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CONTENTS OF VOLUME XIII

ARTICLES

PAGE

Canon Law, Diriment Impediments in the New Code of . . 121
By Rev. Professor M. J. O'Donnell, D.D.

Canon Law, Matrimonial Dispensation in the New Code of . 189
By Rev. Professor M. J. O'Donnell, D.D.

Canon Law, Validation of Marriage in the New Code of . . 291
By Rev. Professor M. J. O'Donnell, D.D.

Canon Law, Subsidiary Matrimonial Questions in the New Code of 364
By Rev. Professor M. J. O'Donnell, D.D.

Canon Law, 'Sacred Places' and 'Sacred Times' in the New Code of 454
By Rev. Professor M. J. O'Donnell, D.D.

Canon Law, The New Code of—Nuns and Sisters . . 103
By Rev. Professor J. Kinane, D.C.L.

Canon Law, The New Code of—Jurisdiction . . . 204
By Rev. Professor J. Kinane, D.C.L.

Canon Law, The New Code of—Parish Priests . . 377, 469
By Rev. Professor J. Kinane, D.C.L.

Catholic Action: In France, Germany, Switzerland, Italy (and Ireland ?) 276
By Rev. Myles V. Ronan

Catholic Church in 1918, The 87
By Very Rev. James Canon MacCaffrey, S.T.L., D.Ph.

Eternal Punishment 177
By Right Rev. John S. Vaughan, D.D., Bishop of Sebastopolis

Genesis and Evolution 441
By Rev. T. J. Agius, S.J.

Hugh O Neill, Earl of Tyrone, The Will and Family of . . 27
By Rev. Paul Walsh

Hunger-Strike, The Morality of the—A Rejoinder . . 14
By Very Rev. John Canon Waters

Hunger-Strike, Some Further Questions regarding the Morality of the 219
By Rev. P. Cleary, D.D.

Hunger-Strike, The Morality of the—A Further Rejoinder . 391
By Very Rev. John Canon Waters

Ireland and Poland 49
By T. J. Curtin

Irish Literature, Currents in Eighteenth-Century . . 42
By Joseph J. MacSweeney

Monsignor Hogan, The late Right Rev. 56
By the Editor

PAGE

Official Visitor, An 265
By 'Petra'

Pentateuch, The Chronology of the 1
By Rev. C. Lattey, S.J.

Religious Experience, Notes on the Psychology of . . 141
By Professor John Howley, M.A.

Sins, The Numerical Distinction of 353
By Rev. David Barry

The Office—A Conference on the Daily Duty of the Priest and the Religious 310
By Rev. John Kennedy, C.S.Sp.

Why the Old Irish Parliament Failed 484
By Michael MacDonagh

CONTRIBUTORS

AGIUS, REV. T. J., S.J.—Genesis and Evolution . . . 441

BARRY, REV. DAVID—The Numerical Distinction of Sins . . 353

CLEARY, REV. P., D.D.—Some Further Questions regarding the Morality of the Hunger-Strike 219

CURTIN, T. J.—Ireland and Poland 49

EDITOR, THE—The late Right Rev. Monsignor Hogan . . . 56

HOWLEY, JOHN, M.A.—Notes on the Psychology of Religious Experience 141

KENNEDY, REV. JOHN, C.S.Sp.—The Office: A Conference on the Daily Duty of the Priest and the Religious . . . 310

KINANE, REV. J., D.C.L.—Canon Law . . 65, 239, 332, 414, 513

—— The New Code of Canon Law: Nuns and Sisters . . . 103

—— —— Jurisdiction 204

—— —— Parish Priests 377, 469

LATTEY, REV. C., S.J.—The Chronology of the Pentateuch . . 1

MACCAFFREY, VERY REV. JAMES CANON, S.T.L., D.Ph.—The Catholic Church in 1918 87

MACDONAGH, MICHAEL—Why the Old Irish Parliament Failed . . 484

MACSWEENEY, JOSEPH J.—Currents in Eighteenth-century Irish Literature 42

O'DOHERTY, REV. T.—Liturgy . . . 70, 247, 339, 423, 519

O'DONNELL, REV. M. J., D.D.—Theology . . 57, 230, 321, 404, 509

—— Diriment Impediments in the New Code 121

—— Matrimonial Dispensations in the New Code . . . 189

—— Validation of Marriage in the New Code . . . 291

—— Subsidiary Matrimonial Questions in the New Code . . 364

——'Sacred Places' and 'Sacred Times' in the New Code . . 454

'PETRA'—An Official Visitor 265

RONAN, REV. MYLES V.—Catholic Action: In France, Germany, Switzerland, Italy (and Ireland ?) 276

VAUGHAN, RIGHT REV. JOHN S., D.D.—Eternal Punishment . 177

WALSH, REV. PAUL—The Will and Family of Hugh O Neill, Earl of Tyrone 27

WATERS, VERY REV. JOHN CANON—The Morality of the Hunger-Strike: A Rejoinder 14

—— —— A Further Rejoinder 391

PAGE

NOTES AND QUERIES

Theology:

By Rev. Professor M. J. O'DONNELL, D.D.

Absolution in Urgent Cases 57
—— Postponement of 506
Affinity and Public Propriety 230
Baptism, Sin committed in 57
Bination, Problem in 505
Double Relationship 230
Extern Penitents, Confessors and 324
Fees, Division of 237
Funeral Offerings in the Province of Armagh . . . 232
Hospital Patients 321
Impetratory Fruit in the Mass, The 505
Marriage, Validation of 322
Old Age Pensions 232
Paschal Communion and Ecclesiastical Burial . . . 60
Recitation of the Office, The 512
Seminaries, Students in 321
Sponsors by Proxy 323
Twilight Sleep 409
'Vagi' of the Code: Who are they? 63
Voters, Duties of—Corruption and Bribery . . . 404

Canon Law:

By Rev. Professor J. KINANE, D.C.L.

Administrators of Cathedral Parishes in England and the Mass 'pro populo' 516
Changes in the Bull 'Apostolicae Sedis' and in the Index Legislation 332
Clerics and Foxhunting 240
Conferences and Conventions, Attendance of Priests at . . 69
Confession of Nuns—the Condition for the 'peace of their conscience' 239, 414
Diocesan Consultors 246
—— Recent Decision regarding the right of, to appoint the Administrator of a Diocese during Vacancy . . . 337
In common Error and positive and probable Doubt the Church supplies Jurisdiction 517
Married Persons and the Religious Life 68
Nuns and Sisters, Some Questions regarding . . . 335
Parish Priests' Obligations in regard to Attendance at Funerals and the Care of the Sick 513
Preaching on Sundays and Holidays, The Obligation of . . 65
Profession, The Ceremony of 246
Simple Vow of Poverty in Religious Congregations, Effects of . 337
Suspension 'ex informata conscientia'—the Crimes for which it can be inflicted 421

PAGE

NOTES AND QUERIES—*continued.*

Liturgy :

By Rev. Professor T. O'DOHERTY

'Asperges' before a Low Mass, The 522
Benediction of the Blessed Sacrament—May other Prayers be added after the 'Deus qui nobis'? 72
'Bursa' for the small Pyx, The 70
Celebration of Mass by Priests on Retreat 522
Communion before a Requiem Mass 250
—— of a Sick Priest, Stole and Surplice for 424
Confessional Stole—Should it be Blessed ? 341
Dominican Beads, Short Form for Blessing 250
Holy Oils, Blessing of the—Number of Priests required . . . 339
'Memoriale Rituum' in Convents, The 342
—— and certain Blessings 519
Midnight Mass on Christmas Night 340
October Devotions, Indulgences for the 70
Papal Blessing at the end of a Mission or Retreat—May it be given from the Pulpit ? 342
Patrons, A Query regarding 522
Privileged Altar, The 71
Requiem Masses, Additional, on the occasion of a Funeral when the Exsequial Mass is not Sung 249
Servers at a Private Mass 424
Titular of a Church, The 247, 519
Two Masses in the same Church on the same day 425
Varia Dubia 423

DOCUMENTS

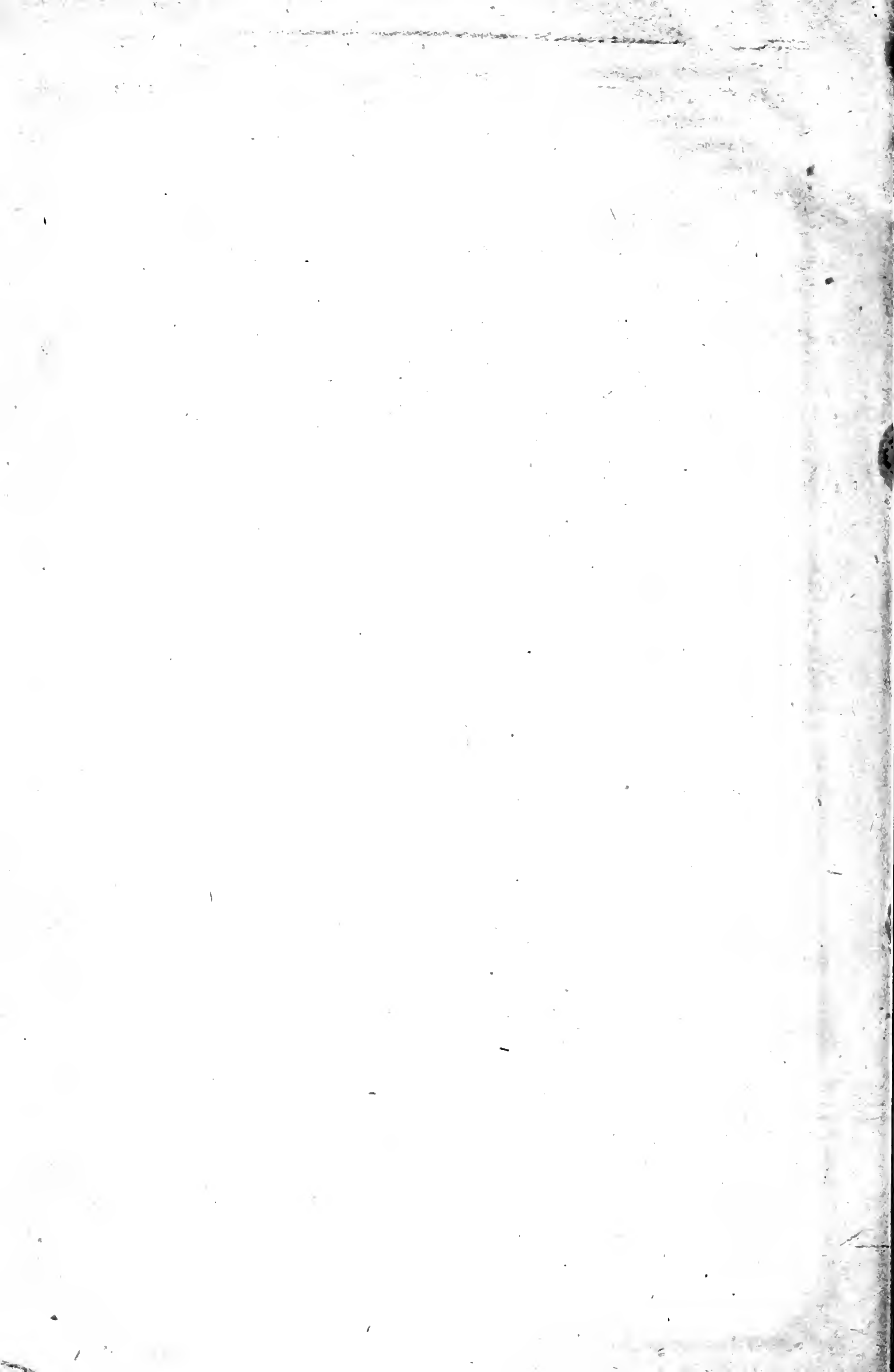
All Souls' Day, A Mass 'pro Defuncto' may be sung on . . . 524
Benedictions and Sacramentals in which Catechumens may participate according to the New Code of Canon Law 430
Certain Italian Publications are Condemned and put on the Index of Prohibited Books 166
Certain Rubrical Doubts solved by the Congregation of Rites . . 347
Conditional Matrimonial Consent—Interesting Case decided by Special Commission 81
Corea and Cochin-China, Decree introducing the Cause of Beatification or Declaration of Martyrdom of Many Servants of God from the Provinces of 431
Degrees in Canon Law, Decree prescribing the Subject-matter of Examination of 165
Devotion of the 'Forty Hours,' Decree regulating the Mass to be said when the, takes place on All Souls' Day 434
Hosts or Particles intended for the Holy Sacrifice of the Mass should be recently made; adverse Practice in certain Dioceses condemned 166
John Pelingotto of the Third Order of St. Francis, Decree confirming the long-established cult of the Servant of God . . . 253
Letter from Pope Benedict XV to the Patriarch of Venice . . . 85

PAGE

Letter to the Bishop of Lourdes regarding the Solemnities in Commemoration of the Apparition of the Blessed Virgin . . 252
Manual Masses, Decree of the Sacred Congregation of the Council arranging for the Celebration of a cumulation of . . 169
'Maynooth Mission to China,' Rescript granting Faculties to the, to Incardinate, Excardinate, give Dimissorial Letters, and Ordain 'titulo Missionis' 251
Metropolitan Church of Carthage becomes a Minor Basilica, The . 83
'Missa pro populo' in certain cases, Questions discussed regarding the Obligation of the 343
Peace Congress, Encyclical Letter of His Holiness Pope Benedict XV ordering public Prayers for the 74
'Pious Missionary Union of Clerics, The,' is enriched with Spiritual Favours 167
Priests emigrating to certain Countries, Important Decrees prescribing the Rules to be observed in the case of . . . 427
Roman Missals, Two new Prefaces to be inserted in all . . 523
United States, Doubts regarding the Nomination of Administrators of Vacant Sees in the 349
Vicars and Prefects-Apostolic are not 'de jure' entitled to a Commemoration in the Canon of the Mass 525
War, The—Decree in reference to Clerics returning from Military Service 76
—— A Reply to the Petition of a certain Religious returning from Military Service 168
—— A Decree providing for vacant Offices and Benefices during the, is now recalled 350
—— The Withdrawal of Special Faculties granted to Priests during . 348

REVIEWS AND NOTES

'Accidence of Hebrew Grammar,' 262; 'Aṁráin Ṁuiġe Seóla—Traditional Folk-Songs from Galway and Mayo,' 257; 'Apologetics and Catholic Doctrine,' 172; 'Christian Apologetics, The Principles of,' 526; 'Christ's Masterpiece—A Study of the One True Church,' 263; 'Commentarium Textus Codicis Juris Canonici,' 436; 'Correspondance du Siècle Dernier—Un Projet de Mariage du Duc d'Orléans, Lettres de Léopold Ier de Belgique à Adolphe Thiers,' 86; 'Crown of Sorrow, The,' 439; 'Devotion to the Sacred Heart,' 438; 'Elementary Handbook of Logic, An,' 263; 'Eight Days' Retreat, An,' 439; 'His Only Son—The Truth of the Divinity of Christ,' 263; 'Lumen Vitae,' 351; 'Mater Christi,' 439; 'Pilgrimage of Life, The,' 528; 'Pius X,' 437; 'Prince of Peace, The,' 88; 'Reading and Reflections for the Holy Hour,' 87; 'Summarium Theologiae Moralis, ad recentem Codicem Juris Canonici accommodatum,' 256; 'Your Interests Eternal,' 438; 'Your Neighbour and You,' 351; 'Your Soul's Salvation,' 438; 'World Problem, The—Capital, Labour, and the Church,' 175; Books, etc., Received, 88, 176, 264, 352, 440, 528.



THE IRISH ECCLESIASTICAL RECORD

THE CHRONOLOGY OF THE PENTATEUCH

BY REV. C. LATTEY, S.J.

THE question of the antiquity of man, which was dealt with in the I. E. RECORD for May, 1917,[1] does not introduce us to anything like strict chronology; but it is of evident importance in order to the better understanding of the biblical narrative that we should establish points of contact with contemporary history and an established system of dates. In the present essay, accordingly, an attempt is made to fit the earlier parts of Old Testament history into what we know of the early history of some other nations. Our *terminus a quo*, from which we shall work back, will be the building of the Temple, which it seems possible to date with some degree of accuracy; the *terminus ad quem* will be the incidents of Genesis xiv. where an independent synchronism will serve to confirm the results already obtained. Some of the chief difficulties will then be considered. It may be as well to say at once that it does not seem possible to arrive at absolute certainty; if the general trend of the argument point to one definite conclusion, at least no attempt will be made to minimise what may tell against it.

Both the Assyrian and the Egyptian monuments furnish a clue to the date of the beginning of the Temple. The former show *Ahabbu mat Sir'ilaa* fighting with his allies against Shalmaneser II, King of Assyria, at the battle of Karkar (Qarqara). In spite of some difficulties, it may be taken as generally admitted that this is 'Ahab of the

[1] Fifth Series, vol. ix. pp. 378 et seq.

land of Israel,' and the date is given as 853 or 854 B.C. For a discussion of the question it may be enough to refer to Dr. Pinches' important work, *The Old Testament in the Light of the Historical Records of Assyria and Babylonia* (Chapter x). We can now proceed to fix the beginning of the Temple within certain fairly large limits, premising that throughout this essay we shall only attempt approximations, inasmuch as the nature of the evidence forbids us to hope for more. It may be remembered that the Books of Kings furnish us, not merely with a chronological scheme of the reigns of the Kings of Judah and Israel, but also with a system of cross-references between the two that creates no little difficulty. Father Deimel, indeed, the Professor of Assyriology at the Biblical Institute, in his *Veteris Testamenti Chronologia* (p. 118) quotes with approval St. Jerome's saying: 'ut huiusmodi haerere quaestionibus non tam studiosi quam otiosi hominis esse videatur.' Without stopping to discuss details, therefore, we may conclude from this datum to about 974-948 B.C. as the outside limits for the beginning of the Temple. The reader may consult the convenient table on pp. 104-105 of the *Chronologia*.

The Egyptian evidence turns upon the invasion of Judah by the Pharaoh Sheshenq in the fifth year of Rehoboam (3 Kings xiv. 25). Prof. Flinders Petrie, in his *History of Egypt* (vol. iii. pp. 234-235), has no difficulty in identifying this invasion with that monarch's Syrian campaign. Putting the narratives of Kings and Paralipomena together, he says: 'This accords perfectly with the contemporary record in Egypt. And when an encyclopaedic critic states that "it is difficult to doubt that Shishak and Shushakim are corruptions of Cushi and Cushim," and "they belong to well-ascertained types of textual corruption," it is evident that this form of historical criticism belongs to a well-ascertained type of critical aberration.' Prof. Flinders Petrie would himself put the invasion in 933 B.C., which would give 977-937 B.C. for Solomon—though the frequency with which periods of forty years recur may possibly indicate the use of round numbers—and 973 B.C. for the beginning of the Temple (3 Kings vi. 1; xi. 42). This only just falls within the limits fixed by the Assyrian data, but, as has already been said, we cannot hope for more than approximate dates.

In 3 Kings vi. 1 we are further told that it was in the 480th year after the Exodus that Solomon began the

Temple. Adding this 480 to the 973 above, we get 1453 B.C. as roughly the date of the Exodus. The various chronological items making up this period may be found tabulated in Father Deimel's *Chronologia* (p. 97). In the Hebrew text they total to 534 years (588 in the Septuagint), with an uncertain addition to be made for the government of Josue, Samgar (possibly), Samuel and Saul. In order to reconcile this high figure with the 480 given above, it has been suggested that the 114 years in all spent under foreign domination are not to be counted separately, but as already comprised under the years assigned to the judges. This view is by no means free from difficulty ; yet it leaves us with the very plausible equation 420 + Josue, (Samgar), Samuel, and Saul=480, and it therefore appears wisest to adopt it as a working hypothesis.

We now proceed to work back from the Exodus to the incident of Genesis xiv., when we find the system we have adopted confirmed by a striking synchronism. Taking the 430 years of Exodus xii. 40 with the Massoretic text (i.e., the traditional rabbinical text), and the great mass of authorities to refer to the sojourning in Egypt only, we must add a little under 215 years to the 1453 years already obtained to arrive, as desired, at Genesis xiv. The 215 years are obtained as follows : Abraham migrated into Canaan at 75 (Genesis xii. 4), and Isaac was born to him when 100 (Genesis xxi. 5), and Jacob descends into Egypt 190 years later (Genesis xxv. 26 ; xlvii. 9) : hence the total sojourn in Canaan is 100—75+190=215 years. We take a little *under* 215 years, because the incident of Genesis xiv. takes place a little after the arrival into Canaan recorded in Genesis xii. ; if we call it 210 years, then these 210 years + the 430 years in Egypt of Exodus xii. 40 + 1453 B.C. as the date of the Exodus give 2093 B.C. as the date of Genesis xiv. And this result confirms the rest of the scheme, inasmuch as the date thus reached falls within the period during which Hammurabi, King of Babylon, was probably reigning. According to many, Hammurabi is the Amraphel of Genesis xiv. 1 ; this identification, and that of Amraphel's allies, is worked out at length by Dr. Pinches[1] ; and Dr. Sayce has lately declared[2] that 'only a German with German ideas of historical evidence would dispute

[1] *Old Testament*, etc., pp. 208-233.

[2] *Proceedings* of the Society of Biblical Archaeology, vol. xl. p. 92, May, 1918.

Dr. Pinches' discovery of the names of Chedor-laomer and his allies in Babylonian literature. . . They have been reproduced by the Biblical writer with singular exactitude.' Dr. King, too, in his *History of Babylon* (pp. 159-160), remarks that 'though we have as yet found no trace in secular sources of such a confederation under the leadership of Elam, the Hebrew record represents a state of affairs in Western Asia which was not impossible during the earlier half of Hammurabi's reign.' Dr. King gives 2123-2081 B.C. for Hammurabi's reign, and Father Deimel, in his *Chronologia*, gives 2132-2089 B.C.; it will be observed that on these reckonings 2093 B.C. falls into the later half of Hammurabi's reign, but, as has been said, all these dates are merely approximate, and the substantial agreement in the date unquestionably lends strength to the whole scheme here outlined.

Another possible interpretation of Exodus xii. 40, however, should here be noted. The Samaritan Pentateuch and the Septuagint insert Canaan in this verse alongside of Egypt, making the 430 years cover the sojourn in both, and we should naturally suppose that St. Paul, in Galatians iii. 17, was following the Septuagint computation. The total stay in Canaan, as has been explained above, amounts to 215 years, so that with this reading only the other 215 years would be left for the stay in Egypt. And the case for this shorter period in Egypt, it might well be claimed, is much strengthened by the statement in Genesis xv. 16, that it is the fourth generation that is to come out of Egypt, a statement itself borne out by the actual enumeration of generations. We get Levi Caath Amram Moses (Exodus vi. 16-20); Levi Caath Isaar Core (Exodus vi. 16-21; Numbers xvi. 1); Levi Caath Oziel Mizael (Exodus vi. 16-22; Leviticus x. 4); Ruben Phallu Eliab Dathan (Numbers xxvi. 5-9); and, moreover, Josue's generation appears to be reckoned as the fifth (e.g., Josue vii. 1; cf. Genesis xxxviii. 30). But against these considerations, and against the tempting hypothesis of a shorter stay in Egypt, stands the very serious and even decisive objection, that we should have to abandon the identification of Amraphel with Hammurabi. It appears wisest to accept this objection as fatal, because of the great difficulty of placing the incident of Genesis xiv. with anything like probability any later in history. On the supposition of the longer Egyptian stay, a 'generation' in Genesis xv. 16 may be taken with

Father Hetzenauer[1] to be capable of meaning a century or more like the Latin *saeculum*; whether, however, in the light of what has been said, that be the more natural meaning, is another question. We have here a reproduction on a smaller scale of the difficulties arising out of the ages assigned to the patriarchs, already touched upon in the I. E. RECORD,[2] and hardly worth re-opening here; whatever solution we adopt, the 430 years in Egypt are best respected. As for the interpretation of Galatians iii. 17, the best of several suggestions seems to be, that it should be taken to mean just what it says, and no more; the interval was at least that, and St. Paul was not concerned to discover, or at all events to say whether it was more. With the Greek version alone accessible to his readers, to have given the longer interval deduced from the Hebrew text might have been to lay himself open to a cavilling retort.

The above is a conservative scheme of chronology, in that it may be said to follow the most obvious indications of the sacred text, and to be that which Catholics in the main follow; nevertheless, it does not find much favour outside the Church, where the general tendency is to put the Exodus more than two hundred years later, on grounds little discussed hitherto by Catholics. *Mere* exegetical tradition, as is clear from the *Providentissimus Deus* itself, and as was pointed out in connexion with the Flood,[3] must not be mistaken for strictly dogmatic tradition; the former may be at fault in such a matter as mere chronology, which does not directly involve faith or morals. It is necessary to review the chief objections to the above scheme, therefore, not as difficulties against a dogma which must at all costs be upheld, but with a view to ascertaining whether prudence and sound scholarship require that, while safeguarding biblical inerrancy, we should cast about for some other interpretation of the biblical figures, which would bring them better into line with modern discoveries. Not to keep the reader waiting for his answer, it may be said at once that to the present writer there does not seem to be any really sufficient call for a drastic change in the chronology here in question, that is to say, it still appears best to place the Exodus about the middle of the fifteenth century.

[1] *Comment. in Librum Genesis*, ad loc.
[2] May, 1917.
[3] See I. E. RECORD, Fifth Series, vol. vii. pp. 209 et seq.

There are some difficulties in the way to warn us against too round and intolerant an assertion of our own position; they impose caution, but not the complete abandonment of ancient landmarks.

In the first place there are the Egyptian campaigns in Syria. It is said that on the scheme of chronology already explained the Israelites should actually be in Palestine, and that there is no mention of an encounter in either the Egyptian or Hebrew records. In general it may be answered that a good deal depends upon a right understanding of the period of the judges; it was a time of disintegration, and of slow and difficult penetration after the brilliant success of Josue. It was one thing to overrun the Promised Land, another to settle in it and take permanent possession of it. The Book of Josue shows us the land assigned to the tribes; the Book of Judges their partial failure to secure it.

To come to particulars. Two Egyptian invaders of Palestine have to be reckoned with, Rameses II and Rameses III. For the date of Rameses II, Prof. Flinders Petrie, in his *History of Egypt* (vol. iii. p. 28), gives 1300–1234 B.C.; Prof. Sayce, in his *Egypt of the Hebrews* (p. 316), gives 1348–1281 B.C. Rameses II undertook Syrian campaigns in his first, second, and fourth years, and it was the last of these that roused the Hittite confederacy in the north to more or less successful resistance. 'Notwithstanding the pompous boasts of Ramessu, the Egyptians had to remain content with Palestine, and did not possess more than had been easily acquired in the beginning of his reign.'[1] 'The result of the war was a drawn game.'[2] These remarks of Prof. Petrie's apply to Rameses' fourth year. It was in his twenty-first year that his celebrated treaty with the Hittites was ratified, and there seems no reason to doubt that Palestine was at this time in the Egyptian sphere.

> Of the latter part of the reign there are no records, except a few trivial papyri and ostraka. . . . Thus we have no details of the greater part of this reign, and can only say that there do not seem to have been any wars for over fifty years. While the credit of the earlier wars lasted, Egypt was probably untroubled; but as those who had fought died off, Egypt gradually weakened, and her enemies strengthened. The old age of a long reign is always perilous for a fighting state; and Ramessu, living to 85, could not have undertaken fighting for long before he died. Early in the next reign we find that the Libyans were not only pillaging

[1] Petrie, *History*, vol. iii. p. 47. [2] Ibid. p. 55.

but settling in the country, and it was thought much for the Egyptians to triumph over even the southern towns of Palestine. It seems, then, that a long period of gradual decline occupied the greater part of this much-boasted reign.[1]

Having thus reduced the argument on its Egyptian side to something like its true proportion, let us do the same for the Hebrew evidence. The Israelites are said to have spent forty years in the desert (e.g., Numbers xxxii. 13), so that the date 1453 B.C. for the Exodus would give us 1413 B.C. as the date when Josue assumed the leadership: how long he held it, we are not told. Othoniel and Aod take 120 years together;—if, on principles explained above, we take no notice of 26 years of foreign domination, but on the other hand allow 30 years for Josue, then by 1263 B.C. there have been but two judges in Israel, and we are told practically nothing of their rule. On Prof. Petrie's reckoning, Rameses II's reign is already more than half over, and on Prof. Sayce's reckoning, it has been quite over some years. If we consider the character of the later part of Rameses' reign, and also how little we are told of the two judges in question, the silence of the records does not seem so wonderful.

Still, as regards the Egyptian monuments of this time, we may ask, is their silence so complete? Under Rameses II's son and successor, Merenptah, we have a mention of Israel that seems to wreck the whole argument from silence. There is question of deliverance from a league of tribes, and among other boasts the Pharaoh declares that 'the people of Israel is laid waste—their crops are not, Kharu (Palestine) has become as a widow by Egypt.' Prof. Petrie remarks that 'the name of the people of Israel here is very surprising in every way; it is the only instance of the name Israel on any monument, and it is four centuries before any mention of the race in cuneiform; it is clearly outside of our literary information, which has led to the belief that there were no Israelites in Palestine between the going into Egypt and the entry at Jericho. . . . The only likely conclusion is that there were others of the tribe left behind, or immediately returning, at the time of the famine.' It has seemed best to quote a good deal of the context, for fear of seeming to misrepresent the learned Egyptologist. It will be seen that, unable to surrender his conviction of

[1] Ibid. pp. 71, 72.

a late Exodus, he still feels that, somehow or other, Israelites must be got into Palestine before it! The point is worth noting, because we shall recognize the same makeshift theory when we come to the Tel-el-Amarna correspondence.[1]

As regards Rameses III, Prof. Sayce wrote strongly in 1895,[2] without himself volunteering a date for the monarch:

> When Rameses III overran the southern portion of Palestine, and built the temple of the Theban god at the spot now known at Khurbet Kan'an, not far from Hebron, the Israelites could not as yet have entered the Promised Land. There is no reference to the Egyptians in the Pentateuch, and there is no reference to the Israelites in the hieroglyphic texts of Medinet Habu. Hebron, Migdal, Karmel of Judah, Ir-Shemesh and Hadashah, all alike fell into the hands of the Egyptian invaders, but neither in the Egyptian nor in the Hebrew records is there any allusion to a struggle between Egypt and Israel. When Joshua entered Canaan all these cities belonged to the Canaanites, and when Rameses III attacked them this was also the case. The Palestinian campaign of Rameses must have prepared the way for the Israelitish conquest; it could not have followed after it.

