition in the form of a precept may be imposed so long as it is legitimate and the authority who wishes to issue it is competent to do so. Competent authority is advised to act with prudence and charity, considering the good of the person and of the community.

One might consider the following:

What? What is the exact matter that needs to be addressed? Care must be taken to avoid generalities. Expectations must be measurable.

²⁸ S. COVEY, *Seven Habits of Highly Effective People*, New York 1989.

²⁹ Also worth considering is that as a result of a bishop taking seriously his duty to visit parishes in his diocese (cf. cann. 396-398), some issues may be addressed and resolved before getting to the point of grave concern. This conclusion is at least implicit in a work treating the subject. Cf. G.N. SMITH, *The Canonical Visitation of Parishes*.

Why? Why is it important/necessary that this particular issue/matter be addressed?

Who? Who should address the particular matter? Might this be handled by lower authority (vicar forane, episcopal vicar or auxiliary bishop) rather than the diocesan bishop himself? The smaller the matter, the easier it should be for the diocesan bishop to delegate its handling. This approach is in line with the principle of subsidiarity.

When? When should an issue be addressed? In general, matters should not be allowed to fester. Often when something is attended to right away it can be resolved before getting out of control.

Where? Where should the precept be issued? Precepts should normally be given in private. Generally the one issuing it and a witness should be present, along, of course, with the recipient.

How? How should a precept be imposed? In a given case should the warning be issued verbally first? Is fraternal correction called for first? Might a simple conversation be a suitable starting point? These questions should be considered, and, while consistency is important, there should be some allowance afforded for individual cases and those involved in them. Once competent authority determines to impose a precept it should be done in writing.

3. A checklist to ensure proper implementation of the canon

The following checklist is offered to assist competent authority.

3.1 *Clarity from the beginning*

We spoke already about the need to provide a warning or at least indicate in the text of a precept that what is contained in the precept is considered a canonical warning for the purposes of can. 1371, 2°. Even before this step, competent authority should define expectations in writing. For lay employees of a diocese or parish, clear job descriptions and rules governing the organization should be made known to each of them. In this way, it would be difficult for one to respond that he or she was unaware from the beginning of what was expected from him or her. It is important also that job descriptions and regulations should be updated as needed.

3.2 *Is the person to be considered persistently disobedient?*

If no warning has been issued, one cannot be classified as persistently disobedient. The person may be disobedient, perhaps, but only per-

sistently so if the person were put on notice. A precept specifically stating that failure to follow its contents will result in a just penalty is considered to suffice as a warning. It is necessary to make the proper distinction and not to make use of can. 1371, 2° (by imposing a just penalty) in matters of mere disobedience.

As pointed out in the third chapter, a number of crimes are punishable as a result of the act itself and therefore do not require that a warning be given (for example, any crime falling into the *graviora delicta* category).

3.3 *Following the requirements of the law*

When a report of wrongdoing has been received, the ordinary should undertake a preliminary investigation (can. 1720 CIC). Sometimes the accused person will admit wrongdoing and accept the penalty imposed upon him; in this scenario the case is resolved somewhat easily. In other cases, depending upon what was uncovered during the preliminary investigation, the ordinary may proceed to judge the matter. Though the CIC prefers that a judicial process be celebrated, can. 1342 allows competent authority to proceed by way of extrajudicial decree by undertaking an administrative penal process (can. 1720 CIC). In regards to an administrative penal process, it must be remembered that even though the proofs may be overwhelming, the bishop or superior must not neglect to ensure the right of defense for the accused (can. 1720, 1°) before weighing the evidence with the assistance of two assessors (can. 1720, 2°). In addition to being faithful to the requirements of the law, competent authority also gives the accused person less of a reason to perceive unfairness or arbitrariness on the part of the superior. Finally, a decree containing the reasons *in iure et in facto* is to be issued in accordance with cann. 1342-1350 (can. 1720, 3°). A well-motivated decree that sets forth that warnings had been given and documents persistent disobedience would seem to have a good chance of standing the rigors of hierarchical recourse.

That the law is to be respected and followed is worth repeating: «When we follow the requirements of the law, even if we take a decision that's unfavorable to people, at least they know that it was taken legitimately with respect to what the Church requires for that decision»³⁰. This statement by Cardinal Burke, who at the time was the Pre-

³⁰ R.L. BURKE, «Hew to canon law when closing churches», 9 May 2014.

fect of the Apostolic Signatura, was made in regards to the closing of churches, but it also applies to other matters that touch on canon law. The implication seems to be that there is a connection between legality (competent authority following the law) and justice (the rendering of a just decision). The Cardinal's statement is also relevant to bishops when they make decisions, as well as judges.

3.4 *Just penalties*

It is not always easy to determine what a just penalty should be for a given crime. Going back to the fonts in chapter one, we recall that various penalties were prescribed or foreseen; for example, the handing over of disobedient priests to the Curia to be punished. Depending upon the gravity of the crime and other circumstances, it was for curial officials to determine specific penalties in specific situations (cf. section 2.1.3, chapter 1). Other penalties included: excommunication; prohibition from office; suspension; deprivation of one's status as a presbyter; deprivation of spiritual goods; denial of office (including Pontifical or episcopal); anathema; deprivation of benefice; and, in the words of the time «incurrence of the wrath of God» (cf. especially sections 2.1 – 2.10, chapter 1).

The CIC allows the ordinary and judges (in a judicial penal process) a wide range of leeway in determining what a just penalty might be in a given situation, but they may not go beyond what the law allows and are to consider the relevant canons in Book VI, already discussed in chapter 3 of this work, including cann. 1323, 1324 and 1326. In addition, the following should be taken into consideration:

Does the punishment fit the crime? Is it neither too lenient nor too harsh to repair scandal, restore justice and reform the offender (cf. can. 1341)? A penalty that is too soft can make a mockery of the judicial system as well as do little to bring about the eventual reform of the offender or to restore justice. Additional scandal might result when others learn that a guilty party suffered few if any consequences for persistently disobedient behavior. A penalty that is too harsh could deprive the guilty person and others of, for example, spiritual benefits³¹.

Is the punishment oriented towards the spiritual well being of both the accused and accusers? If it assists the parties on their path to refor-

³¹ For example, when a priest is dismissed from the clerical state, he along with the faithful could be deprived of spiritual goods or benefits of a spiritual nature.

mation (for the offender) or wholeness (for the one offended if he/she perceives that justice has been served, for example), the punishment (or penance) can be a conduit leading the person into a deeper relationship with Christ. In this way, it touches upon the *salus animarum* for the offender, both at the present time (if one gets back on the right track) and in the future (when the reform takes root and the conversion perdures).

Is the punishment perpetual in nature? The just penalty imposed upon one culpable under can. 1371, 2° is usually not perpetual in nature (in accord with can. 1349) though we observed in the last chapter that it is not out of the question for a priest to be dismissed from the clerical state for failing to abide by precautionary measures imposed upon him as a result of having been accused of more serious delicts³².

Is the punishment consistent with penalties imposed for similar offenses committed by others in the past, at least in the diocese or religious institute in question?

Does the punishment take into consideration any aggravating or mitigating circumstances (cf. cann. 1326; 1324) that might call for the imposition of a heavier or lighter penalty?

Does the punishment go beyond what is permitted in canon law? For example, a diocesan priest culpable of persistent disobedience must «not lack what is necessary for his worthy support» (can. 1350 §1; cf. can. 384), though a bishop is not required to provide remuneration to a priest not in an assignment. A diocese should have a properly promulgated policy in place regarding remuneration. Nor may a perpetual penalty be imposed unless foreseen as a response to the offense (can. 1349).

3.5 *Creating particular law*

A diocesan bishop may wish to establish particular law in his territory. In my diocese of incardination, in 2009 the then-ordinary promulgated particular law which included expectations for pastors, parochial vicars and senior priests³³. Eventual lack of cooperation or signs of persistent disobedience could result the bishop determining not to offer the priest an assignment, proper warnings having been given. A priest who considers himself aggrieved by the bishop's decision to not assign him

³² Cf. M. MOSCONI, «Il vescovo davanti al sacerdote che abbandona il ministero», 401.

³³ T.D. BROWN, decree, 1 July 2009, in effect in the Diocese of Orange in California, USA.

to active ministry (with corresponding reduction in salary), could present recourse to the Congregation for the Clergy (cf. can. 1737 §2, *PB* 93, 96).

Mentioned elsewhere in this work is the need for competent authority to make expectations known. A clear and canonically sound policy communicated to interested parties should leave little room for confusion. In regards to particular law mentioned in the paragraph above, seminarians should be considered an interested party since they will be expected to abide by the law once they will have been ordained. If a seminarian should determine that the expectations for priests in the diocese for which he is studying are too high or are unrealistic, it would be for him to seriously consider with all goodwill whether he should continue in formation. He might be very contemplative and at the same time have the tendency to shy away from encounters with the faithful, for example. In such a case, he might be better suited to live as a contemplative religious.

3.6 *Other considerations*

The reality in a given diocese, territory or religious institute should also be taken into consideration. What is the ordinary to do if a member refuses to obey? Without suggesting that the criteria hitherto analyzed are relative, it would seem that in some situations, reality might invite the bishop to eventually drop the matter. Suppose, for example, a certain priest is not following approved liturgical norms and, after several interventions on the part of the bishop, the priest remains steadfast in his desire to celebrate Mass the way he wishes and not in accord with what the liturgical books indicate. The bishop might wish to weigh a number of factors before determining how strongly to pursue the matter. If the priest is in a missionary country where priests are few, the bishop of that diocese may (reluctantly) eventually drop the matter. On the other hand, if his diocese does not lack priests, the bishop may consider imposing appropriate penalties upon the offending priest for his persistent disobedience.

4. **Questions open to further study**

We have discussed in length the value of can. 1371, 2°. At the same time, questions have arisen and *lacunae* have been pointed out. We now consider specific matters that might be the subject of further study.

4.1 *Obedience to authority not specified in can. 1371, 2°*

An area not covered in this work is whether obedience is owed to a person who is not designated as a vicar of the bishop but who wields some power and authority. This is an issue that arises in some countries where laypeople have been entrusted with positions in chancery offices and who are responsible for implementing certain initiatives of the bishop.

For example, a situation arose in 2004 when a lay director of liturgy³⁴ sent out a memorandum explaining the diocese's position in regards to the implementation of the instruction *Redemptionis Sacramentum*, prepared by the CDWDS in collaboration with the CDF and at the mandate of Pope John Paul II, who approved the instruction³⁵. Some of the directives contained in the memorandum went against what is found in *RS*. No little consternation resulted among priests and laypeople who were aware of the contents of the mentioned instruction and interpreted the letter as a nothing more than an excuse not to implement the changes needed in order to be in conformity with the legitimately promulgated instruction.

We have already established that one is not held to follow illegitimate commands. However, if there is doubt as to whether what is being commanded is legitimate, must priests and lay faithful yield to the commands? It would seem that if a priest (to whom the memorandum was addressed) considers himself aggrieved by the command and is unable to obtain satisfaction by discussing the matter with the author of the memorandum, he would do well to present his concerns and eventually formal recourse to the bishop, the author's hierarchical superior. If the bishop chooses not to respond or rejects the recourse outright, the aggrieved party or parties would have the canonical right to present recourse to the Congregation for Divine Worship and Discipline of the Sacraments (*PB* 62).

By extension, then, it would seem that one aggrieved by a decision of a non-vicar or by one whose authority is ambiguous could always have recourse to the bishop and then to the competent dicastery of the Apostolic See. Should the aggrieved person instead refuse to do what is asked, it would be for someone with canonical authority to impose a

³⁴ The specific case involved a layperson. However, there could be times when a cleric is put in charge of a diocesan office. Similar concerns could be offered if the authority enjoyed by a priest or deacon holding an office is not well defined.

³⁵ CDWDS, instr. *Redemptionis sacramentum*, 25 March 2004.

warning and later a punishment upon him if he continues to disobey. But it would seem that competent authority would need to specify that the warning or punishment is not for failure to obey a lay employee. The diocesan bishop, for example, might have to include in the precept that the priest in question is to obey what is contained in the memorandum. In effect, the bishop would be making his own the contents of the memorandum and any future disobedience on the part of the priest would then be to the bishop and not the author of the memorandum³⁶.

4.2 *Unmotivated priests*

Sometimes punishments may have little effect upon one who is persistently disobedient. A priest who wishes to do nothing more than celebrate Mass would seem to be affected little by consequences not of a financial nature. The CIC does allow for different pay scales (can. 281 §1), so such a possibility is foreseeable. The same priest who has no desire to be named pastor or to another office, for example, would not be affected.

Also in this category might fall priests who serve outside their home countries. Cultural differences in regards to authority, punctuality, dress code, preaching praxis, availability, socializing and the like should be addressed as much as possible before incardination to help ensure that expectations are clear and that the person is truly suited to serve in a foreign environment.

4.3 *Dealing with tough cases*

We already observed some negative consequences of bishops not following a command or decision of the Apostolic See. There can be times, however, when the bishop in conscience is unable to execute such a decision or judgment handed down by the Apostolic See, even if no objections touching on canon law can be presented. The bishop would do well to present his objections to the particular dicastery³⁷ or

³⁶ Though I offer an analysis, it seems this topic would still be worthy of further study given the increased authority enjoyed by laypeople in certain countries.

³⁷ Cf. can. 41: «Exsecutor actus administrativi cui committitur merum executionis ministerium, executionem huius actus denegare non potest, nisi manifesto appareat eundem actum esse nullum aut alia ex gravi causa sustineri non posse aut condiciones in ipso actu administrativo appositae non esse adimpletas; si tamen actus administrativi executio adiunctorum personae aut loci ratione videatur inopportuna, exsecutor executionem intermittat; quibus in casibus statim certiore faciat auctoritatem quae actum edidit».

even pay a visit and speak to the superiors. When the bishop's refusal to implement a decision would result in a grave injustice to the recurrent or to the People of God, the bishop would have a difficult time justifying his action (or lack of it). On the other hand, when the implementation of a decision could have grave consequences for the People of God or for the common good, the bishop might eventually determine that he needs to bring the matter personally to the Holy Father for his consideration, in the event that the bishop is unable to convince the superiors of the competent dicastery of the gravity of the matter and/or special circumstances connected with the case.