But ten years later Prof. Petrie, in his *History of Egypt* (vol. iii. pp. 152-3), puts the matter in a very different light.

> Unfortunately there is no account of the Syrian war; and that a great land fight took place we only learn form the scenes of groups of Amorite captives, and the Philistines and Zakkaru escaping in ox wagons. Unhappily the lists of captive towns have been so largely copied from earlier conquests, that we cannot use them for history; especially as the walls of the Ramesseum, which were probably their prototype, have nearly all been destroyed, and cannot be compared.

We may thus reasonably decline to take this difficulty very seriously until the main facts are more clearly ascertained. We may also, of course, allege Merenptah's inscription once more, and further suggest that possibly the Philistines might be holding Jewish towns in South Palestine. Prof. Petrie gives 1202-1170 B.C. as the date of Rameses III; this date does not bring us anywhere near Samson, who seems to be the only judge of moment belonging to the southern group of tribes. We may presume Samgar to belong to this group, since he smites the Philistines (Judges iii. 31), but we are hardly told anything of him, and there

[1] *The Palestine Exploration Fund Quarterly Statement* for 1916 (p. 42) gives a new interpretation of this inscription by Prof. Edward Naville, translating 'The Israelites are swept off, his seed are no more.' On this astonishing change in the rendering we have yet to hear the experts' final judgment.

[2] *Egypt of the Hebrews*, pp. 89, 90.

is no other southern judge whatever. Even in Samson's time Judah is represented as under Philistine domination (Judges xv. 11). Here again, even in what concerns the Hebrews, and abstracting from the Egyptian monuments, the objection appears to be based on an insufficient realization of the general state of affairs in the time of the judges.

Nevertheless the Philistines are a whole difficulty in themselves; but a difficulty of such large proportions as not to bear with particular weight against any one system of chronology. 'The Philistine settlement in Canaan,' writes Prof. Sayce,[1] 'must be ascribed to the age of Rameses III, and it was already with the Philistines that the Israelites came into conflict under almost the earliest of their judges.' As a matter of fact, the Philistines are mentioned long before the period of the judges, in connexion with Abraham (Genesis xxi. 32-34), and Isaac (Genesis xxvi. 1-18), and elsewhere. Prof. Macalister, in his *Philistines* (p. 39), explains the matter in a sensible way, that clears the sacred text from any charge of error :—

> The use of the word 'Philistine' in these stories has long been recognized as an anachronism. Perhaps with less harshness and equal accuracy we might characterize it as a rather free use of modern names and circumstances in telling an ancient tale. Even now we might find, for example, a popular writer on history saying that this event or that of the Early British period took place 'in Norfolk,' although it is obvious that the territory of the North Folk must have received its Saxon name in later times. The tales of Abraham and Isaac were written when the land where their scenes were laid was in truth the Land of the Philistines; and the story-teller was not troubled with the question as to how far back that occupation lasted.

If, then, the early occurrence of the term 'Philistine' can be explained by the popular character of the narrative in the case of Genesis, so it can be in Judges. Nevertheless it is not clear that we need to fall back on this solution. Is it really certain that, as Prof. Sayce asserts, 'the Philistine settlement in Canaan must be ascribed to the age of Rameses III'? The actual disturbances which caused their invasion of South Palestine began in the fourteenth century, and Rameses II himself felt the pressure of the moving of the peoples.[2] Prof. Flinders Petrie[3] is uncertain whether the Philistines of Rameses III came from Palestine or Crete, but inclines to the latter; may they

[1] Ibid. p. 91.
[2] Macalister, *Philistines*, pp. 18-20.
[3] *History of Egypt*, vol. iii. p. 151.

not have had a footing in Palestine also? To such attacks —half raid and half settlement—the Saxon and Danish invasions of England would appear to offer some parallel.

We come to another difficulty, raised, for example, by Driver[1]: the Tel-el-Amarna letters show that about 1400 B.C. 'Palestine was still an Egyptian province, under the rule of Egyptian governors; the entry of the Israelites into Canaan could not, consequently, have taken place till after 1400 B.C.' About the Tel-el-Amarna tablets we need here say no more than that 'they were letters from monarchs of western Asia, like Kadashman-Kharbe, King of Babylonia; Ashuruballit, King of Assyria; and Tushratta, King of Mittanni, to Amenophis III, or Amenophis IV, Kings of Egypt, or they were despatches from various governors or princes of Syria or Palestine, Philistia, or Phœnicia, to these same Egyptian kings, whom they acknowledged as lawful rulers or suzerains over their territories.'[2] Driver does not even mention the possibility, discussed by many, that the 'Khabiri' mentioned in these inscriptions may be the Hebrews invading under Josue. It appears to be generally admitted that there is no difficulty in equating the names, and, if we allow for the vast difference in the point of view, it appears not unreasonable to equate much of their deeds also. The story of the invasion as told in Holy Writ is only a bare summary, and in these letters we should in any case have merely some odd references to it from the fearful victims, so that some rein must be given to historical imagination in attempting a reconciliation. Dr. Rogers[3] is chiefly impressed with the chronological difficulty of the identification; but is there not here some danger of a vicious circle? We have already sufficiently seen that, as far as the biblical chronology itself goes, this early date is that which does least violence to the text. However, there is a formidable difficulty still awaiting us, and it may be that which Dr. Rogers has chiefly in view. And so too may Dr. Skinner in his *Genesis* (p. 218), though he likewise refrains from mentioning the fact. He actually feels bound to postulate an invasion of Palestine by the ancestors of the Israelites in the fifteenth century B.C., but will not suppose the Exodus an already accomplished fact. 'There is thus a strong probability,' he

[1] *Genesis*, Introduction, p. xxix.
[2] R. W. Rogers, *Cuneiform Parallels to the Old Testament*, p. 254.
[3] Ibid. p. 260.

writes, 'that עברים ['ibhrim, Hebrews] was originally the name of a group of tribes which invaded Palestine in the fifteenth century B.C., and that it was afterwards applied to the Israelites as the sole historic survivors of the immigrants.' Here, too, the chronological difficulty is imagined to be insuperable, although the synchronism is precisely what could most easily be squared with the Scripture record.[1]

The last difficulty upon which we shall touch is the most serious, and it shall be stated quite frankly. In Exodus i. 11 we read that the Israelites 'built for Pharaoh store cities, Pithom and Raamses'—so the Revised Version, following the Hebrew. Now it is contended that 'the excavations of M. Naville have shown that Rameses II, of the nineteenth dynasty, was the builder of Pithom; and the name of the other city, though it is still not certainly identified, is sufficient evidence that he was its founder likewise.'[2] Rameses II appears to have been reigning during the first half of the thirteenth century B.C.,[3] so that if the Israelites built for him, the Exodus cannot have been as early as the middle of the fifteenth century. M. Naville's witness, it should be noticed, is very explicit:—

> The founder of the city, the king who gave to Pithom the extent and the importance we recognize, is certainly Rameses II. I did not find anything more ancient than his monuments. It is possible that before his time there may have been here a shrine consecrated to the worship of Tum, but it is he who built the enclosure and the storehouses; he is the only king whose name appears on the naos and on the monuments of Ismailiah. Nowhere is it said, as on the monolith of Abou Seyfeh, that he restored constructions of former kings.[4]

As for 'other monuments,' these may be those already here indicated as difficulties; at all events, the chief difficulties actually raised have here been reproduced. But it is what M. Naville has to tell us about Pithom itself that seems the most formidable of all. Are we simply to accept Rameses II as the Pharaoh of the Oppression? The opinion of such a distinguished Egyptologist is not lightly to be

[1] Some 'Khabiri' appear to have been found 'some six centuries before the era of the Tel-el-Amarna tablets,' in Babylonia (*Palestine Exploration Fund Quarterly Statement* for 1916, pp. 140, 141). But the name ('the men from across') might fit many tribes at different times, and it is not clear that this has any important bearing on what has been written above.

[2] Driver, *Genesis*, Introduction, p. xxix.

[3] Cf. ante p. 6.

[4] Naville, *The Store-City of Pithom*, p. 13.

rejected, and he has borne such willing witness in his *Archaeology of the Old Testament* to the general trustworthiness of the Pentateuch in matters Egyptian, that he can scarcely be accused of any unhealthy bias in the matter. Nor would it be right to commit the Church herself to an opposite view, in a matter so obscure and from every point of view undecided ; indeed the French *Crampon* Bible, for instance, notes that the Pharaoh of Exodus ii. 15 is 'probably' Rameses II, and Father Hugh Pope, O.P., in his *Catholic Students' Aids* leans at least as much towards the later date for the Exodus as towards the earlier one which we have given. Still, this entails treating the biblical figures very cavalierly, and, as regards the non-biblical data, we have already found twice over that the hypothesis of a late Exodus compels the experts to assume Israelites in Palestine before it (pp. 7-8, 10-11). It is, therefore, worth while to consider carefully whether this last difficulty be indeed absolutely insuperable.

Sometimes the best way to attack a problem is to suppose it already solved, and then to consider the implications of the solution. This method we may apply to the present case, without pressing unduly any one particular method of reconciliation. Let us, then, suppose that the Israelites built these cities much earlier, say for the conqueror Thothmes III. In the Egyptian monuments no record exists of their having done so ; but then there is nothing in these same monuments to tell us that they did so for Rameses II either. We should presumably have to suppose that Rameses II was restoring the store-cities ; there does not seem to be any cogent proof that he was bound to mention the fact if he did so. Indeed, several eminent scholars, including M. Naville himself, identify Raamses, the second store-city, with Zoan, a city greatly enlarged by Rameses II, but originally built much earlier.[1] The name was therefore changed, and we could well imagine the later name slipping into the text in the days when it was in vogue. An argument from silence is seldom absolutely trustworthy ; in this case we have to reconcile ourselves to much silence on the side of the pagan records in any case. We could even imagine the epithet 'store-cities' coming in with the later names ; but, on the other hand, Thothmes III was a

[1] Cf. Driver's note on Exodus i. 11 (*Cambridge Bible for Schools and Colleges*).

great Asiatic conqueror himself, and may have felt the need of them no less than Rameses.

And there we may leave the question, without pretending to offer here a certain solution of all difficulties, any more than in the case of some previous articles on the Pentateuch. Yet on the whole it appears wisest to hold on to the obviously biblical system of chronology, while not denying the presence of real difficulties. We can but endeavour to weigh carefully both what the experts have to tell us of the monumental evidence, and what the Church and the Holy See have to teach us in the handling of Holy Writ. One pious wish the consideration of such problems as this leaves strong within us—the wish that Catholic studies may be so efficiently organized as to produce first-rate experts in all the various departments of biblical research.

CUTHBERT LATTEY.

THE MORALITY OF THE HUNGER-STRIKE

A REJOINDER

By Very Rev. JOHN CANON WATERS

When I wrote my article on the morality of the hunger-strike in the August number of the I. E. Record,[1] I knew that I was breaking new ground, that my conclusions would very likely be challenged, and that opposition to them was sure to make itself articulate sooner or later. I expected, therefore, and was ready to welcome reasonable criticism. I had not long to wait. Dr. Cleary, who till quite recently was a professor of theology in Maynooth, has published an answer to me in the November number of the same review. I have read this article with great care and interest, but I must say frankly that I have found it in many ways disappointing. I do not believe that it will give any assistance towards amending or correcting the opinions I expressed on the immorality of the hunger-strike.

Dr. Cleary revels in scepticism. His mind is obsessed with doubt about the simplest truths. Assent or positive assertion seems foreign to his philosophy. Whether I state principles or draw conclusions, whether I make concessions to my opponents or refuse them, whether I deal with history or with science, whatever I say seems but to inspire or to increase his doubts. The cloud of doubt which my critic raises leaves an impression on the minds of cursory or simple readers that he has closed with the enemy and overthrown him, whereas he has kept himself at a very safe distance.

It is to me a matter of sincere regret that I may appear, in the course of my present defence, to impute to Dr. Cleary plain fallacies, misunderstanding of his own

[1] Fifth Series, vol. xii. pp. 89 et seq.

quotations, unacquaintance with elementary principles of natural law, and such a total disregard of the kind of argument that would alone be effective in such delicate discussions as I should not have believed possible in a theologian of his standing. I mean no personal discourtesy to him, and have no other wish than to let the facts speak for themselves.

With this preface, I address myself at once to the examination of his article and the problems it raises. I will begin with the only objections which are at all serious or relevant—the only objections which would impair to any notable degree the value of my conclusions. My article was in plan a simple one. I assumed, at the beginning, that to kill oneself is always unlawful. Dr. Cleary cavils a little at this, but does not venture to deny its truth, and that is all my argument needs. I then proceeded to show by three proofs, based on the three determinants of morality in acts generally, that the hunger-strike is wrong. First, it is objectively self-starvation, and therefore, killing of oneself; second, not only do the strikers perform an act which amounts to suicide, but they actually intend death and ordain it as a means to an end; in the third place, the evil consequences of the hunger-strike preponderate. Dr. Cleary does not dispute the cogency of my arguments nor does he express dissent from my conclusion. A very awkward thing about my critic is that he never expresses agreement or acceptance. His doubts, however, are so numerous that I am sure if he could have questioned these, my principal positions, he would not have been reluctant to say so. I cannot but assume, then, that Dr. Cleary agrees with me in condemning any hunger-strike which involves self-starvation or the election of one's own death as a means to a desired end. If he accepts so much, what, then, does he object to? He suggests an alternative. He makes a distinction between the unlimited strike, for which there is no defence, and *a limited, non-fatal* form of strike, which just allows one to take a certain *risk of death,* provided *death* itself be guarded against.

Dr. Cleary thinks this latter form of hunger-strike quite innocent, and I presume he also holds that it is of practical importance. Before dealing with its morality I would like to say that I regard this limited strike as of little or no practical interest. An exact line cannot be drawn in a concrete case between the point where serious danger

ends, and death becomes inevitable. No conscientious man would license an act whose morality depended on the ascertainment of such an elusive line; no sensible man would venture his life on such a chance. Moreover, either the point at which the strike is to be abandoned will be fixed so close to the fatal line as to be invisible to all, especially to the men on strike, and then it does not differ from the unlimited and condemned form of strike; or the point will be fixed at such a distance as to to make the security of life visible to all, and then it loses all power of putting pressure on Government. I have had considerable experience of such limited strikes, and can assure my readers that success by their means is very rare and very tardy. I knew a man once who carried on such a strike for some two years, and was released only when his full term had expired. The public never heard of the case. The Government took no notice, and his sacrifices were all in vain. The Irish strike of 1917 was of the unlimited type, as is abundantly attested by the sworn declarations, the public speeches, and the open and notorious professions of those engaged in it. The men at the head of the movement knew that no other had any promise of success. My article dealt not with any particular strike, but with the *type* to which this and all other real strikes must belong.

The morality of the limited strike, therefore, is of interest to the philosopher in his study, but does not present any problem of practical urgency. I do not mean, however, to shelve the task which my critic has placed on me of showing that it is not lawful. I had, in fact, foreseen this indirect way of evading my argument against hunger-strike, and I had provided against it by introducing the principle 'that we may not directly will the risk of that which we may not directly do.' My opponent sees that this principle bars his path. What does he do with it? He makes no attempt to dislodge it by reasoning or argument. He does not deny it—he contents himself with saying that Lehmkuhl denies it. This amounts to a surrender of his case, so far as it rests on discussion. His aim, then, is not to provide *a justification* of the mitigated strike, but merely to set up an *extrinsically probable opinion*—if one man can make such an opinion probable—which shall be available in practice only, and only for men who can certify that they will not push their resistance to the last.

This is not a very ambitious aim, but I have no intention of belittling the objection, and I will answer it as the most serious one I have to meet. The objection is stated (p. 268) thus :—

> I can understand and sympathize with a man like Lehmkuhl when he says, 'a girl may jump into certain danger of death, when she may not jump into certain death.' Probably Canon Waters would consider Lehmkuhl's distinction too fine. . . . The distinction is of importance, as it would help to decide the morality of very many instances of hunger-strike. In such cases, if there is a good reason for the strike, it will, according to Lehmkuhl's principle, be lawful to hunger-strike, even though the abstinence will induce danger of death, and even though it be decided that the hunger-strike *à outrance* is essentially wrong.

A man should be very gross who could not see a distinction of this magnitude. I have used the distinction myself, and everyone admits that there are cases which will justify a man taking a certain risk of losing his life which would hardly be a defence for a plunge into certain death. The quotation omits a phrase—'licet virgini ad evadendam laesionem sui'—which gives all its point to the distinction in the author—but let that pass. I hope Dr. Cleary does not forget that what he has to show is, that Lehmkuhl is thinking of *direct* danger, or rather of *direct intention* of risk. This is the only point in dispute, for no one denies the lawfulness of incurring danger, or even death *indirectly*. But one glance will show that Lehmkuhl, on the contrary, is talking of *indirect* danger and of *indirect* death. The heading of the paragraphis, 'On the *indirect* killing or wounding of oneself.' There are six instances of this indirect killing or wounding given by Lehmkuhl—that cited by Dr. Cleary being the second—and all are the usual instances of indirect actions. The sixth is a case where death itself is allowed, which would not be possible if direct death were being considered. The title of the paragraph is decisive, but it is borne out by the character of the instances and the solutions, especially the sixth. Evidently Dr. Cleary is mistaken in supposing that Lehmkuhl lends him any support. On the last page Dr. Cleary writes : 'In this case we have, with all due respect to Canon Waters, the authority of men like Lehmkuhl that one may go *directly* into danger of death, even when it is unlawful to commit oneself to certain death.' Dr. Cleary is well aware of the importance of that little word 'directly,' which he has introduced here. The misfortune is that the author himself would have supplied 'indirectly.' *Cadit quaestio.*

If any one of my readers wishes to know what Lehmkuhl really thinks of the principle, let him turn to the chapter on 'The Duel.'[1] He will find that Lehmkuhl fully adopts the principle that we must not choose danger of death as a means to an end, and uses it to refute the milder forms of duelling as I do to refute the milder forms of hunger-strike. So Lehmkuhl, instead of founding a probable opinion in favour of the non-fatal hunger-strike, is proved to be a vigorous upholder of the principle which condemns it.

There is only one other objection that I have to reckon with—another quotation. This time it is Dr. MacDonald, who, however, is not quoted as an authority, like Lehmkuhl, but merely as an author for whose opinions I have made myself responsible by granting his book the *nihil obstat* as a diocesan censor. Few censors take so strict a view of their duties as Dr. Cleary supposes. However, I am glad to say that I agree with my friend Dr. MacDonald here. I see nothing wrong in his teaching, and nothing in support of any form of hunger-strike. I will quote only the last sentence of the passage given by my critic: 'Why should not the same good aspect have equal efficacy even though the production of the good effect should perhaps be accelerated by the effect which is evil?' There is no reason at all why an act otherwise good should become bad merely because the evil effect accelerates the good. I think such a fact should rather be a recommendation of it—provided always that two conditions are verified: (*a*) that the acceleration is not intended by the will, and (*b*) that the evil effect is an incidental effect of the act. These two conditions, which would have the unanimous support of theologians, will render the doctrine quite true, and will at the same time prevent it being used in favour of hunger-strike. The evil effect in the hunger-strike is not incidental, but essential, and it is intended directly as a means to an end. Thus the teaching of Dr. MacDonald will assist the strikers only at the cost of rejecting two conditions which have the consensus of theologians behind them. The result is that there is not the slightest probability of any kind in favour of the mitigated, any more than in favour of the extreme, kind of hunger-strike. The proposition that would assert its lawfulness is so far without support either from reason or authority.

[1] Vol. i. nos. 1016, 1017, edition 12.

The whole case as presented by Dr. Cleary is confined to the limited strike only, and rests entirely on two quotations, one of which is innocuous and the other a misrepresentation. I, therefore, reaffirm my conclusion that this minor form of strike is evil, because it implies the direct incurring of danger to life, and because this danger to life is ordained as a means to an end. I do not say that it is suicide, but it is a very grave sin that savours of suicide, and if the sacraments of the Church are sought and received by men who have the will to persevere in such sin, it is sacrilege, if we are to judge their acts objectively.

This ends my criticism of the article, regarded as an assault on my chief conclusions. There is, indeed, some slight attempt to turn the edge of my third argument—an argument which proceeds on the balance of good and evil in the hunger-strike, but it amounts to little, and any niggling with the third argument, if the other two hold their ground, as they do, is like addressing the jury after one's client has been hanged.

There are a great many other objections in this article which some people would perhaps like to see answered, and as the task is easy I will do so, if the Editor of this review does not object. First, there are two points of considerable interest in themselves which have a certain affinity with the main discussion. One of these I had mentioned in my article, the other I had for good reasons omitted, but I will deal with both now. (*a*) Dr. Cleary writes (p. 273) :—

> If a Christian in the early days of the Church was entitled to refuse meat of animals killed by strangulation, or if at the present day one is entitled to refuse food offered to idols, even when one can get no other food, why should not one be entitled to refuse prison food when no other food is offered and when its acceptance would imply the sacrifice of a big principle ?

I will not question this, although I do not know on what authority it is stated that the prohibitions were intended to bind men, even when no other foods were available It causes no difficulty, however. God, who is the Author of nature and is active in all her operations, and who, of His own bounty, gives food to all in due season, may obviously refuse to give food, or may forbid a particular kind of food. If He does so, then we must treat such food as withdrawn, as not available for human use, and even

starving men would have to avoid it as not being human food at all. Clearly, however, God alone can do this. No human authority, resting on natural law, and making ordinances that derive all their validity from natural law, could possibly issue a valid prohibition of food that was made by nature to sustain human life, and to eat which there was, moreover, a primary natural command. Therefore no doctrine of 'tainted' food can be allowed.

An interesting case of hunger-strike is here suggested. Suppose a man thought his honour compromised by eating, or by eating the only food that was supplied, might he push his abstinence so far as to endanger seriously his life or to incur certain death? The case is very like that of duelling and the same answer must be returned. A man in such a case would not intend his own death or danger, and would not use either as a means to gain his purpose. His whole purpose is achieved simply by abstinence, and is not furthered by the danger into which he is brought. To this extent, he is more innocent than the ordinary hunger-striker, to whom danger of death is a means directly chosen to gain some end. Nevertheless, if the moment comes when death is the only alternative to taking food, he will have to take the food; for, as I showed in my first article, not to take it would be to kill himself, and no man may kill himself even to save his honour.

The second problem arises out of a difficulty put in the following passage (p. 269):—

> Indeed, if my Carthusian is entitled to abstain from meat because his delicacy is an accident, it would seem that a hunger-striker, possessed by accident of a delicate constitution, and therefore likely to die sooner than the normal man, might very well contend that his 'abstinence has no power to kill him by a law of his constitution,' and, consequently, that he may hunger-strike in or out of prison for a cause of some considerable importance.

Dr. Cleary here frames a case and draws an inference. The case is a real one, and will become more familiar as the hunger-strike becomes more frequent. I remember reading some years ago, in the newspapers, an account of a peculiar case of suicide in an English town. An unfortunate man was found hanging from a beam, but the medical evidence at the inquest showed that he died of heart failure and not of hanging or strangulation. This man could commit suicide, but he could not commit suicide by strangulation, because before he could succeed in hanging himself he would

have already died of heart failure. We need not regret that some of the avenues to suicide are occasionally closed. So, I have no doubt, there are men who could not kill themselves by sheer starvation. Before the process had gone as far as that, the abstinence from food would have found out some weak point in their constitution, and they would then, if they continued their fast, die of heart failure or of whatever other disease they were prone to. The death of a man under these circumstances would be incidental in reference to *the means* he took, but it would not be incidental in respect of his *intentions*. Dr. Cleary should not forget that, as I proved in my first article, strikers intend their own death as a means of wringing concessions from the Government. The striker with the delicate constitution may not die of self-starvation, but he intends his death, and that is suicide. There is no reason, after this, to ask whether such a man may strike for any good cause. No man, I repeat, may lawfully intend to kill himself for any cause whatever.

I may then solve the problem of the drug, which Dr. Cleary puts (p. 269) :—

> I may not take a drug, a single glass of alcohol, let us say, which has an invigorating effect on mankind generally, but which through 'an accident of my constitution' will kill me.

Taking the drug in this case is undoubtedly an act of indirect killing of oneself, and may be justified on the same condition as other acts of the sort. One condition is that the advantage to be gained attaches, not to the man's death or danger of death, which must not be made a means to an end, but to the swallowing of a drug, which is not poisonous but 'invigorating.' Moreover, a proviso must be inserted that once the feat of swallowing the drug has been accomplished and the advantage gained, every remedy should be employed to save his life—otherwise there would be evidence that the man's death was intended.

I will next take Dr. Cleary's objections to the proof of the principle with which my first article began. These objections have only a very remote bearing on my theme, still I hope readers who have followed so far will travel a little farther.

I began with the truth—that to kill oneself is always unlawful. One must begin somewhere. Lugo says of this principle that it was denied by some forgotten heretics,

but it is received as most certain by the unanimous assent of theologians and philosophers. I thought I had solid ground under my feet here. I quoted the teaching in the words of the master of all theologians, St. Thomas Aquinas, and, to make assurance doubly sure, I quoted one of his proofs. It is this proof which Dr. Cleary attacks in the following objections (p. 266) :—

> Somehow, this argument from St. Thomas has never appealed to me. (*a*) In the first place, it seems to prove too much. If we base the intrinsic unlawfulness of suicide on the fact that we love ourselves and naturally resist destroying agencies, it seems to me that we may kill nothing, since 'naturally everything loves itself.' (*b*) Nor would I care to lay too much stress on the contention that it is against a natural inclination and therefore wrong—I have a suspicion that there is a good deal of truth in the old axiom, *nitimur in vetitum*, and recollect that, as the Catechism tells us, the sin of our First Parents has left in us a strong inclination to evil.

The law here objected to is a law of all being and is not limited to men or even to living things. 'Omne ens appetit esse' is only another expression of it. To overthrow such a law would be to loosen the foundations of the world. I am not sure what Dr. Cleary questions in it. Does he say it is not true? or that this, the most fundamental law of nature, is not a good rule of morals? or that it cannot be ascertained and distinguished from counterfeits? No teacher of morals has a right to thrust such doubts on the public without answering them.

Let us now look at the first objection. To take concrete instances, the argument comes to this, 'Cats naturally love themselves, mice naturally love themselves, *ergo* cats love mice'—an argument without a middle term! Let us, however, go behind the letter of the objection, and, without claiming Dr. Cleary's authority, nurse it into some semblance of life. The essence of the argument in the mind of its author would seem to be that, e.g., since sheep naturally love themselves, a man who kills a sheep violates some part of the natural law. I answer—the law of nature is different in different things, and may enjoin different and opposite acts according to the various natures on which it is inscribed. Thus, there is the law of the cat and the law of the mouse—both natural laws—but the law of the cat commands the killing of mice that cats may live, and the law of the mouse commands it to thwart the intentions of the cat, if it is able. So it is with men and animals that men kill. A man, following

the natural moral law of the man, kills the sheep as food for man. He does not observe the law of the sheep because he is not subject to it, and he does all that natural law binds him to do if he observes the law of the man. A man who kills sheep does not then break any natural law by which he is bound, and the truth is, that no man can break a rule which does not apply to him. The axiom, therefore, that every being severally loves itself by a natural law lends no countenance to any theory of universal benevolence.

In his second objection, Dr. Cleary confuses inclinations which arise from nature with those which are the outcome of some failure or disease of nature. That certain functions are natural and others morbid, I thought no one would question. Teeth grind food, and sometimes ache, but one function is natural, and the other is unnatural and morbid. This elementary distinction is as well known to the physiologist as to the psychologist. It is a principle of the utmost importance to the epistemologist, for no one can separate trustworthy from untrustworthy perceptions who has not mastered it. To the moralist, the distinction is simply essential. A moral philosopher who could not distinguish natural inclinations from those due to failure has still to learn the most elementary truths of his science. The very principle of self-love is at once the root of all good and, when disordered, the root of all evil. Dr. Cleary does not seem to know how to distinguish a truly natural inclination from a diseased one, and as these inclinations are the language in which the natural law is written on our hearts, he is quite unable to distinguish the natural law from what St. Thomas calls the 'lex fomitis,' the law of sin. Readers of the I. E. Record will be pleased to know that St. Thomas supplies an answer to both these doubts, in one article of the *Summa Theologica.*[1]

There is an argument in pages 266, 267 to show that theologians do not hold, as is commonly supposed, that suicide is *intrinsically* wrong. This is a question of fact, and might be settled by quotation. Let Dr. Cleary make a list of those who maintain that suicide is not naturally wrong, and that it is a sin only by positive legislation or on account of the consequences that would attend on its being permitted. The list will be a short one. Dr. Cleary's argument is no more conclusive than would be the inference

[1] Ia IIae, Q. xci. Art. 6.

that, because a boy got a wrong answer to a difficult arithmetical exercise, he had doubts of the principles of the table-book.

I devoted a very considerable part of my article to a consideration of the morality of exposing one's life to danger from the action of others, as soldiers do, and of the similar but distinct act of incidentally killing oneself. The study was strictly not necessary, but I thought it right to deal with these questions before I came to the arguments against the hunger-strike. I wished, in the first place, to lead up to the point gradually, and to prepare readers to appreciate the argument; secondly, I wanted to show by contrast with lawful actions what exactly was the difference between them and hunger-strike, and to determine precisely the line between right and wrong in those matters, so that everyone might see on which side of it the hunger-strike lay. I had too much confidence in my case to fear difficulties, and I beg readers to consider that all these cases, with the solutions I give, are *difficulties against my own theory* of the hunger-strike, and *not arguments for it.* If I have magnified my own difficulties, it is not for my opponents to complain, yet here precisely my critic gets fierce against me and speaks of my revolting expedients as if I were caught propping up my own tottering case, instead of making liberal concessions to his. I am glad of this unwitting testimony to my truth and honesty. But my critic has simply lost his bearings. Take as an instance the following: 'Candidly, I never could see my way to let that Carthusian kill himself.' I have no interest in saving the Carthusian —my critic has, if he only knew it. If the Carthusian is a suicide, the case against hunger-strike is already decided *à fortiori.*

Again, every theologian who has written on this department of morals, has found it to be one in which the most subtle reasoning and the finest distinctions are necessary. Father Rickaby writes :—

In a nice point of law and intricate procedure, the lawyer is aware that scarcely more than the thickness of the paper on which he writes lies between the case going for his client or for the opposite party. To rail at these fine technicalities argues a lay mind, unprofessional and undiscerning. Hair-splitting, so far as it is a term of real reproach, means splitting the wrong hairs. The expert in any profession knows what things to divide and distinguish finely, and what things to take in the gross. But there are lines of division exceeding fine and nice in natural morality no less than in positive law. The student must not

take scandal at the fine lines and subtle distinctions that we shall be obliged to draw in marking off lawful from unlawful action touching human life.[1]

It is in this department, of all others, that Dr. Cleary relies on his common sense and sense of humour! These are not *loci Theologici*, and deserve little respect as instruments of Science, but as a court of appeal in the kind of discussion that we are engaged on here, they are quite singularly inept. The difficulties that they enable Dr. Cleary to make, present nothing that could detain any student a longer time than it takes to write out the answer. Thus:—

> He could picture for himself a man, with razor in hand, saying, as he cuts his throat: 'I merely cut my throat, it is the pressure of the muscles on the blood-vessels which will cause my death,' or, in other circumstances: 'I merely set this match to the fuse: it is the explosion of the mine, a thing altogether outside me, which will kill me. I have no doubt of what will kill me.'

The man with the sense of humour here is represented as murmuring to himself two observations, which are meant to be 'posers' for me. I answer the first that it is not very intelligible, but that if he inflicts on himself intentionally a wound which would be mortal to a normal man, and dies of it, he has committed suicide, and nothing that I ever said gives any warrant for thinking anything else. To the second I reply: either, he fires the mine *because* he is standing on it, and this is suicide, or *in spite of the fact* that he is standing on it, and this admits of justification. But where is the difficulty?

> I wonder if the Canon means to imply that the obligation of conserving our lives ceases to urge when death is proximately inevitable: . . . and, if so, may one, like Wolfe Tone, kill himself some days before in order to escape the hangman?

What I said was that no one is obliged to take means which are obviously insufficient to preserve life—this does not warrant the extravagant inference that therefore a man may take most efficacious means to put an end to his life.

> But when men like Lehmkuhl fail to see the logic of argument such as his, Canon Waters may very well pardon the uninitiated for their inability to grasp the view-point of their chaplain.

Lehmkuhl does not fail to see the logic of my arguments. The 'uninitiated,' who are unable to judge a case on

[1] *Moral Philosophy*, Part iii. cap. 2.

its merits, may be expected to defer to proper authority, and, I will add, to their own common sense if they have nothing better.

Dr. Cleary scores a point against me on page 270, by suggesting that I regarded as magnanimous an act which is not a human act at all. His point here depends on the suppression of the very next sentence that follows his quotation, where it is evident the praise is given to the choice a man makes of himself as the victim, who is to die for his fellows. I will take one other passage:—

> True, one meets in his paper a statement that makes one rub one's eyes: 'There are goods which outweigh human life. The life of man is naturally subordinated to the welfare of the πόλις and should, with due consideration of individual rights, be sacrificed to the public good when necessity urges.'

Evidently my critic has never seen this principle in an author of repute. He cannot, therefore, be a very close student of the *Summa Theologica*, in which it occurs a score of times or more, and more than once in the articles dealing with the taking of human life. It is also a commonplace of political philosophy. Patriotic citizens are expected, and may be compelled, to give their lives for the common welfare, and men do not sacrifice a greater to gain a lesser good.

There are still many things that I take exception to in this article, but I have given a fair sample of Dr. Cleary's methods and arguments. I have answered all his relevant, and most of his irrelevant, objections: I have, I hope, proved that he has failed to substantiate the claim of any hunger-strike to even the lowest degree of moral sanction.

JOHN WATERS.

THE WILL AND FAMILY OF HUGH O NEILL, EARL OF TYRONE

By Rev. PAUL WALSH

I

Among a collection of papers recently brought to light by the Rev. Father Brendan, O.F.M., and at present housed in the Franciscan Convent, Wexford,[1] there is one short document in Irish which possesses considerable interest. It bears the endorsement: *Testamentum Illustrissimi Domini Onelli,* and embodies an abstract or epitome of the last Will of Hugh O Neill, the great Earl of Tyrone, who left Ireland in 1607 and died at Rome in 1616. The document itself appears to be a draft of a letter written by some one in the latter city, and addressed to Henry O Hagan, a former dependent of O Neill, who was in the Spanish dominions in Flanders in the years 1616-17. It is somewhat carelessly written, but not to such a degree as to be in any part ambiguous. It has no signature, nor can the writer's identity be conjectured from the contents. It is undated, but we can infer that it was written before August, 1617. O Neill had, among other bequests, granted a pension of 56 crowns a month to Henry O Hagan, and the writer states that £168 would be due to him 'the coming August.' This implies that the Earl had not been a whole year dead at the time of writing. His death occurred July 20, 1616.

The document consists of two distinct portions, each written on separate pages of a single sheet of paper. The first gives an account of the persons provided for in the Will, and states that it was drawn by a notary, who kept a copy. The King of Spain, Philip III, through his Ambassador at the Papal Court, was appointed trustee or executor, to carry out its provisions. In the second portion the writer complains that O Neill's Countess was appropriating more

[1] Since the above was written the papers have been transferred to the Franciscan Library, Merchants' Quay, Dublin.

than her share, and endeavours to interest O Hagan and Colonel Henry O Neill in the distribution of the Earl's money and plate. The latter was at this time, and for many years before, serving with the Irish regiment in the Spanish service in Flanders.

The text is printed below, and each portion is provided with a translation. The few words and letters missing in the manuscript are printed in italics, and the places where a word is written twice or mis-written are indicated in the footnotes. To marks of length and of aspiration, added in editing, I have not thought it necessary to draw attention. Some paragraphs are appended dealing with O Neill's marriages and family, and with the other personages mentioned in the Will.

Bíodh a fhios agaibh gur mar so do righne O Néill a thiomna ⁊ mar do iarr sé athchuingidh ar *an* Rígh. An feadh do choimédadh a bhen phósta hí féin go honórach dá choróin dég ⁊ ocht *b*fichid do bheith aice sa m*í* ⁊ anuair do dhénadh sí a atharrach sin gan pighinn do thabhaírt di: ⁊ ceithre fichit do Sheán O Néill mac Corbmaic. Sé corónach dég ⁊ dá fhiched ag Enrí O Agán: ⁊ sé corónach ⁊ dá fhiched ag Seán O Agán: ⁊ se corónach deg ⁊ dá fhiched dEnrí Silis. A uirid eile ag Seón Bá. Fiche coróin don Fherdorcha O Néill. Fiche coróin do Ghiollaruadh O Coinne. A uirid do Bhrian O Coinne: ⁊ *a* uirid eile dEmonn óg O Maolchra*o*ibhe. Tuilleadh ro fhágaibh sé so scríobhtha rena thabhairt don ambasadóir ionnus go bfaiceadh an Rí hé maille lena bheannacht fa mhaith do dhénuibh ar na daoinibh bochta ag ar fháguibh sin.

Tuilleadh do iarr sé a phláta uile do thabhairt don Choirenéil acht gidhbé diarr sé do thabhairt do Bhrian O Néill ⁊ fós ro iarr sé a roibhe do thaipstrí síoda astigh ⁊ leba shíoda ⁊ culaidh aifrain do thabhairt don Choirenéil mar an ccédna ⁊ na bruit lethuir agá mhnaoi phósta ⁊ leba éduigh.

Dá dherbhadh sin atá coipí ionna lebhar aige an noiteóir do scríobh an tiomna[1] innsa mbaile so.

TRANSLATION.

Know that the following is the manner in which O Neill made his will and besought a favour of the King:—

As long as his wife shall maintain herself honourably, she is to have 172 crowns a month, and whenever she shall fail to do this, not a penny is to be given her.

And Sean, son of Cormac O Neill, to have 80 [crowns a month]. Henry O Hagan to have 56. Sean O Hagan to have 46.[2] Henry Silis to have 56. A like amount to John Bath. Feardorcha O Neill to have 20. Giollaruadh O Coinne to have 20. A like amount to Brian O Coinne. And a like amount to Emonn og O Maolchraoibhe.

[1] Altered from *a thiomna*.

[2] Probably the word *deag* is omitted in the original. If so, Sean O Hagan's allowance would be 56 crowns a month.

Further, he left this in writing to be given to the Ambassador, so that the King might see it; and with it his commission to render a service to the poor people to whom he made those bequests.

Further, he asked that all his plate be given to the Colonel, except whatsoever he requested should be given to Brian O Neill. And likewise he asked that all the silk tapestry in the house, and a bed of silk, and a set of vestments, should be also given to the Colonel. And his wife to have the leather cloaks, and a bed of cloth.

In proof of that, the notary who wrote the will in this town[1] has a copy in his book.

Letter to Henry O Hagan

Atámaoid dá chur a gcéill dhaoibh, a Enrí, gur cóir dhaoibh a thaisbénadh do mhac Uí Néill mar atá an Chondaois ag ceil*t*[2] an bhennacht so ro ág O Néill aige an Rí ⁊ gach tiomna dá nderna sé, ⁊ a rádh leis gan a bheith réigh ar chor ar bith nó go bfagha sé an tiomna air a láimh féin, ⁊ an ní do fágadh aige na daoinibh bocht*a* so a chur ar a láimh féin, a bfochuir a bheith ag dul amogha dhóibh dá dhíoghbháil, ⁊ dob fherr don Choirenéil a rogha cil do dhénamh leis *an* dá fhichid dég ponta atá amuigh ag an gcethrar ógánach sin lá Lunasa[3] so chugainn ⁊ leis na hocht bponta ⁊ ocht bfichid atá agaibhsi amuigh an uair sin (ní oile cuid Sheón Bát ocht bponta ⁊ ocht bfichid) ⁊ gidhbé heil*e* do bhen sí don[4] dá Sheán ná a bheith dá chur a ndroch-chel mar atá ag dul.

Agus bíodh a fhios agaibh nach bíonn[5] a bfuil annso beó go brách ⁊ gur chóra don Choirenéil cuid an fhir do ghéabhaidh bás nó rachaidh go hEirinn a bheith ar áird aige féin nó gan a bheith acasan no aige duine do dhénadh maith ar bith ris, ⁊ muna ngabha an Chundaois a chomhairle fán gcúis so ní fhuil aige mac Uí Néill acht a leigen air techt chum Rómha[6] ⁊ as sin don Spáinn ionnas go ndiongnadh an Rí ordughadh annsa gcúis ⁊ a mháthair ghabháil a mainistir chaillech ndubh. Ní eile muna dherna sé deifir[7] leis an bpláta do bhreith leis go gér ⁊ le[8] gach ní eile dár fágadh aige, is dóigh lem go mbiaidh aithrech air, ⁊ gidhbé duine do chuirfe aníos uime sin ní bheidh aige acht iad sin uile do chur a mba*rc*[9] a bhos ⁊ a bhfagháil thíos a nAnuarb óna cenduighionnuibh, ⁊ scríobhadh sé aníos fa ccur sgan[10] a ccur as chéile uair én gúnna ann is fiú céd go leith ponta.

Translation.

We make known to you, Henry, that you ought to inform O Neill's son of the manner in which the Countess is concealing the commission

[1] These words show that the letter was written in Rome.

[2] The manuscript has *ceill.* The error may be due to the fifth word in the paragraph which occurs right over this in the manuscript.

[3] The manuscript has *lá la lunasna.* The passage in parentheses is in the margin.

[4] This word is written twice in the manuscript.

[5] This is an example of the present tense employed where one would expect the future. The usage, allowable in certain cases, is characteristic of the dialects of Ulster and Scotland.

[6] The article should probably be supplied.

[7] Immediately before this word *sin* is written and crossed out.

[8] This word might be omitted.

[9] The manuscript has *banc.*

[10] The manuscript has *tur sgan gan.*

which O Neill gave to the King, and also every bequest which he made; and you ought to say to him that it will not be executed at all until he himself gets possession of the bequest, and delivers into the hands of these poor folk whatever was left to them, instead of its going to destruction and being lost to them. And it would be better if the Colonel would spend in any way he choose the £240 due next first of August to these four young men,[1] and the £168 due to you at that date, also John Bath's £168, and whatever she deprived the two Seans of, than that it should continue to be spent ill as it is now.

And consider that those who are here will not live forever, and that it would be more proper if the Colonel entertained expectation that he would himself acquire the portion of whomsoever may die or go to Ireland, than that neither they nor anyone who would make any good use of it should get it. And if the Countess will not accept his direction in this matter, all O Neill's son has to do is to pretend to come to Rome, and to proceed from there to Spain to secure that the King should issue a decree in the matter and have his mother enclosed in a convent of nuns. Further, if he does not hurry and quickly remove the plate, and everything else which was left to him, I think he will regret it. And the person he shall send down for that purpose will have only to put them in a barque[2] here, and they can be recovered from the merchants below in Antwerp. And let him write down to have them sent, and direct that they be carefully handled, for there is one gown there which is worth £150.

The letter here published and the evidence it affords of the slender maintenance O Neill was able to provide for his surviving family and dependents, undoubtedly deepen the tragic element in the career of the great chieftain. By his genius and his valour he had made himself master of the wide principality of Tyrone, which he claimed as his birthright. In addition, when driven to rebellion by the unscrupulous emissaries of Elizabeth, he consolidated all Ulster under his sway, and defied and defeated the best generals that the Queen could send against him. He annihilated her forces and exhausted her treasury. He compelled the other provinces to acknowledge his authority, and with his armies he traversed the land from north to south like an *Ard-ri* of old. He created earls like a sovereign and set up chieftains like a dictator. He was recognized as one of the greatest soldiers of his age, and were it not for the fatal day of Kinsale, he might have lived to rule all Ireland in peace. Unable to ruin him by the sword, the English Government sought to strip him of his power by legal chicanery, until finally, apprehending treachery, which he could better ward off while at war, he abandoned his great domain and left Ireland for ever. He died after

[1] That is, those who were granted 20 crowns a month. This allowance amounted to £60 a year, or £240 for all four.

[2] The reading of the manuscript would mean 'bank.'

nine years of exile, and the sadness of his end is emphasized by the comparative poverty which his last Will discloses, and by the smallness of the gifts whereby he would fain provide for his surviving wife and the few kinsmen and faithful friends who conducted him to a resting-place 'no worse than Armagh.'

II

The Countess who survived O Neill was Catherine, daughter of Sir Hugh Magennis, last inaugurated chieftain of Iveagh, County Down, and sister of Sir Arthur, the first Viscount. Her marriage took place subsequently to the death of Mabel[1] Bagenal, in 1596. She was O Neill's fourth wife, and was considerably younger than the Earl. Particulars of her family will be given below.

O Neill's first marriage was with a daughter of Sir Brian mac Feilim O Neill, chieftain of Clannaboy, whose revolting murder by the Earl of Essex is described by the Four Masters at the year 1574. His divorce from this lady was effected, as he himself tells us, 'by the orders of the Church.' It took place prior to 1574. In 1591 the marriage of the Earl and Mabel Bagenal created a storm of protest on the part of the English officials, among whom the most violent was Sir Henry Bagenal, Marshal-General of the Queen's forces, and brother of the bride. The Lord Deputy FitzWilliam took action in the matter, and after an investigation, in the course of which the judges in the case were examined, he reported to Burghley on October 25:—

> The Earl of Tyrone's divorce is a valid one. The gentlewoman who was divorced from him was soon after married to Neil mac Brian Fertagh O Neill. The Earl had shown him the original sentence of his divorce under the seal of the judges that pronounced it.[2]

The name of Brian mac Feilim's daughter has not been ascertained. The Baron of Dungannon had a family by her, as we learn from the Queen's letter to Lord Deputy Perrot, published in the Carew Papers of the year 1585, page 407. Neill mac Brian Fertagh, whom she married later, became lord of upper or southern Clannaboy in 1590. See *Calendar of State Papers*, January 26 of that year, and Fiant of Elizabeth, No. 5443.

[1] This lady is named Ursula in a pedigree compiled by John P. Prendergast, and published in the *Kilkenny Archaeological Journal* for 1860–1.
[2] *Calendar of State Papers* (1591).

Hugh O Neill's second marriage was with Siobhan or Joan, sister of Hugh Roe O Donnell. Hugh Roe's mother, the celebrated Inghean dubh, was married to Black Sir Hugh, not earlier than 1569[1]; consequently, as Joan was O Neill's wife less than ten years[2] later, she must have been the issue of a previous marriage of O Donnell. In his petition to the Queen, presented in 1587, O Neill speaks as follows :

most humbly beseecheth that it may please your Majesty of your princely bounty to grant and confirm all and singular the contents of your said father's letters patents unto your said subject for term of his life, the remainder to Hugh O Neill, the eldest son of your suppliant and the lady Johan his wife, and to the heirs males of the body of the said Hugh, the remainder to Henry, another son of your said suppliant and the said lady, and the heirs males of the body of the said Henry.[3]

Joan died before January 31, 1591, on which date Tyrone informed Burghley of the 'death of his countess.'

The year following Joan's death, the Earl's romantic marriage with Mabel Bagenal took place. This girl was then aged about twenty years. The documents bearing on the event have been published in the *Journal* of the Kilkenny Archaeological Society for the years 1856-7 (pp. 298-311), and later, in Father Meehan's *Fate and Fortunes of Tyrone and Tyrconnell* (third edition, p. 288 ff). The following summary of them by Hill, in his *MacDonnells of Antrim* (p. 212), is worth reproducing here :—

Soon after her [Joan O'Donnell's] death, he met Mabel Bagenall, by whose youth, and beauty, and graceful manners he was willingly captivated. His admiration or love was fully reciprocated, but when Tyrone proposed for her, sir Henry Bagenall, her brother, declined to sanction the marriage, ostensibly on the grounds of the *uncivilised condition* of the earl's country, but really because he was unable to part with his sister's dowry, which he held in trust. He also removed her from his own residence at Newry, to the house of his sister, lady Barnwell, of Turvey, nine miles north of Dublin. Here, however, the earl was made very welcome to visit her, and they were formally betrothed in July, 1591. At the end of that month, Tyrone and his affianced suddenly disappeared during a festive evening at Turvey and rode to Drumcondra, within a mile of Dublin, where they were married at the house of a friend named Warren. The bishop of Meath, who performed the ceremony, hesitated until he should first speak with the bride apart. Having asked her whether she had really plighted her troth to O Neill, Mabel very distinctly replied in the affirmative, that she had received from him a gold chain as a token,

[1] See Hill, *The MacDonnells of Antrim*, p. 151,

[2] See Section III. of this paper. 'Her marriage is announced by Essex writing to Leicester and others, from Dublin, 14th June, 1574' (O Grady, *Catalogue*, p. 372).

[3] *Calendar of State Papers* (1587), p. 290.

and that she had come away from Turvey freely and of her own entire consent. 'I beseech you, my lord,' she added, 'perfect the marriage between us, the sooner the better.' And they were forthwith united according to the forms of the English church. Mabel became a Catholic, and no doubt lived happily as Tyrone's wife. Her married life, however, was brief, as she died in 1596, leaving no children.

Contemporary authority for the parentage of O Neill's fourth wife is the following passage taken from *The Description of Ireland in Anno* 1598, published by the late Dr. Edmund Hogan (p. 7): 'Tyrone hath to his Wife the sister of this McGennis [Sir Arthur].' When or where she died is unknown, but O Neill's Will definitely establishes the hitherto doubtful conjecture that she survived the Earl.

III

That O Neill had three wives legitimately married was the common view in his own lifetime. This view is so adequately expressed in Peter Lombard's *De Hibernia Commentarius*, written in 1600, and published in 1632, that it may be quoted here in full :—

Aliqui ex alio capite eundem traducentes commenti sunt quod is, tametsi profiteretur se pro religione bellum gerere, nihilominus ab ea professione vita eius ita discreparet vt in aperto viuens adulterio tres quasi vxores simul retineret, sed maligna haec calumnia. Habuit quidem ille tres vxores at legitimo matrimonio singulas sibi copulatas. Primam omnium lectissimam foeminam ex illustrissima familia Odonellorum ex qua suscepit plures proles : inter quas duo filii optimae indolis et maximae expectationis nunc adolescentes Hugo et Henricus. Ea deinde defuncta aliam duxit vxorem Britannis parentibus in Hibernia natam, sororem Marescalli totius regionis. Qua quomodocumque apud suos de religione primum docta, constat quod postquam vxor huic principi facta, in aedibus suis a Catholicis sacerdotibus tam bene instituta fuerit, vt et religiosissime vixerit et sanctissime obierit. Ab huius itaque morte postremo inde loco habet vxorem ex familia Aeneadum seu Magnesiorum aetate quidem iuniorem, sed educatione, moribus, prudentia pietate maturam.[1]

It is, therefore, very regrettable that a recent volume,[2] which otherwise does ample justice to Hugh O Neill, revives the slanderous report sent by Lord Justice Drury to England in 1579, that the then Baron of Dungannon had divorced O Donnell's daughter, and married a daughter of Turlough Lynagh O Neill. That Hugh O Neill ever intended such a

[1] Pages 382–3 of the Louvain edition. The edition of 1868 (Dublin), p. 158, which is taken from a Roman manuscript dated 1600, adds after *Henricus* : 'quorum juniorem dum haec scribo advenisse audio in aulam Regis Hispaniarum.'

[2] *The Indestructible Nation : A Survey of Irish History from the English Invasion.* By P. S. O'Hegarty. Maunsel and Company, 1918. See page 130.

proceeding may be doubted; but whether he did or not, it never took place. The few documents in which this report is embodied are collected by Daniel MacCarthy in the *Kilkenny Archaeological Journal* for 1856-7 (pp. 307-8). The Lord Justice wrote on February 11 to Burghley as follows:—

> What letters he [Turlough Lynagh] sent to me or received from me, your Lordship shall see either the originals or copies of them which I send by Mr. Carew to the end you may the better look into his nature and inclination, and see how little hold is to be taken of one that is so rude and so wild or savage as he is. Before my coming down the Baron of Dungannon and he had met and parleyed together and were entered into a great league of friendship, in so much as the Baron should have put away his wife that now he hath, and have taken Turlough's daughter to wife; but I have so conjured the Baron, as that match is broken.

On February 22 Fitton, the Secretary of the Council, wrote to the same effect, and on March 30, Drury informs the Privy Council that the divorce and re-marriage had actually taken place. On April 8 the Privy Council instruct Drury 'to impedite the match between Dungannon and Turlough Lynagh's daughter.' Drury's successor, Lord Justice Pelham, deals with the affair in letters written in December 1579 and January 1580; see the *Calendar of the Carew Papers*, pages 185, 199, 200, 201, and particularly the correction on page 277. Now it is quite clear O Neill never put away O Donnell's daughter, because, (1) If he did, there would surely be further reference to the event in the State correspondence, more particularly about the time of O Neill's marriage with Mabel Bagenal, when, as we have seen, his enemies were at their wits' end to formulate a sound charge against him.[1] (2) In 1585 Lord Deputy Perrot, by letter of June 30, sent an account of Dungannon's petition to Parliament of that year for his place of Earl of Tyrone. The Queen directed the Lord Deputy to hold inquisition before granting the title, and instructed him that Dungannon was 'to bear 100 soldiers.' Regarding the earldom, the Queen thinks that 'as he has had *two* wives and children by them both, if the limitation be made to exclude his first children, as he desires, some controversy may hereafter come.'[2] O Neill's wife was then manifestly O Donnell's daughter, whom we hear of again in

[1] On this point see MacCarthy, loc. cit., whom I have not space to quote at length here.

[2] *Calendar of the Carew Papers*, p. 407.

1587; otherwise the Queen, providing that 'controversy hereafter' might not arise, would certainly have mentioned the third wife if she existed. (3) In a subsequent petition for the grant of the earldom, dated 1587, O Neill asks that the remainder be granted to Hugh O Neill, 'the eldest son of your suppliant and the lady Johan his wife.'[1] Clearly the reference is to his *then present* wife, not to a lady whom he is alleged to have divorced eight or nine years earlier. Compare the passage from Peter Lombard, cited above.

Drury's discovery of a matrimonial alliance between Hugh O Neill and Turlough Lynagh was, therefore, of the nature of a 'mare's nest.' In the light of Hugh's subsequent dealings with the English Government, it is not difficult to find a motive for his fooling of Lord Justice Drury. But it is a pity to find a report so damaging to the moral character of O Neill served up as historic fact by a thoroughly sympathetic writer in this present year, 1918.

IV

Dealing with O Neill's family, I shall first briefly mention his sons. When he went into rebellion in 1594, one of his most efficient captains was his son, Conn. He is referred to in the contemporary documents as a bastard son of Tyrone. Meehan, in opposition to all the evidence, styles him 'the Earl's nephew' (op. cit. 77); but he is clearly described in the *Four Masters*, at the year 1607, as the '*son* of O Neill.' It is quite possible that Conn was a child of O Neill's first marriage—it is certain that there was a son or sons of Brian mac Feilim's daughter alive in 1585, otherwise the Queen could have no misgivings as regards the succession to the earldom which she was then about to grant. I make the suggestion that Conn was one of these sons. If O Neill's divorce was valid, of course Conn was illegitimate by English law. His father had to acknowledge him and describe him as such, for he could not make a child of his second marriage his heir and maintain at the same time that those of the first were legitimate. But it by no means follows that Conn or any other children of O Neill, described as illegitimate, were the children of concubines. Conn was a capable soldier. He was wounded[2] near Killmallock in 1600, and there is no trace of him afterwards.

[1] *Calendar of State Papers* (1587), p. 290.
[2] 'Con O Neale, Tyrone's base son, was hurt'—*Pacata Hibernia*, Bk. i. c. 4.

Of the children of O Neill's second marriage, Hugh and Henry are mentioned in the petition of the year 1587. The Government were endeavouring to secure them as pledges in 1594, and we learn from Tyrone's letter of August 25 of that year that they were then at fosterage.[1] Hugh died September 24, 1609.[2] According to the epitaph published by Meehan (op. cit. 342), he was then in his twenty-fourth year. Henry was sent to the court of Spain in 1600.[3] He became Colonel of the Irish regiment in Flanders as early as 1604, and continued in the command till his death, which occurred prior to the publication of O Sullivan's *Historia Catholica* in 1621.[4]

The sons of the Earl by his last wife were three in number: Sean (who is not referred to in the above abstract of the Will of his father), Brian, and a second Conn.[5] Sean assumed the title of Earl after his father's death. He succeeded his half-brother Henry in the command of the Irish regiment, and was killed in Catalonia in 1641. He left 'onely one boy, by name Huigh Oneyll, fruit of his loynes, behinde him, thin of the age of 9 yeares.'[6] Brian, the second son, became page in the palace of the Archduke, and was assassinated at the age of 13, on August 16, 1617.[7] Concerning the child Conn the younger, Chichester wrote to the Privy Council on September 7, 1607 :—

> I have given warrant likewise to Sir Tobias Caulfield to make search for Con O'Neill, one of the earl's children, among his fosterers in Tyrone, and to take him into his safe custody, until he receive other direction in his behalf. This child was by accident left behind, for the earl sought him diligently, but by reason he was overtaken with shortness of time, and that the people of those parts do follow their *creates*, as they call them, in solitary places, and where they best like their pastures (after the manner of the Tartars), they are not therefore always ready to be found.[8]

Caulfield captured the child after some time. He was subsequently despatched to Eton College, and on August 12, 1622, he was committed to the Tower of London. We hear no more of him.

[1] See *Calendar of State Papers* (1594).

[2] See my edition of O Keenan's *Flight of the Earls*, p. 193.

[3] See Murphy, *Life of Hugh Roe*, p. cxxiii, note, and the reference to his arrival in the passage from Peter Lombard above.

[4] See tome 3, book 8, chap. 6.

[5] They are referred to in a document of the year 1605 as Tyrone's 'three young sons by the now countess' (Hill, op. cit. p. 210).

[6] Gilbert, *History of Affairs in Ireland*, i. p. 6.

[7] See Meehan, op. cit. p. 323.

[8] *Calendar of State Papers* (1607), p. 261.

V

Regarding O Neill's daughters, it is difficult to secure detailed information. The following particulars have been noted in casual reading, and make no claim to completeness, In the case of four daughters known to have existed, I have not yet discovered their names. It is, in most cases, impossible to say of which marriage they were children.

(1) Name unknown. Hugh Maguire, Tyrone's staunch ally in all the rebellion, was married to his daughter. Burghley notes this fact on the margin of a document dated April 21, 1593.[1] This Maguire was killed in a skirmish near Cork city in 1600.

(2) Name unknown. 'Young McMahon created McMahon in his father's place. He hath married Dungannon's daughter.'[2] This was Ross MacMahon, chief of his name, who surrendered his country to the Queen in 1587, and had a re-grant in the same year. He died in 1589.[3]

(3) Name unknown. A daughter married a *filius M'Guyr.*[4] The name and parentage of this Maguire is not yet determined.