Indeed there can be times when a decision rendered may be canonically sound but for whatever reason the bishop or the one whom he delegated to prepare a response to the hierarchical recourse does not adequately respond to the objections presented in the recourse. Depending upon the gravity of the matter, it would seem that hierarchical authority may wish to double check with the bishop to make sure that the pertinent *acta* have been transmitted and all of the facts presented³⁸.

4.4 *Call for greater accountability*

Accountability can be defined as being «responsible to someone or for some action; answerable»³⁹. There has been a concerted effort on the part of some to push for consequences for bishops who fail or fall

³⁸ In a case dating back to the early 1990's, not published, a bishop found himself in a difficult position. The competent dicastery of the Apostolic See decided that the recurrent priest offender was to be returned to ministry (either due to prescription of the action or age of the accuser). The decision was not incongruent with norms found in the CIC, but the bishop was convinced that if he returned the priest to ministry, he might offend again. For the good of the Church and the protection of the faithful, the bishop determined that he would not return the priest to ministry, but would make sure that the priest was provided for financially. The bishop did not want to be disobedient to the authority issuing the decision, but in conscience could not implement it. He pursued the matter and, upon further review, it was discovered that in fact not all of the pertinent information was provided to the dicastery making the decision and therefore that the decision rendered was based upon consideration of only partial information. Once all the facts were made known to it, the dicastery reached a different decision, this time more in consideration of the common good. In this case, it would not be accurate to state that the bishop in question was disobedient; he went through the proper channels to ensure that all the facts of the case were indeed clear and known and acted in accord with can. 41 (cf. footnote 37). This is different from other cases examined in this work where a bishop simply refuses to comply.

³⁹ <http://www.wordreference.com/definition/accountability>.

short in their exercise of governance, specifically in the area concerning the protection of minors. In this regard, it would seem that had diocesan bishops and religious superiors understood and properly exercised their power of governance in the 1970's and 1980's, this issue would receive much less attention today.

There is also the question of the authority of conferences of bishops in regards to holding accountable individual bishops who fail to implement or follow particular law established by the conference of which the offending bishop is a member. The CIC states that conferences of bishops enjoy legislative authority within strict limits (can. 455). Even when the Apostolic See has given its *recognitio* to a law at the request of a bishops' conference and it becomes particular law (can. 455 §2), there are no provisions for coercing individual bishops to abide by or to implement said law. Similarly, a bishops' conference does not possess canonical authority to coerce a diocesan bishop to implement a decision of the Apostolic See⁴⁰.

Competent authority must take care to avoid any abuse as regards the exercise of its *potestas* or governing authority. Canon law is not to be used to justify absolute or arbitrary exercise of power on the part of the hierarchy. It is to be used correctly, fairly and responsibly⁴¹.

Also important is that attention be paid to accountability of seminarians during their years of formation. Those responsible for overseeing seminary formation must take seriously their duty to properly gauge the candidate and not easily recommend one who displays signs of unsuitability. While those charged with seminary formation would be irresponsible and unfair to eliminate from consideration a candidate simply be-

⁴⁰ Concerning bishops being in communion with each other, at least in regards to pressing moral questions, cf. D.J. MALLOY, «The Diocesan Bishop, the Episcopal Conference and *Communio*». On page 43, Malloy points out that «decisions in one diocese can cause perplexity among the bishops and faithful in other dioceses».

⁴¹ J. HERRANZ, «*Salus Animarum, principio dell'ordinamento canonico*», 298-299. «Ciò per evitare – attesa la fallibilità della natura umana – tanto l'abuso di potere quanto – ciò che oggi costituisce un maggiore pericolo – l'atteggiamento rinunciatorio e indolente nell'esercizio dell'autorità medesima, che è stata conferita da Dio per edificare non per distruggere o lasciare irresponsabilmente che altri distruggano. A nessuno sfugge come questo arricchimento dottrinale e normativo sulla natura e l'esercizio dell'autorità nella Chiesa abbia svuotato di reale contenuto scientifico le dannose critiche fatte al Diritto canonico da coloro che vedevano in esso uno strumento al servizio del potere assoluto o dell'arbitrio della Gerarchia, la quale – con una discrezionalità illuminata – agirebbe senza alcuna responsabilità giuridicamente esigibile».

cause he holds views on certain matters which are contrary to those in charge of his formation, formators cannot overlook sometimes grave signs of problematic behavior. This was illustrated in chapter four in the cases concerning priests who manifested problems in the seminary and continued to have problems into their priesthood⁴². There appears to be nothing in place to hold competent authority accountable in this regard. It is not uncommon for a bishop to have been named to or transferred to another diocese or in retirement before grave problems become clear⁴³.

4.5 *To whom are bishops accountable?*

To the question, «to whom are bishops responsible?», we conclude that there is not a definitive answer. While the CIC (esp. cann. 383-402) lists the many duties that fall upon a bishop, nowhere does the Code indicate to whom the bishop reports. Of course, the pope exercises *potestas* over all of the faithful, including prelates. As mentioned in chapter two, there are examples of bishops being removed by the pope for serious reasons (normally not made public), but for issues that might be less important or less urgent, action on the part of the Apostolic See sometimes seems to be slow in coming in regards to enforcing its decisions that a bishop refuses to execute.

Bishops are accountable to the Lord, «but also to their people. They owe their people good stewardship»⁴⁴, according to C.J. Scicluna, who points out that while canon law reserves to the pope power to impose sanctions or penalties on a bishop, a papal nuncio can also play a role in prompting the pope to act in a given situation. Scicluna has stated

⁴² This theme was written about as regards judicial processes: «Alcuni sacri pastori non sono esenti da responsabilità riguardo alle gravi situazioni alle quali si deve porre rimedio nel rispetto della procedura prevista [...] In primo luogo perché hanno conferito l'ordinazione sacerdotale o affidato mansioni pastorali a persone non idonee, pur essendo consapevoli di detta inidoneità o per non averla riconosciuta come tale. In secondo luogo, perché in seguito alla conoscenza dei fatti oggettivamente perniciosi, detti sacri pastori non hanno adottato le dovute misure cautelari o disciplinari». J. LLOBELL, «Il diritto e il dovere», 74 and quoted in P. BUSSELLI MONDIN, «Il diritto di difesa in ambito disciplinare», 680.

⁴³ Pope Francis has mentioned on more than one occasion the matter of bishop accountability: «All bishops must carry out their pastoral ministry with the utmost care in order to help foster the protection of minors, and they will be held accountable». FRANCIS, homily, 7 July 2014.

⁴⁴ J.L. ALLEN, «Vatican abuse summit: "Bishops must be held accountable"», 8 February 2012.

that «ecclesial authority has to be further developed», but that what is currently found in the CIC needs to be applied rather than changed⁴⁵.

4.6 Lacuna? *Punishment for bishops who refuse to implement a decision of the Apostolic See*

Though can. 1371, 2° calls for the imposition of a just penalty upon an ordinary who will not execute a decree issued by the Apostolic See, in practice this appears to be rare⁴⁶. One reason could be that bishops are successors to the apostles, and dicasteries wish to respect the dignity they enjoy. However, one might question whether a dicastery's apparent unwillingness to enforce the execution of a decree truly helps ensure that justice is being served. The CIC, for good reason, allows recourses to be presented by an aggrieved party. Dicasteries, possessing vicarious *potestas*, execute decisions against which an aggrieved party (e.g., a diocesan bishop) may present recourse. When a bishop refuses to implement such a decision, negative consequences can result, as we read in chapter 4.

Canon 128 provides some relief for one who believes he has been wronged by his bishop, stating «whoever illegitimately inflicts damage upon someone by a juridic act or by any other act placed with *dolus* or *culpa* is obliged to repair the damage inflicted». When a bishop fails or refuses to execute a legitimate command or decision issued by a dicastery of the Apostolic See, it would seem that he should be held to the standard indicated in the canon.

Ultimately the pope is competent and responsible to discipline cardinals, nuncios and bishops (can. 1405 §1, 2°, 3°). Only in the most serious matters would he involve himself in the removal of bishops. Justice would call for the bishop's right to be heard; he should always be allowed to tell his side of the story. Yet it would seem that if a pattern is established that a certain bishop continually refuses to implement decisions of the Apostolic See, removal or demotion could be considered a just consequence⁴⁷.

⁴⁵ J.L. ALLEN, «Vatican abuse summit: "Bishops must be held accountable», 8 February 2012.

⁴⁶ However, *PB* 79 states that the Congregation for Bishops is competent to apply itself «to matters relating to the correct exercise of the pastoral function of bishops».

⁴⁷ Cf. *Rescriptum ex audientia Ss.mi*, 5 November 2014. Article 5: «In alcune circostanze particolari l'Autorità competente può ritenere necessario chiedere a un Ve-

5. **Brief summary**

This short chapter considered conciliation, including principles guiding it and how to put it into practice. It showed how to impose a precept and provided a checklist to assist competent authority in properly implementing the canon. It pointed out that often the joining of accepted management principles with canon law can be congruent and that what is done well in the secular realm can often be incorporated by competent church authority in an authentic way. Finally, the chapter offered suggestions for possible study in the future.

These various matters having been considered, we now proceed to the conclusion, where a brief summary of this work will be provided along with suggestions for the reader to contemplate.

scovo di presentare la rinuncia all'ufficio pastorale, dopo avergli fatto conoscere i motivi di tale richiesta ed ascoltate attentamente le sue ragioni, in fraterno dialogo».

CONCLUSION

1. General findings

This work has examined persistent obedience to competent Church authority from various perspectives, including historical (by means of the fonts), exegetical (by studying the narrative behind the words making up the canon) and jurisprudential (in the form of recourses presented to various dicasteries of the Roman Curia) and has presented contemporary considerations of our canon of study, 1371, 2°. Having pondered the material contained in the five chapters making up this work, we are now prepared to offer some universal conclusions in regards to the content, interpretation and importance of the canon and benefits of its proper implementation. We will begin, however, with a brief summary.

Our analysis of the fonts on which can. 1371, 2° are based, undertaken in chapter 1, brought to light the development of our understanding of persistent disobedience. The disobedience in question often concerned a person doing something competent authority had commanded him not to do or not doing what competent authority had commanded him to do. Examples included: the willing transgression of the commands of the Apostolic See; refusing to consent to the bishop; contempt of the Apostolic See; failure to inform the local bishop before building a monastery; and not obeying one's bishop. For their part, bishops were considered disobedient when they failed to execute a decree or when they did not exercise proper oversight of their subjects or were negligent in this regard.

Penalties, which have been attached to disobedience going back to the first century, have included suspension, excommunication, deprivation of spiritual goods, ineligibility to receive an honor and condemnation. A cleric could be prohibited from celebrating the sacraments, could be deposed (lose the clerical state) or lose his benefice. The pen-

alty varied according to the seriousness of the violation and to the state of life of the offender, be he a cleric or layperson. There was an awareness that the punishment should fit the crime. Also implicit was a concern that scandal may have been given to the community of believers.

Sometimes the disobedience was grave enough not to require a warning before being punishable. Other times it was determined that a warning first had to be issued. More recently (for example, the situations explained in sections 2.12.1 and 2.12.2 in chapter one), the fact that a matter was decided and decreed was considered a warning in itself. This conglomerate of findings all came into play in the drafting of can. 2331 §2, CIC 1917.

The CIC 1917 brought together prior legislation and packaged it into a concise canon, 2331 §1, which foresees that those who persistently do not yield to (obey) a precept or prohibition of the Roman Pontiff, their proper ordinary or another competent authority (*aliquid*) are to be punished with a suitable penalty, not excluding a censure, according to the gravity of the crime. Moreover: 1) any baptized person above the age of reason and who possesses sufficient maturity is subject to the canon; 2) competent authority includes the Roman Pontiff, an ordinary and other superiors; 3) a command or prohibition issued by competent authority must be legitimate; 4) one must be pertinacious in not following a command, which *de facto* means that a warning must have been given; 5) an offender is to be punished with a suitable penalty, not excluding a censure, the gravity of the crime having been taken into account. Furthermore, the key verb in the canon, *obtemperare*, often translated «obey», is better rendered «yield to» or «comply with».

Canon 1371, 2° CIC 1983 contains few substantial differences from can. 2331 §1 CIC 1917, with the new text widening the scope of the canon and rendering it more precise and less precise at the same time. The modifications also reflect a certain development. Specifically, the changes contained in can. 1371, 2° include an expanding and precision of who the canon considers competent authority – «Apostolic See» instead of «Roman Pontiff»; «superior» instead of «other» [competent authority]; «ordinary» instead of «proper ordinary». Taking into account that subsidiarity was one of the principles of the revision of the Code and resulted in a commensurate increase in the number of recourses presented against decisions made by competent authority, it is most fitting that «Apostolic See» replaced «Roman Pontiff». There should now be no confusion that the intended recipients must comply with the final decisions of dicasteries of the Roman Curia. Additional-

ly, can. 1371, 2° clarifies that a warning is required before a punishment may be imposed, where can. 2331 §1 implies this with the use of the word «pertinaciter».

There are some elements of can. 1371, 2° that are less precise than its 1917 counterpart. For example, unlike can. 2331 §1, the text of can. 1371, 2° does not specify that competent authority could impose a censure as a just penalty or that competent authority is to take into account the gravity of the crime before determining a just penalty. However, these missing elements are implied in the current canon.