(4) Catherine, married to Sir Henry Og O Neill, grandson of Shane O Neill. He possessed an extensive country in the south-east of County Tyrone and the adjoining district of Tiranny, in County Armagh, and obtained a patent of the same in 1606. He and his father-in-law were by no means friends. He was foreman of the jury that sat at Lifford in the end of 1607, and before which the Earl and his followers were indicted for treason. Sir Henry was slain in the operations against O Doherty the following summer.[5]

(5) Margaret, married Richard Butler, son and heir of Edmond Butler, second Viscount Mountgarret. In 1598 the latter concluded a peace with O Neill[6]; hence the following in *Ireland in* 1598, in the description of County Kilkenny (p. 72): 'The L. Mountgarrat accompanied with many Butlers, Graces, and all the younger Brethren of Gent[lemen] of this Countie are now in Rebellion. He is able to make about 150 Horsemen and 500 Footemen. They

[1] See *Calendar of State Papers*, p. 95.
[2] Lord Justice Drury to Burghley, February 11, 1579.
[3] *Annals of the Four Masters*.
[4] *Calendar of State Papers* (1593), p. 95.
[5] See *Calendar of State Papers*, pp. 406, 559. For the names of his wife, sons, and numerous followers, see Fiant of Elizabeth, n. 6735.
[6] *Annals of the Four Masters*, vi. 2082.

stop the Passage from Dublin to Mounster, which lieth through this Countie, and do much harm to all the Counties adjacent.' But Mountgarret deserted his ally the next year,[1] and a pardon from the Government followed in due course.[2] Fiant 6484 (dated 1601) is explicit as regards the relationship of these personages: 'pardon to Richard Butler, esq., son and heir of Lord Visct. Mountgarret, Edmund Butler son of said Richard, Margaret ny Neale, wife of said Richard, etc.' Sir Edmund died in 1602 and was succeeded by Sir Richard. On June 18, 1608, Salisbury is instructed on 'the alliance of Tyrone the arch-traitor' as follows:—'The Earl of Tyrone has one daughter married to Magenis, whose sister is likewise married to Tyrone. He had another married to Maguier, one to Mack Mahound, one to O Chane, one to Sir Randall M'Surley, one to the Viscount Mountgarrett, and one to Henry oge.'[3] This is the Mountgarret who was president of the Supreme Council of the Confederation, and whom the author of the *Aphorismical Discovery* describes as 'a poor dotinge ould man.' He died in 1651. He married three times, and Margaret above seems to have died before 1619.[4]

(6) Rose, married Hugh Roe O Donnell. When O Donnell was captured by Sir John Perrot, at Michaelmas, 1587, he was aged about fifteen and married. On December 10 of that year Tyrone writes to Walsyngham that 'the Lord Deputy hath caused O Donnell's son, called Hugh O Donnell, to be taken, and now he remaineth as prisoner in the castle of Dublin. He is my son-in-law, and the only stay that O Donnell had for the quieting of this country, and the detaining of him in prison is the most prejudice that might happen unto me.'[5] Some time after his escape in 1592, O Donnell and Rose separated. The author of *Ireland in* 1598, referring to a long-standing feud between the O Neill and O Donnell families, says, 'This controversie was taken away by a double Marriage, Tyrone having married O Donnell's sister, by whom he hath divers Sonnes, and O Donnell having married his daughter, whom many yeares he hath cast off for Barrenness.' A scheme for the marriage of O Donnell with Joan, sister of the Queen's

[1] *Annals of the Four Masters*, vi. 2114.

[2] See Fiant 6309, which mentions Edmond, Visct. Mountgarret, dame Grany, his wife, Richard Butler, Margaret Neale, and many others.

[3] *Calendar of State Papers*, p. 570.

[4] See Archdall's *Lodge*, iv. 51 ff.

[5] *Calendar of State Papers*, p. 442.

Earl of Desmond, was blocked by Carew towards the end of 1600.[1] Rose re-married with Domhnall Ballach O Catháin, who succeeded to the chieftainship of his name in 1598. The above-mentioned author describes him as Tyrone's 'chief vassell,' and says that 'of late he hath married this Earle's Daughter whom O Donnell hath divorced from him.'[2] Fiant 6688 mentions her by name: 'pardon to Donald or Daniel O Cahan gent., chief of his name, Rosa O Neale his wife, etc.' O Cahan had been previously married, and Montgomery, Bishop of Derry, writes to Chichester, L.D., March 4, 1607, that 'the breach between him and his landlord will be the greater by means of his [Tyrone's] daughter, his reputed wife, whom he has resolved to leave, having a former wife lawfully married to him.' O Cahan retained the lady's marriage portion, and Tyrone subsequently to his downfall, for which this son-in-law was largely responsible, explained to King James his whole grievance in the matter. He was arrested in 1608, and died in the Tower years later. Chichester proposed placing his eldest son with the provost of the college [Trinity], 'to be brought up in learning.'

(7) Sorcha, married Sir Arthur Magennis, who succeeded his father, Sir Hugh, as Lord of Iveagh in 1595. Sir Hugh is described as 'the civilest [i.e., most anglicized] of all the Irish in these parts . . . But this old knight being dead, his Sone that succeeded, being a young man, hath ioyned himself with Tyrone, his Brother-in-law, and thereby cast away his Father's civilitie, and returned to the rudeness of the country.'[3] He is said to have married the Lady Sara before 1599. She is mentioned in Sir Josias Bodley's humorous account of his visit to Lecale in 1602-3:—

> We now came to the island of Magennis, where, alighting from our horses, we met Master Morrison and Captain Constable. . . . They had tarried there at least three hours expecting our arrival, and in the meantime drank ale and usquebath with the Lady Sara, the daughter of Tyrone and wife of the aforesaid Magennis, a truly beautiful woman; so that I can well believe these three hours did not appear to them more than a minute, especially to Master Constable, who is by his nature very fond not of women only, but likewise of dogs and horses. We also drank twice or thrice, and after we had duly kissed her we each prepared for our journey.[4]

[1] See *Pacata Hibernia*, Book i. c. 18.
[2] *Ireland in* 1598, pp. 30, 33.
[3] Ibid. p. 7.
[4] Falkner, *Illustrations of Irish History*, p. 331.

Sir Arthur was made Viscount Iveagh in 1623. He died in 1629. Falkner[1] gives 1638 as the date of the death of Lady Sara.

(8) Mary, married Brian (son of Aodh Og) Mac Mathamhna of Oriel. He became a competitor for the chieftainship in 1589. *Pacata Hibernia* (Book ii. chap. 21), describes a horrible act of treachery committed by him immediately before the attack on Mountjoy's army before Kinsale, on Christmas Eve, 1601. On April 25, 1608, Sir Henry Dillon informs Salisbury that 'as for Sir Bryen Mac Mahowne, who hath been an auncient rebell, he is growen to be every daie hevy with surfett; and albeit he be maryed to the Lady Mary, daughter to Tyrone, yett I think if his son Art Oge Mac Mahowne be still restrayned he will not stir except there be a generall revolt.' His son Aodh, 'grandson to the traitor Tyrone,' was concerned in the attack on Dublin Castle, in October, 1641, and was executed in London nearly four years later. There is preserved an Irish poem which was addressed to Sir Brian and his wife. It begins:

'*Beag mhairios do mhacraidh Ghaoidel.*'[2]

(9) Alice, married Randall (son of Sorley Boy) MacDonnell, who succeeded his brother, Sir James, as chief of the Antrim MacDonnells in 1601. Hill[3] gives the date of this marriage as 1604. That Randall's wife was a *daughter*, not a *sister*, of Tyrone, is clear from the passage quoted above under (5). Again, 'Sir Randal McSorley, who hath married the Earl of Tyrone's daughter.'[4] Sir Randall was created Viscount Dunluce in 1618, and Earl of Antrim in 1620. He died in 1636. His countess, Lady Alice, was still alive in 1663, and was then aged eighty years.[5]

(10) Name unknown. A spy, writing to England from Rome, January 7, 1615, says:—

Of Tyrone I have not been able to learn much. His departure hence is not believed, for he is as well off here as he could be in any other part

[1] Op. cit. p. 332.

[2] See O'Grady, *Catalogue of Irish Manuscripts in the British Museum*, p. 472.

[3] Hill, op. cit. p. 222.

[4] Sir John Davis to Salisbury, September 12, 1607. See further Meehan, op. cit. p. 233. This author is in error, pp. 47, 70, as also T. M. Healy, *Stolen Waters*, p. 121, etc.

[5] See Hill, op. cit. p. 355.

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of the world. He has a very beautiful daughter, marriageable and greatly admired; so much so, that it will amaze us all if he take her with him unmarried.[1]

VI

This paper has run to so great length that I must abbreviate my remarks on the personages mentioned in O Neill's Will. Sean, son of Cormac, was a nephew of the Earl, being a son to his brother. For another nephew, and the two O Hagans, Henry and Sean, see my notes to the *Flight of the Earls*, page 16. Feardorcha O Neill was grandson of the Earl, a child of the elder Conn above. The two gentlemen named O Coinne may have been sons of Muircheartach O Coinne, who took part in the flight. John Bath was the captain of the ship which carried the Earls out of Ireland. Of Eamonn Og O Maolchraoibhe I know nothing. Henry Silis may be the 'Spaniard that lived with Tyrone since the year 1588, and fled with him.'[2] Very likely he belonged to Tyrone's secretarial staff, and was employed to help O Neill in his Spanish correspondence. The great Earl of Desmond likewise had a foreigner as secretary; William of Danubi was his name. While the last person mentioned in the Will is O Neill's young son, Brian, the unfortunate boy whom the assassin, no doubt employed for the task, sent to his doom in August, 1617.

PAUL WALSH.

[1] Meehan, op. cit. p. 303, note.

[2] *Flight of the Earls*, p. 19.

CURRENTS IN EIGHTEENTH-CENTURY IRISH LITERATURE

By JOSEPH J. MacSWEENEY

The Battle of the Boyne and its sequel, the Fall of Limerick, are the historical events which, in the main, influenced Irish Literary development during the eighteenth century. With the fall of Limerick fell the political hopes of the Irish, and with Sarsfield departed the leaders of the race. The characteristic of Irish-speaking Ireland from 1690 to 1760 is the lack therein of political initiative, and the existence, strange to say, of a literature which is thoroughly national. This latter fact finds its explanation in the departure of the Irish and old English nobility, and in the passing of literary patronage from them to the people. Such patronage naturally deflected the native literature into popular channels, and to the influence of the new poetry some would attribute in part the growth of the Celt's conception of the national idea in place of the tribal.[1] However, the tribal, or local idea, caused the generation of poets who lived subsequently to the fall of Limerick, and who remembered better days, to turn to lamenting the exile of the nobles, and to expressing hopes for their return. To them the Stuart cause seemed linked with the preservation of their own class, and in lyric after lyric we get the hope expressed that James may be king. Three powerful interests were thus represented by this literature, namely, the political or Jacobite, the religious, and the popular, and all three seemed to coalesce in forming a great national demand. Thus it was that a strong sense of unity grew up among the mass of Irishmen in a manner such as previously was unknown, and it is true to say that the solidarity of O'Connell's political campaign can, in part, be traced to this early expression of Irish nationality in lyrical verse.

[1] Vide E. Hull, *New Ireland Review*, March, 1903, p. 40.

The social conditions brought about by the events already referred to, gave added importance to the new prosody, and to the *scéal*. With the necessity for popular appeal, the old syllabic verse structure gave way to a metrical scheme which appealed to the ear. The history of this new metre is uncertain, though there are some who find for it an origin in the poems of Alaster Rua Macleod.[1]

Social conditions are, perhaps, likewise the cause of the importance of the *scéal* in eighteenth-century literature. A society such as is found in eighteenth-century Irish-speaking Ireland finds its main outlet for intellectual enjoyment in the *scéal*. It is the literature of the fireside. The *scéal* and the new metre might, perhaps, be regarded as old heritages assuming a new and important rôle owing to the coming of social conditions and circumstances which encouraged their development and the extension of their usage. For there has existed from the earliest period of Irish literature traces of a free metre, and the modern *scéal*, though it may in part represent the dissolution of the early saga, yet may be regarded as a thoroughly independent form of literature.

The *scéal*, like the early saga, has poetry introduced throughout the prose. Whilst this introduction of poetry might be structural in the saga, in the *scéal*, it appears to be merely artistically intertwined throughout the narrative. The *scéal* thus, in a sense, resembles Elizabethan prose fiction, and the lyricism of Irish eighteenth-century poetry resembles in some respects the lyric note of the age of Elizabeth. Both the Elizabethan and Irish lyric had (independent of their connexion with prose) a great development, by reason of the fact that such lyric was often wed to music which is of singular charm. Carolan's fame as a musician has reached beyond the shores of Ireland, and Moore has considerably aided in making the song-gift of the race known on the continent of Europe and throughout the English-speaking world. But in order to realize the real charm of eighteenth-century lyric as set to music, one must listen to it as it is sung, for example, in the vales of Desmond by those who are the true heirs to its traditional interpretation and rendering.

Though Irish literature is predominantly represented in the eighteenth century by the lyric and the *scéal*, yet it received variety from the longer poems of such as Merriman

[1] See E. Hull, *New Ireland Review*, March, 1903, p. 58.

and Macnamara, from religious prose and verse, Osianic poetry, satire, and anecdote. In the previous century, marked though it was by wars and confiscations, Irish literature showed few signs of decay. The contention of the bards awoke a host of defenders of the native literature, and amidst the wreck of Irish society was wrought the work of the Four Masters, MacFirbis, Keating, and MacAingil among prose writers, and of Feiritér, O Heoghusa, MacanBhaird, O Caoimh, O Donnchadha, and O Bruadair among poets. The subsequent decay of so virile a literature must find its explanation in history.

There are two tendencies to error in regard to Irish literature and language : one is to attribute their decay entirely to the invader, the other is to forget the people's own occasional want of interest in the survival of both. There were among the English—particularly among the old English in Ireland—those who favoured the Irish speech, just as there were those among the Irish people who favoured English, and who, to use a phrase of O Bruadair's, dashed 'off in mad career to Leinster.'[1] That such should have been the case is in accordance with reason, for ambitious, talented, energetic men will ever leave weak causes because they do not procure for them preferment and scope.[2] It is to such as these that Conell MaGeoghegan refers, when, as early as 1627, addressing Terence Coghlan, he remarked in regard to the chroniclers :

> and now because they cannot enjoy that respect and gain by their said profession as heretofore they and their ancestors received, they set nought by the said knowledge, neglect their books, and choose rather to put their children to learn English than their own native language, insomuch that some of them suffer tailors to cut the leaves of the said books (which their ancestors held in great account) and sew them in long pieces to make their measures of, so that the posterities are like to fall into more ignorance of any things which happened before their time.[3]

This tendency to abandon Irish was hastened by the confiscations, until even in the western counties a bilingualism, tending to a total suppression of Irish, became common. The survival of Irish literature became equally endangered, both by reason of the decline of the language and the fact that there were to be found few patrons of Irish literary effort. This lack of patronage made the poets

[1] *The Poems of David O Bruadair*, ed. MacErlain, p. 73.
[2] H. Belloc, Lingard, *History of England*, vol. xi. p. 171.
[3] *The Annals of Clonmacnoise*, ed. Murphy.

turn to the people for support. They thus became the poets of the people, voicing their fears and hopes, sharing their joys and sorrows. A knowledge of Irish literature is essential to the understanding of eighteenth-century Ireland, for the poems of such as O Rahilly reveal an Ireland which Swift and Berkeley saw with imperfect vision. The latter knew of life within the Pale, but of Irish life proper they only beheld the exterior, and the extent to which the life of the Pale tended to chequer it. It is an Irish poet who tells in a few words the real trend and effect of this penetration of the non-native element on the Irish social fabric, and on the old culture :—

> The O'Doherty is not holding sway, nor his noble race ;
> The O'Moores are not strong, that once were brave—
> O'Flaherty is not in power, nor his kinsfolk,
> And sooth to say, the O'Briens have long since become English.[1]

Apart from this destruction of the native society and culture, English influence, owing to the Revolution, which established an oligarchical system of government, was also detrimental from an economic point of view. The Walpole administration pursued through the medium of such as Boulter a narrow and destructive policy, a policy which suppressed all activity in a high degree among the Irish. When the mass of a nation finds its path to political power and higher social life blocked, it sometimes seeks self-expression by way of literature. That the Irish found self-expression in literature in the eighteenth century is in no way surprising, for no other outlet worthy of the race was available, except in so far as some emigrants fought in the foreign armies of France and Spain. This aspect of Irish life was noted by Berkeley in *A Word to the Wise* :—

> Perhaps it will be said, the discouragements attending those of your Communion are a bar against all endeavours for exciting them to a laudable industry. Men are stirred up to labour by the prospect of bettering their fortunes, by getting estates, or employments; but those who are limited in the purchase of estates, and excluded from all civil employments, are deprived of those spurs to industry. To this it may be answered, that, admitting these considerations do in some measure damp industry and ambition in persons of rank, yet they can be no let to the industry of poor people, or supply an argument against endeavouring to procure meat, drink, and clothes.[2]

Bishop Berkeley in these words expressed an attitude

[1] *The Poems of Egan O Rahilly*, ed. Dinneen (I.T.S.).
[2] *The Works of George Berkeley*, vol. iii. p. 392, ed. Sampson.

towards the problem of Irish life which is dominant among those who seek for a solution along purely economic lines. The Celt was regarded for the most part as forming one class, reduced to wage-earning, and incapable of rising to a position of wealth or of command. But a complete closing up of all the avenues to wealth was, by reason of the circumstances of the times, impossible, and events served to prevent the complete realization of such schemes as Boulter's. In the midst of economic decay, and amidst circumstances the most depressing, what surprises one is the insistency with which the poets of the eighteenth century still continued to voice the national sentiment.

But this expression of Irish nationality did not confine Irish literature to merely patriotic themes; rather is it a fact that Irish literature is, in the eighteenth century, an expression of life in some of its gayest and sprightliest moods. But the gay, irresponsible note may be thought to pervade it too much, and it must be remembered that joy and mirth are often in the case of the oppressed but a cloak to sorrow—'the tricks of a broken heart.'[1]

The early eighteenth century in Ireland cannot, even almost from any point of view, be regarded as bright. For the native Irish the period was one of gloom, since they were reduced to impotency. The new planters were not of the kind whom the Irish formerly made more Irish than themselves—the Geraldines, the Norman, and the old-English families. It was difficult for the Irish to coalesce with the newcomers, and O Bruadair represents an early instance of the native contempt for what was strange and upstart in the new colonists. Indeed, the cynicism of Swift[2] and the remarks of Stewart[3] in regard to the planters, give ample proof that O Bruadair's attitude was in a great measure justified, for, to a large extent, the newcomers were mere adventurers. Ireland, during the eighteenth century, was plagued with the lawlessness of its minor gentry, 'a class whose property was not derived from the accumulated savings of industrious ancestors, but from violent and recent confiscations.'[4] The life of these minor landowners reacted on Irish life in general, and was not

[1] Hon. Emily Lawless, in *With the Wild Geese.*
[2] Swift, Political Tracts.
[3] Lecky, *History of Ireland in the Eighteenth Century,* vol. i. pp. 22-23.
[4] Ibid. p. 288.

without its effect on Irish literature, by introducing into it the note which, above all others, would have been best omitted—the absence, at times, of due restraint. Lecky has given a vivid description of a society whose tendons were cut by reason of the fact that the title-deeds of the new landowners were founded on confiscation. The people could not regard them as their natural leaders, they rather regarded them as their natural enemies. 'Chesterfield,' wrote Lecky, 'who as Lord Lieutenant studied the conditions of Irish life with more than ordinary care, left it as his opinion that "the poor people in Ireland are used worse than negroes by their lords and masters, and their deputies of deputies of deputies."'[1] Absenteeism for the most part cut off the larger landlords from direct contact with the mass of the people, and it is to the influence of the minor gentry and of the middlemen that we must, in consequence, turn in order to find the most immediate cause for the miserable state of Irish life in the early eighteenth century.

> At a time when in England economical causes were steadily weeding out the poorer and less cultivated members of the squierarchy, and replacing them by large landlords, the tendency in Ireland was precisely opposite. Abseenteism drew away a great part of the richer landlords, while the middlemen rapidly multiplied. A hybrid and ambiguous class, without any of the solid qualities of the English yeomen, they combined the education and manners of farmers with the pretensions of gentlemen, and they endeavoured to support those pretensions by idleness, extravagance, and ostentatious arrogance. Men who in England would have been modest and laborious farmers, in Ireland sublet their land at rack-rents, kept miserable packs of half-starved hounds, wandered about from fair to fair and from race to race in laced coats, gambling, fighting, drinking, swearing . . . parading everywhere their contempt for honest labour, giving a tone of recklessness to every society in which they moved. . . . They were the chief agents in agrarian tyranny, and their pernicious influence on manners, in a country where the prohibition of manufactures had expatriated the most industrious classes and artificially checked the formation of industrial habits, can hardly be over-rated. They probably did more than any other class to sustain that race of extravagance which ran through all ranks above the level of a cottier, and that illiberal and semi-barbarous contempt for industrial pursuits, which was one of the greatest obstacles to national progress. False ideals, false standards of excellence, grew up among the people, and they came to look upon idleness and extravagance as noble things, upon parsimony, order, and industry as degrading to a gentleman.[2]

The evils of such a class weighed heavily upon the country, but in addition to that, the people regarded them

[1] Lecky, *History of Ireland in the Eighteenth Century,* vol. i. p. 285.
[2] Ibid. pp. 292-294.

as usurpers whom they might lawfully seek to get rid of. To obtain this object was a cherished hope, and as a consequence the people were Jacobite, the landlords, and particularly the minor gentry, anti-Jacobite. It was the belief that, if Jacobitism were successful, they would be ousted out of their newly-got possessions, that urged on the landed gentry to a fierce application of the penal code in Ireland. Suspicion thus begot to an increased degree the thing suspected, because Jacobitism was not so strong in Ireland during the first half of the eighteenth century as might at first be thought. This is proved by the withdrawal of troops from Ireland in the critical years of 1715, 1719, and of 1722;[1] and by the evidence of Swift in 1725,[2] and of Stone in 1747.[3] The occasional imminence, however, of the Pretender's landing, and the disturbed state of the Continent—from which the Wild Geese might readily return—caused the Government to give undue attention to Jacobitism in Ireland. This attention rather begot what it intended to kill, and Jacobitism continued to be a popular inspiration even after it had receded from the horizon of practical politics. Its effect on Irish literature was to inspire the production of such classic lyric achievements as Cáitilín ní Ualacháin and Cáit ní Dhuibhir. In England perhaps the most significant evidence of the strength of Jacobitism was to be found in the intrigues, correspondence, and private actions of the Duke of Marlborough.

JOSEPH J. MACSWEENEY.

[1] Lecky, *History of Ireland in the Eighteenth Century*, vol. i. pp. 142-143.
[2] *Drapier's Letters*, No. 7.
[3] Lecky, *History of Ireland in the Eighteenth Century*, vol. i. p. 144.

IRELAND AND POLAND:

A SHORT CONTRAST [1]

By T. J. CURTIN, B.A.

'To every nation has been given some deep thought from the heart of God as its special predestined work for the human race. And some are chosen before all others to combat for God's beauty on the earth, to carry the cross in a blood-stained track, and to give out the more love and greater brotherhood in exchange against the murderer's knife.'

In these beautiful sentiments of a very distinguished Polish poet, we have admirably expressed the part which seems to have been allocated in the drama of the world's history to these two countries which I have chosen for a brief contrast in this paper. However lightly we peruse the pages of Poland's history, we note and feel that bond of sympathy with this sweet Ireland of the East and our own fair Ireland. But if history is not merely the chronicling of successive events and different movements, if history, I say, is not the mere narrative of attempt and failure, but rather such narrative in its relation to subsequent events and with its lessons and morals as a guide to posterity, then we may find much in history to console us when scanning the respective accounts of the fate of these ill-fated foster-sisters. Throughout the history of the world, whether we are dealing with the old tribal system or the glorious old pagan empires or our own modern empires, there is one lesson that has been repeated over and over again, and that lesson is the impossibility and futility of disregarding and trying to extinguish the national spirit of a nation. If we just recall the beginning of the nineteenth century and review the exploits of the great Napoleon, we find that it was not the workings of this

[1] Paper read before the Irish Society, Liverpool University.

or that individual nation but the awakening of the national spirit of Europe which brought about the downfall of that extraordinary genius—indeed, his doom was sealed by the battle of the nations, surely suggestive enough. So it is with Italy: the unification of Italy starts with the rousing of the national spirit and the throwing off of the yoke of Austria under the astute Cavour.

The re-incarnation of Prussia is signalized by the fresh realization of the national spirit after the humiliation of Jena; and, lastly, what was it that brought the whole of the structure of the Congress of Vienna, with its lack of foresight and historical perspective, tottering to the ground, but the failure of this Congress to recognize this absolute essential—the spirit of Nationalism? If, then, history has taught us all this, why, I say, should it not afford us remarkable consolation in the story of Poland and Ireland, for in no other country has that spirit of nationality, that spirit of national liberty, been kept alive so fiercely and so well as in these two heroic countries. Let us take a brief survey of the history of these two countries.

It is hardly within the scope of so short a paper as this to describe at length the tragic and pathetic history of Poland. To the reader of medieval and modern European history such history is heartrending, by reason of the almost inevitable destruction which seemed to hang over the country. We must fain pass over the period in which Poland was the battlefield of Europe; the period in which invading Swede and Russian deluged the land with blood, and come to the culminating epoch of Polish history —the eighteenth century. Poland then lay a shattered mass, between the vigorous rule of Russia and the ambitious rule of Prussia—'a *nuisance* to them both,' as one writer aptly puts it, 'by reason of her backward economic development, and a *temptation* by reason of her weakness'; thus she lay a country to be divided and partitioned, but never to be conquered. With Peter the Great such an epoch opens. The early love of Western civilization, the ambition to bring Russia in touch with the West—this is the keynote of his policy. Hence he regarded Poland as the 'doormat of the West.' This country must be acquired to make Russia a really important country in modern Europe, but it was left for the unscrupulous Catherine (history ironically calls her great) to carry out

such a project. History has sometimes tried to defend her action. 'The Polish constitution at the time was a survival of the age of medieval, feudal anarchy. In the struggle between the royal power and feudal nobility the aristocracy had triumphed and the kingship deteriorated to a mere shadow. The notorious *liberum veto* existed, which made every noble virtually a king.' Anarchy certainly existed, avowedly to the interests of more than one Power, but such an anarchical constitution did not warrant the consummation of one of the greatest acts of political brigandage.

Therefore the barbarous partition treaties took place which split up unhappy Poland into three divisions and under three kingdoms.

'But from evil comes forth good,' and out of this evil came the inspiration of uniting the Poles with a common purpose: from this period onwards, the restoration and independence of their country was the one aim of the Poles. Such restoration was unfortunately at the mercy of outside Powers, and from this period onwards the history of Poland is an account of unanswered trust—she was, in other words, the dupe of nations. Napoleon flattered the aspirations of the Poles with smooth words and pleasant innuendos, but sacrificed their ideals on the gorgeously decorated barge, 'Parterre of Kings,' which, moored in the midstream of the Niemen, near Tilsit, was the scene of one of the most astounding treaties of history. They gained something, it is true, by the introduction of the famous 'Code Napoleon,' which benefited the laws of more than one country in Europe; but the aspirations of the Poles, as far as Napoleon was concerned, ended with his meteoric downfall in 1813. The bodies of Poles which lay on the bloody battlefields of Russia and their corpses which lay strewn amidst the cruel Alps surely would have made some claim on his pity had his power not so tragically ended. Again, at the Congress of Vienna, Poland was ordered to give up all claim to national independence and was restored as a constitutional kingdom to Russia, like Ireland was to England by the Union of 1801. Alexander I certainly behaved at times magnanimously to the Poles, but the independence of their country would alone satisfy them. So we see that in every period of revolution which marked the history of the nineteenth century the Poles of Germany and Austria played their part. The upheaval

of 1830 saw the clamouring in revolt for their rights; the year of revolution, 1848, saw the Poles, in keeping with the Liberals of Europe, fighting a futile fight for their ideal; and then came the unfortunate revolution of 1863, which drove all the Poles of Europe into a rebellion which cost them dear.

And what has been the result of all this struggle? What conditions have the Poles found themselves in? 'On the ruins of this revolt,' indeed, as a famous Polish writer puts it, 'rose the work of Bismarck and the system of russification in the Empire of the Czars.' In Russian Poland, by means of the Russian school, nationality and language was suppressed and forbidden; Polish only being taught twice a week. The mainstay of Polish nationality, the Catholic Church, was attacked also with a vigour doomed to failure, and which was so recognized in 1905. The very administration of Poland had been russified since 1863. Certainly the industry of Poland has thrived, and the Poland of 1914 was a different one to that of 1864; but it has thrived under Russian rule, and has had its result in its modification of Polish nationalism, the aim of which is now rather the preservation of its national individuality and the development of its civilization. The Polish nationalist of Russia, chastened by the whip of Russian administration and lashed by the scourge of Russian oppression, has become larger in his conceptions and saner in his methods of realizing the same ideal—the preservation of his nationality.

But the German Pole has been likewise oppressed. His Church has been oppressed; his language also suppressed. Was it not as late as the year 1902 that an admission of the fact that children had been flogged for refusing to say the Lord's Prayer in German, was wrung from the administrative powers in the Prussian Parliament? Was it not in 1906 that we had the unique spectacle of 400,000 Polish school children going on strike because of the re-introduction of German as the medium of religious instruction? An important effort was further made to subject the Pole economically beneath the German sway, but, somewhat ironically, it has resulted in the enriching and improvement of the Poles themselves. Space forbids me to go into the condition of Austrian Poland, but in justice to Austria it must be admitted that the lot of the Pole here has been more tolerable than under Russia and

Prussia. Absence of oppression has been by no means complete. The Polish status here has suffered from the position of Austria itself and from the growth of the Ukrainophil movement in particular, but they have acquired a position of some constitutional, social, and economic influence.

I would turn to the title of my paper for excuse in giving you so hurried a glimpse of unhappy Poland as I have done, but it is sufficient for my purpose in asking you to draw a parallel of its unhappy fate with the unhappy fate of Ireland. Ireland, we all know, has felt the grip of narrow-minded government. 'It is commonly supposed,' writes Mrs. Green, 'that Ireland, the outpost of Europe, must by nature hang for its support on the fortunes of England.' Here we have the keynote of the trouble of centuries between the two countries. We do not need to pursue investigations further than the date we took for our starting-point in reviewing the history of Poland, 1798. Indeed, the Ireland of Grattan and Flood had been 'intellectually fertile,' and had resulted in legislative independence in 1782. But how short-lived were the hopes raised from this measure? Practically a decade later Ireland was in the throes of a rebellion round which legend has woven plenty of romance, which touches the imagination and spirit of all countries, but after the wonderful chivalry and bravery which attended the effort of '98, this rebellion was followed by one of the most disgracefully contrived acts in history—the Union of 1801. We can hardly realize the utter wretchedness of the country following on this union. She sank into the slough of despondency and despair. And what has been the result? Like the attempt of the three despoilers to destroy the nationality of Poland, the attempt to destroy the nationality of Ireland has resulted in a century of ceaseless agitation, from the rising of 1803 to the present day. Every period of rebellion which saw the abortive efforts of Poland saw likewise such efforts on the part of her unhappy foster-sister. The phenomenal rise of O'Connell, indeed, counted for something. For, even though the magnifying glass of subsequent historical criticism has found faults and apportioned failures, the re-awakened spirit of independence which his personality infused into Ireland bore some fruit. The Catholic Emancipation Act of 1829 made possible the Repeal movement. Rebellion and revolt arose in Ireland, as in Poland, and in 1848 the wave of

revolution touched also this unhappy isle. So also the Fenian movement of 1867 was evidence of the futility of attempting to crush nationality.

Need we pause to realize why the position of Ireland has caused such rebellions. Government by martial law, a huge army of occupation, the colossal ignorance of Englishmen, such as Peel, who, actually, saw good in Ireland, except 'for a general confederacy in crime and a settled and uniform system of guilt'—a callousness in administration which made English parliamentarians gloat over the extinction of Irishmen, even in quite modern times—these are but a few evidences of the misgovernment of Ireland. But not only politically, but also religiously and economically, has this oppression gone on in Ireland as in Poland. Thus, though we find plenty of English sympathy with Polish injustices in the early nineteenth century, we also find Irish industry and resources crushed out by the Act of Union. A very reliable Irish historian has brilliantly pointed out that from 1817 to 1870 the cost of government in Ireland was under 100 millions, while the contributions to the Imperial Exchequer were 210 millions. So that Ireland sent to England twice as much as was spent on her. In other words the taxes rose far beyond the rise of taxes in England, and while one-third of these taxes was spent in Ireland, actually two-thirds were absorbed by England. Even under Gladstone, in 1852, two and a half millions was added to Irish administration when the country was devastated by famine and disease. But it is impossible to bring before you thoroughly in this paper the utter drain on Irish wealth caused by England. Suffice it to say that all material progress was impossible, all permanent government rendered hopeless by such injustices.

So, too, in religious matters, Ireland, to some extent, resembled Poland. Throughout the long period of physical protest and open rebellion in the nineteenth century arms were openly apportioned to Orangemen, while Catholics were penalized for their maintenance. Something, indeed, was done by the Disestablishment of the Irish Church in 1869; but as to complete religious toleration, we are wondering if it has yet come.

Thus subjection, political, religious, and economic, has resulted in Ireland, as in Poland, in misery and rebellion. The draining of the country of men and money has passed unheeded, nay, has even drawn passages of

exultant and gloating triumph from more than one English newspaper and statesman. In both countries recent years had brought some relief by reason of intelligent demands and the growth of constitutionalism which had characterized those responsible for the conduct of the policy of these respective countries. But the absolute analogy of Ireland and Poland at the outbreak of the present war must have struck forcibly every student of history. Is the opportunity now afforded for righting the wrongs of two of the most oppressed of the small nations of Europe? At this point we are reminded of the pathetic picture in Roman history, when, after years of oppression by the patrician lords, the desperate Plebs betook themselves off to found a new, a freer State. The Patricians, ready to appreciate their loss and unwilling to lose the dignity of their order, at length commissioned one of their order to beg them to return. So have recent events reminded us of the patrician countries of Europe asking these two communities to return to their help. Has the lesson of nationality, ever recurring throughout history's pages, been successfully learned at this juncture? Let us hope that the late superhuman struggle may afford some comfort at all events in the release of these two hitherto crucified nations. Let us hope that the folly of trying to extinguish nationality and absorb nations will be taken to heart by the various countries of Europe. Then Kosciusko, Emmet, Fitzgerald, and those innumerable Polish and Irish nationalists will not have died in vain, but their deaths will have been witness to the truth of the beautiful words of Byron :—

> Yet *freedom*, yet thy banner torn and flying,
> Streams like the thunderstorm against the wind.
> Thy trumpet voice, though broken now and dying,
> The loudest still the tempest leaves behind.
> Thy *tree* hath lost its *blossoms* and the rind,
> Chopped by the axe looks rough and little worth,
> But the *sap* lasts—and still the seed we find
> Sown deep, even in the bosom of the north,
> So shall a *better spring less bitter fruit* bring forth.

T. J. Curtin.

THE LATE RIGHT REV. MONSIGNOR HOGAN

We desire to pay our tribute of respect to the memory of the late Right Rev. Monsignor Hogan, President of Maynooth College. His death has removed a familiar and esteemed figure from the ecclesiastical body in Ireland, and we are sure that the sorrow of his immediate colleagues in Maynooth at his passing away will be shared by the generations of priests in Ireland and abroad who studied under him.

Born at Coolreagh, in the County of Clare, in 1858, Mgr. Hogan commenced his studies at the Diocesan College, Ennis; thence he proceeded to Paris, where his distinguished uncle, the Abbé Hogan, resided, and entered St. Sulpice. He continued his studies at Freiburg/im Breisgau, and was ordained in 1882. After his ordination he resided for some years in France and Germany, and laid the foundation of his cultured knowledge of Modern Languages. He had excellent qualifications, therefore, for the Chair to which he was elected in Maynooth—that of Modern Languages. This Chair he held until his appointment as President in 1912. In that year he also resigned the Editorship of this Journal, whose destinies he had so well guided for almost twenty years. His representative position as President of Maynooth led to his appointment as Senator of the National University in 1913, and as Pro-Vice-Chancellor in 1914; and in the latter year he was made a Domestic Prelate.

As a writer, Mgr. Hogan wielded a ready and trenchant pen. His two controversial works, *Irish Catholics and Trinity College*, and *Maynooth College and the Laity*, are good examples of his powers in this respect. In the domain of pure scholarship his *Life and Work of Dante* exhibits a deep sympathy and scholarly acquaintance with the work of the greatest of Catholic poets.

Those of us who knew him intimately shall ever regret the loss of a genial and kindly friend and colleague. In many respects his outlook was that of the old school, and he had the corresponding virtues of the old school. Amidst the bustle and pre-occupation of the new era there will be not a few, we trust, who will remember from time to time, in their prayers, the old master who sleeps his last sleep in the quiet God's-acre of the College which he loved so well.

THE EDITOR.

NOTES AND QUERIES

THEOLOGY

SIN COMMITTED IN BAPTISM

Rev. Dear Sir,—Kindly answer the following query in the I. E. Record :—

An adult sins in the reception of Baptism by the voluntary lack of attrition. Does original sin remain, or has it been removed? If removed, how? And what of the personal sin committed?

Canadensis.

The original sin remains. It will be removed by the Sacrament of Baptism, when that sacrament 'revives.' The personal sin, we may take it, is not a mere momentary act coinciding with the reception of the sacrament: it extends before and after. In so far as it is ante-baptismal, it will be removed by Baptism in the same way as the other: as post-baptismal, by contrition, or by attrition with the Sacrament of Penance. As committed at the very moment of reception, it is more probably post-baptismal, on the old principle *Prius est esse quam esse tale*: if so, it is remitted in the same way as others of its class; if not, as others ante-baptismal.

If the original sin stood alone, attrition would suffice for reviviscence. But, to remove the other, contrition or Penance with attrition is required. Since they cannot be remitted separately, neither will be forgiven till the stricter condition is fulfilled.

ABSOLUTION IN URGENT CASES

Rev. Dear Sir,—After receiving absolution from censures Caius had to say as a penance the whole Rosary twice a week for four years. Occasionally, during this period he omitted to say the penance within the week—not with the intention of omitting it altogether—but of postponing it. He fears also that through acting in this way he may, on a few occasions, have, through his neglect, omitted altogether some of the penances. To make good such possible omissions it is his practice, during retreats and occasionally at other times, to say extra Rosaries.

Moreover, though he believes the penance was imposed only for four years—he is not absolutely sure about the period of four years; but believes it must have been imposed for this period, otherwise this definite term would not be in his mind—he has continued fulfilling it (and still

continues) for a period of about six years to allay all doubts and to cover any possible omissions.

At times he has had fears, lest, through delaying as above described or through possible omissions, there might be something in the nature of 'reincidentia.' In the past, however, he looked into the question—more than once, he believes—but each time made the mistake of thinking that penances imposed because of censures were on a par with those imposed in certain cases when a dispensation for marriage is granted—the non-fulfilment of which does not interfere with the validity.

These same fears have asserted themselves lately, and Caius, thinking that he had settled the question, but with some dread lest he might be mistaken, determined to look up the question again. Mostly through forgetfulness, but also possibly through negligence, this was not done. Then Caius accidentally came across Canon 2254 of the new Code, which gave rise to his present trouble. I may add that Caius 'ad evitandam scandalum et infamiam' obtained absolution from an ordinary confessor, and applied within the month to Rome. Rome, amongst other conditions, told the confessor to impose a penance 'gravis et longa.'

May I ask, then, whether this is a case of 'reincidentia,' or whether I am right in telling Caius that it is not? He would seem to have fulfilled the penance substantially—especially in view of its being imposed for so long a term.

It is open to doubt whether the confessor confined the penance so rigidly to the week, so that if not said within that time, it would entail such consequences. Lastly, though there may be negligence—possibly serious—there seems to be no sign of contumacy. For although Caius had such fears as above described, he was in ignorance, and, moreover, shows his goodwill in continuing the penance when he has reason to believe that the period during which it was imposed has passed.

S. L.

'Caius' would not re-incur the censure, even though he never said a single one of the rosaries prescribed. He would, of course, be guilty of a grave sin by failing to discharge a grave penance imposed for grave sins committed. But that is a different matter. 'Reincidence' is the penalty, not for omitting the penance, but for failing to have recourse to Rome within the month, or for refusing to accept the instructions received. 'Caius' discharged this second obligation faithfully: his fears, therefore, about the return of the censure are absolutely groundless.[1]

Nor need Canon 2254 of the Code have given him cause for alarm. Even though it had introduced a change in this matter, it would have had no retrospective effect: the change would have been all a matter of mere theory for 'Caius.' In Canon 2226, § 2, for example, he will find it stated that 'though a subsequent penal law abrogates a previous one, still, if a crime has already been committed at the time the subsequent law is passed, the law to be applied is the law that favours the delinquent most.' Or, if he wants to rest his case on a broader basis, he

[1] Cf. *Irish Theological Quarterly* (Dr. M'Kenna), July, 1907, p. 362: 'Should the penitent duly return and accept the injunctions of the Superior, deliberate neglect in subsequently carrying out these instructions, while, of course, gravely sinful, does not involve the censure.'

has Canon 10 to fall back on: 'laws regard the future, not the past, unless they contain a special provision to the opposite.'

But, as a matter of fact, it has introduced no change at all bearing on 'Caius'' difficulties. The only section that could affect him is the first. It reads:

In the more urgent cases, if, that is, censures *latae sententiae* cannot be complied with externally without danger of grave scandal or loss of reputation, or if it be a hardship for the penitent to remain in the state of grave sin during the period required to have the Superior make provision for his case, then any confessor may absolve from them, no matter how reserved, in the sacramental forum. The confessor, however, must impose on the penitent an obligation of having recourse, under pain of re-incurring the censure, within a month—by letter and through the confessor (if that can be done without serious inconvenience) and without mentioning the name—to the Penitentiary, or to the Bishop or other Superior to whom faculties have been granted, and [the further and consequent obligation] of abiding by the instructions received.

There is nothing in that to trouble 'Caius.' The Canon crystallizes the essential points of the decisions given in connexion with the famous enactment of 1886, and reproduces the very words in which they were expressed.[1] There is no need to abandon any liberal interpretation that was tolerated under the old régime.

Perhaps it was the statement in the third section that roused 'Caius'' suspicion. It tells us:

If in any abnormal case this recourse be morally impossible, then the confessor himself—apart from the case in which there is question of the absolution of the censure specified in Canon 2367, § 1—can grant an absolution without imposing the obligation mentioned above. He must, however, enjoin what the law requires,[2] and impose a suitable penance and satisfaction for the censure, on the condition that the penitent, unless he discharges the penance and makes satisfaction within a suitable period to be fixed by the confessor, will fall into the censure again.

But that is not 'Caius'' case. The confessor was not obliged to take the case into his own hands and deal with it on abnormal lines. 'Caius' followed the ordinary course: he required none of the protection that this section would have given him: neither need he have any fear of its concluding words—which, we admit, do impose in the exceptional case the very régime he dreads. But, above and beyond all, he will note that this section is an addition to the old law, and, as we said above, is not retrospective.

'S. L.,' we think, will advise 'Caius' to trouble no more about the matter. The penance already discharged is enough, in all conscience. We do not presume to question the previous confessor's judgment, but his interpretation of a penance 'gravis et longa' would seem not to

[1] They are given in full in the Appendix to the Maynooth Statutes (1900), pp. 113-124.

[2] The general obligations affecting a penitent.

have erred on the side of leniency. We may contrast it with the view of a well-balanced theologian :—

A 'grave' penance is one the weight of which so affects the guilty man that he is thereby made to feel and know the gravity of his offence. On the authority of St. Alphonsus (vi. 1143) we should have such a penance if there were imposed for a period of six months a weekly fast, three rosaries a week, or frequent confession (once a month at least). . . . A 'long' penance is one that continues each week for a whole year. . . .

There are Ordinaries who assign the degrees of penance as follows. For 'salutary' penance they impose the recitation of five *Paters* and *Aves* five times a day; for 'grave' penance, the same, with the Acts of Faith, Hope, and Charity, daily for four weeks; for 'grave and protracted'[1] the same, for eight weeks.[2] . . .

Selections like these may give 'S. L.' greater courage in dealing with the situation.

PASCHAL COMMUNION AND ECCLESIASTICAL BURIAL

REV. DEAR SIR,—When I read the I. E. RECORD of February 1918, I took special note of a statement you make on page 116, as I am rather interested (at present) in the question of Ecclesiastical burial. Regarding the Precept of Paschal Communion, you write: 'It only remains to say that the 'ferendae sententiae' punishments directed against those who violate the precept fall out *in theory* [italics are mine] as they have long since fallen out in practice.' I have no intention at present to controvert the general statement you make, and only wish respectfully to draw your attention to the two following points:

1°. In Canon 859, § 1, where the old precept is re-stated, reference at the foot of the page is made by Cardinal Gasparri to the *Rituale Rom.*, tit. iv. c. 3, *De Communione Paschali*, n. 1, 4. There, as you know, is given the *Constit. Concilii Lateran.*, 1215, which includes the penalty 'alioquin . . . moriens *Christiana careat sepultura.*' This is not deleted in the Editio Typica of 1913, and yet we may presume that those responsible for this new edition must have been well aware of what was going to be put in the *Codex Juris Canonici* anent this matter.

2°. In Canon 1240, § 1, where the different classes that are to be denied ecclesiastical burial are given, we find No. 6, 'alii peccatores publici et manifesti.' Then reference is made below regarding *Suicides*, 16 May, 1866; *Oddfellows*, 10 May, 1898; those civilly married to an infidel, 6 July, 1898; and finally, there is a special reference to *Rituale Rom.*, tit. iv. c. 3, *De Communione Paschali*, n. 1, and again tit. vi. c. 2, *Quibus non licet dare Eccles. Sepulturam*, n. 2-6.

As I said at the beginning, I have no wish to dispute the accuracy of your statement; but I must say I find it rather difficult to reconcile it with the two references I have quoted—both of which are supplied by Cardinal Gasparri himself.

As regards the *practice*, of course that is a different question altogether. There will be very little, if any, difference of opinion amongst the clergy on that point.

G. C.

[1] 'Diuturna'—a stronger term than 'longa.'
[2] Marc, *Inst. Mor. Alph.*, ii. 2055.

'G. C.' raises a very interesting point in regard to the interpretation of the new Code. His suggestions are based on what some people term the 'notes' in Cardinal Gasparri's edition—the 'notes,' however, as our readers know, being merely references to previous laws on the matters dealt with in the Canons to which they are attached. When we wrote the article to which he refers—about a year ago—the annotated edition was not available. Our interpretation was based exclusively on the Code itself, as then known to the public.

In the Code itself there was, and is, no mention of a special penalty, *latae* or *ferendae sententiae,* in connexion with those who violate the Paschal precept. There are several references to 'public sinners': under that head the offenders in question might take their stand—but in company with a host of others, of whom the Code makes no specific mention, and in connexion with whom it would be incorrect to say that there are any special penalties decreed. Dealing, therefore, with 'G. C.'s' delinquents *as such,* we had no choice but to say that, even in theory, the old penalties had disappeared. For we read that 'as regards penalties, of which no mention is made in the Code—whether they be spiritual or temporal, medicinal or (as they are termed) vindicatory, *latae* or *ferendae sententiae*—they are to be looked upon as abrogated' (6, 5°).

That does not mean, of course, that malefactors, who have been fortunate enough to escape mention in the Code, must be allowed to go unpunished. The regulations on 'public sinners' may be invoked any day by a Bishop who finds a delinquent notorious enough to call for inclusion in the group. National, Provincial and diocesan laws may make the punishment more definite still; and the Code will say nothing to the opposite. But, after all, that would not have justified us in selecting a special class of public sinners—say public usurers or thieves or drunkards or rapacious captains of industry—and in claiming that there was in the Code a special punishment, even *ferendae sententiae,* directed against them. And so of those who violated the Paschal precept.

Even with Gasparri's 'notes' to guide us, we see no reason for expressing our views in more rigorous language. The notes, important as they are, are no portion of the Code. If the opposite is ever defined, it will mark a sad development in Canon Law: all the chaotic legislation of the past will sweep over us again, and the Code will be only a straw on the waters. But the contingency is too remote to give us any anxiety. In the sources referred to in the 'notes' there are documents out of harmony with the new legislation: there are many in complete contradiction: only a few can be said to be in thorough agreement. The object in giving the references is to direct attention to the laws that we must keep in mind when we apply the rules of interpretation given in the first six Canons. We had them all already, but the 'notes' help us to recall them. That is all.

The reference attached to Canon 859 does involve the decree of the Council of Lateran. But, obviously, the decree is not to be taken as giving the meaning of the Canon: else we should have to 'debar (these men) from entrance into the Church during life'—and no one now dreams

of treating them so harshly. The reference gives us a view of the stringent Church legislation and policy in the past: when that is done, its lesson is conveyed and its work is finished.

The citations attached to Canon 1240 look, at first sight, more menacing. So perhaps we may be allowed to give the Canon in full:—

The following are to be deprived of ecclesiastical burial, unless, before death, they have given some signs of repentance:

1°. Notorious apostates from the Christian faith, and those who are well known to be members of an heretical or schismatical sect or of the Masonic sect or other societies of the same description;

2°. Those under excommunication or interdict, when a condemnatory or declaratory sentence has been passed;

3°. Those who have deliberately committed suicide;

4°. Those who die in a duel or of a wound received in one;

5°. Those who have given orders to have their bodies cremated;

6°. Other public and open sinners.

Some may be inclined to think that the enumeration of the first five classes is superfluous: would the designation 'public and open sinners' not cover them all? It would. But the purpose is clear. The five most offending classes are selected for special mention, and a special penalty, *ferendae sententiae,* is directed against them. No other class has been marked off for special treatment. So the violator of the Paschal precept is lost in the general mass of sinful humanity: and it would be unfair to dispel the shadow that the Code has mercifully thrown over him.

'G. C.'s' references are quite correct. The men he mentions are all there—and many more besides. Of *all* those mentioned, five are selected for an evil eminence. What of the others? 'Where the law makes no distinction, neither should we.' The law makes all of them one, and we may leave them so. None of them, as such, is threatened with a special penalty. But, if they make themselves specially prominent, they are reminded, in n. 6°, that the resources of canonical punishment are not exhausted.

So our conclusion is the same as before. The reference to the *Editio typica* (1913) does not excite us very much: we have had to refer already to a case in which 'those responsible for this new edition' would seem *not* to 'have been well aware of what was going to be put in the *Codex Juris Canonici*.'[1] We are glad to see that 'G. C.'s' theoretical difficulties are to have no effect on practice. It is pleasant to know that, however we differ about the proper method of summing up the facts as disclosed in the Code, we agree on the only point that is likely to be of much interest to missionary priests.

[1] See I. E. Record (April, 1918), Fifth Series, vol. xi. p. 293.

WHO ARE THE 'VAGI' OF THE CODE?

Rev. Dear Sir,—X had a domicile in my parish for thirty years. He has just given it up, is now paying visits to friends in various dioceses, and intends taking up permanent residence in a neighbouring diocese after a few weeks. In the meantime he wishes to be married to a parishioner of mine. Is he to be treated as a 'vagus,' and am I obliged to apply to the Bishop for permission to assist at the marriage? I am assured by our local theologians that I am, but I must say the whole thing seems very unreasonable. I know this man well, and am as sure as anyone can be that there is no impediment. What light can the Bishop throw on the matter, and why should he be troubled with it? If the man had been married last month, I could have proceeded without anyone's permission. What has happened since to make these extreme precautions necessary?

Parochus.

We sympathize with 'Parochus.' We do not know whether anything may have 'happened since to make these extreme precautions necessary'; but it does seem strange that he should have to go to all this trouble in regard to a man whom he has known nearly all his life, or that he should be obliged to ask for guidance when he is the best possible guide himself. And, in his favour, it must be remembered that the Council of Trent, when it prescribed an appeal to the Bishop in the case of 'vagi,' [1] had in mind those who wander about without any fixed residence [2]—the 'habitual vagi,' not the 'accidental' and 'temporary vagus' of our correspondent.[3]

The only question is whether the *Ne Temere* and the Code have extended the regulation. And, technically speaking at all events, it would really look as if they had. If 'Parochus'' friends want to give him trouble, they will, we have no doubt, let him hear an amount on the following points:

1°. Canon 1032 makes no distinction between 'habitual' and 'temporary vagi.' And the old principle, *Ubi lex non distinguit*, etc., is still a maxim of interpretation.

2°. The same Canon reproduces almost word for word art. v. § 4, of the *Ne Temere*. Now, the Congregation of the Sacraments, when consulted about that passage, replied that 'under the name of *vagi* in art. v, § 4, are to be understood all those, and only those, who have nowhere, by reason of either domicile or month's residence, a parish priest or Ordinary of their own.' [4] In view of the modification introduced by Canon 1097, § 1, 2°, the important words now would run 'domicile or quasi-domicile or month's residence.' But that will give 'Parochus' no consolation. His friend has no quasi-domicile, any more than he has a domicile or month's residence.

3. Canon 1097 lays down the rules for lawful assistance at a marriage.

[1] Sess. 24, c. 7, *De Ref. Matr.*
[2] 'Qui vagantur et incertas habent sedes.'
[3] Cf. St. Alph., vi. 1089; Gasparri, i. 192, etc.
[4] March 12, 1910 (ad vi.).

It provides for those who have a domicile, quasi-domicile, or month's residence, and for the 'vagi' as well. If the 'temporary' wanderers are not included in the latter class, where are they ? Is there no arrangement at all made for *them* ?

4°. If we look for a definition to the only Canon that professes to give one—Canon 91—matters are still worse. There a 'vagus' is defined as a man 'who has no domicile or quasi-domicile anywhere.'

But those technicalities may, we think, easily be pressed too far. If adhered to strictly, they will lead to conclusions that the legislator surely cannot have intended. 'Parochus' may, for instance, ask his friends whether they would assist, without asking for the Bishop's permission, at the marriage of a lady who has resided for a month in their parish without acquiring a domicile or quasi-domicile. They will probably resent the implication that they cannot. And, very justly, they will point to Canon 1097, § 1, 2°, which gives them full authorization, and to the reply, already quoted, which proves that the lady is not a 'vaga.' But if they do, they forget Canon 91, which certainly rules against them, and which is cited in the very canon (1032) which prescribes an appeal to the Bishop.

That is how the matter stands. If a disputant wants to be troublesome, he can raise doubt and endless difficulties. But, when we find that strict insistence on the letter of the law leads to such a strange conclusion as that suggested in the last paragraph, we begin to grow suspicious of the whole process. Technically, it may be contended that 'Parochus' is bound to get the Bishop's permission. Practically, in view of previous laws and of the apparent purpose of the whole regulation, we cannot, until we get a decision to that effect, bring ourselves to believe that there is any serious obligation.[1]

M. J. O'DONNELL.

[1] If the prospective bridegroom intended remaining in the diocese, the new regulations on 'diocesan' domicile would meet the difficulty.

CANON LAW

THE OBLIGATION OF PREACHING ON SUNDAYS AND HOLIDAYS

REV. DEAR SIR,—Canon 1348 of the new Code says that the faithful are to be earnestly exhorted to attend sermons frequently. This naturally implies that the sermons themselves must be frequent. Now, the writer knows places where there is no sermon at any of the Masses for at least three Summer months. Of course, there are evening devotions, on holidays as well as Sundays, and confraternity meetings during the week—on all of which occasions there is a sermon. But, I submit, this arrangement provides sermons only for those who least need them. Of those who attend Sunday night devotions, the vast majority are confraternity men and women; and even when zealous priests have got a large percentage of the faithful into the parish confraternities, you will not see that 'large percentage' at the weekly confraternity meeting. As a consequence, for three or four months very many never hear a sermon, because they attend the only service which is obligatory—the Mass.

As far as strict law goes, leaving aside exhortation, perhaps there can be no objection to the above. Statute 299 of the Maynooth Synod (1900), it is true, entirely reprobates the practice of omitting, in Summertime, the Sunday sermon, but it does not reprobate omissions *at Mass.* However, I am inclined to condemn the above arrangement.

(1) In the statutes of an Irish diocese, under the heading 'Decreta et monita miscellanea,' I read: '*Singuli* sacerdotes hujusce diocesis tam coadjutores quam parochi . . . *singulis* diebus dominicis et festis, gregem sibi creditam verbis salutaribus fascant.' It were hard to keep this injunction in the case stated (only one Sunday sermon—at the evening devotions) if the parish had more than one priest. Perhaps the injunction implies that each priest should preach at the devotions, and thus have a competition in preaching as well as long devotions?

(2) Again, the same statutes in 'Instructiones pro concionatoribus' say: 'Moneant (praedicatores) populum, ut frequenter ad suas parochias, saltem diebus Dominiciis et festis majoribus, accedat, ibique verbum Dei audiat, etc.' But it is an utter impossibility for as many to hear the Word of God as hear Mass, owing to lack of accommodation—on Sunday night you cannot pack as many into the church as were there at four or five Masses in the forenoon. Besides, as stated already, many will not come to the devotions, because there is no obligation to do so.

(3) Maynooth Statute No. 295 seems to be opposed.

(4) It fits in badly with the Encyclical Letter *Acerbo nimis* of 15th April, 1905, and with the modifications of that Encyclical which were sanctioned by the Irish Bishops. In the modifications of the sixth section the Bishops, *inter alia*, say that where there are evening devotions, there should be a sermon in the morning and a catechetical instruction in the evening, or *vice versa* (I. E. RECORD, December, 1905, p. 563).

Rightly or wrongly, I have got it into my head that, as a rule, to every Mass of obligation there should be a bit of a sermon attached. A

reply at your earliest convenience, in the I. E. RECORD, would oblige others as well as

ANXIOUS.

The purpose of this query is to find out whether, and in how far, it is obligatory to have sermons at Masses celebrated in parochial churches for the accommodation of the faithful on Sundays and holidays of obligation. The Code deals with this matter in Canon 1344, § 1. 'On Sundays and other feasts of obligation during the year,' this section states, 'it is the duty of every parish priest to make known the word of God to the faithful by means of the customary homily, especially during the Mass which the majority of people usually attend.' If this canon were to be interpreted by itself without reference to the pre-existing legislation, it might be possible to maintain that, so far as strict law is concerned, the obligation here imposed would be fulfilled, even if the sermon or homily were given outside of Mass, for example, at evening devotions. In view of the old discipline, however, it is certain that the comparison instituted by the word *praesertim, especially,* is between the principal and other Masses, not between it and any other function whatever. The Council of Trent, Sess. XXII, c. 8,[1] and Sess. XXIV, c. 7, *de Ref.*,[2] made it clear that the customary homily to which this canon refers should be given during Mass. The Encyclical *Acerbo nimis,* in which our late Holy Father, Pope Pius X, so clearly defined the discipline on catechetical instruction, takes this point for granted. 'Parish priests and others having the care of souls,' it states, 'besides the customary homily on the Gospel, which should be given in the parochial Mass on all feast days, should also instruct the faithful in catechism, etc.' [3]

From what has been said it is evident that, whilst a parish priest is bound to preach during Mass on Sundays and holidays, he is not obliged, either personally or through a substitute, to do so at all the parochial Masses. Perfect compliance with this obligation demands only a sermon at the Mass usually attended by the majority of the faithful, and its substantial fulfilment will be attained even by one given at any of the parochial Masses. It is even provided that the Ordinary may permit the omission of the sermon altogether on the more solemn feasts, and for a just cause, on some Sundays also (C. 1344, § 3).

That, so far as general law is concerned, there is no strict obligation to have a sermon at all parochial Masses is indicated also in Canon 1345.

[1] 'Quamobrem mandat sancta synodus pastoribus et singulis curam animarum gerentibus, ut frequenter inter missarum celebrationem vel per se vel per alios ex iis, quae in missa leguntur, aliquid exponant, atque inter cetera sanctissimi hujus sacrificii mysterium aliquod declarent, diebus praesertim dominicis et festis.'

[2] 'Necnon ut inter missarum solemnia aut divinorum celebrationem sacra eloquia et salutis monita eadem vernacula lingua singulis diebus festivis vel solemnibus explanent.'

[3] 'Parochi universi ceterisque animarum curam gerentes, praeter consuetam homiliam de Evangelio, quae festis diebus omnibus in parochiali Sacro est habenda, etc.'