Common in both canons is that a crime has to be juridically imputable to the person *ex dolo*. «Dolus», generically translated as malice «is the positive will to act against the law, humanly and freely, whatever the reasons may be that lead to violating the law or precept, provided that freedom continues during the act»¹. The crime may also be imputable *ex culpa* when the person is at fault. Therefore if two people commit the same delict, one might be punished more or less harshly depending upon specific factors.

From the CIC we learn that a just penalty can be either medicinal – namely excommunication, interdict or suspension (upon a cleric) – or expiatory (including deprivation from office). However, the application of penalties falls largely on competent authority, who is to keep in mind that the Supreme Legislator foresees that such a penalty will be imposed upon one persistently disobedient to a legitimate precept or prohibition issued by competent authority, a change from the original *schema* which provided leeway to competent authority, who could punish the offender if he wished but was under no obligation to do so. Depending upon other circumstances, a penalty may be augmented or reduced or competent authority might decide to impose a penal remedy or penance on the offender. The difficulty of determining a just penalty in particular cases cannot be minimized, and since only five expiatory penalties are listed in the CIC 1983 (compared to the CIC 1917, which contains twenty-four), the current Code is not overly helpful in this regard.

We must briefly consider that can. 2331 §1 CIC 1917 and 1371, 2° CIC 1983 contain, as the principal verb, the word «obtemperare», which is commonly rendered «obey» in English. There are some nuances to the word. *Obtemperare* can be rendered «abide by, accede, ac-

¹ V. DE PAOLIS, *De sanctionibus in ecclesia*, 57. Translated in A. MARZOA, «Those Who Are Liable to Penal Sanctions», 271.

cept, adhere, attend to, fall into line, comply with, take the true sense of the command, fulfill, submit, yield». One who does not yield to, comply with, fall into line with or abide by a command or prohibition is not obedient to the command or prohibition and he is persistently disobedient if, after a warning, he continues the behavior. We observed that the obedience foreseen in the canon (by means of the verb *obtemperare*) is less profound than a vow of *obedientia* made by a religious but that this complying with, abiding by or adhering to a command is necessary to keep order.

To sum up the canon in a paragraph, I would propose the following:

All baptized Catholics over the age of reason are held to comply with commands or prohibitions legitimately imposed by the Apostolic See (including the pope and Roman Curia), an Ordinary (the diocesan bishop or other person enjoying ordinary power) or another Superior (often of a religious institute) who has authority over the person. If, after competent authority has given a warning to a person who does not comply, that person continues to be disobedient, the same competent authority, having determined the culpability of the person, is to impose as a punishment a suitable penalty according to the gravity of the crime.

But how does this play out in everyday life? What if a person considers a command to be unjust or unfair? What if he or she has been punished and concludes the penalty is too harsh or never should have been imposed? Chapter four of this work examined recourses that had been presented by aggrieved parties. Specifically studied were the content of the recourses, the decisions arrived at by various dicasteries in response to the recourses along with motivations behind the decisions rendered. Examples were provided of attempts at conciliation on the part of a dicastery of the Roman Curia.

In the cases examined, competent authority sometimes cited can. 1371, 2° in a precept imposing precautionary measures: upon one priest, ordering him to return to the diocese or religious house, and upon a second priest, who was forbidden from celebrating Mass at an unapproved shrine; upon a laywoman, forbidding her from worshiping at a certain parish; upon all the faithful, forbidding them from participating in any way at the same unapproved shrine. These examples are representative of the many different possible situations that occur and which competent authority might find itself facing.

The cases involved the imposition of various just penalties, including suspension, deprivation from office and even dismissal from the clerical state when persistent disobedience was attached to a more grave de-

lict. We also noted times when no penalty was imposed for disobedient behavior.

What should the reader walk away with having read and studied this work? Based upon the law as it is written and the study of cases, we can now offer the following conclusions:

- Disobedience on the part of clerics is addressed more frequently than on the part of lay people according to current jurisprudence;
- The issuing of a warning before a penalty may legitimately be imposed has always been a *condicio sine qua non* before one might be considered persistently disobedient, even if it was only implicit in prior legislation;
- Competent authority from a religious institute, diocese or the Apostolic See should, as much as possible, be consistent in the issuing of warnings;
- Warnings should be given in a fair, just and non-capricious manner and for reasons grounded in law;
- The imposition of a warning can result in the prevention of more grave offenses in the future;
- Competent authority should impose penances and penal remedies when appropriate, and it is not necessary to first undertake a penal process;
- Before issuing a warning and eventual penalty, competent authority should investigate as to what might be at the root of a problem;
- Practically speaking, in the cases described in chapter 4, competent authority did not regularly cite can. 1371, 2° when issuing warnings in the form of a precept;
- It is important for competent authority to make expectations clear, which can be done in a written warning or rebuke (can. 1339) or precept;
- Sometimes bishops do not follow decisions of the Apostolic See; concrete consequences for this disobedience appear to be few if any;
- Bishops who refuse to implement a final decision of the Apostolic See demonstrate a lack of respect for the law and for others and jeopardize the proper authority of the body established to assist the pope in the governance of the Church as well as call into question their own governance and demand for obedience;
- The effects of disobedience are not confined to the disobedient person but often negatively affect the community;

- One cannot be ordered to be obedient to something impossible, but he can be punished for creating the impossibility;
- Proper application of can. 1371, 2° will be helpful if a recourse is later presented to a dicastery of the Apostolic See;
- It is often difficult to determine the proper penalty to be applied in a given situation;
- In general the legislator does not foresee the imposition of a perpetual expiatory penalty upon one culpable for persistent disobedience under the provisions of can. 1371, 2°;
- It can be difficult to balance the protection of the faith with the desire to be open to possibly legitimate phenomena (for example, in cases of presumed apparitions);
- Prolonged negligence in the handling of certain matters may result in the eventual imposition of drastic measures in order to compensate for the earlier failure of oversight;
- The use of conciliation should be considered with the goal of arriving at a solution acceptable to both parties;
- The virtue of patience can help to temper one's tendency to attempt to resolve a matter too quickly.

We can also propose «Ten Commandments» to competent authority to help ensure proper implementation of can. 1371, 2°

1. Thou shalt be sure to issue a written warning before proceeding penally;
2. Thou shalt warn only those people subject to you and for matters over which you are competent;
3. Thou shalt clearly and concisely set out expectations in a command, prohibition or warning and schedule follow up meetings with the person to ensure that the precept is understood and is being respected;
4. Thou shalt be as consistent as possible in applying this canon;
5. Thou shalt keep in mind that the penalty/punishment should fit the crime;
6. Thou shalt act with concern for the *salus animarum*;
7. Thou shalt be proactive in your *munus* of governance;
8. Thou shalt be obedient to the legitimate commands of your hierarchical superiors, including the Apostolic See;
9. Thou shalt normally undertake a penal process before imposing penalties upon one accused of a delict (cf. cann. 1341; 1342; 1718 §1).
10. Thou shalt attempt to employ conciliatory methods when possible.

Likewise we might consider the following «Ten Commandments» for those not considered «competent authority», both clerics and lay-people, who are likely to be the recipient of a precept or prohibition:

1. Thou shalt comply with legitimate commands or prohibitions imposed by your superior;
2. Thou shalt cooperate with your superior (mainly for clerics);
3. Thou shalt ask for clarification if a precept is not clear enough;
4. Thou shalt be honest with your superior and tell him or her if, for legitimate reasons, you are unable to follow a precept;
5. Thou shalt have a genuine concern for the common good;
6. Thou shalt keep in mind that the ordinary is responsible for the well-ordering of the institute or diocese;
7. Thou shalt keep in mind that an overabundant focus on individual rights might take away from the Church's mission of preaching the Good News;
8. Thou shalt remember that the Church has avenues in place for one to submit a hierarchical recourse against a decision that seems unfair and that you may avail yourself of this provision;
9. Thou shalt strive to resolve disputes in a spirit of conciliation whenever possible;
10. Thou shalt recall the promise or vow of obedience made at your ordination and therefore you are to yield to the legitimate decisions or conclusions of your superior (for clerics only).

2. Why is can. 1371, 2° important?

Various difficulties in implementing the canon notwithstanding, this work has allowed us to conclude that there are several reasons why competent authority should have a proper understanding of this canon and its parameters and to implement it when appropriate.

2.1 *Salus animarum*

A common thread in this work is the primacy of concern for the *salus animarum*. What is foreseen in this canon – the giving of a warning and the eventual imposition of a just penalty when one persistently disobeys the warning – is in place for various reasons, including for the salvation of souls. Competent authority is to have the utmost concern for the eternal salvation of those entrusted to him. Acting unjustly might have the opposite effect (going against the good of souls) for both the accused and community.

2.2 *Good order of the Church*

When people know what to expect, there tends to be good order and harmony. There should be no surprises when it comes to expectations concerning clerics and laypeople. Accountability across the board should be expected and enforced.

When competent authority correctly understands and implements can. 1371, 2°, the result could be more accountability for each member of the Church (though admittedly more so for clerics): bishops to the Apostolic See, clerics to their ordinaries and to the Apostolic See and perhaps to their religious superior; laypeople to their Ordinary and Apostolic See.

2.3 *Protection against scandal and more grave disobedience in the future*

Proactive addressing of matters can be beneficial to the disobedient person and to other faithful who are associated in some way with the person. Disobedience can be manifested in different ways, not always directly (for example, in a priest's celebration of Mass, including preaching). A seminarian might regularly appear unable or unwilling to yield to the legitimate commands of the rector, who is responsible for the man's formation. If the concerns are presented to the seminarian, hopefully he changes his behavior, which should be the goal. If not, it should be asked whether he is suitable for ministry and should remain in the seminary or be dismissed. If problematic behavior continues into his priesthood, this could be detrimental for his fellow priests, his pastor, the bishop and the people of God².

Likewise competent authority would do well to keep in mind, when discerning which battles to fight, that decisions made today set precedents for the future. Therefore, refraining from taking action or taking decisive action will be noticed by others and will affect the superior's relationship with members of the faithful, both clerics and laypeople. Obviously a delicate balance is at play here.

² The reason for presenting seminary formation as an example is because can. 1371, 2° is used more to hold clerics accountable rather than laypeople. Competent authority must take personal blame when it could have or should have foreseen future grave problems but in practice chose not to address the matter.

2.4 *Protection of the Faith*

One conclusion from our study of jurisprudence, which concerned recourses presented to a dicastery of the Holy See by an aggrieved party against a decision made by a competent superior, is that failure or refusal on the part of a bishop to implement legitimate decisions of the Apostolic See can lead to the aggrieved party developing a sense of mistrust of the hierarchy. This mistrust can extend to other parties who hear about the bishop's behavior³. The possible loss of confidence in one's ordinary or in the hierarchy in general and disillusionment on the part of the priest and other faithful is a serious matter; some people point to a lack of trust or confidence in the hierarchy as a justification for their leaving the Church and for discontinuing the practice of the faith. Conversely, his proper implementation of such decisions at least would seem to result in a respect for and trust in a bishop.

2.5 *Spiritual benefits*

There are benefits of a spiritual nature that can result when one is obedient to competent authority. There can be freedom in yielding to the legitimate commands of others, especially, it would seem, when a cleric is obedient to his ordinary and to the apostolic see. This is in line with the homily given by Pope Benedict XVI during his final Chrism Mass in 2012. After lamenting that «recently a group of priests from a European country issued a summons to disobedience, and at the same time gave concrete examples of the forms this disobedience might take, even to the point of disregarding definitive decisions of the Church's Magisterium», he asked, «do we sense here anything of that configuration to Christ which is the precondition for all true renewal, or do we merely sense a desperate push to do something to change the Church in accordance with one's own preferences and ideas?⁴». Clerics and laypeople alike would do well to seriously reflect upon and take to heart the pope emeritus' advice.

3. **Reflection on opportuneness and *aequitas canonica***

As has been stated more than once in this work, for one to be disobedient it is necessary that the authority who issues the command or pro-

³ Cf., for example, the cases described in section 2 of chapter 4.

⁴ BENEDICT XVI, *Homily at Chrism Mass*, 5 April 2012, 332.

hibition is competent/legitimate; that the matter is not contrary to divine, natural or revealed law; and that what is desired is possible to do (fulfill) physically and morally. Whether or not the execution of a law or decision is opportune, which in this work has only been slightly treated⁵, is important to keep in mind especially when taking into consideration cases such as those presented in chapter four concerning bishops who would not implement decisions of their hierarchical superiors. It is for the hierarchical authority (in the referred to cases, the competent dicastery of the Apostolic See) ultimately to determine whether to accept the explanation of the bishop concerning the reason he has decided not to implement the decision. So while it is for the bishop to explain why he considers that the decision cannot be executed, it is for higher authority to accept or not the explanation.

If too often bishops and religious superiors find reasons why a decision should not be implemented, dangerous consequences might result and, in my opinion, the bishop will undermine his own authority inasmuch as it will be more difficult for him to demand obedience from his subjects when he himself is not willing to be obedient to his superiors. Still the CIC foresees that the execution of an administrative act could seem inopportune «due to the circumstances of person or place» and that in such a case «the executor is to inform immediately the authority who issued the act» (can. 41 CIC). There could be reasons known to the bishop alone why the execution of a particular decision is simply not opportune or could be detrimental to the common good if executed. In such cases, the bishop should proceed *onerata conscientia*.

We might also consider, at least by analogy or by extension, that *aequitas canonica* could come into play at times. Might it be possible that implementing a decision that in itself is just, fair, reasonable and equitable could become unjust or unfair given the concrete circumstances in a given case or situation⁶? Perhaps it could be seen as not fair to the community even if a decision objectively is considered fair/just and arrived at after a full consideration of the law and the facts. That is to say, there can be times when what is just and right for the recurrent can result in the opposite effect for others (a parish or diocese, for ex-

⁵ Ghirlanda explains that the law to be promulgated must also be «opportuno (lo richiede il bene comune)». G. GHIRLANDA, *Il diritto nella Chiesa*, 600.

⁶ «Si arriva infatti a fare dell'equità costituita un assoluto, e si perde di vista il principio che la legge, teoricamente equa, può diventare iniqua nelle circostanze concrete». F.J. URRUTIA, «Equità canonica», 449.

ample) and a «better justice» might result if the decision is not rigorously carried out but rather tempered⁷.

We might also propose that if a particular circumstance exists where the carrying out of the decision could result in a detriment to the good of souls, the bishop could make a case for not executing the decision⁸.

Now we are clearer on why dicasteries of the Apostolic See may not force a bishop to execute a decision due to lack of opportuneness (not fitting or timely). This does not mean that a decision favorable to a recurrent has been overturned, it simply means that, at least at the present time, the bishop will not be held to enforce it because it is lacking the element of being opportune, even though the other elements are present (legitimate authority; lawful matter; and the possibility to carry it out both physically and morally). It might be seen as more just not to enforce it, respecting the judgment and determination of the bishop, who as chief shepherd of his diocese should be aware of the circumstances and environment there and can foresee the consequences of implementing a decision. He might wish to take into consideration that there could be other unintended consequences, for example lower morale on the part of priests or lessening of respect for the bishop should the bishop not execute a given decision with which he does not agree.

4. Final thoughts

This study of jurisprudence of the Roman Curia, undertaken to inform can. 1371, 2°, has highlighted the importance of strong leadership and effective communication in the Church. In general people want to know what is expected of them. They appreciate feedback, even though not all appreciate being held accountable for their actions.

Canon 1371, 2° provides competent authority with tools to assist with the keeping of proper order in the Church, and competent authority should use these tools when needed. Recognizing that it is uncomfortable to issue a warning or to accept one, when it is given out of concern for the person and others who might be negatively affected by the person's actions or inaction, competent authority is showing respect and

⁷ «Il diritto ha cercato di emendare, di rettificare e anche di correggere il *rigor iuris*; e ciò avviene per opera dell'equità, la quale in tal modo incarna le aspirazioni umane verso una migliore giustizia». PAUL VI, *Ad Praelatos Auditores*, 8 February 1973, 99.

⁸ «Se in una circostanza particolare dovesse venire un detrimento alle anime, la legge non obbligherebbe». G. GHIRLANDA, *Il diritto nella Chiesa*, 601.

concern for the people of God, including not only the recipient of the warning but possibly the entire community and future communities. We repeat what is included at the end of chapter two, where Gregory of Nyssa is quoted:

Those who are in a position of authority must look after their brothers as conscientious teachers look after the young children who have been handed over to them by their parents. If both disciples and masters have this loving relationship, then subjects will be happy to obey whatever is commanded, while superiors will be delighted to lead their brothers to perfection. If you try to outdo one another in showing respect, your life on earth will be like that of the angels⁹.

It is hoped that this study of the fonts, the law and cases has brought the reader to a new enthusiasm for can. 1371, 2°, for penal law in general and to a realization that invoking can. 1371, 2° when needed can assist competent authority in its governing of the Church (diocese or religious institute). It is also desired that those subject to canon law have taken note of important reasons to respect the law and to strive to faithfully follow it. May this work have made a positive contribution towards an authentic understanding of and appreciation for can. 1371, 2° so that it might be properly invoked for the good order of the Church and for the *salus animarum*.

⁹ GREGORY OF NYSSA, «Liber de instituto christiano», 339.

ABBREVIATIONS

<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
ap. cons.	Apostolic Constitution
ap. letter	Apostolic Letter
ap. exhort.	Apostolic Exhortation
art., artt.	Article, articles
<i>ASS</i>	<i>Acta Sanctae Sedis</i>
can., cann.	canon, canons
Card.	Cardinal
CCEO	<i>Codex Canonum Ecclesiarum Orientalium</i>
CCC	Catechism of the Catholic Church
CC	Congregation for the Clergy
<i>CD</i>	<i>Christus Dominus</i>
cf.	Confer
CDF	Congregation for the Doctrine of the Faith
CWDS	Congregation for Divine Worship and the Discipline of the Sacraments
CEP	Congregation for the Evangelization of Peoples
C.G.	Congregazione Generale (General Congregation)
CIC 1917	<i>Codex Iuris Canonici</i> 1917 (Code of Canon Law)
CIC 1983	<i>Codex Iuris Canonici</i> 1983 (Code of Canon Law)
<i>CIC fontes</i>	<i>Corpus iuris canonici fontes</i>
CICLSAL	Congregation for Institutes of Consecrated Life and Societies of Apostolic Life
CLD	Canon Law Digest
CLSA	Canon Law Society of America
Cong.	Congregation
const.	Constitution
Cor.	Corinthians
decl.	Declaration
decr.	decree
Dogmatic Cons.	Dogmatic Constitution

DS	Denzinger Schönmetzer
Dt	Deuteronomy
ed.	Editor(s)
EE. VV.	Their Excellencies
encycl.	Encyclical
<i>EV</i>	<i>Enchiridion Vaticanum</i>
Gn	Genesis
fn.	footnote
Fr.	Father
Id.	Idem (the same)
instr.	instruction
LG	Dogmatic Constitution on the Church <i>Lumen Gentium</i>
Mt	Matthew (Gospel of)
<i>m.p.</i>	<i>motu proprio</i>
N.	Name
n.: nn	number, numbers
<i>OE</i>	Decree on the Catholic Churches of the Eastern Rite <i>Orientalium Ecclesiarum</i>
<i>ORE</i>	L'Osservatore Romano English Edition
§: §§	paragraph; paragraphs
PCCICR	<i>Pontificia Commissio Codici Iuris Canonici Recognoscenda</i>
<i>PB</i>	Apostolic constitution <i>Pastor Bonus</i>
PC	Pontifical Council
PCLT	Pontifical Council for Legislative Texts
<i>Periodica</i>	<i>Periodica de re canonica</i> [before 1991: <i>Periodica de re morali canonica liturgica</i>]
<i>PG</i>	Apostolic exhortation <i>Pastores gregis</i>
Pr	Proverbs
<i>PO</i>	<i>Presbyterorum ordinis</i>
Prot. n.	Protocol number
<i>QDE</i>	<i>Quaderni di Diritto Ecclesiale</i>
r.	reigned
<i>REDC</i>	<i>Revista Española de Derecho Canónico</i>
rel.	relatio (report)
S	Sacred
SC	Sacred Congregation
S. Cong.	Sacred Congregation
SCC	Sacra Congregatio Consistorialis
SCER	Sacra Congregatio Episcoporum et Regularum
SCDF	Sacra Congregatio pro Doctrina Fidei
SCPF	Sacred Congregation for the Propagation of the Faith

SE	Synodus Episcoporum (Synod of Bishops)
<i>SST</i>	<i>motu proprio Sacramentorum Sanctitatis Tutela</i>
STAS	Supreme Tribunal of the Apostolic Signatura
tr.	Translator
USCCB	United States Conference of Catholic Bishops

BIBLIOGRAPHY

1. **Fonts**

1.1 *Ecumenical Councils (in chronological order)*

Acta et Decreta Sacrorum Conciliorum Recentiorum: Collectio Lacensis, Freiburg 1870-1890.

VATICAN COUNCIL I, dogmatic constitution *Pastor Aeternus*, 18 July 1870, DS 3084.

VATICAN COUNCIL II, dogmatic constitution *Lumen gentium*, 21 November 1964, AAS 57 (1965) 5-71.

———, decree *Orientalium Ecclesiarum*, 21 November 1964, AAS 57 (1965) 76-89.

———, decree *Christus Dominus*, 28 October 1965, AAS 58 (1966) 673-701.

———, pastoral constitution *Gaudium et spes*, 7 December 1965, AAS 58 (1966) 1025-1120.

1.2 *Roman Pontiffs (in chronological order)*

BENEDICT XIV, encycl. *Vix pervenit*, 1 November 1745, in P. GASPARRI, ed., *Codicis Iuris Canonici Fontes I*, Romae 1923, 939-943.

PIUS XII, sermo *Quem beatissimus pater, die xxiv mensis Iunii anno mcmxxxix, in palatio apostolico Vaticano habuit ad alumnos seminariorum, collegiorum et institutionum utriusque cleri atque ex omni gente, qui in alma urbe ad sacerdotium efformantur*, 24 June 1939, AAS 31 (1939) 245-251.

———, *m.p. Crebrae allatae*, 22 February 1949, AAS 31 (1949) 89-117.

———, *Nuntii*, 5 December 1954, AAS 47 (1955) 60-85. In English: *The Pope Speaks*, Washington, 1955, 19-20.

PAUL VI, *m.p. Pastorale munus*, 30 November 1963, AAS 56 (1964) 5-12.

———, *Allocutio ad em.mos patres cardinales et consultores huius pontificiae commissionis*, 20 October 1965, AAS 57 (1965) 985-989.

- PAUL VI, *m.p. De Episcoporum muneribus*, 15 June 1966, *AAS* 58 (1966) 467-472.
- , *encycl. Sacerdotalis caelibatus*, *AAS* 59 (1967) 657-697.
- , *ap. exhort. Evangelica testificatio*, 29 June 1971, *AAS* 63 (1971) 497-526; *CLD* 7 (1968-1972) 425-449.
- , *m.p. Ministeria quaedam*, 15 August 1972, in *CLD* 6 (1963-1967) 91.
- , *Ad Praelatos Auditores et Officiales Tribunalis Sacrae Romanae Rotae, a Beatissimo Patre novo litibus iudicandis ineunte anno coram admissos*, 8 February 1973, *AAS* 65 (1973) 95-103.
- , *Discorso ai partecipanti al II Congresso Internazionale di Diritto Canonico organizzato dalla «Consociatio Internationalis Iuris Canonici promovendo»*, 17 September 1973, *Communicationes* 5 (1973) 127.
- , *Response to the Letter of His Grace the Most Reverend Dr. F.D. Coggan, Archbishop of Canterbury, concerning the Ordination of Women to the Priesthood*, 30 November 1975, *AAS* 69 (1977) 98-116.
- JOHN PAUL I, *Allocution to the College of Cardinals*, 30 August 1978, *AAS* 70 (1978) 703-705; *The Pope Speaks* 23 (1978) 318-320.
- JOHN PAUL II, *ap. letter Dominicae Cenaе*, 24 February 1980, *AAS* 72 (1980) 113-148; *CLD* 9 (1978-1981) 529-574.
- , *ap. cons. Sacrae disciplinae leges*, 25 January 1983, *AAS* 75/II (1983) vii-xiv.
- , *ap. cons. Spirituali militum curae*, 21 April 1986, *AAS* 78 (1986) 481-486.
- , *ap. cons. Pastor Bonus*, 28 June 1988, *AAS* (1988) 841-930.
- , *speech Ad Romanae Rotae Praelatos, auditores, officiales, et advocatos anno iudiciali ineunte*, 18 January 1990, *AAS* 82 (1990) 872-877. English translation: W. WOESTMAN, ed., *Papal Allocutions to the Roman Rota 1939-2002*, Ottawa 2002, 209-213.
- , *speech In aula Synodi episcoporum habita: de novo Codice Canonum Ecclesiarum Orientalium*, 25 October 1990, *AAS* 83 (1991) 490.
- , *ap. exhort. Pastores dabo vobis*, 25 March 1992, *AAS* 84 (1992) 657-804.
- , *Address to the Participants at the International Symposium "Ius in vita et in missione Ecclesiae"*, 23 April 1993, *OR*, 25 April 1993, 4.
- , *Catechismus Catholicae Ecclesiae*, Vatican City State 1997.

- JOHN PAUL II, ap. letter *m.p.* *Ad tuendam fidem by which certain norms are inserted into the Code of Canon Law and into the Code of Canons of the Eastern Churches*, 18 May 1998, *AAS* 90 (1998) 457-461.
- , *Regolamento generale della Curia Romana*, 1 July 1999, *AAS* 91 (1999) 630-699.
- , *m.p. Sacramentorum sanctitatis tutela*, 30 April 2001, *AAS* 93 (2001) 737-739.
- , ap. letter *Rosarium Virginis Mariae*, 16 October 2002, *AAS* 95 (2003) 5-36.
- , ap. exhort. *Pastores gregis*, 16 October 2003, *AAS* 96 (2004) 825-924.
- BENEDICT XVI, ap. letter *m.p. Summorum pontificum*, 7 July 2007, *AAS* 99 (2007) 796-799.
- , ap. letter *m.p. Antiqua ordinatione*, 21 June 2008, *AAS* 100 (2008) 513-538.
- , *Letter proclaiming a Year for Priests on the occasion of the 150th anniversary of the dies natalis of John Mary Vianney*, 16 June 2009, *AAS* 101 (2009) 569-579.
- , ap. letter *m.p. Omnium in mentem*, 26 October 2009, *AAS* 102 (2010) 8-10.
- , ap. cons. *Anglicanorum coetibus*, 4 November 2009, *AAS* 101 (2009) 985-990.
- , *Papal appointment of delegate for Legionaries of Christ*, 16 June 2010, <http://www.zenit.org/en/articles/papal-appointment-of-delegate-for-legionaries> [accessed 19 September 2014].
- , ap. letter *m.p. Ubi cumque et semper*, 21 September 2010, *AAS* 102 (2010) 788-792.
- , «Lettera ai seminaristi», 18 October 2010 in *Insegnamenti di Benedetto XVI*, VI, 2, Città del Vaticano 2010, 630-636; *AAS* 102 (2010) 793-798.
- , ap. letter *m.p. Quaerit Semper*, 30 August 2011, *AAS* 103 (2011) 569-571.
- , speech *Ad Sacrae Rotae Romanae Tribunal, occasione inaugurationis Anni Iudicialis*, 21 January 2012, *AAS* 104 (2012) 103-107.
- , *Homily of His Holiness Benedict XVI*, 5 April 2012, *AAS* 104 (2012) 330-334.
- , ap. letter *m.p. De caritate ministranda*, 11 November 2012, *AAS* 104 (2012) 996-1004.