'It is desirable,' this canon states, 'that there should be a brief explanation of the Gospel or some part of Christian Doctrine in Masses which are celebrated in presence of the faithful in all churches and public oratories on feast days of obligation; and should the local Ordinary command this and make suitable regulations for its fulfilment, not only secular priests but also religious, even those who are exempt, are bound by this law in their own churches.' In Ireland we have a local regulation of this nature. The Maynooth Synod, n. 295, commands those having the cure of souls, in addition to the sermon at the principal Mass, to read in the vernacular the Gospel of the day, and to give an instruction of at least five minutes' duration at all public Masses on Sundays and holidays, unless the Bishop otherwise disposes on account of the special circumstances of any parish.[1]

Although our correspondent speaks expressly only of sermons, we gather from his letter that he intends to include in his query catechetical instructions also. Now, the obligation of giving catechetical instruction to adults, though allied to is yet distinct from that of preaching. It is dealt with in Canon 1332. 'On Sundays and other feasts of precept,' it is stated, 'at that hour which, in his judgment, is most suitable for the attendance of the people, the parish priest should besides explain the catechism to the adult faithful in language suited to their intelligence.' In addition, therefore, to the obligation of the homily or sermon on Sundays and holidays, there is also the further one of the catechetical instruction—the very position which obtained after the publication of the *Acerbo nimis* in 1905. Now, it will be remembered that the Irish Bishops received special faculties from the Holy See to make accidental changes in regard to the time and manner in which the regulations contained in the Encyclical were to be fulfilled.[2] In accordance with the general principle enunciated in Canon 4, these powers, in so far as they are necessary, still continue; and, consequently also the modifications which have been made in virtue of them. In regard to the particular point with which we are concerned—preaching to and catechising adults —the regulation of the Irish hierarchy is the following: 'VI. As to the sixth point, the giving of catechetical instruction to adults, a programme indicating the subjects of instruction will be issued by each Bishop. This, as directed in the Encyclical, will be so arranged as to provide a complete course of catechetical instruction extending over not more than four or five years.'

As regards the time at which the Catechetical Instruction is to be given, the following arrangement is to be followed: 'In churches in which there are evening devotions on Sundays, the ordinary sermon being preached at Mass, the Catechetical Instruction is to be given in the

[1] 'Praecipimus ut diebus Dominicis et festivis omnes qui curam animarum habent, praeter concionem quae in Missa principali fieri debet, intra celebrationem omnium omnino Missarum publicarum Evangelium diei occurrentis, lingua vernacula . . . distincte legant, atque per breve tempus, saltem per duodecimam partem horae, populum in lege Domini erudiant, nisi ob circumstantias alicujus paroeciae Episcopus aliter disponat.'

[2] Vide Appendix to Maynooth Statutes, p. 230.

evening, or *vice versa*. In churches in which there are not evening devotions on Sundays, the sermon being preached at one of the Masses, the Catechetical Instruction is to be given at another—or in the case of a church in which there is but one Mass, the sermon and Catechetical Instruction may be on alternate Sundays, the order of the Diocesan Programme of Catechetical Instruction being in all cases observed.' [1]

If, then, 'Anxious' means by 'a bit of a sermon' not merely a homily or sermon in the strict sense, but also a Catechetical Instruction and a short explanation of the Gospel, such as that referred to by the Maynooth Statutes, then he is quite correct in his impression that it is obligatory in all parochial Masses in this country.

There is no doubt whatever that the law on preaching is violated in parishes in which there is no sermon at any of the Masses for three or four Summer months. Sermons at confraternity meetings and evening devotions are not sufficient for its fulfilment. We disagree with our correspondent's view that Statute 299 of the Maynooth Synod does not reprobate the practice of omitting, in Summertime, a sermon at the parochial Mass on Sundays and holidays: in our opinion, it does. The sermon to which it refers is evidently the sermon which Statute 295 requires to be given at the principal Mass.

MARRIED PERSONS AND THE RELIGIOUS LIFE

Rev. Dear Sir,—How do you reconcile Canon 1119: 'Matrimonium . . . dissolvitur . . . ipso jure per solemnem professionem religiosam,' with Canon 542: '1° Invalide ad novitiatum admittuntur. . . Conjux durante matrimonio'? Is permission to be obtained from the Holy See for such a person to enter the novitiate, or does the old privilege of the *bimestre* remain?

J. E.

It seems to us pretty clear how the reconciliation is to be effected. Canon 542, 1°, states, without any restriction whatever, that a married person, as long as the marriage bond lasts, cannot be validly admitted to the novitiate. Consequently, no exception can be made for non-consummated marriages, even during the first two months after their contraction. It is evident, therefore, that the old privilege of the *bimestre* has been abolished. Should, however, a married person, whose marriage has not yet been consummated, obtain from the Holy See a dispensation to join an Order and afterwards take solemn vows, the marriage would be dissolved. In this way it is possible to give effect to Canon 1119, which merely states that a non-consummated marriage is dissolved by solemn religious profession.

[1] Vide Appendix to Maynooth Statutes, p. 402.

ATTENDANCE OF PRIESTS AT CONFERENCES AND CONVENTIONS

Rev. Dear Sir,—Would you kindly give your views regarding the interpretation of Statute 397 (1) Maynooth Statutes. The statute runs: 'Omnibus sacerdotibus interdictum est quominus conventibus publicis intersint sine expresso Parochi consensu in cujus paroecia conventus habetur.' Do the conferences which are held in the different parliamentary constituencies for the purpose of selecting a representative for the division come, in your opinion, under the designation of 'conventus publici,' as mentioned in the statute?

I am old enough to remember the time this statute was first promulgated and the reasons that induced the Bishops to frame it. In the time of the Land League it was customary to hold monster public meetings in the different parishes. Some of the parish priests did not give them much countenance, while others were most enthusiastic. I remember that one of those meetings was held in a parish not far from where I was stationed as a young curate. The parish priest was fully convinced that the meeting would tend to disturb the good order of his parish and did not attend it. The meeting, however, was held. A neighbouring parish priest who was an enthusiast in the cause led all his people in procession to the place of meeting, which was practically in front of the parish priest's house, made a flamboyant speech, was cheered and was carried on the shoulders of the mob.

To correct such a state of things the Bishops very properly framed the above statute. Now, when we come to consider the question of conferences, as they are constituted at present, the reasons that induced the Bishops to frame the statute do not seem to exist. The conference is summoned by the central executive for a certain day and in a certain place. The conference is composed of delegates from the different parishes. The parish priest of the place has just the same representation at the conference as his neighbouring priests. The good order of his parish is no way imperilled. He may absent himself from the deliberations, if he thinks right to do so, without incurring any odium for his action. He is in every respect on a par with his neighbouring priests, and it is altogether a mere accident that the meeting is held in his parish. In the face of all this, is it not strange that the parish priest of the place should have the power of excluding all the priests of the division if he should take it into his head to do so?

Parochus.

In our opinion, conferences such as those mentioned by our correspondent do not come within the scope of this statute of the Maynooth Synod. Priests, therefore, are free to attend them, without the permission of the local parish priest. In coming to this conclusion we have been guided mainly by the meaning of the expression 'conventus publicus,' or rather its English equivalent, 'public meeting.' In ordinary language a meeting is not called public unless people generally have the right of being present at it: a conference or convention, confined to delegates and others to whom rights of admission are granted, is never spoken of, or referred to, as a public meeting, even though the proceedings be afterwards published in the Press. Now, the most

fundamental of all rules for the interpretation of a law is that its words should be given their proper meaning; and, of course, it is a well-known fact that it is usage which determines the proper meaning.[1]

The reasons which brought about the law help to confirm this view. As our correspondent points out, the attendance of outside priests at conferences and conventions can scarcely interfere with the fruitfulness of the local pastor's ministry or impair the good order of his parish.

J. KINANE.

LITURGY

INDULGENCES FOR THE OCTOBER DEVOTIONS. THE 'BURSA' FOR THE SMALL PYX

REV. DEAR SIR,—Would you kindly answer in the I. E. RECORD, at your convenience, the following two queries:—

1. What are the indulgences attached to the October devotions, and what are the conditions for gaining them?

2. May an ordinary clasp purse, such as is used for holding money, be used as a '*bursa*,' provided other conditions, as 'lining with silk,' etc., are observed? I once saw one, and though I am aware of no regulation to the contrary, it struck me as objectionable to have the small pyxis and Blessed Sacrament contained in such an article. The purse was originally intended to hold money, and the purchaser got it lined with silk in order to comply with the rubric. If convenience only were looked to I must say such a *bursa* fulfils its purpose much better than the kind generally in use.

M. F.

1. The following is a summary[2] of the indulgences which may be gained and the conditions required. (*a*) An indulgence of seven years and seven quarantines may be gained each day during the month on which a person recites five decades of the Rosary, whether publicly in a church, or privately. (*b*) A plenary indulgence may be gained on the feast of the Rosary or any day within the Octave, on the usual conditions of confession and Communion, visiting any church and praying there for the intentions of the Pope, provided one has recited, publicly or privately, five decades of the Rosary on the feast day and every day throughout the octave. (*c*) A plenary indulgence may also be gained on any day one wishes to select, on the conditions just mentioned, by reciting five decades of the Rosary at least on ten days of the month, after the octave of the feast of the Rosary. All these indulgences are applicable to the souls in purgatory. In addition an indulgence of seven

[1] Canon 18: 'Leges ecclesiasticae intelligendae sunt secundum propriam verborum significationem, etc.'; D'Annibale, *Summul. Th. Mor.*, vol. i. n. 184[3]: 'Verba autem ea significatione accipienda sunt, quae propria, et usu, seu vulgari, seu juris, recepta est,' etc.

[2] S. C. Indul., 29 Aug., 1899. See I. E. RECORD, Dec., 1899, p. 559.

years and seven quarantines may be gained when, during the month of October, the prayer to St. Joseph is added to the public recitation of the Rosary.

2. The Constitution *Inter omnigenas* (when giving directions regarding the method of carrying the Blessed Sacrament secretly to the sick) merely says: 'in sacculo, seu bursa Pyxidem recondat, quam per funiculos collo appensam in sinu reponat.' The rubric,[1] also, which deals with the case in which the journey is long, or has to be made on horseback, uses practically the same words—'bursa decenter ornata, et ad collum appensa.' It will be noticed, then, that nothing is definitely prescribed regarding the size, shape, or material of the 'bursa.' O'Kane[2] in commenting on this rubric, says that the 'bursa' is 'generally a kind of loose bag, of suitable size and shape. . . . A leathern case, lined with silk, may be used as the "bursa," and many prefer it to the loose bag, as being a better protection to the pyxis.'

We do not, therefore, see any serious objection to the use of the kind of 'bursa' described in the query. The fact that it was originally intended for another purpose makes no difference whatever. But it should be provided with strings by which it can be securely fastened round the neck of the priest when he carries the Blessed Sacrament to the sick. The suggestion that the pyxis with its covering might be put 'into a pocket made in the vest for this purpose, and used for no other,' was condemned by the Congregation of Rites.[3]

THE PRIVILEGED ALTAR

REV. DEAR SIR,—In an article some time back in the I. E. RECORD on privileged altars, the writer stated that in order to gain the indulgence it is necessary that the altar should be dedicated to some Mystery or Saint. I take it that this dedication is something apart from the dedication of the church where the altar is situated. What ceremony is prescribed for the occasion; where is it to be found; and by whom may it be performed?

RUBRICUS.

In order that the indulgence may be gained it is necessary that the Mass be celebrated on a fixed altar. But the term 'fixed' is here used in a wide sense. A fixed altar, in the strict liturgical sense, consists of a table of stone joined to a *stipes* or support of the same material, and duly consecrated. The ceremony of consecration, as may be seen from the Pontifical, implies that the altar is dedicated to some saint or mystery, as title. Hence, if the privileged altar is a fixed one, in the strict liturgical sense, no difficulty can arise.

But, for the purpose of gaining the indulgence it is not at all necessary that the altar should be a 'fixed' one in this strict sense. Any permanent structure, in the shape of an altar, on which an altar stone is placed, is quite sufficient. Is it *necessary*, as a condition for gaining the

[1] Tit. iv. cap. iv. 10. [2] N. 806. [3] O'Kane, n. 807.

indulgence, that such an altar should be dedicated to some saint or mystery?

The answer must be in the affirmative. This is clear from a reply of the Congregation of Indulgences given in the year 1843: 'privilegium, de quo supra, datum est altari determinato, et in honorem alicujus Sancti specialiter dicato.' A somewhat similar reply was given in the year 1902.

Generally speaking, the principal altar of the church is selected for the privilege. When this is so there can be no trouble about the titular. in the case of a church or oratory which has received the solemn blessing, The titular of the altar is the same as that of the church, and the dedication takes place during the ceremony of blessing the church: 'Ut hanc Ecclesiam, et Altare ad honorem tuum, et nomen Sancti tui N., purgare, et benedicere digneris,' etc. We have already seen that the titular is also definitely defined when the altar, whether the principal one or not, has been consecrated.

But let us suppose that an altar other than the principal one, and not consecrated, is designated for the privilege. The titular is not defined in this case by any special ceremony, such as is the case when a fixed altar is consecrated or when the church is being solemnly blessed. The altar, in the case made, is a fixed one only in the wide sense. There is no special ceremony in connexion with the erection of such an altar. The consecrated altar stone is simply placed upon it. What is to be said, then, of the saint or mystery to whom it is dedicated? Who is to select the titular?

The Bishop, of course, may do so; but his intervention is not required. Even in selecting the titular of a church the name may be chosen 'ex privato etiam fundatorum vel aliorum, ad quos spectat, beneplacito.' [1] Much more is this the case in the selection of the titular of a particular altar. This is sufficiently done when the altar is erected in honour of, and named after, some saint or mystery, as is commonly the case. No particular ceremony is required at all; in fact, there is no ceremony for the purpose to be found in any of the liturgical books.

BENEDICTION OF THE BLESSED SACRAMENT—MAY OTHER PRAYERS BE ADDED AFTER THE 'DEUS QUI NOBIS'?

REV. DEAR SIR,—It has been the constant practice in this church, on the occasion of a Novena in preparation for a feast, to add the prayer of the feast to the prayer of the Blessed Sacrament, after the *Tantum Ergo* has been sung. I have lately been told that this practice is incorrect. Would you kindly give your opinion on this matter in an early issue of the I. E. RECORD.

ANXIUS.

The practice mentioned has been condemned on more than one occasion in recent years. We may quote the following answers of the Congregation of Rites:—

Q. An in functione Benedictionis SSmi Sacramenti, praeter Orationem de eodem, alia cantari possit?

[1] Ephem. Liturg., 1908, p. 151.

R. Affirmative, priusquam cantetur *Tantum Ergo,* si tunc aliae dictae sint Preces; secus, negative, nisi aliter Apostolica Auctoritate statutum fuerit.

The question was again raised quite recently :—

Q. An . . . in solemni expositione Augustissimi Sacramenti, juxta vetustissimum ordinarium liturgicum, post hymnum *Tantum Ergo* orationi SSmi Sacramenti *Deus, qui nobis* adiici possint aliae collectae?
R. Negative, juxta Decretum n. 4194 ad x diei 23 novembris 1906.[1]

The decree referred to is that which we have just quoted. If, then, the officiant wishes to chant other prayers on the occasion of a novena, he must insert them before the *Tantum Ergo.* After this hymn has been sung it is not correct to chant any prayer except that of the Blessed Sacrament until the Benediction has been given.

T. O'Doherty.

[1] S.C.R. 26 April, 1918

DOCUMENTS

ENCYCLICAL LETTER OF HIS HOLINESS POPE BENEDICT XV ORDERING PUBLIC PRAYERS FOR THE PEACE CONGRESS

(*December* 1, 1918)

AD VENERABILES FRATRES, PATRIARCHAS, PRIMATES, ARCHIEPISCOPOS, EPISCOPOS ALIOSQUE LOCORUM ORDINARIOS, PACEM ET COMMUNIONEM CUM APOSTOLICA SEDE HABENTES, PER QUAS PUBLICAE INDICUNTUR PRECES PRO CONVENTU DE PACE COMPONENDA.

BENEDICTUS PP. XV

VENERABILES FRATRES SALUTEM ET APOSTOLICAM BENEDICTIONEM

Quod iam diu orbis terrarum anxie expetebat, quod christianae gentes omnes magnis precibus implorabant, quod Nos, ut communium dolorum interpretes, paterno erga omnes studio instanter quaerebamus, id momento factum cernimus ut arma tandem conquieverint. Nondum quidem crudelissimo bello finem solemnis pax imposuit; sed tamen pactio illa, qua caedes et vastationes terra mari caeloque intermissae sunt, ianuam aditumque ad pacem feliciter patefecit. Quae rerum subita commutatio cur evenerit, multiplices variaeque sane possunt caussae afferri: verum si ultima et summa ratio quaeritur, ad Eum demum mens attollatur oportet, cuius nutu moventur omnia, quique, sollicita bonorum comprecatione ad misericordiam inductus, dat humano generi ut a tam diuturno angore luctuque respiret. Itaque pro tanto beneficio ingentes benignissimo Deo agendae sunt atque habendae grates: gaudemusque ob eam rem in orbe catholico crebras et celebres pietatis publicae significationes factas esse. Nunc autem illud est a Dei benignitate impetrandum ut collatum mundo beneficium ac munus cumulet quodammodo et perficiat Scilicet propediem in unum convenient qui, populorum mandato, debent iustam mansuramque pacem orbis terrae componere. Deliberatio iis habenda est talis, qua nec maior unquam nec difficilior in ullo hominum consilio habita esse videatur. Nimium quantum igitur divini luminis ope indigent, ut recte possint mandatum exsequi. Quum vero communis salutis hoc vehementer intersit, profecto catholicorum omnium, qui, e sua ipsorum professione, humanae societatis bono et tranquillitati student, officium est 'assistricem Domini sapientiam' eisdem delectis viris comprecando conciliare. Huius officii Nos, quotquot sunt catholici homines, commonefiant volumus: quare, ut e proximo conventu magnum illud Dei donum exsistat quod est vera pax, christianis iustitiae principiis constituta, vos, Venerabiles Fratres, *Patri luminum* propitiando publicas ad arbitrium vestrum supplicationes in unaquaque vestrarum dioecesium

paroecia indicere maturabitis. Nostrum vero erit, cum Iesu Christi *Regis Pacifici* vices, quamquam nullo merito, geramus, pro apostolici muneris vi et auctoritate contendere, ut quae ad tranquillitatem ordinis et concordiam toto orbe perpetuandam consulta erunt, ea volentibus animis ubique a nostris excipiantur, inviolateque serventur.

Auspicem divinorum munerum ac testem benevolentiae Nostrae, vobis et Clero populoque vestro apostolicam benedictionem amantissime, in Domino impertimus.

Datum Romae apud S. Petrum die 1 mensis decembris MDCCCCXVIII Pontificatus Nostri anno quinto.

BENEDICTUS PP. XV.

(*Translation.*)

To the Venerable Brethren, Patriarchs, Primates, Archbishops, Bishops, and other Ordinaries of Places, Being in Peace and Communion with the Apostolic See.

BENEDICT XV.

Venerable Brethren, Salutation and Apostolic Benediction.

That which the whole world has long anxiously awaited, which all the Christian nations have vigorously prayed for, which We, as the interpreter of the common sorrow, in fatherly zeal for all, have sought, we now see realized in the cessation of strife. Not indeed that a solemn peace has as yet terminated this most cruel war; but that the armistice, through which a pause has been given to the slaughter and devastation on land and sea and in the sky, has happily opened a way to peace. For this sudden change in affairs many and various causes can be assigned: but indeed, if the final and highest cause is to be sought, the mind must turn to Him, by Whose word all things are moved, and Who, through the solicitous prayers of all good men, being led to show His mercy, has granted to the human race a respite from its long anguish and turmoil. Therefore, for so great a benefit, it is right that we express our most profound gratitude to the good God: and We rejoice that on this account frequent and striking evidences of public piety have been manifested throughout the Catholic world. Now, however, we must pray that, through the goodness of God, this gift and benefit conferred on the world may be further increased and perfected. At no distant day there will be assembled, at the request of the Peoples, those who are to frame a just and lasting peace for the world. Men have never met in council for a more important or more difficult deliberation. There is, therefore, all the greater need for the Divine inspiration, if their object is to be rightly attained. And as it is of the utmost importance to the common safety, it is especially the duty of all Catholics, who, from their very profession, desire the good and tranquillity of human society, to gain through prayer 'the aid of the Divine Wisdom' for the Delegates. It is Our wish that all Catholics should be forcibly reminded of this duty. Wherefore, in order that that great gift of God, a true peace, may result from the approaching Congress, a peace based on the Christian principles of justice, you, Venerable

Brethren, will hasten to announce in every parish in your dioceses public prayers, chosen at your discretion, to propitiate the *Father of Light*. As representing, though through no merit of Our own, Jesus Christ, the King of Peace, it will be Our duty to see, by virtue of Our Apostolic office and authority, that those things which may be decided upon for the perpetuation of tranquillity and concord throughout the whole world, shall be willingly accepted and inviolately preserved on all sides by our people.

As earnest of the Divine Favour and in testimony of Our benevolence, We lovingly grant in the Lord to you, the clergy, and your people the Apostolic Benediction.

Given at Rome, at St. Peter's, on the first day of December, 1918, in the fifth year of Our Pontificate.

BENEDICT XV.

DECREE IN REFERENCE TO CLERICS RETURNING FROM MILITARY SERVICE

(*October* 25, 1918)

SACRA CONGREGATIO CONSISTORIALIS

DECRETUM

DE CLERICIS E MILITIA REDEUNTIBUS

Redeuntibus e militari servitio clericis, oportet ut Ordinarii omnes maximo cum studio nitantur eos omnes a mundano pulvere detergere, quo inter armorum strepitus et quotidiana pericula pronum est etiam religiosa corda sordescere, eosque ab irregularitatibus et ab impedimentis quae dimicando contraxerint liberare. Hoc sane exigit ipsorum clericorum bonum, fidelium animarum salus et Ecclesiae utilitas.

Itaque Beatissimus Pater Benedictus PP. XV, dum cum Episcopis universis impense dolet grave vulnus ecclesiasticae disciplinae illatum clericos adigendo ad militare stipendium faciendum, quod, praeter reliqua, tot paroecias spiritualibus subsidiis et Seminaria suis alumnis magno cum christianae plebis detrimento privavit; in praesenti cum pax diu desiderata in eo iam sit ut lucescere videatur, ad sanctum finem assequendum renovandi in sacerdotibus a militia reversis ecclesiasticum spiritum et diluendi noxas quas forte contraxerint, auditis haud paucis Archiepiscopis nationum omnium quae inter se praesenti bello dimicarunt, de consulto peculiaris coetus Emorum Cardinalium, haec quae sequuntur, statuit ac decrevit:

Caput I

De irregularitatibus

1. Omnibus Ordinariis locorum et religiosorum facultas conceditur dispensandi ab irregularitate ex defectu corporis cum suis sacerdotibus e militari servitio revertentibus, quoties ex testimonio scripto magistri

caeremoniarum, qui sacerdotem examini subiecerit, plane constiterit ipse posse sine alieno auxilio servare cum decore omnes ritus necessarios in Missae celebratione praescriptos; onerata super hoc ipsorum Ordinariorum conscientia.

In casibus vero gravioribus vel dubiis, et quoties agatur de non promotis ad sacerdotium, recurrendum erit ad S. Sedem.

2. Pariter omnibus Ordinariis facultas conceditur dispensandi, saltem ad cautelam, ex irregularitate, quae a canonistis olim dicebatur *ex defectu lenitatis,* quoties sacerdotes, clerici et seminariorum seu religionum alumni in eam incurrerint non ex facto proprio sed ex necessitate, coacti nempe ad arma capessenda et mortem vel mutilationem forte inferendam. Quoties vero agatur de clericis in sacris qui, non legum necessitate coacti, sponte sua se obtulerunt ad arma suscipienda, aut ea susceperunt, pro dispensatione ad S. Sedem erit recurrendum, firmo tamen praescripto can. 188, n. 6°.

Quapropter Ordinarii, praevio examine in singulis casibus, decernant cum revertentibus e militia quos ab irregularitate absolvere possint, quos ad S. Sedem remittere debeant.

Ipsi autem sacerdotes qui e militia revertuntur et sciunt se irretitos esse irregularitate S. Sedi reservata, ne audeant sacris ministrare ante obtentam dispensationem.

Caput II

De dandis et assumendis informationibus

3. Singuli locorum Ordinarii de clericis et Seminariorum alumnis alterius iurisdictionis, qui in sua dioecesi militare servitium obeuntes per notabile tempus commorati sunt, vel adhuc commorentur, notitias, quantum fieri potest plenas, propriis illorum Ordinariis quam cito praebere accuratissime satagant: idque gravissimum conscientiae officium esse reputent, quo neglecto, haud modica christianae rei oriri poterunt detrimenta.

Notitias autem, quas Ordinarii de suis clericis et alumnis receperint, complere studeant per informationes ab aliis fontibus ac personis, ad rem quam diligentissime assumptis, ac demum per examen etiam personale de quo infra.

Caput III

De sacerdotibus saecularibus et regularibus

4. Sacerdotes, sive saeculares sive religiosi, redeuntes e militia, intra decem dies a reditu tenentur se sistere coram Ordinario suo eique exhibere litteras Ordinarii Castrensis vel saltem militaris cappellani sui, aliaque documenta quae testimonium reddant de eorum vita et moribus; quae omnia proinde secum afferre curabunt. Ordinario autem eos percontanti de iis quae pertinent ad externam seu publicam vitae rationem quam in militia duxerunt, de operibus ibi actis, de locis ubi commorati sint, respondere ex conscientia secundum veritatem iubentur.

Qui intra tempus superius praefixum Ordinarium suum non adibunt,

suspensi manent ipso facto a divinis: a qua censura non relevabuntur, nisi quum quae supra mandata sunt impleverint.

5. Omnes sacerdotes, sive saeculares sive religiosi, intra tempus ab Ordinario suo designandum (quod sine iusta et necessaria causa nimium protrahere non licebit), secedere debebunt in aliquam piam domum ab Ordinario designatam ad spiritualia exercitia peragenda, iuxta ipsius Ordinarii praescriptiones.

Qui huic praecepto non satisfecerint, manebunt pariter ipso facto suspensi a divinis, a qua censura non liberabuntur, nisi quum exercitiorum domum ingredientur.

6. Quum spiritualia exercitia, ut fructuose fiant, peragi debeant in aliqua pia domo a mundanis rumoribus remota, in silentio, sub ductu prudentis ac pii directoris et cum subsidio praedicatorum et confessariorum, qui cum doctrina et prudentia vitae sanctitatem coniungant, necesse est ut Ordinarii multo cum studio haec omnia comparent.

Sed quum vix possibile sit ut singulae dioeceses et religionum provinciae domum pro spiritualibus exercitiis plene instructam habeant; Episcopi curent cum aliis eiusdem provinciae aut regionis Presulibus convenire ad communem aliquam domum designandam et instruendam. Idem ut Ordinarii religiosorum peragant praecipitur.

7. Quum sacerdotum reversorum a militia non eadem sit conditio, neque par necessitas abluendi conscientiam et renovandi ecclesiasticum spiritum, Ordinariorum prudentiae relinquitur breviorem vel longiorem spiritualium exercitiorum cursum pro singulis statuere; ita tamen ut nemo minus quam octo integros dies spiritualis recessus impleat.

8. Ob eamdem causam in singulis casibus Ordinarii definient, utrum, post spiritualia exercitia peracta, sacerdotes ad pristina officia sive curae animarum, sive magisterii aut regiminis in Seminariis aut similia sint statim restituendi, vel secus.

Ad hunc finem tribuitur facultas Episcopis removendi ad tempus ab animarum cura, ab officio confessarii, a regimine et magisterio alumnorum in Seminario, qui durante militia non bene se gesserint, sive iidem suspensi fuerint a divinis, sive non; eosque adigere poterunt ad vivendum ad tempus vel in aliqua religiosa domo, vel sub ductu pii et prudentis sacerdotis cum obligatione pia aliqua exercitia ex praescripto faciendi.

Idem in paribus casibus statuant Ordinarii religiosorum pro suis subditis, quos etiam voce activa et passiva ad tempus privare poterunt et ad vivendum in aliquo strictioris observantiae conventu adstringere. Superioribus autem generalibus facultas insuper tribuitur removendi superiores provinciales et locales, quoties ex eorum agendi ratione in militia id necessarium esse ducant.

Caveant tamen Ordinarii, quantum fieri potest, ne sacerdotes sive saeculares sive regulares sedem figant in locis ubi, militare servitium obeuntes, diu commorati sint.

In casibus vero dubiis vel gravioribus, Ordinarii ad S. Sedem recurrant.

9. Denique, attentis peculiaribus nostri temporis conditionibus, conceditur Ordinariis dioecesanis facultas ad quinquennium valitura, qua, exigente animarum necessitate, si desint sacerdotes unicuique paroeciae

proprii, committere possint uni eidemque sacerdoti curam duarum vel etiam trium paroeciarum, et transferre parochos a paroecia sua ad aliam magis centralem ex qua facilius succurrere possint fidelibus ipsorum curae commissis.

Caput IV

De alumnis Seminariorum

10. Omnes Seminariorum alumni, qui post militare servitium ad pium locum redire volent:

(*a*) Ordinario suo se sistent, eodem prorsus modo ac de sacerdotibus superius est dictum.

(*b*) Ordinarius circa examen et notitias assumendas eadem ratione se geret ac cum sacerdotibus.

(*c*) Si ex hoc examine aliisque argumentis et documentis constiterit aliquem haud bene se gessisse in militia, Episcopus, habito cum deputatis super disciplina et cum rectore Seminarii consilio, eum a regressu in Seminarium repellat.

(*d*) Si aliter constiterit, Episcopus, habito cum iisdem deputatis et rectore Seminarii consilio, petitionem admittat; sed sub modo et conditionibus quae in sequentibus indicantur.

(*e*) In primis alumnum iubeat spiritualia exercitia peragere et quoad locum, tempus et modum spiritualis recessus Episcopus statuat ac decernat quod magis in Domino expedire in singulis casibus censeat, servatis, quantum fieri poterit, iisdem regulis ac cum sacerdotibus.

(*f*) Post spiritualia exercitia, videat pariter, pro sua prudentia et cum consilio ut supra, utrum expediat alumnum a militia reversum cum ceteris statim admittere, an per aliquod tempus seorsim sub speciali vigilantia eum cum aliis a militia reversis detinere.

11. Alumni in Seminarium reversi studia prosequentur inde adamussim incipiendo ubi ea abruperunt, et integrum cursum perficiant.