- BENEDICT XVI, ap. letter *m.p. Ministrorum institutio sacrorum*, 16 January 2013, *AAS* 105 (2013) 130-135; *Communicationes* 45 (2013) 9-20.
- , ap. letter *m.p. Fides per doctrinam*, 16 January 2013, *AAS* 105 (2013) 136-139; *Communicationes* 45 (2013) 21-28.
- , speech *Ad Romanae Rotae Tribunal*, 26 January 2013, *AAS* 105 (2013) 168-172; *Communicationes* 45 (2013) 39-43.
- , *Declaratio Summi Pontificis de muneris Episcopi Romae, Successoris Sancti Petri abdicatione*, 10 February 2013, *AAS* 105 (2013) 239-240; *Communicationes* 45 (2013) 44-45.
- FRANCIS, ap. exhort. *Evangelii gaudium*, 26 November 2013, Città del Vaticano 2013.
- , *Chirographus minorum tutela actiosa*, 22 March 2014, *AAS* 107 (2015) 562-563.
- , «Santa Messa con alcune vittime di abusi sessuali da parte di esponenti del clero, lunedì 7 luglio 2014», in *Omellerie del mattino della Capella della Domus Sanctae Marthae*, Città del Vaticano 2014, 3-7.
- , *Rescriptum ex audientia Ss.mi sulla rinuncia dei vescovi diocesani e dei titolari di uffici di nomina pontificia*, 3 November 2014, *L'Osservatore Romano*, 6 November 2014, 6.

1.3 Dicasteries of the Holy See

- CONGREGATIO DE PROPAGANDA FIDE (C.G.), 12 September 1729, *Collectanea S. Congregationis de Propaganda Fide seu Decreta Instructiones Rescripta pro Apostolicis Missionibus* I, Romae 1907, 101.
- CONGREGATION FOR BISHOPS, *Recognitio of the Holy See for the Essential Norms approved by the United States Conference of Catholic Bishops*, 8 December 2002, http://www.vatican.va/roman_curia/congregations/cbishops/documents/rc_con_cbishops_doc_20021216_recognitio-usa_en.html [accessed 28 May 2014].
- , *Directory for the Pastoral Ministry of Bishops Apostolorum Successores*, 22 February 2004, Città del Vaticano 2004.
- , letter, 15 September 2013, prot. n. 972/2008.
- CONGREGATION FOR CATHOLIC EDUCATION, *Guidelines for the use of psychology in the admission and formation of candidates for the priesthood*, 29 June 2008, Città del Vaticano 2008.
- , *Direttive sulla preparazione degli educatori nei seminari*, 4 November 1993, *L'Osservatore Romano* 8 (12 January 1994) n. 18.
- CONGREGATION FOR THE CLERGY, *acta*, 23 December 1996, prot. n. 97 000 028.
- , letter, 12 February 1997, prot. n. 97 000 028.

- CONGREGATION FOR THE CLERGY, decree, 5 May 1998, prot. n. 97 000 028.
- , *Letter Concerning Licit Psychological Testing of a Priest*, 8 October 1999, CLD 14 (1996-2000) 960-961.
- , letter, 10 September 2003, prot. n. 97 000 028.
- , letter, 3 October 2003, prot. n. 20030754.
- , letter, 24 November 2003, prot. n. 97 000 028.
- , *acta*, 15 April 2004, prot. n. 2004-1282.
- , letter, 5 December 2005, prot. n. 2004-1282.
- , decree, 26 May 2006, prot. n. 2008-3375.
- , decree, 19 June 2006, prot. n. 2008-3375.
- , letter, 13 September 2006, prot. n. 2004-1282.
- , *acta*, 23 April 2007, prot. n. 2007-0203.
- , letter, 11 December 2007, prot. n. 2007-0203.
- , letter, 8 February 2008, prot. n. 2004-1282.
- , letter, 17 April 2008, prot. n. 2004-1282.
- , decree, 14 August 2008, prot. n. 2008-3373.
- , decree, 13 September 2008, prot. n. 2008-3373.
- , decree, 18 September 2008, prot. n. 2008-3400.
- , letter, 24 September 2008, prot. n. 2008-3400.
- , letter, 7 October 2008, prot. n. 2008-3373.
- , letter, 27 October 2008, prot. n. 2008-3400.
- , letter, 28 October 2008, prot. n. 2008-3400.
- , letter, 31 October 2008, prot. n. 97 000 028.
- , letter, 5 February 2009, prot. n. 2008-3375.
- , *acta*, 26 March 2009, prot. n. 2009-0923.
- , letter, 9 April 2009, prot. n. 2009-0923.
- , *Circular Letter to Communicate the Special Faculties Conceded for the Expulsion of Clerics from the Clerical State*, 18 April 2009, prot. n. 2009 0556; Eng. trans. *Origins* 39 (2009) 81-86.
- , letter, 2 September 2009, prot. n. 2008-3373.
- , letter, 4 October 2009, prot. n. 2008-3373.
- , letter, 5 October 2009, prot. n. 2008-3373.
- , letter, 8 October 2009, prot. n. 2008-3373.
- , letter, 6 November 2009, prot. n. 2008-3400.
- , letter, 20 November 2009, prot. n. 97 000 028.

CONGREGATION FOR THE CLERGY, letter, 6 February 2010, prot. n. 2008-1463.

———, letter, 25 June 2010, prot. n. 2009-0923.

———, letter, 13 July 2010, prot. n. 2009-0923.

———, decree, 1 October 2010, prot. n. 2007-0203.

———, decree, 11 April 2012, prot. n. 2008-3400.

———, letter, 10 May 2012, prot. n. 2008-3400.

———, letter, 15 June 2012, prot. n. 2009-0923.

———, letter, 1 August 2012, prot. n. 2007-0203.

———, letter, 3 August 2012, prot. n. 2008-3400.

———, letter, 31 December 2012, prot. n. 2007-0203.

———, letter, 31 January 2013, prot. n. 2007-0203.

———, letter, 6 February 2013, prot. n. 2007-0203.

———, *Directory on the ministry and lives of priests, new edition*, 11 February 2013, Città del Vaticano 2013.

———, letter, 20 March 2013, prot. n. 2007-0203.

———, letter, 30 October 2013, prot. n. 2013 3243.

CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, *Circular Letter to the Presidents of Episcopal Conferences*, 15 March 1994, *Notitiae* 30 (1994) 333-335.

———, *Litterae Congregationis*, 27 July 2001, prot. n. 2451/00/L, *Notitiae* 37 (2001) 397-399.

———, *Litterae Congregationis*, 1 July 2002, prot. n. 1322/02/L, *Notitiae* 38 (2002) 582-584.

———, instr. *Redemptionis Sacramentum*, 25 March 2004, *AAS* 96 (2004) 549-601.

CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter, 18 April 1986, prot. n. 114-2004.

———, *Instruction on respect for human life in its origin and on the dignity of procreation. Replies to certain questions of the day*, 22 February 1987, *AAS* 80 (1988) 70-102.

———, *Decretum de sacramenti paenitentiae dignitate tuenda*, 23 September 1988, *AAS* 80 (1988) 1367.

———, *Sull'autorità dottrinale della istruzione Donum vitae*, *L'Osservatore Romano*, 21 December 1988, 1-2.

———, *Profession of Faith and Oath of Fidelity*, 9 January 1989, *AAS* 81 (1989) 104-106.

- CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Instruction on the Ecclesial Vocation of the Theologian Donum veritatis*, 24 May 1990, *AAS* 82 (1990) 1550-1570.
- , letter, 4 November 1992, prot. n. 114/2004.
- , letter, 28 July 1993, prot. n. 114/2004.
- , letter, 25 August 1993, prot. n. 114/2004.
- , policy, 10 June 1994, prot. n. 128/2009.
- , memorandum, 21 June 1994, prot. n. 128/2009.
- , letter, 31 August 1994, prot. n. 547/2010.
- , letter, 26 April 1995, prot. n. 94/2008.
- , letter, 25 September 1995, prot. n. 94/2008.
- , letter, 21 August 1996, prot. n. 547/2010.
- , *Dall'«Inter insigniores» all'«Ordinatio Sacerdotalis»: Documenti e commenti*, Città del Vaticano 1996.
- , «Il primato del successore di Pietro nel mistero della Chiesa», in ID. *Il primato del successore di Pietro*. Atti del Simposio Teologico (Roma, dicembre 1996), Città del Vaticano 1998.
- , *Agendi ratio in doctrinarum examine*, 29 June 1997, *AAS* 89 (1997) 830-835.
- , *Doctrinal Commentary on the Concluding Formula of the Professio Fidei*, 29 June 1998, *ORE* 15 July 1998, 3-4.
- , letter, 1 September 2000, prot. n. 456/2012.
- , *Instruction on prayers for healing*, 14 September 2000, Vatican City 2000.
- , precept, 13 August 2001, prot. n. 94/2008.
- , precept, 3 June 2002, prot. n. 94/2008.
- , letter, 18 September 2002, prot. n. 114/2004.
- , letter, 18 May 2003, prot. n. 94/2008.
- , letter, 9 August 2003, prot. n. 94/2008.
- , decree, 14 August 2003, prot. n. 94/2008.
- , letter, 15 September 2003, prot. n. 456/2012.
- , decree, 12 November 2004, prot. n. 114/2004.
- , *acta*, 16 January 2004, prot. n. 14/2004.
- , declaration, 8 February 2005, prot. n. 456/2012.
- , decree, 10 November 2006, prot. n. 312/2003.
- , letter, 22 December 2006, prot. n. 114/2004.

- CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter, 2 July 2007, prot. n. 240/2006.
- , letter, 25 November 2007, prot. n. 94/2008.
- , *Decretum generale. De delicto attentate sacrae ordinationis mulieris*, 19 December 2007, *AAS* 100 (2008) 403; *Notitiae* 44 (2008) 135.
- , decree, 21 January 2008, prot. n. 112/1993.
- , decree, 21 January 2008, prot. n. 94/2008.
- , letter, 12 February 2008 prot. n. 114/2004.
- , letter, 14 February 2008, prot. n. 94/2008.
- , precept, 10 April 2008, prot. n. 114/2004.
- , letter, 27 September 2008, prot. n. 270/2008.
- , *Complementary Norms for the Apostolic Constitution Anglicanorum coetibus*, 4 November 2009, *AAS* 101 (2009) 1015-1017.
- , *Normae de delictis Congregationi pro Doctrina Fidei reservatis seu Normae de delictis contra fidem necnon de gravioribus delictis*, 21 May 2010, *AAS* 102 (2010) 419-430; *Communicationes* 42 (2010) 333-344.
- , *acta*, 6 February 2011, prot. n. 547/2010.
- , letter, 28 February 2011, prot. n. 240/2006.
- , letter, 1 March 2011, prot. n. 547/2010.
- , letter, 30 March 2011, prot. n. 112/1993.
- , *acta*, 3 November 2011, prot. n. 100/2012.
- , letter, 11 January 2012, prot. n. 14/2004.
- , declaration, 5 April 2012, prot. n. 456/2012.
- , declaration, 16 April 2012, prot. n. 456/2012.
- , notification, 30 April 2012, prot. n. 112/1993.
- , letter, 16 August 2012, prot. n. 240/2006.
- , *acta*, 31 August 2012, prot. n. 240/2006.
- , decree, 3 October 2012, prot. n. 632/2013.
- , decree, 4 October 2012, prot. n. 270/2008.
- , letter, 17 October 2012, prot. n. 240/2006.
- , letter, 2 December 2012, prot. n. 597/2013.
- , precept, 22 January 2013, prot. n. 597/2013.
- , precept, 28 February 2013, prot. n. 597/2013.
- , letter, 23 March 2013, prot. n. 114/2004.

- CONGREGATION FOR THE DOCTRINE OF THE FAITH, precept, 28 August 2013, prot. n. 597/2013.
- , *acta*, 7 September 2013, prot. n. 547/2010.
- , letter, 17 October 2013, prot. n. 100/2012.
- , decree, 17 October 2013, prot. n. 597/2013.
- , decree, 22 November 2013, prot. n. 547/2010.
- , decree, 29 November 2013, prot. n. 100/2012.
- , letter, 7 December 2013, prot. n. 597/2013.
- , letter, 19 December 2013, prot. n. 597/2013.
- , decree, 10 January 2014, prot. n. 114/2004.
- , sentence, 10 October 2014, prot. n. 128/2009.
- CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, instr. *De vitanda quorundam clericorum vagatione*, 25 April 2001, *AAS* 93 (2001) 641-647.
- CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, *The Service of Authority and Obedience*, 11 May 2008, *Origins* 38 (2008-2009) 65-83.
- S. CONGREGATIO CONCILII, decree *Vigilanti studio*, 25 May 1893, *ASS* 26 (1893-1894) 56-59.
- , decree *Ut debita*, 11 May 1904, *ASS* 36 (1903-1904) 672-676.
- , «Decretum», 29 June 1950, *AAS* 42 (1950) 601-602.
- SACRA CONGREGATIO CONSISTORIALIS, *Nullius Montis Virginis*, 14 November 1699, in P. GASPARRI, ed., *Fontes*, V, Vatican City 1930, 449-450.
- , *Nullius Montis Virginis*, 26 June 1700, in P. GASPARRI, ed., *Fontes*, V, Romae 1930, 456.
- , *Neopolitana*, 3 August 1709 in P. GASPARRI, ed., *Fontes*, V, Romae 1930, 535.
- , decr. *Maxima Cura*, 20 August 1910, *AAS* 2 (1910) 636-648.
- , instr. *Ut quae*, 28 June 1917, *AAS* 9 (1917) 328-334 (Latin); 335-341 (Italian).
- SACRA CONGREGATIO PRO DOCTRINA FIDEI, *Nova agenda ratio in doctrinarum examine*, 15 Jan. 1971, *AAS* 63 (1971) 234-236.
- SACRA CONGREGATIO EPISCOPORUM ET REGULARIUM, *Nullius*, 22 December 1628, in P. GASPARRI, ed., *Fontes*, IV, 753, n. 1736.
- , instr. *Sacra Haec*, 11 June 1880, in P. GASPARRI, ed., *Fontes*, IV, 1022-1025, n. 2005, 1.