12. Quoad ordinationem, Episcopi, memores plus quam alias apostolici illius praecepti (*ad Thim.*, I, cap. V): 'Manus cito nemini imposueris, neque communicaveris peccatis alienis,' caveant a promovendis suis alumnis, praesertim ad maiores Ordines, antequam per aliquot menses eos rite comprobaverint, onerata super hoc gravissime eorum conscientia.

Caput V

De novitiis clericisque religiosis

13. Quoad novitios et clericos diversarum religionum, qui post militare servitium ad religionem suam revertuntur, eaedem cum proportione serventur regulae ac de Seminariorum alumnis praescriptae sunt.

14. Transitus religiosorum, post militare servitium, ad clerum saecularem eorumque admissio in Seminarium prohibita manent iuxta communis iuris praescriptum.

Caput VI

De laicis aut conversis variarum religionum

15. Qui fratres conversi vel laici in variis religionibus nuncupantur et post militare servitium ad conventum redeunt, consueto ut supra examini Superiores subiiciant; et si bene in militia eos se gessisse constet, praeviis spiritualibus exercitiis, cum cautelis et regulis in superioribus articulis nuntiatis, eos denuo in communitatem admittant.

Si vero constet eos se male gessisse et votis solemnibus ligati non fuerint, dimittant et hoc ipso a votis omnibus, etiam castitatis perpetuae absoluti erunt.

Quod si votis solemnibus obstricti fuerint, Superiores casum deferant ad S. Congregationem de Religiosis, et interim eos iubeant penes consanguineos suos, vel in monasterio, sed seorsim, vivere.

Caput VII

De clericis in sacris, saecularibus vel regularibus, qui in graviora crimina prolapsi fuerint.

16. Cum clericis in sacris, qui forte in aliquod ex maioribus delictis, durante militari servitio, misere lapsi forent, quum redeunt, Ordinarii paterne quidem se gerant, sed ad eorum emendationem et salutem et in publicum Ecclesiae bonum, non omittent in singulis casibus iuxta criminum naturam procedere, prout in lib. V Codicis praescribitur, praesertim si in infamiam iuris vel facti incurrerint.

Cum iis vero qui per lugendum nefas a suis votis vel etiam a religione apostatae ad saecularem statum transiverint, iidem Ordinarii boni pastoris officium, quantum in ipsis est, agere non omittant, errantes oves opportune quaerendo. Curent insuper pro viribus ut, saltem in aliorum fidelium scandalum et perniciem, eorum prava exempla ne cedant.

Meminerint praeterea officii sui esse in relatione de dioecesis vel religionis statu aperte innuere an et quot apostatae deplorari apud ipsos debuerint.

Haec omnia Sanctitas Sua districte ab omnibus Ordinariis servari mandat, nec plane dubitat, attenta singulari rei gravitate, quominus omnes et singuli peculiarissimum impensuri sint studium, ut quae praescribuntur plene et ad unguem impleantur.

Datum Romae, ex Aedibus S. Congregationis Consistorialis, die 25 Octobris 1918.

✠ C. Card. De Lai, Ep. Sabinen., *Secretarius.*

L. ✠ S.

✠ V. Sardi, Archiep. Caesarien., *Adsessor.*

CONDITIONAL MATRIMONIAL CONSENT—INTERESTING CASE DECIDED BY SPECIAL COMMISSION

COMMISSIO SPECIALIS RR. PP. CARDINALIUM

VERSALIEN.

NULLITATIS MATRIMONII

Die 29 febr. 1908 B. C. coniugium iniit in facie Ecclesiae cum P. D., sed consuetudo matrimonialis post breve tempus perturbata fuit. Mulier enim sibi proposuerat non nubere nisi viro qui labe contubernii esset immunis et hoc aperte pluries sponso sub conditione proprie dicta declaraverat, qui vice sua sub fide honoris iterum iterumque affirmaverat se labe contubernii esse exemptum.

Post quindecim vix dies a contractis nuptiis in itinere nuptiali et pluries deinceps vir patefecit mulieri aliisque se amasiae adhaesisse et adhuc corde adhaerere. Hinc gravia iurgia habita sunt, hinc sententia separationis favore mulieris a tribunali laico lata fuit mense martio anni 1909.

Anno 1910 mulier se sistit coram iudice ecclesiastico, instans ut suum matrimonium nullum declararetur ex capite conditionis appositae et non impletae.

Plures sententiae latae fuere actrici contrariae, quibus illa haud acquievit, sed Ssmum supplicavit et obtinuit ut Commissioni quinque Emorum Patrum novum examen suae causae deferretur. Die 2 augusti currentis anni, adstantibus EE. PP. De Lai, Pompili, Gasparri, Giustini et Lega ad id deputatis, responsum prodiit matrimonium in casu nullum fuisse ex conditione apposita et non impleta.

Certe si 1° mulier suum matrimonialem consensum subordinavit conditioni proprie dictae quod vir labe contubernii in sua anteacta vita fuerit immunis; si 2° haec conditio ante initum matrimonium nec revocata fuit nec alio modo cessavit; si 3° demum anteacta viri vita labe contubernii revera infecta fuit, matrimonium est irritum ex defectu consensus ob oppositam et non impletam conditionem; et in hoc omnes uno ore conveniunt. Quamquam enim error qualitatis, etiam dans causam contractui, matrimonium irritum per se non reddit, quia matrimonialem consensum minime excludit, si tamen error cadit in qualitatem, conditione proprie dicta et usque ad matrimonii celebrationem perseverante, requisitam, deficiente qualitate, et consensum eidem subordinatum deficere ac proinde matrimonium viribus carere, evidens est. Illae igitur tres quaestiones, potius facti quam iuris, ad examen revocandae sunt, ut exinde constet utrum matrimonium in casu ex hoc capite valeat, necne.

In primis videamus num mulier praestiterit consensum sub ea conditione proprie dicta quod vir labe concubinatus esset immunis.

Conditio proprie dicta tunc habetur quando pars explicito voluntatis actu suum consensum existentiae alicuius qualitatis alligavit, ita ut si qualitas deficiat, etiam consensus, qualitati subordinatus, deficere debeat. Iam vero ex actis habetur mulierem ante sponsalitiam promis-

sionem colloquium cum viro habuisse, in quo eidem suam intentionem ita declaravit : ' . . . subordonnant mon consentement à l'assurance formelle qu'il n'avait eu dans son passé aucune liaison suivie . . . à trois reprises je lui exprimais formellement ma volonté de ne pas épouser un homme qui aurait eu auparavant une liaison suivie. . . Je désirais doublement y subordonner mon consentement. . . . Je mettais comme condition absolue de mon consentement à mon mariage que celui que j'épouserais n'aurait jamais eu des liaisons suivies. . . . Ma condition, quoique n'ayant pas été renouvelée, subsistait cependant toujours aussi absolue, aussi vivace. . . . Je n'ai pas renouvelée cette condition trouvant que l'ayant si nettement formulée, je ne pouvais en dire d'avantage. Mr D. P. avait du reste si bien compris que j'en faisais une condition *sine qua non* de mon consentement, qu'il n'osat pas la nier dans l'interrogatoire.'

Has suae intentionis declarationes se viro fecisse, mulier tempore minime suspecto retulit pluribus testibus fide dignis, ita ut de facto habiti colloquii cum relatis declarationibus nullo modo dubitare liceat. Iamvero has declarationes conditionem proprie dictam continere evidens est ; et reipsa testes qui factas declarationes cognoverunt, eas de conditione proprie dicta intellexerunt. Mulier igitur ante sponsalitiam promissionem non meram, uti fieri solet, peregit de anteacta viri vita inquisitionem, sed talem ut suum consensum explicite subordinatum declaraverit immunitati concubinatus ex parte viri.

Sed non sufficit quod conditio proprie dicta posita fuerit ; requiritur insuper ut non fuerit revocata nec alio modo cessaverit ante nuptias.

In primis dici nequit conditionem fuisse a muliere positive revocatam. Nam haec revocatio est factum et facta non praesumuntur sed probantur ; atqui revocatio nullatenus probatur, imo ex actis contrarium potius deducitur : ' . . . ma condition, quoique n'ayant pas été renouvelée, subsistait cependant toujours aussi absolue, aussi vivace. . . . Je n'ai pas renouvelée cette condition trouvant que, l'ayant si nettement formulée, je ne pouvais en dire d'avantage.' Nec conditionem per se cessasse coniici ex eo licet quod mulier ex falsa viri asservatione acquisiverit certitudinem hunc esse contubernio immunem. Nam mulier conditionem apposuit ante viri asservationem, ideoque ante acquisitam certitudinem ; subsequens autem certitudo nullo modo destruit conditionem antea appositam, sed consensus eidem subordinatus remanet, non obstante subsequenti certitudine, quae esse simul potest cum virtuali voluntate conditionata.

Restat demum ut inquiratur num vir revera concubinariam duxerit vitam ante matrimonium.

Ipse vir, ut supra relatum est, dixit uxori se concubinarias fovisse relationes cum quadam muliere et quidem per duodecim annos, addens: ' Quoique vous fassiez dans l'avenir, vous n'effacerez jamais le souvenir de douze années de bonheur que ma petite amie m'a donnée. Ma mère a la première place dans mon cœur, ma petite amie vient ensuite et vous après. Je vous serai fidèle à moins que je ne rencontre ma petite amie.' Haec viri verba mulier retulit matri suae, matri sponsi et aliis

quos certiores antea fecerat circa colloquium ante nuptias habitum cum sponso et conditionem appositam. Porro si ei fides data est quando ante nuptias suum retulit colloquium cum viro et adiectam consensui conditionem, tribuenda quoque est quando refert viri confessionem, ni quis velit in contradictionem incidere. Haec insuper confirmantur ex confessione facta ab eodem viro testibus indubiae fidei qui de hoc testati sunt. In ipso demum tribunali laico viri patronus concubinatum admisisse ex actis eruitur.

Quare quum mulier, contrahens sponsalia et matrimonium, alligaverit suum consensum conditioni proprie dictae immunitatis concubinatus in P. D.; nihil in actis probet hanc conditionem fuisse revocatam vel cessasse; constet vero ex actis virum amasiae adhaesisse, matrimonium ab Emis Patribus nullum declaratum est.

E. Lucidi, *a Secretis Commissionis.*

THE METROPOLITAN CHURCH OF CARTHAGE BECOMES A MINOR BASILICA

(*August* 5, 1918)

METROPOLITANUM TEMPLUM PRIMARIUM CARTHAGINENSE TITULO AC PRIVILEGIIS BASILICAE MINORIS COHONESTATUR

BENEDICTUS PP. XV

Ad perpetuam rei memoriam.—Illustriores inter sacras Aedes, quae sive sacrorum Antistitum sanctimonia, sive Conciliorum celebritate, sive martyrum copia in historiis dilaudantur, omni procul dubio illa eminet Primaria Carthaginensis appellata. In summo veteris urbis clivi fastigio, inter paganorum templorum ruinas sacrasque recenter detectas primi aevis christiani aedes, a fundamentis erecta fere exeunte saeculo decimonono, Deo in honorem S. Cypriani episcopi et martyris et S. Ludovici regis Francorum confessis sollemniter dicata, nobilium Gallicae nationis virorum munificentiam late praedicat. Et sane circumstantes inter agros aedes ista caput effert, christiani nominis insigne trophaeum et victoriae prius de ethnico, dein de islamitico cultu relatae splendidum monumentum. Hic cura et sollertia amplissimi viri, divinae gloriae atque aeternae hominum salutis studiosissimi, bo. me. Caroli Martialis S. R. E. Presbyteri Cardinalis Lavigerie, tituli ad S. Agnetis extra moenia, postea archiepiscopi Carthaginensis, feliciter actis effossionibus, plures et quidem ingentes Basilicae in lucem redierunt, ornatae sepulchris tertii saeculi ad quartum reparatae salutis, passim epigraphes sive epitaphia referentibus, in quibus, praeter omnigenam veritatem, formarum Crucis et D. N. Iesu Christi monogrammatis legere est, adiectos hos titulos: episcopus, diaconus, subdiaconus, acolytus, lector, exorcista, clericus, virgo sacra et saepissime vocabulum: fidelis. Perampla interior aedes, etsi enunciatae basilicae romanae ad S. Agnetis extra moenia formam aliquatenus imitetur, structuram tamen bizantino-arabicam praesefert, pulcherrime decoratam gentilibus stemmatibus descendentium e viris illis, qui in sacris expeditionibus vulgo 'Cruciatis' bonum pro fide certamen strenue decertarunt. Magnificis decora artis operibus plura

adsunt sacella, ubi pretiosa varioque de marmore nitent altaria. Templi autem decus adauget splendidissima theca, affabre elaborata, et in altari principe collocata, quae S. Ludovici Francorum regis et confessoris reliquias insignes recondit, itemque conspicuum monumentum, sive mausoleum, ad perennandam memoriam purpurati principis Lavigerie exstructum, qui benemerentissimus exstitit in Metropolitani templi condito illique pro dignitate ornando, nullis laboribus parcens, donec vixit, consuluit, atque in ea sede honoris sui conditus, exspectat immutationem. Denique praecipuum, ne dicamus caelestem, templo nitorem effert Beatissimae Dei Genitricis marmoreum simulacrum, vetustissimo praegrandi anaglyfo ibidem reperto, accuratissime expressum. Virgo Dei Mater, Domina nostra Carthaginensis, ut vocant, Infantem Iesum ulnis complectens, veluti solio maiestatis assidet, atque ex illo urbis culmine, Punica olim arce, subiectam civitatem et propemodum cunctas Algeriae ac Tuneti regiones materna sollicitudine tutari benignissime videtur. Quare ad ipsius aram voti et piae peregrinationis causa frequentes ac persaepe turmatim accedunt fideles, gratiarum apud Deum sequestrae Virginis praesidium opemque imploraturi, vel ut plurimum felici successu, quod ibi appensae tabellae votivae ac donaria luculenter testantur. Quemadmodum Carthaginensi Sacrorum Antistiti fel. rec. Praedecessor Noster Leo PP. XIII primatus honoris et iurisdictionis in Africanis cunctis Ecclesiis privilegium recognitum, confirmavit, ita Metropolitano templo triginta quatuor abhinc annis noviter aedificato, Primariam aeque dignitatem ac pristinum eius Ecclesiae splendorem, per Litteras sub plumbo die x mensis novembris anno MDCCCLXXXIV datas, iure restitutum idem Praedecessor Noster voluit, vestigiis adhaerens Leonis PP. IX, qui de eo Primatu sententiam rogatus, in epistolam ad Thomam Episcopum Africanum, medio saeculo undecimo, perhonorificum et gravissimum testimonium scripserat. Nil mirum igitur quod brevi annorum spatio in Primaria nova illa Aede octo episcopales consecrationes habitae fuerint, itemque templum sacra suppellectili ditiore abunde refertum sit atque indulgentiarum thesauro locupletatum, nil mirum quod eiusdem templi ordo canonicorum, qui una cum cetero clero divinis officiis muniisque ecclesiasticis ibidem in exemplum perfungitur, ab hac Sancta Apostolica Sede potioribus choralibus insignibus et privilegiis late honestatus fuerit. Haec omnia animo repetens venerabilis frater Bartholomaeus Clemens Combes, archiepiscopus Carthaginensium, Africae Primas, de honore qui templi Metropolitani cultuque augendo apprime sollicitus, ferventia quoque vota cleri populique sibi commissi humiliter depromens, enixis Nos precibus rogavit, ut primariam Aedem Metropolitanam Carthaginensem basilicae minoris appellatione ac dignitate cohonestare dignaremur. Nos autem, quibus nihil antiquius est, quam ut templum hoc, munificentiae ac pietatis praenobilis Gallicae nationis monumentum praestantissimum, singulari per Nos augeatur honoris titulo, optatis hisce annuendum ultro libentesque existimavimus. Quare, collatis consiliis cum VV. FF. NN. S. R. E. Cardinalibus Congregationi praepositis pro sacris tuendis Ritibus, apostolica Nostra auctoritate, praesentium vi, perpetuumque in modum, templum Metropolitanum Carthaginense, Deo in-

honorem S. Cypriani episcopi et martyris ac S. Ludovici Francorum regis et confessoris dicatum, Decessorum Nostrorum beneficiis, ac potissimum perpetuo privilegio Primatus super totius Africae Ecclesiis honestatum basilicae minoris titulo donamus, illique omnia et singula honorificentias, ac privilegia tribuimus, quae minoribus almae huius Urbis Basilicis de iure competunt. Porro haec largimur, decernentes praesentes Litteras Nostras firmas, validas atque efficaces semper exstare ac permanere, suosque plenos atque integros effectus sortiri atque obtinere, illisque ad quos pertinent nunc et in posterum plenissime suffragari; sicque rite iudicandum esse ac definiendum, irritumque ex nunc et inane fieri si quidquam secus super his a quovis, auctoritate qualibet, scienter sive ignoranter attentari contigerit. Non obstantibus constitutionibus et ordinationibus apostolicis, ceterisque omnibus in contrarium facientibus quibuscumque.

Datum Romae apud sanctum Petrum, sub annulo Piscatoris, die v augusti MCMXVIII, Pontificatus Nostri anno quarto.

P. CARD. GASPARRI, *a Secretis Status.*

LETTER FROM POPE BENEDICT XV TO THE PATRIARCH OF VENICE

(*September* 20, 1918)

AD PETRUM S. R. E. CARD. LA FONTAINE, PATRIARCHAM VENETIARUM, CUIUS OFFICIOSIS LITTERIS EX SACRA SPIRITUALIUM EXERCITIORUM SECESSIONE DATIS RESCRIBIT.

Dilecte fili Noster, salutem et apostolicam benedictionem.—Quae in proximis litteris, communiter cum pluribus de tuo clero ad Nos datis, significaveras, ea Nobis pergrata acciderunt, siquidem optimis digna filiis visa sunt. Cum enim statis divinarum rerum commentationibus una vacaretis, nihil fuit vobis antiquius quam conceptum inde animorum fervorem testimonio praeclarae vestrae in Nos pietatis cumulare. Profecto maxime in hac temporum inclinatione Nos consolatur sacerdotum bonorum diligentia; qui quidem sui memores officii, excitato saepius in secessione spiritu, incensiore in dies studio, cum Christi Vicario coniuncti, sancta obire ministeria contendant. In quo certe plurima etiam communis salutis spes continetur. Itaque vobis gratulamur vehementer; in primisque tibi, dilecte fili Noster, in cuius laude merito singularis quaedam pastoralis sollertia atque cura ponenda est. Vestrum erit, ut certe facietis, istam retinere alacritatem: Nos vero ut propositi vestri constantiam salutarium copia fructuum consequatur, datorem munerum Deum enixe rogamus. Quorum auspicem paternaeque benevolentiae Nostrae testem, apostolicam benedictionem tibi, dilecte fili Noster, et omnibus qui tecum convenerunt, amantissime in Domino impertimus.

Datum Romae apud S. Petrum, die xx mensis septembris MCMXVIII, Pontificatus Nostri anno quinto.

BENEDICTUS PP. XV.

REVIEWS AND NOTES

Correspondance du Siècle Dernier: Un Projet de Mariage du Duc d'Orléans (1836); Lettres de Léopold 1er de Belgique à Adolphe Thiers (1836–1864). Par L. de Lanzac de Làborie. Paris: Beauchesne, 1918.

In these days of open diplomacy and democratic alliances the political marriage as the basis of national alliances seems strange. The system, however necessary as a political instrument, was frequently detestable in its effects on individual happiness. M. De Lanzac de Làborie furnishes us with an interesting series of letters dealing with the projected marriage of the Duc d'Orléans with an archduchess of Austria. The chief correspondents are Queen Marie-Amélie, the Duc d'Orléans, the Archduke Charles, Metternich, Adolphe Thiers, and the Comte de Sainte-Aulaire. The correspondence opens in the year following the death of the Emperor Francis (1836). Sainte-Aulaire was convinced that the death of Francis had ruined all chances of the proposed marriage. Metternich was indisputable head of the State under the new Emperor Ferdinand; and the direction of the Imperial Family passed into the hands of the youngest of the uncles of the sovereign, the Archduke Louis, a strong opponent of an alliance with France. Metternich had no desire to oppose Louis, and hence when the marriage question was broached he replied 'qu'il ne fallait point toucher à cette corde.' With the replacing of the Duc de Broglie by Thiers as head of the French administration, Metternich suddenly discovered all the virtues of the world in the King of the French. 'The Revolution of July,' he cried, 'has saved the world.' Sainte-Aulaire tried to warn Thiers against taking Metternich's ebullitions 'au pied de la lettre'; but Thiers had already written to Vienna to say that he was a partisan of the English alliance for reasons known to all, but that this alliance would be strengthened by an Austrian one: and that this triple alliance would secure the Peace of the World! The Duc d'Orléans and his brother, the Duc de Nemours, left for Vienna (*via* Berlin) on May 2nd, 1836. The correspondence now published for the first time describes the events and negotiations to which this journey gave rise.

The Letters of Leopold I of Belgium to Adolphe Thiers reveal to us an important chapter in European diplomacy. When Leopold ascended the throne in 1831 he was not exactly a lover of the French. As Saxe-Coburg he had his first experiences as a soldier in the Russian army. After Waterloo he became naturalized in England and was married to the daughter and heiress of the Prince of Wales. Even after the death of his wife he remained associated with England and English affairs, and this did not predispose him in favour of the French. The feelings were reciprocated. When the question of the Belgian throne was mooted

Sébastiani, the Minister for Foreign Affairs for Louis Philippe, exclaimed: 'If Saxe-Coburg sets foot in Belgium, we shall shoot him.' After the refusal of the Duc de Nemours, however, the opposition of the French Government was withdrawn. Once elected, Leopold devoted himself wholeheartedly to the interests of his kingdom. 'We are a small country, it is true, but we are by no means insignificant politically.' Though a Protestant, he won the favour of the Catholics by his observation of the Parliamentary Constitution. He drew closer the friendly relations between Belgium and France. He helped to restrain and moderate Thiers. The latter was on the point of bringing about a rupture between France and Russia and England in connexion with the affair of Mehemet-Ali. Leopold did his best to restrain Thiers, foreseeing the consequences to Belgium of a European crisis. Even the fall of the Monarchy of July did not interrupt his efforts to keep in touch with the Liberal Party in France. He continued his correspondence with Thiers, exchanging with him reflections on the great international crises, the Crimean War, the war in Italy. We have, therefore, in the present publication a 'document intime' on the politics of Europe from 1836 to 1864 which will well repay perusal.

P. M.

READINGS AND REFLECTIONS FOR THE HOLY HOUR: THE MANIFESTATIONS OF THE DIVINE PRESENCE. By Rev. Frederick A. Reuter. Second Edition. New York: Pustet, 1918.

THE object of this little work is to help to spread the devotion to the Blessed Sacrament. As Father Reuter says, there is now a happy rivalry between the clergy and laity in their efforts to extend to our Divine Lord in this Sacrament of Love every token of the deepest love and veneration. The short chapters are divided into *Legenda* and *Reflections*. In the *Legenda* numerous historical examples are given of devotion to the Blessed Sacrament and its consequent happy results. The *Reflections* stimulate us to pious thoughts based on the examples given. The method is a sound one. The priest will find in the *Legenda* numerous apt illustrations with which to enliven his discourse. The *Reflections* consist of a collection of passages from the Fathers and Doctors of the Church, each of which has won a place here by the beauty of its diction or the truth it teaches. The little work is at once, therefore, a history of the devotion to the Blessed Sacrament and a work of meditation as well. As an example of the historical illustrations we may quote the following:—

'The first circumstance which led to the celebration of the Feast of Corpus Christi was a vision granted to the Blessed Juliana, a nun of Liège. . . . Being one day engaged in contemplation, she saw in spirit a vision of the moon at its full, but a dark spot on it marred its shining radiance. After much prayer and fasting she was enlightened as to the meaning and signification of this apparition. God revealed to her that the moon represented the Catholic Church, and that the dark spot signified the want of a special feast in honour of the Blessed Eucharist. . . . In the year 1230 she disclosed the apparition to a few men equally renowned for piety and learning. These men declared the apparition to be of God,

and induced Robert, Bishop of Liège, to institute in his diocese a feast of the Adoration of the Most Holy Sacrament of the Altar. In the year 1246 Bishop Robert issued a command that every year, on the fourth day after the feast of the Most Holy Trinity, the feast of Corpus Christi should be celebrated in all the churches within the diocese of Liège. . . . In the year 1261 James Pantaleon, Archdeacon of Liège, one of the first whose voice had decided in favour of the heavenly vision, was raised to the Pontifical Throne, under the name of Urban IV. Thus the new Pope was happy, a few years later, in being able by a Bull to establish the feast of Corpus Christi all over the world. This ordinance was confirmed by Pope Clement V in the Council at Vienna, in the year 1311. Several Pontiffs granted special indulgences for this feast.'

M.

THE PRINCE OF PEACE: Meditations by the Rev. Allan Goodier, S.J. London: Washbourne.

AMONG the many works of meditations Father Goodier's will, we trust, find a place. He acknowledges his indebtedness to Father Coleridge, S.J., and, in a sense, the present work supplies the want of a much-needed selection from the latter's works. *The Prince of Peace* is really a series of concise meditations on Advent and Christmas. Each meditation is preceded by quotations from the Scriptures, and is succeeded by a brief summary. A priest will find in it suggestive material for Advent and Christmas-tide instruction. Though very brief, the Meditations are rich in thought, and their language is concise and terse.

M.

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THE CATHOLIC CHURCH IN 1918

By Very Rev. JAMES CANON MacCAFFREY, S.T.L., D.Ph.

At last the terrible struggle that has devastated Europe for years, and that at one time threatened to end only with the mutual destruction of the belligerents, has been brought to a close almost as unexpectedly as it began. After a prolonged contest, during which their victorious forces over-ran a great portion of Europe, the Central Powers have been forced to hoist the white flag and to surrender almost at discretion. Last April, it looked as if victory were within their grasp. Russia and Rumania had been counted out; the huge forces on the Eastern frontier were being diverted towards the West; the Allied armies in France were falling back before the new offensive, and it seemed as if Paris and the whole French coast-line, from Havre to Dunkirk, were to pass into the hands of the Germans.

But, as subsequent events proved, the terrific onslaught of last March was but a last desperate bid for victory that had been so often denied them. The German High Command, realizing the exhaustion of their raw materials, the depletion of their man-power, and the imminent danger of famine and revolution, resolved to stake the fortunes of the Empire on one gigantic effort to secure a decision before the army of America could be ready to take the field. It was their final and only hope, in view of the fact that the submarine campaign could not render the American intervention ineffectual; and once that hope failed nothing remained for them but retreat and surrender. Torn by convulsions at home and deserted by her allies in the field, Germany was obliged to accept the humiliating terms dictated by the victorious generalissimo of the Allied and American forces.

But the overthrow of the Kaiser does not necessarily mean the restoration of peace to the world. In their anxiety to encourage their friends and embarrass their

enemies the statesmen of both belligerent parties have pledged themselves to principles and programmes which, whether realized or disowned by their authors, are likely to mark a new era in the history of mankind. The world outlook of 1919 is not that of 1914; the old order is gone for good, whatever may take its place. To preach for years the overthrow of autocracy, the uplifting of democracy, the right of peoples whether weak or strong to determine their own form of government, the banding together of nations into one great league to enforce disarmament, compulsory arbitration and international peace, and when the opportune moment comes to do nothing to put these high-sounding principles into operation is to court swift and terrible disaster. If the diplomatists of Versailles, closing their eyes to the past and their ears to the present, determine to follow the methods of the Congress of Vienna rather than the peace proposals of President Wilson, then, indeed, may men pray for peace.

The President of the United States, more than any other single individual, is responsible for the overthrow of the Germans. By his skill and diplomacy he kept his country clear of the war until the protection of American interests demanded intervention; and when, at last, he felt it necessary to call his compatriots to arms, they responded with an eagerness and unanimity that astonished both friend and foe. By his soul-stirring messages to mankind he converted what seemed to many a sordid contest for economic predominance or territorial expansion into an unselfish crusade for liberty, peace and justice. As he played the leading part in bringing the war to an end, so too, it is hoped, he will exercise a powerful influence on shaping the terms of peace. He has pledged his own honour and the honour of his country to certain well-defined proposals. If he can succeed in winning over the diplomatists of Versailles to his views, though the practical difficulties in carrying out his plans are well-nigh insuperable, his name will be held in benediction by the Old World as well as by the New; if he fail at the Congress, then it only remains for him to do what he did in his dealings with German autocracy, to appeal from the governments to the governed. If he has the courage to adopt this course, he need have no fears about the verdict of the people.

Now, that the great war has come to an end, one may

well inquire how the victories of the Allies and the downfall of Austria and Germany are likely to influence the Church? During the vicissitudes of the contest some people seemed convinced that the triumph of Germany would spell another *Kulturkampf* against the Church, more violent and more widespread than that initiated by Bismarck and Falk; while others were equally confident, from their knowledge of the Governments of France and Italy, that the success of the Allies would be hailed as a victory by the friends of Atheism and Freemasonry. Both parties were probably equally sincere, but both were influenced by their prejudices rather than by facts. Religious considerations played an insignificant part in the councils of the men responsible for the war, and however zealous may have been their professions of sympathy during the struggle, the Church had good reason to be equally cautious in her dealings with the leading belligerents. While there is but little ground for hope that the war would lead to a great religious revival in Italy and France in face of which the Governments of these countries would be forced to modify their attitude of hostility to the Church, there is still less ground for believing that the downfall of the Austrian Empire involves the extinction of Catholicity in the territories of the Habsburgs. If, indeed, the power of Austria had been broken before defeat and revolution had destroyed the autocratic sway of the Czar, then the situation, from the point of view of the Church, would have been undoubtedly serious. With Austria weak and Russia victorious and united, the way would have been open for the enforcement of Orthodoxy throughout Eastern and South-Eastern Europe.