- SACRA CONGREGATIO PRO INSTITUTIONE CATHOLICA, *Ordinationes*, 29 April 1979, *AAS* 71 (1979) 500-521.
- SACRA CONGREGATIO DE PROPAGANDA FIDE, decree, 30 September 1730, *Collectanea S. Congregationis de Propaganda Fide seu Decreta Instructiones Rescripta pro Apostolicis Missionibus*, I, Romae 1907, 436.
- , instr. *Cum magnopere*, 1883, in P. GASPARRI, ed., *Fontes*, VII, 475-479, n. 4900. [n.b. there is no specific date indicated in the *Fontes*].
- SACRA CONGREGATIO PRO SACRAMENTIS ET CULTU DIVINO, reply, 18 May 1981, prot. n. 603/81, CLD 9 (1978-1981) 586-588.
- SECRETARIUS STATUS, instr., 4 February 1974, *AAS* 66 (1974) 89-92; CLD 8 (1973-1977) 205-210.
- , notif. 29 December 1981, prot. n. 78638/158, in CLD 9 (1978-1981) 120-121.
- , *Regolamento generale della curia romana*, 22 February 1968, *AAS* 60 (1968) 129-176.
- , *Regolamento generale della curia romana*, 1 July 1999, Città del Vaticano 1999.
- , *Appendici II e III del Regolamento generale della curia romana*, 10 luglio 2009, Città del Vaticano 2009.
- SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 20 November 1985, prot. n. 17083/83 CA, in W. DANIEL, ed. *Ministerium Iustitiae. Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Montréal 2011, 137-140.
- , decree, 23 January 1988, prot. n. 15721/83 CA, in W. DANIEL, ed. *Ministerium Iustitiae. Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Montréal 2011, 203-230.
- , decree, 30 October 1990, prot. n. 18881/87, in W. DANIEL, ed., *Ministerium Iustitiae. Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Montréal 2011, 603-606; *Notitiae* 26 (1990) 711-713.
- , decree, 12 September 1991, prot. n. 21191/89 CA, in W. DANIEL, ed. *Ministerium Iustitiae. Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Montréal 2011, 230-236.
- , decree, 9 May 1992, prot. n. 21191/89 CA, in W. DANIEL, ed., *Ministerium Iustitiae. Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Montréal 2011, 236-253.
- , decree, 8 May 1993 prot. n. 18881/87, in W. DANIEL, ed., *Ministerium Iustitiae. Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Montréal 2011, 603-615.

- SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, decree, 15 May 1995, prot. n. 25250/94 CA.
- , decree, 10 November 1997, prot. n. 27308/A/96 CA.
- , decree, 10 November 1997, prot. n. 27308/B/96 CA.
- , decree, 20 January 1998, prot. n. 27338/96 CA.
- , definitive decree, 28 February 1998, prot. n. 27308/A/96 CA.
- , definitive decree, 28 February 1998, prot. n. 27308/B/96 CA.
- , definitive decree, 10 July 1999, prot. n. 27338/96 CA.
- , definitive sentence, 6 maii 2000, prot. n. 29240/98 CA.
- , sentence coram *Cacciavillan – Esercizio del ministero sacerdotale*, 18 March 2006, prot. n. 32108/01 CA, in *Ius Ecclesiae* 23 (2011) 651-658.
- , decree, 13 June 2008, prot. n. 38962/06 CA, in *Ius Ecclesiae* 23 (2011) 659-664.
- , decree, 1 September 2008, prot. n. 41703/08 CA.
- , decree of the *Congresso*, 18 June 2009, prot. n. 41703/08 CA.
- , letter, 24 April 2012, prot. n. 42529/09 CA.
- , decree, 2 March 2012, prot. n. 45545/11 CA.
- , decree, 25 September 2012, prot. n. 47101/12 CA.
- , *Votum pro rei veritate*, 8 October 2012, prot. n. 45545/11 CA.
- , decree, 27 November 2012, prot. n. 45545/11 CA.
- , decree, 3 January 2013, prot. n. 47101/12 CA.
- , decree, 15 January 2013, prot. n. 47101/12 CA.
- , decree, 24 March 2014, prot. n. 47914/13 CA.
- SYNODUS EPISCOPORUM, *Relatio Principia quae pro Codicis Iuris Canonici recognition proponuntur a Synodo Episcoporum approbantur*, 7 October 1967, *Communicationes* 1 (1969) 77-85. Italian translation: *EV* 2 1358-1377.

1.4 Legislative (Chronological order by date of publication)

- BROWN, T.D., decree, 1 July 2009 (no prot. n.).
- Codex Iuris Canonici cum notis Petri card. Gasparri (Schema Codicis Iuris Canonici sub secreto Pontificio)*, Romae 1913.
- Codex Iuris Canonici Pii X Pont. Max. iussi digestus Benedicti Papae XV auctoritate promulgatus praefatione Emmi. Petri Card. Gasparri et indice analytico-alphabetico actus*, Città del Vaticano 1930; English trans. in E.N. PETERS, ed., *The 1917 or Pio-Benedictine Code of*

Canon Law in English Translation with Extensive Scholarly Apparatus, San Francisco 2001.

Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus fontium annotatione et indice analitico-alphabetico auctus, 25 January 1983, AAS 75/II (1983) 1-324; trans. in English, CLSA, *Code of Canon Law Latin-English Edition. New English Translation*, Washington 1999.

Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus, 18 October 1990, AAS 82 (1990) 1033-1363; trans. in English, CLSA, *Code of Canons of the Eastern Churches, Latin-English Edition. New English Translation*, Washington 2001.

CURTISS, E.F., decree, 27 May 1998 (no prot. n.).

FRIEDBERG, A., *Decretum Magistri Gratiani*, Lipsiae 1879.

———, *Decretalium Collectiones*, Lipsiae 1881.

———, «Decretalium D. Gregorii Papae IX Compilatio», in *Corpus Iuris Canonici*, Graz 1955.

JAFFÉ, P., ed., *Regista Pontificium Romanorum ab condita Ecclesia ad annum post Christum natum MCXCVIII I*, Lipsae 1885.

———, ed., *Regista Pontificium Romanorum ab condita Ecclesia ad annum post Christum natum MCXCVIII II*, Lipsae 1885.

LANDAU, P. – KOZUR, W., ed., *Monumenta Iuris Canonici Corpus Glossatorum, Magistri Honorii Summa de iure Canonico tractaturus in memoriam Rudolf Weigand V/II*, Città del Vaticano 2010.

LUCAS, G.J., decree of suppression, 15 October 2010, <http://www.catholicculture.org/culture/reviews/view.cfm?recnum=3768> [accessed 27 August 2014] (no prot. n.).

OCHOA, X., *Leges Ecclesiae post Codicem iuris canonici editae*, IV, V, VI, Romae 1974, 1980, 1987.

PALLOTTINI, S., *Collectio omnium conclusionum et resolutionum quae in causis propositis apud Sacram Congregationem Cardinalium S. Concilii Tridentini interpretum prodierunt ab eius institutione XV*, Romae, 1840.

PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, *Codex Iuris Canonici, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico/alphabetico auctus*, Città del Vaticano 1989.

PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECONOSCENDO, «Coetus studii “de iure poenali”», Sessio I (diebus 28-30 novembris 1966 habita), *Communicationes* 44 (2012) 184-264.

- PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECONSCENDO, «Coetus studii “de iure poenali”», Sessio II (diebus 9-13 ianuarii 1967 habita), *Communicationes* 44 (2012) 548-591.
- , «Coetus studii “de iure poenali”», Sessio III (diebus 29 maii-3 iunii 1967 habita), *Communicationes* 45 (2013) 165-238.
- , «Coetus studii “de iure poenali”», Sessio IV (diebus 4-7 decembris 1967 habita), *Communicationes* 45 (2013) 484-547.
- , «Quaestiones praeviae de recognoscendo Codice Iuris Canonici quod attinet ad canones de poenis in singula delicta», 8 February 1968, *Acta et Documenta Coetus Studii «de iure poenalis»* I, Section H.
- , «Quaestiones praeviae», *Acta et Documenta Coetus Studii* I, 14 February 1968, Section H, 2-4; 6, prot. n. 1291/68.
- , «Nota quod attinet ad canones de poenis in singula delicta», 27 February 1968, *Acta et Documenta* I, Section G, prot. n. 1340/68.
- , *Acta et Documenta coetus Studii* II «de iure poenalis», 1969 (no specific date), Section C, prot. n. 1799/69.
- , «De delictis contra Ecclesiasticas auctoritates et Ecclesiae libertatem», *Acta et Documenta Coetus Studii «de iuris poenalis»* II, 24-28 November 1969.
- , «De iure poenali reconoscendo, principia generalia», *Communicationes* 2 (1970) 101.
- , «Osservazioni allo “schema documenti quo disciplina sanctionum seu poenarum in Ecclesia Latina denuo Ordinatur», *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, 19 March 1975.
- , «Coetus Studiorum de iure poenali», 1 December 1973, *Communicationes* 7 (1975) 93-97.
- , «Relatio de iure poenali», *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section C, 19 January 1976.
- , «Coetus studiorum de iure poenali»; *Communicationes* 9 (1977) 304-322.
- , «De iure poenali, pars secunda, de poenis in singula delicta, adunatio diei 7 maii 1977», *Acta et Documenta Coetus Studii de iure poenali* Series Altera I, Section C, 7 May 1977.
- , «De sanctionibus in Ecclesia», *Communicationes* 16 (1984) 38-51.
- PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS, «Dichiarazione», 19 May 1997, *Communicationes* 29 (1997) 17-18.
- , instr. *Dignitas connubii*, Città del Vaticano 2005.

PŘEROVSKÝ, O., ed., *Monumenta Iuris Canonici Huguccio Pisanus Summa Decretorum I/6*, Città del Vaticano 2006.

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, Washington 2002, 2006².

———, *Program for Priestly Formation*, Washington 2006⁵.

———, *Promise to Protect, Pledge to Heal. Charter for the Protection of Children and Young People. Essential Norms. Statement of Episcopal Commitment*, Washington 2011³.

2. Books and Articles

ABBO, J. – HANNAN, J., *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church I – II*, St. Louis – London 1952.

ALFANO, G., *Istorica descrizione del regno di Napoli: diviso in dodici provincie*, Napoli 1798.

ALLEN, J.L., «Vatican abuse summit: “Bishops must be held accountable”», 8 February 2012, <http://ncronline.org/blogs/ncr-today/vatican-abuse-summit-bishops-must-be-held-accountable> [accessed 29 May 2014].

Annuario pontificio 2013, Città del Vaticano 2013.

Annuario pontificio 2014, Città del Vaticano 2014.

ARRIETA, J.I., *Governance Structures within the Catholic Church*, Montreal – Chicago, 2000.

———, «Personal Ordinariates for Former Anglicans», *Origins* 40 (2010) 378-383.

———, «Cardinal Ratzinger’s Influence on the Revision of the Canonical Penal Law System», *Origins* 40 (2010) 494-498.

———, «Ordinariato personal para fieles anglicanos recibidos en la Iglesia Católica», in J. OTADUY – A. VIANA – J. SEDANO, ed., *Diccionario general de Derecho Canónico V* (Legistas – Patronato Regio), Pamplona 2012, 814-819.

ARTNER, P., «Disciplinary measures outside Book VI of the 1983 CIC», *Studia canonica* 42 (2008) 473-502.

ASTIGUETA, D.G., «Lo scandalo nel CIC: significato e portata giuridica», *Periodica* 92 (2003) 589-651.

———, «Facoltà concesse alla Congregazione per il Clero», *Periodica* 99 (2010) 1-33.

———, «La medicinalità della pena canonica», *Periodica* 99 (2010) 251-305.

- ASTIGUETA, D.G., «La pena come sanzione: un contributo su questo concetto», *Periodica* 101 (2012) 501-534.
- AYRINHAC, H. – LYDON, P., *Penal Legislation in the New Code of Canon Law V*, New York – Boston – Cincinnati – Chicago – San Francisco 1944.
- BARTCHAK, M.L., «Child pornography and the grave delict of an offense of the sixth commandment of the Decalogue committed by a cleric with a minor», *Periodica* 99 (2011) 285-380; *The Jurist* 72 (2012) 178-239.
- BAXTER, J.H. – JOHNSON, C., *Medieval Latin Word-List*, London 1934.
- BENEDICT XVI, *Light of the World. The Pope, the Church, and the Signs of the Times. A Conversation with Peter Seewald*, London – San Francisco 2010.
- BERNAL, J., «Protección penal de las verdades propuestas por el magisterio», *Fidelium Iura* 9 (1999) 77-135.
- BLAT, A., *Commentarium Codicis Iuris Canonici Liber V: de delictis et poenis*, Romae 1924, 1935.
- BONNET, P.A., «The Duties of the Judges and Officers of the Tribunal», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ-OCAÑA, ed., *Exegetical Commentary on the Code of Canon Law IV/1*, Montreal – Chicago 2004, 858.
- BORRAS, A., «Entre l'obsolescence de la norme et la vitalité de la doctrine: le sort actuel du livre VI du CIC: à propos d'un ouvrage récent», *Studia canonica* 33 (1999) 139-149.
- BOUDINHON, A., «Excommunication», in *The Catholic Encyclopedia* 5, New York 1909, <http://www.newadvent.org/cathen/05678a.htm> [accessed 8 January 2014].
- BOUSCAREN, T.L. – ELLIS, A., *Canon Law: A Text and Commentary*, Milwaukee 1957.
- BRETZKE, J., *Consecrated phrases: A Latin theological dictionary: Latin expressions commonly found in theological writings*, Collegeville 1998, 2003².
- BUNSON, M., *The Pope Encyclopedia: an A to Z of the Holy See*, New York 1995.
- BURKE, R.L., *Lack of discretion of judgment because of schizophrenia: doctrine and recent jurisprudence*, Romae 1986.
- , «Canon 915: The discipline regarding the denial of Holy Communion to those obstinately persevering in manifest grave sin», *Periodica* 96 (2007) 3-58.
- , «Hew to canon law when closing churches, Cardinal Burke says», 9 May 2014, <http://www.catholicreview.org/article/news/local-news/hew->

- to-canon-law-when-closing-churches-cardinal-burke-says [accessed 11 July 2014].
- BURKE, R.L., *Canon Law at the service of justice and freedom in the Church as the people of God*, *Canon Law Society of Kenya*, 28 August 2014, <http://www.zenit.org/en/articles/cardinal-burke-to-kenya-canon-law-convention> [accessed 22 October 2014].
- BUSSELLI MONDIN, P., «Il diritto di difesa in ambito disciplinare», *Ius Ecclesiae* 23 (2011) 651-688.
- CALABRESE, A., «The Course of the Process», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ-OCAÑA, ed., *Exegetical Commentary on the Code of Canon Law II/1*, Montreal – Chicago 2004, 2006-2012.
- , *Diritto Penale Canonico*, Città del Vaticano 2006³.
- CAPARROS, E. – THÉRIAULT, M. – THORN, J., ed., «Offences Against Church Authorities and the Freedom of the Church», *Code of Canon Law Annotated*, Montréal – Woodbridge 2004, 1068.
- CARRAGHER, M., «The raison d'être of punishment», in D. CITO, ed., *Processo penale e tutela dei diritti nell'ordinamento canonico*, Milano 2005, 449-467.
- CHELODI, I., *Ius Penale et ordo procedendi in iudiciis criminalibus iuxta Codicem Iuris Canonici*, Tridentinus 1935⁴.
- CHIAPPETTA, L., *Il Codice di Diritto Canonico. Commento giuridico-pastorale II*, Roma 1996².
- CHIRICO, A., «Norme penali canoniche e comunicazione mediatica», in D. CITO ed., *Processo penale e tutela dei diritti nell'ordinamento canonico*, Milano 2005, 469-490.
- CICERO, M. T., *De Legibus*, <http://www.thelatinlibrary.com/cicero/leg3.shtml#8>.
- CICOGNANI, A., *Canon Law*, Philadelphia 1934.
- CITO, D., «Office of the Rector», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ-OCAÑA, ed., *Exegetical Commentary on the Code of Canon Law II/1*, Montreal – Chicago 2004, 289.
- , «La pérdida del estado clerical *ex officio* ante las actuales urgencias pastorales», *Ius Canonicum* 51 (2011) 69-101.
- COCCHI, G., *Commentarium in Codicem Iuris Canonici ad usum scholarum VIII*, Torino 1928.
- CODIGNOLA, L., *Guide to Documents Relating to French and British North America in the Archives of the Sacred Congregation «de Propaganda Fide» in Rome 1622-1799*, Ottawa 1991.
- COLONNA, P. – GOZZANO, N. – PIERGIOVANNI, P., *The Colonna Family. A Short Selective History*, Rome 2010.

- CONTE A CORONATA, M., *Institutiones Iuris Canonici* I, IV, V, Taurini – Romae 1950⁴; 1955⁴; 1951³.
- , *Compendium Iuris Canonici ad usum scholarum* II, Taurini – Romae 1950⁴.
- CORECCO, E., «Il valore della norma disciplinare in rapporto alla salvezza nella tradizione occidentale», in *Incontro di canoni d'Oriente e d'Occidente* I, Bari 1994, 289-292.
- COVEY, S., *The Seven Habits of Highly Successful People*, New York 1989.
- DALY, B., «Sexual Abuse and Canon Law», *Compass* 33-3 (2009) 33-34.
- D'OSTILLO, F., *Prontuario del Codice di Diritto Canonico*, Città del Vaticano 1998.
- DAVIS, R., *The Lives of the Ninth-Century Popes*, (Liber Pontificalis): *The Ancient Biographies for Ten Popes from a.d. 817-891*, Liverpool 1995.
- DEFFERRARI, R., ed., *The Fathers of the Church* I, New York 1951.
- DE IORIO, A., «Scomunica», in *Enciclopedia Cattolica* XI, Città del Vaticano 1953, 143-148.
- DELLA ROCCA, F., *Manual of Canon Law*, Milwaukee 1959.
- , «Il rapporto tra delitto e peccato nell'attualità del diritto canonico», *Ius Canonicum* 53 (2013) 199-224.
- DEL POZZO, M., «*Salus animarum*», in J. OTADUY – A. VIANA – J. SEDANO, ed., *Diccionario general de Derecho Canónico* VII (Rite dispositus – Žužek, Ivan), Pamplona 2012, 134-139.
- DE MEESTER, A., *Iuris Canonici et Iuris Canonico-Civilis Compendium*, Brugis 1921.
- DENZINGER, H., *Enchiridion Symbolorum: definitionum et declarationum de rebus fidei et morum*, Bologna 1996².
- DE PAOLIS, V., *De sanctionibus in ecclesia. Adnotationes in codicem: Liber VI*, Romae 1986.
- , «Scomunica», in C. CORRAL SALVADOR – V. DE PAOLIS – G. GHIRLANDA, *Nuovo Dizionario di Diritto Canonico*, Milano 1993, 958-962.
- , «Il libro VI del Codice di Diritto Canonico: diritto penale, disciplina penitenziale o cammino penitenziale?», *Periodica* 89 (2000) 635-659; 90 (2001) 85-114.
- , «Le sanzioni penali nella Chiesa», in P. PINTO, ed., *Commento al Codice dei Canoni delle Chiese Orientali*, Città del Vaticano 2001, 1104-1151.

- DE PAOLIS, V., «Penal Sanctions, Penal Remedies and Penances in Canon Law», in P. DUGAN, ed., *The Penal Process and Protection of Rights in Canon Law*, Montreal 2005, 145-182.
- DE PAOLIS, V. – CITO D., *Le Sanzioni nella Chiesa. Commento al Codice di Diritto Canonico Libro VI*, Città del Vaticano 2000.
- DE ROCABERTI, I.T., *Bibliotheca maxima pontificia in qua authores melioris notae qui hactenus pro Sancta Romana Sede, tum Theologice, tum Canonice scripserunt, fere omnes continentur*, IX, Romae 1698.
- DI MATTIA, G., «Sostanza e forma nel nuovo diritto penale canonico», in *Il nuovo codice di diritto penale canonico: novità, motivazione e significato*, Roma 1983, 409-437.
- , «Expiatory Penalties», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ OCAÑA, ed., *Exegetical commentary on the Code of Canon Law IV/1*, Montreal – Chicago 2004, 342-347.
- EICHMANN, E., *Lehrbuch des Kirchenrechts auf Grund des Codex Iuris Canonici für Studierende*, Paderborn 1926.
- FARIS, J., *Eastern Catholic Churches: Constitution and Governance*, New York 1992.
- FELDMEIER, P., «Seeking the Meaning of Vatican II», *Chicago Studies* 52 (2013) 54-69.
- FERME, B., «The response (28 October 1995) of the Congregation for the Doctrine of the Faith to the dubium concerning the Apostolic Letter *Ordinatio Sacerdotalis* (22 May 1994): Authority and significance», *Periodica* 85 (1996) 689-727.
- , «Ad tuendam fidem: some reflections», *Periodica* 88 (1999) 579-606.
- , *Introduction to the History of the Sources of Canon Law. The Ancient Law up to the Decretum of Gratian*, Montreal 2007.
- FISHER, R. – URY, W., *Getting to yes: negotiating agreement without giving in*, New York 1981.
- FORCELLINI, E., *Totius Latinitatis lexicon, consilio et cura Jacobi Facciolati opera et studio Aegidii Forcellini lucubratum*, Patavii 1771.
- FRANCESCHI, H., «The Power of Governance», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ-OCAÑA, ed., *Exegetical Commentary on the Code of Canon Law I*, Montreal – Chicago 2004, 842-848.
- FÜRST, C.G., «Diritto penale e carità», in *Vehiculum Caritatis: atti del Simposio internazionale per il decennale dell'entrata in vigore del Codex Canonum Ecclesiarum Orientalium, 19-23 novembre 2001*, Città del Vaticano 2004, 516-534.

- GARCÍA MARTÍN, J., «Los actos administrativos de los Dicasterios de la Curia Romana según el Reglamento general (1 julio 1999)», *Apollinaris* 73 (2000) 733-759.
- , «Ordinario e ordinario del luogo ai sensi del can. 134», *Ephemerides Iuris Canonici* 52 (2012) 109-172.
- GARNER, B., ed., *Black's Law Dictionary*, St. Paul 2004⁸.
- GASPARRI, P., *Codex Iuris Canonici*, Città del Vaticano 1933.
- GEISINGER, R.J., *On the Requirement of Sufficient Maturity for Candidates to the Presbyterate (c. 1031 §1), with a Consideration of Canonical Maturity and Matrimonial Jurisprudence (1989-1990)*, TG. DC 35, Roma 1999.
- GHIRLANDA, G., «La carità come principio giuridico fondamentale costitutivo del diritto ecclesiale», *La Civiltà Cattolica* 128 (1977) 454-471.
- , «Natura delle prelature», *Gregorianum* 69 (1988) 299-314.
- , *Il diritto nella Chiesa mistero di comunione*, Roma – Milano 2006⁴.
- , «Cessazione dall'ufficio di Romano Pontefice», 2 March 2013, *La Civiltà Cattolica* 164 I (2013) 445-462.
- GRAY, J.A., *Causes and Proofs for the Removal of a Pastor*, Peoria 2006.
- GRAZIANO, L., «La *praevia investigatio* e la tutela dei diritti nell'ordinamento penale», in D. CITO, ed., *Processo penale e tutela dei diritti nell'ordinamento canonico*, Milano 2005, 491-510.
- GREEN, T., «Penal Law in the *Code of Canon Law* and in the *Code of the Eastern Churches*: Some Comparative Reflections», *Studia Canonica* 28 (1994) 407-452.
- , «Penal remedies and penances», in J. BEAL – J. CORIDEN – T. GREEN, ed., *New Commentary on the Code of Canon Law*, New York 2000, 1556-1557.
- , «Delicts against Ecclesiastical Authorities and the Freedom of the Church», in J. BEAL – J. CORIDEN – T. GREEN, ed., *New Commentary on the Code of Canon Law*, New York 2000, 1580-1582.
- , «The Roman Curia», in J. BEAL – J. CORIDEN – T. GREEN, ed., *New Commentary on the Code of Canon Law*, New York 2000, 475-489.
- GREGORY OF NYSSA, «Liber de instituto christiano», in *The Liturgy of the Hours* IV, New York 1975, 339; *Liturgia Horarum*, IV, Città del Vaticano 2000, 279.
- HÄRLE, W., «Potestas Dominitiva», *Religion Past and Present*, Brill Online, http://referenceworks.brillonline.com/search?s.num=0&s.rows=20&s.mode=DEFAULT&s.f.s2_parent=religion-past-and-present&s.au=&s.excl=&s.sub=&s.start=0&s.q=%28potestas+dominativa%29&s.head= [accessed 1 September 2014].

- HERRANZ, J., «*Salus animarum*. Principio dell'ordinamento canonico», *Ius Ecclesiae* 12 (2000) 291-306.
- HUELS, J., «Cases Involving Lacunae», in J. BEAL – J. CORIDEN – T. GREEN, ed., *New Commentary on the Code of Canon Law*, New York 2000, 79.
- , «Singular Administrative Acts», in J. BEAL – J. CORIDEN – T. GREEN, ed., *New Commentary on the Code of Canon Law*, New York 2000, 110.
- , «Subjects of the Law», in J. BEAL – J. CORIDEN – T. GREEN, ed., *New Commentary on the Code of Canon Law*, New York 2000, 62.
- HÜNERMANN, P. – FASTIGGI R. – ENGLUND NASH, A., ed., *Denzinger. Enchiridion symbolorum definitionum et declarationum de rebus fidei et morum. Compendium of Creeds, Definitions, and Declarations on Matters of Faith and Morals*, San Francisco 2012⁴³.
- JENSEN, K., «Why Negotiators Still Aren't Getting To Yes», *Forbes*, 5 February 2013, <http://www.forbes.com/sites/keldjensen/2013/02/05/why-negotiators-still-arent-getting-to-yes/> [accessed 27 September 2013].
- KASPER, W., *The Gospel of the Family*, Manwah 2014.
- KOWAL, J., *Uscita definitiva dall'istituto religioso dei professi di voti perpetui*, Roma 1997.
- LE BACHELET, N.M., ed., «Tractatus de obedientia», in *Auctarium Bellarminianum*, Paris 1913, 377-385.
- LEVADA, W.J., «Dissent and the Catholic Religion Teacher», *Origins* 16 (1986) 195-200.
- LEWIS, C. – SHORT, C., *A Latin Dictionary*, Oxford 1879, 1984².
- LIGHTFOOT, J., ed., *The Apostolic Fathers*, London – New York, 1885.
- LLOBELL, J., «Il diritto e il dovere al processo giudiziale nella Chiesa. Note sul magistero di Benedetto XVI circa la necessità di “agire secondo ragione” nella riflessione ecclesiale», *Ius Ecclesiae* 19 (2007) 55-75.
- LOMBARDIA, P., «Singular Administrative Acts», in E. CAPARROS – M. THÉRIAULT – J. THORN, ed., *Code of Canon Law Annotated*, Montreal – Woodbridge 2004, 64.
- LOVE, P., *The Penal Remedies of the Code of Canon Law*, Washington 1960.
- MAITLAND, F.W., *Roman Canon Law in England: Six Essays*, London 1898.
- MALLOY, D.J., «The Diocesan Bishop, the Episcopal Conference and *Communio*», *Chicago Studies* 53 (2014) 34-46.
- MARTENS, K., «Brief Note on the Apostolic Signatura and the Contentious-Administrative Recourse», *The Jurist* 73 (2013) 228-235.

- MARZOA, Á., «Those Who are Liable to Penal Sanctions», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ-OCAÑA, ed., *Exegetical Commentary on the Code of Canon Law IV/1*, Montreal – Chicago 2004, 269-270.
- MAYER, B., *The Dynamics of Conflict: A Guide to Engagement and Intervention*, San Francisco 2012².
- MCBRIEN, R., *Lives of the Popes: the Pontiffs from St. Peter to John Paul II*, San Francisco 1997.
- MEIER, C., *Penal Administrative Procedure Against Negligent Pastors, An Historical Synopsis and Commentary*, Washington 1941.
- , *Normae Generales Juris Canonici: Commentarius Libri I Codicis Juris Canonici I*, Parisiis – Tornaci – Romae, 1949.
- MICHIELS, G., *Normae generales juris canonici: commentaries libri I Codicis juris canonici*, Paris 1949².
- , *De Delictis et Poenis I-III*, Parisiis – Tornaci – Romae – Neo Eboraci 1961².
- MIRAGOLI, E., «La “pena giusta” nei casi di *delicta graviora*», *Quaderni di diritto ecclesiale* 25 (2012) 356-368.
- MIRAS, J., «Recourse Against Administrative Decrees», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ-OCAÑA, ed., *Exegetical Commentary on the Code of Canon Law IV/2*, Montreal – Chicago 2004, 2063.
- MOLANO, E., «The Roman Pontiff and the College of Bishops», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ-OCAÑA, ed., *Exegetical Commentary on the Code of Canon Law II/1*, Montreal – Chicago 2004, 593-595.
- MONTINI, G.P., «Modalità procedurali e processuali per la difesa dei diritti dei fedeli. Il ricorso gerarchico. Il ricorso alla Segnatura Apostolica», *Quaderno di Diritto Ecclesiale* 3 (1995) 287-320.
- , «I rimedi penali e le penitenze: un’alternativa alle pene», in Z. SUCHECKI, ed., *Il processo penale canonico*, Roma 2003, 75-101.
- , «Conspectus decisionum quae a Supremo Signaturae Apostolicae Tribunali in ambitu rectae administrationi iustitiae invigilandi ab anno 1968 ad annum 2011 latae atque publici iuris factae sunt», *Periodica* 101 (2012) 199-254.
- , «Conspectus decisionum quae a Supremo Signaturae Apostolicae Tribunali in ambitu contentioso amministrativo ab anno 1968 ad annum 2012 latae atque publici iuris factae sunt», *Periodica* 103 (2014) 27-66.
- MOSCONI, M., «Il vescovo davanti al sacerdote che abbandona il ministero», *Quaderni di diritto ecclesiale* 24 (2011) 387-414.

- MOSCONI, M., «L' idoneità al sacramento dell' ordine (requisiti e verifica) e gli atti relativi al suo conferimento», *Quaderni di Diritto Ecclesiale* 25 (2012) 75-105.
- MÜLLER, A., *Obedience in the Church*, London 1966.
- MÜLLER, G.L., «Indissolubilità del matrimonio e dibattito sui divorziati risposati e i sacramenti», 23 October 2013, *OR* 4-5; *Communicationes* 45 (2013) 329-340.
- , *Interview with Vatican Radio*, 24 March 2014, <http://rorate-caeli.blogspot.com/2014/03/very-relevant-exclusive-for-la-stampa.html> [accessed 19 June 2014].
- NAPOLEONI, S., *La potestà coattiva nella Chiesa*, Roma 2002.
- NEDUNGATT, G., ed., *A guide to the Eastern Code. A commentary on the Code of Canons of the Eastern Churches*, Rome 2002.
- NIERMEYER, J.F., *Mediae Latinitatis lexicon minus. Abbreviationes et index fontium*, Leiden (Netherlands) 1984.
- NÚÑEZ, G., «Notas a propósito de dos decretos recientes de la Signatura Apostólica. Supresión de parroquias y reducción de una iglesia a un uso profano no indecoroso», *Ius Canonicum* 53 (2013) 295-309.
- OCHOA, X., *Index Verborum ac Locutionum Codicis iuris canonici*, Romae 1984².
- OTADUY, J., «Ecclesiastical Laws», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ- OCAÑA, ed., *Exegetical Commentary on the Code of Canon Law I*, Montreal – Chicago 2004, 256-382.
- PAMPARA, J.M., *The Specific Characteristics of the Penal Law and the Penal Procedure in the Code of Canons of the Eastern Churches*, Roma 2009.
- PAPALE, C., *Formulario commentato del processo penale canonico*, Città del Vaticano 2012.
- PAPROCKI, T.J., «Methods of Avoiding Trials», in J. BEAL – J. CORIDEN – T. GREEN, *New Commentary on the Code of Canon Law*, New York 2000, 1803-1805.
- PETERS, E.N., «A canonical look at *Ad tuendam fidem*», October 1998, http://www.canonlaw.info/a_adtuendam.htm [accessed 6 September 2013].
- , ed., *Tabulae congruentiae inter Codicem iuris canonici et versiones anteriores canonum*, Montreal 2000.
- , ed., *Incrementa in Progressu, 1983 Codicis Iuris Canonici*, Montreal – Woodbridge 2005.
- PICARD, C. – BISHOP, P. – RAMKAY, R. – SARGENT N., *The Art and Science of Mediation*, Toronto 2004.

- PIGHIN, B.F., *Diritto Penale Canonico*, Venezia 2008.
- PINTO, P., «La potestà di governo», in P. PINTO, ed., *Commento al Codice dei Canoni delle Chiese Orientali*, Città del Vaticano 2001, 825-834.
- PISTOCCHI, M., «Dei delitti e delle pene nel foro ecclesiastico», *Monitor Ecclesiasticus* 5 (1933) 210-214.
- QUINN, H., *The Particular Penal Precept*, Washington 1953.
- RATZINGER, J., «Frank witness and docile obedience», *Theology Digest* 13 (1965) 101-106.
- RATZINGER, J. – MCCARRICK, T., «Vatican, U.S. Bishops: On Catholics in Political Life», *Origins* 34 (29 July 2004) 133-134.
- REGATILLO, E., *Institutiones Iuris Canonici* II, Santander 1963⁷.
- ROBERSON, R., *The Eastern Christian Churches. A Brief Survey*, Roma 1999⁶.
- RODRÍGUEZ-OCAÑA, R., «Ways of Avoiding Trials», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ-OCAÑA, ed., *Exegetical commentary on the Code of Canon Law IV/2*, Montreal – Chicago 2004, 1964-1969.
- ROELKER, E., *Precepts*, Paterson 1955.
- ROSEMAN, D., «Mediation in the Church: A review of the literature and of the key elements of mediation», *Studia canonica* 47 (2013) 145-181.
- SABBARESE, L., «Le eparchie e i Vescovi», in P. PINTO, ed., *Commento al Codice dei Canoni delle Chiese Orientali*, Città del Vaticano 2001, 163-275.
- SALACHAS, D., «Le Chiese patriarcali», in P. PINTO, ed., *Commento al Codice dei Canoni delle Chiese Orientali*, Città del Vaticano 2001, 69-144.
- SÁNCHEZ-GIL, A.F., «Parishes, Parish Priests and Assistant Priests», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ-OCAÑA, ed., *Exegetical commentary on the Code of Canon Law II/2*, Montreal – Chicago 2004, 1282-1283.
- SANCHIS, J., «Rilevanza del principio di sussidiarietà nel sistema penale nel Codice del 1983», *Monitor Ecclesiasticus* 114 (1989) 132-142.
- , *La legge penale e il precetto penale*, Milano 1993.
- SCHAFF, P., *History of the Medieval Church. IV. Medieval Christianity*, <http://www.ccel.org/ccel/schaff/hcc4.i.viii.ii.html> [accessed 19 September 2014].
- SCHNEIDER, F., *Obedience to the Bishop by the Diocesan Priest in the 1983 Code of Canon Law*, Washington 1990.
- SCICLUNA, C.J., «Recourse against singular or particular administrative acts of the Diocesan Bishop: Request for Revocation or Amendment; Hierarchical Recourse to the Holy See; Procedure before the Apostolic Signatura», *The Canon Law Society of Great Britain and Ireland*

- Annual Conference* 13-17 May 2002, Renfrew (Scotland) 2002, 41-51.
- SCICLUNA, C.J., «The Bishop and Priests Experiencing Difficulties», *Duc in Altum*, Città del Vaticano 2011, 135-152.
- SIMPSON, D.P., ed., *Cassell's Latin Dictionary*, New York 1959.
- SIMPSON, J.A. – WEINER, E.S.C., ed., *The Oxford English Dictionary* VII, XIX, Oxford 2001².
- SMITH, G.N., *The Canonical Visitation of Parishes. History, Law and Contemporary Concerns*, TG. DC 80, Rome 2008.
- SMITH, S.B., *Elements of Ecclesiastical Law* III, New York – Cincinnati – Chicago 1988.
- STELTEN, L., *Dictionary of Ecclesiastical Latin*, Peabody 1995.
- STICKLER, A., «Il celibato ecclesiastico. La sua storia e i suoi fondamenti», *Ius Ecclesiae* 5 (1993) 3-59.
- SUCHECKI, Z., *Le Privazioni e le Proibizioni nel Codice di Diritto Canonico del 1983*, Città del Vaticano 2010.
- SWANSON, K., «Archbishop Suppresses Intercessors of the Lamb», 15 October 2010, <http://www.zenit.org/en/articles/archbishop-suppresses-intercessors-of-the-lamb> [accessed 27 August 2014].
- SWOBODA, I., *Ignorance in relation to the imputability of delicts, an historical commentary*, Washington 1941.
- TAMMARO, C., «Riflessioni sul senso e l'ambito di applicazione del can. 294 CIC. Un'analisi logica e teologica della norma», *Ius Canonicum* 45 (2005) 667-691.
- TANNER, N., ed., *Decrees of the Ecumenical Councils*, London – Washington 1990.
- , ed., *The Councils of the Church: A Short History*, New York 2001.
- THÉRIAULT, M., «Juridical Acts», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ- OCAÑA, ed., *Exegetical Commentary on the Code of Canon Law* I, Montréal – Woodbridge 2004, 803-814.
- THOMAS AQUINAS, *Summa Theologica*, London – New York 1973.
- , *Summa Theologica*, tr. Fathers of the English Dominican Province, New York, 2007.
- THOMPSON, A. – GORDLEY, J., *Gratian. The Treatise on Laws (Decretum 1-20)*, Washington 1993.
- URRU, A., *Sanzioni penali nella Chiesa*, Roma 1996.
- , *Punire per salvare. Il Sistema Penale nella Chiesa*, Roma 2002.

- URRU, A., «Considerations on Imposing Penalties in Specific Cases», in P. DUGAN, ed., *The Penal Process and Protection of Rights in Canon Law*, Montreal 2005, 287-303.
- URRUTIA, F.J., «Equità canonica», in C. CORRAL SALVADOR – V. DE PAOLIS – G. GHIRLANDA, *Nuovo Dizionario di Diritto Canonico*, Milano 1993, 447-450.
- VERMEERSCH, A. – CREUSEN, J., *Epitome Iuris Canonici* III, Paris – Malines – Brussels 1956⁷.
- VIANA, A., «The Roman Curia», in Á. MARZOA – J. MIRAS – R. RODRÍGUEZ-OCAÑA, ed., *Exegetical Commentary on the Code of Canon Law*, Montréal – Woodbridge 2004, 677-686.
- , «Sobre el recto ejercicio de la potestad de la curia romana», *Ius Canonicum* 51 (2011) 531-546.
- , «Ordinario militar», in J. OTADUY – A. VIANA – J. SEDANO, ed., *Diccionario general de Derecho Canónico V* (Legistas – Patronato Regio), Pamplona 2012, 808-812.
- , «Ordinario del lugar», in J. OTADUY – A. VIANA – J. SEDANO, ed., *Diccionario general de Derecho Canónico V* (Legistas – Patronato Regio), Pamplona 2012, 823-825.
- VINDELØV, V., *Mediation: A Non-Model*, Copenhagen 2007.
- WACHS, J.M., *Obsequium in the Church: from tradition to Council, Code, liturgy, and contemporary application*, Roma 2013.
- WERNZ, F.X., *Ius decretalium ad usum praelectionum in scholis textus iuris canonici sive iuris decretalium I*, *Introductio in ius decretalium*, Prati 1913³.
- WERNZ, F.X. – VIDAL, P., *Ius Canonicum VII: Ius Poenale Ecclesiasticum*, Romae 1951².
- WOESTMAN, W., «Restricting the Right to Celebrate the Eucharist», *Studia canonica* 29 (1995) 155-178.
- , *Ecclesiastical sanctions and the penal process: A commentary on the Code of Canon Law*, Ottawa 2003.
- WOYWOD, S. – SMITH, C., *A Practical Commentary on the Code of Canon Law II*, New York 1948.
- ZAPP, H., *Codex Iuris Canonici. Lemmata Stichwortverzeichnis*, Freiburg 1986.

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