But, as matters stand at present, there is no need for alarm about the future of religion, even though the principle of self-determination should be applied to the former provinces of the Empire. In Austria proper, where the population generally speaking is German in race and language, no peculiar difficulty will arise; in the Tyrol, whatever may be its ultimate political fate, there is no danger that autonomy or union with Italy will damp the religious fervour of its generous people; in Croatia and Slavonia, where the Jugo-Slavs constitute the predominant element, the union of bishops, clergy and people in their prolonged struggle for freedom affords sufficient warranty for the belief that the new political situation that has

arisen carries with it no danger for religion. So long as the Jugo-Slav movement is led, as it is at present, by men like Mgr. Jeglic, Prince-Bishop of Laibach, Mgr. Bauer, Bishop of Zagreb, and Mgr. Mahonic, Bishop of Veglia, there need be no fear that by ceasing to be Austrian subjects the Jugo-Slavs will cease to be Catholic. And with one slight reservation the same might be said about the Czecho-Slovaks of Bohemia, whose clergy for the most part stand in the very fore-front of the nationalist movement. In proof of this assertion it is sufficient to quote from the solemn declaration issued to the Press by a meeting of the clergy of Prague :—

> We, Czech ecclesiastics [they declared], conscious of springing from the people, and being indissolubly attached to them by the bonds of blood, language and traditions, are determined to stand side by side with them in the struggle till victory crowns our efforts. We claim to belong to Saints Cyril and Methodius, the apostles of the Slavs ; and we declare that the solemn words of our writers and deputies, as well as the nationalist oath, express exactly what we feel and believe. We declare that the establishment of an independent Czecho-Slovak State is an act of justice pleasing to God. And, believing that perfect harmony is indispensable for the achievement of our aims, we declare that the Czech Union is alone competent to act in the name of the nation, and we reject in advance any private or party negotiations concerning the future of our country.

'We will stand or fall with our people' were the striking words used by the clergy of Krems in announcing their adhesion to the cause of Czecho-Slovak independence. The one difficulty that will arise will be the presence of a large German-speaking Catholic minority, and also the fact that a large number of the Bishops are of German origin. But these are matters, we may hope, that will adjust themselves in time, once the irritating and dividing influence of foreign intervention is removed. In Galicia, where the most of the inhabitants are Catholic, no complication need be expected if, as may be assumed, the province is incorporated into the new kingdom of Poland. The absorption of Catholic Transylvania by non-Catholic Rumania might possibly lead to a campaign against Rome, but in view of Rumania's insecurity of tenure and of the wisdom of conciliating the newly-won population, it is not likely that any Government would commit such an act of folly.

One serious danger in connexion with the re-constitution of South-Eastern Europe, might spring from the establishment of a Greater Serbian Kingdom, though the religious

fanaticism of some of the former promoters of such an establishment may have been considerably modified by the events of the last five years.

Whatever may be said of Austria, there can be little doubt that, apart from the spread of Bolshevism and disorder, the dissolution of the Russian Empire could hardly fail to profit the Catholic Church. In the first place, it ensures the independence of the one nation that can compare with our own in its prolonged struggle for religion and liberty—Catholic Poland. A new, united, strong kingdom of Poland, whether it be a monarchy or a republic, if true to the traditions which have characterised its people for centuries, cannot fail to exercise a powerful influence on the progress of Catholicism in Eastern Europe. In the old days Poland was the bulwark of Europe and of the Church. May we not hope that the new kingdom will play an equally glorious part against the more insidious enemies that in our times threaten to overthrow society and religion? Still, it is well to remember that in Poland, as elsewhere, there have been great changes during the past one hundred years. The Socialist party is by no means a negligible factor, from the point of view of numbers or of public activity, and it may be that in the new kingdom there will be a prolonged period of strife before victory is assured. For the rest, the collapse of the Holy Synod and the restoration of religious freedom cannot fail to promote the submission to Rome of many among the Ruthenians, Lithuanians, and the other races inhabiting the western provinces of Russia who were held in bondage to the Orthodox Church by tyranny and oppression.

The conclusion of an armistice, even though its terms involved the disruption of the Austro-German forces, does not necessarily imply that Europe is assured of peace. Even though the Congress of Versailles should succeed in adjusting the conflicting territorial demands that will be brought before it, there is no guarantee that it will be able to apply effective remedies against the spread of anarchy and disorder which threaten to overthrow society and civilization. It is not by bayonet or machine-gun that these can be defeated; it is only by the removal of the causes that have brought about the upheaval. In the work of stemming the advance of Bolshevism, principles must play a more prominent part than force, and conscience rather than fear must be relied upon to secure

restraint and moderation. In this field of operations Church and State should unite their forces in the adjustment of economic conditions and in the removal of the glaring usurpations that threaten to drive the masses of the people into the arms of Bolshevist agitators. Bolshevism began in Russia, where the soil was ready for the seed, but where it may end, or how it may develop, unless some drastic remedy be found, it is difficult to foresee.

Various causes have contributed to bring about the present social unrest. Among these may be reckoned the sufferings and anxiety inflicted by the war on the masses who were allowed no voice in declaring it, the high prices and scarcity of provisions, bordering in some countries on famine, the temporary nationalization of railways, shipping, factories, mines and raw material, the interference of the State in so many matters that were formerly regarded as the domain of the individual, the continual attempts to secure internal peace by the alternate policy of doles and repression, and, added to all these, the protracted tension caused by the war and by the glowing programmes launched on the world by the belligerent statesmen. The social anarchy that threatens to engulf Europe to-day is as dangerous for religion as it is for the State, and it will be necessary for the Church to face the situation with a well-defined and courageous programme if the danger is to be averted. It will be necessary for the clergy to re-study this question, and possibly, in some particulars, to modify their views; to arrive at a clear understanding about the rights of the individual as against the rights of the community, about the meaning and limitation and indestructibility of private ownership, and about the true attitude of the Church towards the various programmes of reform, most of which are so often indiscriminately and incorrectly labelled Socialism by their supporters and their opponents.

The position of the Pope, at all times a difficult one, was exceptionally delicate and responsible during the war. Unmindful of the charges of partiality or cowardice levelled at him by newspapers and politicians, Benedict XV pursued his mission of mercy and peace. Wherever it was possible for him, he intervened to relieve suffering or to prevent injustice, and at all times he bore himself amongst the warring factions as became one who was the representative on earth of the Prince of Peace. Catholics throughout the world, whether they sympathize with Germany or France,

are at one in their attitude of loyalty to the Pope. They demand that one who has done so much for the promotion of peace, and who by his very position can do so much for the preservation of the new European régime, should be admitted to the Congress that is to settle the future of so many of his subjects. They are at one, too, in desiring that the grave injustice inflicted on the Papacy and the Church by the spoliation of 1870 should be remedied, in spite of secret treaties or Italian hostility. They do not ask for the restoration of the Roman States; they commit themselves to no particular scheme of redress; they require only that the Pope should be consulted, and that some settlement should be arrived at in keeping with his dignity and with the dignity of the world-wide organization of which he is the supreme ruler.

Possibly never since the religious convulsions of the sixteenth century was the international position of the Pope more clearly recognized on all sides than it was since the outbreak of the war. Governments that had long refused to accredit representatives to the Roman Court displayed extraordinary eagerness to secure representation, and nations that had but recently broken off diplomatic relations with the Vatican showed considerable anxiety to make amends through unofficial channels. One and all, whether Allies, Germans, Austrians, Turks, or Bulgars, they recognized that the Pope is still a mighty sovereign, and that the views of Rome, even on non-religious matters, are not without their influence in the world. In this connexion it is interesting to note that, after a diplomatic rupture lasting eight years, Portugal has once again established friendly relations with the Holy See. Last December a counter-revolution was begun, and after a brief struggle the moderate party found themselves in control. Senhor Sidonio Paes was elected President of the Republic by an overwhelming majority of votes. At once he announced that he and his Government stood for a policy of justice and pacification, and for personal, social and religious freedom. In pursuance of this policy he proclaimed full religious freedom, restored the churches and the seminaries, invited the Bishops and exiled Orders to return, and opened up negotiations with the Nuncio at Madrid for a complete reconciliation with Rome. After a short discussion the outstanding difficulties were adjusted, and Mgr. Locatelli was despatched as Nuncio to Lisbon, while Senhor Feliciaro

de Costa was received by the Pope as the Minister of Portugal.

It is interesting, too, to recall that during the past year the new Republic of China, anxious to make friends and to keep in touch with modern developments in Europe, requested the Pope to agree to an exchange of representatives. The Pope was most anxious to accept this proposal, but unfortunately the Government of France interfered to prevent its realization. Once before, in 1886, taking its stand on the rights guaranteed to it by the Treaty of Tien-Tsin (1858), France blocked the way against the appointment of a Papal representative at Pekin, and now, a second time, it succeeded in bringing to naught the renewed negotiations. By this Treaty France was guaranteed the protectorate of the Christian missionaries in China, and though this privileged position has been shorn of much of its importance in recent years by the claims of other nations to safeguard directly the interests and lives of their own subjects, still sufficient is left to give the French representative at Pekin a unique advantage. It was feared that by the appointment of a Nuncio the protectorate would be completely destroyed, nor were the official declarations and explanations of the Holy See considered sufficient to allay this apprehension. Pressure was brought on the Chinese Government to object to the proposed appointment of Mgr. Petrelli, on the ground that he was pro-Austrian, and after some further exchanges, the negotiations were suspended until a more favourable opportunity should arise.

It is impossible as yet to say how it may fare with the Church in France, Germany, and Italy as the result of the war. If there is but little sign in any of these countries of a great religious revival, neither is there any convincing indication of renewed hostility to religion. The French Government, mindful of the fact that General Foch and nearly all his prominent assistants were good practical Catholics, and that Catholics, both clergy and laity, offered the most convincing proofs of their patriotism in the dark days, when so many of the Freemason clique were traitors or weaklings, can hardly begin to signalize the well-deserved triumph of their country by another campaign against religion. There is one other consideration that must be kept carefully in mind by the French Government. Alsace-Lorraine is likely to be restored to France.

Whatever may be the views of the people of these two provinces about union with France or with Germany, there can be no room for doubt with regard to their attachment to religion. They are convinced and militant Catholics, who are not likely to submit to Godless schools or the proscription of their clergy, even for the honour of becoming a department of France. It will be necessary, therefore, for the French Government to adopt a conciliatory attitude and to refrain, at least for a time, from religious persecution. As regards the course of affairs in Germany, sufficient information has not been allowed to come through to make it possible to arrive at an accurate conclusion, either as to what took place before or since the armistice or what is likely to take place in the future. That the position of affairs is exceedingly grave can hardly be denied, but in the circumstances it cannot be wondered at that serious disturbance should have taken place. However gloomy the outlook may be at present, we may feel fairly certain that the good sense and natural conservatism of the Germans will make impossible a repetition of the scenes that disgraced the Russian revolution, and that the strong, well-organized Centre Party, which for years has championed the cause of religion and freedom, will once again rally its supporters to do battle against the forces of disorder. In such a crisis as Germany is passing through at present it is always the worst elements which come on top during the early stages of the revolution. We remember that when Belgium rose in revolt against Holland in 1830, though the country was then predominantly Catholic, Catholics were practically without representation in the first provisional government, but once the people had time to consider the situation during the interval necessary to prepare for the elections, the true spirit of the nation manifested itself, and when the votes were counted it was found that the National Assembly reflected the feelings of the majority of the Belgians. It may be that something similar will take place in Germany, if only the Ebert Government can preserve order until the National Assembly can be constituted.

After being held in bondage for more than four years, Belgium has once again recovered its freedom. Whatever differences of opinion there may be on other points connected with the war, few men, Catholic or Protestant, could fail to admire the heroic stand made by the Belgian

soldiers in defence of the liberty of their country, and few could fail to rejoice with the Belgians on the triumphant return of their victorious army and king. Belgium has suffered terribly during four years of war and foreign domination, but the damage, though great, is not irreparable. She has suffered, too, from the skilful accentuation of the long-standing animosity between the Flemish-speaking portion of her population and the Walloons, some going so far as to advocate union with Germany, others, equally extreme, supporting union with France. Time, it is hoped, and a spirit of mutual forbearance and toleration, will heal these divisions and will serve to draw all parties together to restore Belgium to the proud position which she occupied in Europe for more than fifty years. The state of affairs in Holland during the war has been at all times critical, nor has the situation been eased much by the conclusion of the armistice. Bullied and threatened by both parties, the Dutch Government found it difficult to maintain its neutrality during the war, and now that hostilities have been ended it finds it equally difficult to uphold its authority against the enemies of the constitution. Considering the fact that Holland was for centuries the stronghold of Calvinism, and that nothing was left undone to uproot the Catholic religion, it will come as a surprise to many that as a result of the elections during the year, the Catholic party found itself the strongest fraction in the Chamber, and that a Catholic priest was called upon by Queen Wilhelmina to take up the reins of government. As things turned out, he found it impossible to form a Cabinet, but the very fact of such a selection will serve to indicate the marvellous progress made by the Church since the days, not so long distant, when a Catholic Bishop was not permitted to live within the confines of the kingdom.

In the United States the entire energy of its Government and of its citizens seemed to have been directed towards a speedy and successful termination of the struggle in Europe. All the resources of the States in men and money and raw material were thrown into the scales against Germany, with what results the entire world can judge. From the very first moment when President Wilson felt it necessary to declare war till the day when the armistice was accepted the Catholics of America, both clergy and laity, without distinction of race or class, responded nobly to the call of the President. They placed themselves and whatever they

controlled entirely at his disposal, proving once again, as they had often proved before, that loyalty to the constitution was regarded by Catholics as a sacred duty. Notwithstanding the heavy calls made upon them by public authority, they raised immense sums to enable the Knights of Columbus to carry out their great labours of charity at the front, and to more than hold their own with the well-organized and well-equipped army of the Y.M.C.A. In the States, as elsewhere, the war has effected radical changes, most of which are likely to remain even after the restoration of peace. Possibly the most remarkable of these, and certainly the most important in its consequences, is to be found in the field of temperance reform. Americans, it is said, do nothing by halves, and without doubt in this case the saying is amply verified. Before the war Total Prohibition, though adopted by many of the federal legislatures, was looked upon with suspicion by a large majority of the population. Since the outbreak of hostilities the movement has gone forward by leaps and bounds, so that at the present time everything seems to indicate that Prohibition will become the law throughout the entire country. Whether the results will justify the claims of its adherents it is impossible to predict, but with the new spirit that has manifested itself in America we may feel tolerably certain that the anti-Catholic bias of some of the prominent Prohibitionist leaders will not succeed in creating inconveniences or dangers for the Catholic Church.

In Great Britain the war has so occupied the public mind, to the exclusion of nearly every other subject, that the passage of two great Education Acts, one for England and one for Scotland, has not received the attention these measures deserve. From the point of view of education, it must be admitted that they mark a considerable step in advance, and the Minister of Education is to be congratulated on the success of his efforts at a time when success seemed impossible. The aim of the Catholics of England throughout the discussion of the English Education Act was to ensure that in the main the principles of the settlement arrived at in 1902 should be maintained. Though they failed to secure all the amendments they desired, they gained most of the essentials, though a great deal will depend upon the spirit with which the Act is worked by the Local Education Authorities and by the Central Council. Here it will be sufficient to quote the verdict of a Catholic

Manager who has evidently made a close study of the new Act :—

The financial burthen [he writes in the *Tablet*, September 28], thrown on Catholics in providing further accommodation, no doubt will be heavy in many cases. The provision of suitable teachers for advanced and continued classes also presents a difficulty, but since the provided schools will have somewhat similar difficulties, we may trust the authorities will not be too exacting at first, and time and opportunity be given to meet them. For my part, I look on the Act as the charter of the poor man's child, and as such I welcome it, with all its difficulties, and I trust that Catholic managers, in conjunction with their flocks, will meet the local Education Authorities with prudence and good temper, and work the Act for all it is worth in the interests, spiritual and temporal, of the coming generation.

The main feature of the Scotch Act, so far as the Church is concerned, lies in the fact that the Catholic schools may be transferred to the Local Education Authorities, upon whom will fall the cost of paying the necessary staff, care having been taken to assure that Catholic teachers will be provided for Catholic schools. What holds true of schools in existence at the passing of the Act will hold true also of those that may be provided in the future. There is no doubt but that the Act will relieve the Catholics of a great and almost intolerable financial burthen, though at the same time the surrender of their schools and with the schools a great deal of their authority to an outside body, may carry with it very serious inconveniences. For some years a sharp division of opinion has manifested itself among the Catholics of Scotland as to the wisdom of standing out from or coming in under a national system of education, and this division became more acute when the Bill was introduced. It was only when Rome had spoken that both sides agreed to sink their differences and to do what was possible to render smooth the working of the measure.

For Ireland, the year 1918, marking definitely as it does a complete change of methods and a reversion to the old demands, has been one of momentous importance. In 1917 England's Prime Minister attempted to satisfy the public opinion of the world by nominating a Convention to settle the fate of Ireland. What a wealth of sarcasm and ridicule he would have lavished on such a proposal if it had emanated from Austria about Bohemia or from Germany about Poland. Lest, however, in spite of all restrictions and wire-pulling the findings of the Convention might prove embarrassing, he took care to shape its decisions by

presenting what amounted to little less than an ultimatum. When at last the Convention had finished its labours, the Prime Minister had changed his mind. Without waiting to consult the report he promptly consigned it to the waste-paper basket, and determined to pacify Ireland not by Self-Government but by Conscription. Ireland, enslaved herself and without hope or promise of liberty, was to be forced to send her sons to die that Belgium, Poland and Serbia might be free. Such a cynical proposal, involving as it did the flagrant violation of the elementary rights of nationhood, demanded a defiant answer, and the answer was soon forthcoming. At once the country closed up its ranks and declared with no uncertain voice that Irishmen would never consent to be driven into battle as conscript slaves.

A National Committee was summoned to meet at the Mansion House on the very day that the Bishops of Ireland had come together to decide one of the most important questions that ever the Bishops of a nation were called upon to discuss. By a happy thought a deputation from the Mansion House Conference was despatched to Maynooth to interview the Bishops, and as a result of the combined deliberations the people were called upon to pledge themselves to resist Conscription by the most effective means at their disposal. Such a clear statement of policy raised the Irish Question to a higher plane. It served, not indeed to stir up the country, for that was already done, but to convey a solemn message to both the English Government and the Irish people: to the one that the day for negotiations and compromise had passed, and to the other that in such a grave national crisis calmness and prudence were no signs of cowardice or submission.

Never did a people more loyally follow the instructions of their leaders. In response to the advice of their Bishops they sought strength and light from God through Her who had so often protected and consoled their forefathers in the evil days of persecution, and relying upon the justice of their cause, they calmly awaited the beginning of the conflict without shrinking. In face of such determined and united opposition even Mr. Lloyd George began to realize the magnitude of his blunder. Instead of dividing Ireland, he had united her; instead of making Irishmen slaves, he had taught them to speak and act as free men.

To frighten the people, he appointed the ex-leader

of the British Expeditionary Force as Military Dictator in Ireland, and when this did not succeed he had recourse to new weapons. In the hope of breaking up the unity of the country, and of depriving Ireland of the sympathy of America, it was deemed necessary to discover a 'German Plot.' Though the Head of the English Government in Ireland declared from his place in the House of Lords that Dublin Castle had no knowledge of such a plot, and though not a shred of incriminating evidence was produced, great numbers of prominent Irishmen were seized and hurried across to English Jails, where they remain till the present time without charge and without trial. Martial law, domiciliary visits by military and police, wholesale arrests, courtsmartial and imprisonments have been the order of the day since then, until one is inclined to ask where is the constitution about which we have heard so many boasts.

In face of such prolonged and violent provocation the country has remained outwardly calm, but there can be no doubt about the strength of the current that flows beneath. Of this the elections of December afforded the most convincing proof. The issue submitted to the electors was intelligible to all. Should the principle of self-determination, as enunciated by the President of the United States and accepted by all the belligerents, be applied to Ireland in the same way as it was to be applied to other oppressed nationalities; or should Ireland throw herself on the mercy of English statesmen. The results of the elections supply the verdict of the people.

JAMES MACCAFFREY.

THE NEW CODE OF CANON LAW

NUNS AND SISTERS

By Rev. J. KINANE, D.C.L.

III

OBLIGATIONS

The first canon in the chapter on the obligations of Religious is of very little practical importance for our present purpose. 'All religious,' it states, 'are bound to the common obligations of clerics treated of in Canons 124–142, except it appears otherwise from the context or from the nature of the case' (c. 592). Now, from the nature of things, very few of these canons can affect nuns and sisters. In the rare cases in which they do bind them, as, for example, in regard to occupations and amusements unbecoming their state, their own sense of propriety will constitute a safe guide as to the nature and extent of the obligation.

The next canon is a much more important one; it prescribes that 'all religious, Superioresses as well as subjects, are bound not only to faithfully and integrally observe the vows of which they have made profession, but also to order their lives in accordance with the rules and constitutions of their Institute, and so tend to the perfection of their state' (c. 593). The obligation to observe the vows exists from the very nature of the case, and so would exist, even though there were no special canon on the point. We have already dealt in our last article with some slight changes, introduced by the Code, in connexion with the vow of poverty. As no modifications have been made in regard to the obligations imposed by the other two vows, there is no need to dwell on this subject further.

From the very nature of the case, too, religious are bound to order their lives in accordance with the rules and constitutions of their Institute. Entrance into the religious state, of its very nature, binds them to tend towards perfection, and the Church recognizes conformity with the

rules and constitutions as the ordinary means of effecting this purpose.[1] To state, however, that religious are bound to order their lives in accordance with the rule, does not at all imply that they are bound to observe each and every portion of it. The general tenor of their lives may be quite in accordance with the rules—that is all that is here prescribed—even though religious violate occasionally individual rules. Frequent lapses, therefore, are necessary to infringe upon this precept; and a general contempt of rule must be manifested, or serious danger of expulsion must be incurred, before it is gravely violated.[2]

Although the duty of tending towards perfection does not at all imply that individual rules bind in conscience, yet they sometimes do so of their own very nature. If, indeed, they were merely counsels or exhortations, they have, of course, no binding force; but, when they are strict ecclesiastical laws, as is usually the case, an obligation in conscience is necessarily connected with them. But, even in this latter case, the nature of the obligation is not always the same. In some Institutes the rules and constitutions are ordinary moral laws imposing a grave obligation in grave matter and a light obligation in light matter; in others they always impose a merely venial obligation; whilst in others—we think they are the great majority—they are purely penal laws, that is to say, they bind in conscience, not to observe the rules themselves, but to suffer the punishments attached to their violation.

'In every religious Institute, all must carefully observe the common life, even in matters of food, clothing, and furniture' (c. 594, § 1). From the time of the Council of Trent[3] the Church has frequently insisted upon the observance of the common life as a part of religious discipline.[4] Nevertheless, contrary customs have grown up in certain Institutes, in virtue of which individual members of a community are allowed to possess money or property distinct from that of the community, and use it for their own private purposes. These customs are, we think, subject to the general rule contained in Canon 5. Consequently the higher Superiors may tolerate those that are immemorial

[1] Cf. Vermeersch, *De Religiosis*, Tom. i. n. 224, et seq.

[2] Cf. ibid.

[3] Sess. 25, c. 2, *De Reg.*

[4] Cf. Decret. S. C. super Disciplina Reg., 1695; Litterae Ency., Pii IX, 1851; Piat, *Prael. Juris Reg.*, Tom. i., q. 276; Vermeersch, op. cit. n. 281.

or centenary, if circumstances render it inadvisable to remove them. This point, however, is not of much importance for Institutes of women, as amongst them the common life has been very generally observed. It must be remembered that the radical ownership of property, without its use and administration, permitted by simple profession, is not opposed in any way to the strictest observance of the common life. The same is also true of the reservation of their personal clothing for the exclusive use of individuals; in fact, hygienic reasons make this proceeding a necessity.[1] The furniture allowed to religious for the adornment of their cells or rooms must be in accordance with the poverty which they profess (c. 594, § 3).

We have already seen that whatever religious acquire by their own industry after simple profession, or in any other way after solemn profession, belongs to their Institute. It should be immediately incorporated in the goods of the house, or of the Province, or of the Institute, and all the money and letters should be deposited in a common safe (c. 594, § 2).

Canon 595 deals with the exercises of piety which form portion of the religious life. It, however, imposes obligations directly only upon Superioresses; so far as the ordinary rank and file are concerned, its regulations are merely directive:—

'§ 1. Superioresses must take care that all religious:—

'1°. Make an annual retreat.' The duration of the retreat is not determined; and, hence, this will be a matter for the constitutions or for the Superioresses themselves.

'2°. Daily assist at Mass, except legitimately impeded, make the meditation, and faithfully perform the other exercises of piety prescribed by the rules and constitutions.

'3°. Approach the sacrament of Penance at least once a week.

'§ 2. Superioresses should promote amongst their subjects the frequent, even daily, reception of Holy Communion; and liberty must be given to every properly disposed religious to approach frequently, even daily, the most Holy Eucharist.' As Canon 863 contains a virtual approbation of the decree on frequent Communion issued by our late Holy Father, Pope Pius X, it follows that the conditions there prescribed as necessary and sufficient for the daily

[1] Cf. *Normae*, § 128; Battandier, *Guide Canonique*, n. 227.

reception of the Holy Eucharist will still hold. Under the new discipline, therefore, the only indispensable requirements are freedom from mortal sin, a pure intention, and the advice of a confessor.

'§ 3. If, however, a religious has, since her last sacramental confession, given scandal to the community, or committed a serious external fault, the Superioress can forbid her to receive Holy Communion until she shall have again approached the sacrament of Penance.' As a general rule, the individual herself and her confessor are the sole judges on the question of fitness to receive Holy Communion; the Superioress has not a word to say to the matter. This section enunciates an exception to the rule, and is in full accord with the general principle that public sinners are to be excluded from the reception of the Blessed Eucharist until they have done penance and removed the scandal which they have given. The expression, 'grave external fault,' is somewhat ambiguous. We take it, however, that, in accordance with the general principles on this subject, 'external' is here equivalent to 'public'; otherwise the action of the Superioress might clash with the natural right of the subject to her reputation. The point, however, is not of too much importance, as a grave external fault is nearly always public in a religious community.

'§ 4. If in any Institute, whether of solemn or simple vows, the rules or constitutions, or even the calendars, assign or prescribe certain fixed days for the reception of Holy Communion, such regulations are to be regarded as merely directive.' Hence, if religious refrain from receiving Holy Communion on these occasions, their omissions are not in the least sinful. The very self-same regulation is to be found in the decree on frequent Communion already referred to.

The obligation in regard to dress is practically unchanged. 'All religious,' it is stated, 'shall wear the habit proper to their Institute both inside and outside the house, except, in the judgment of the higher Superioress, or, in case of urgency, even of the local Superioress, a grave cause excuses' (c. 596).

The next obligation dealt with is that of enclosure. As the papal enclosure, binding on strict Orders of nuns, is of very little practical importance for this country, and as besides it remains practically unmodified by the Code, we may confine our attention to this obligation as it affects

Congregations, whether with diocesan or papal approval. The subject is treated in Canons 604–607. The first section of Canon 604 states that 'in the houses also of religious Congregations, whether with papal or diocesan approval, the law of enclosure must be observed so that no one of the other sex may be admitted there, excepting those mentioned in . . . Canon 600, and others whom the Superioresses consider may, for just and reasonable motives, be admitted.'

It is not determined, either here or subsequently, how far the law of enclosure should extend; and, hence, just as in the past, there is room for a variety of discipline. In some Congregations it affects the whole house, just as in the case of strict Orders; whereas in others it affects merely a part. Writing on this subject, Battandier thinks that this partial enclosure should contain at least the community room, the dormitory, and the infirmary.[1] This, however, is merely an opinion: there is no legislation on the point. According to the section which we have just quoted, those of the opposite sex are to be excluded from the portion of the house subject to the law of enclosure with the exception of the following persons:—

1°. The local Ordinary visiting the convent or other Visitators delegated by him, but only for the purpose of inspection and on condition that they be accompanied by one cleric of mature age.

2°. The Confessor or his substitute can, with due precautions, enter the enclosure to administer the sacraments to the sick, or to assist the dying.

3°. Rulers of States with their retinue; and also Cardinals.

4°. The Superioress, after taking due precautions, can permit the doctor, the surgeon, and others whose work is necessary, to enter the enclosure, having previously obtained at least the habitual approval of the local Ordinary; but if urgent necessity does not allow time to seek this approval, she may presume the permission.

5°. Others also, for just and reasonable causes, may be admitted by the Superioress, with, however, the restriction mentioned in the preceding number.

Even to places outside of the enclosure, reserved for

[1] Op. cit. n. 28. 'En général cependant, cette partie réservée devrait contenir la salle des exercices ou de communauté, les dortoirs ou les cellules des sœurs et l'infirmerie.'

extern or intern pupils, or for works proper to the Institute, persons of the other sex must not be admitted except for a just reason and with the permission of the Superioress (c. 604, § 2).

'In particular circumstances and for grave reasons, the Bishop can safeguard the enclosure by censures; always, however, he must be vigilant in having it duly observed and in correcting any abuses that may arise in this respect' (c. 604, § 3). 'All those who have the custody of the enclosure shall carefully see, lest from intercourse with outsiders, the discipline be relaxed and the religious spirit weakened by useless conversation' (c. 605). Hence all undue intercourse with outsiders, which would result in a relaxation of discipline, should be discouraged, even though no direct violation of the enclosure is committed.

The enclosure involves a two-fold obligation: it forbids strangers to enter, and religious themselves to leave, the specified places to which it extends. In regard to the former obligation, with which we have just been dealing, the analogy between Orders and Congregations is very marked; where the egress of religious themselves is concerned, the difference between them is much greater. Whereas nuns are strictly forbidden to leave their enclosure without a special Indult of the Holy See, except in the case of imminent danger of death or some other serious evil, sisters, on the other hand, in this matter, and also in regard to receiving and paying visits, are merely obliged to conform to their own constitutions (c. 608, § 1); and in some Congregations, for example, those whose object is the visitation and care of the sick, the constitutions are necessarily very indulgent. In all cases, however, Superioresses and local Ordinaries are to see that religious, except in case of necessity, do not go out singly from the house (c. 607).

For residence outside their house for some time, somewhat greater formality is necessary than for mere egress. According to Canon 606, § 2, 'it is not lawful for Superioresses, saving the dispositions of Canons 621–624, to permit their subjects to remain outside the house of their own Institute, except for a just and grave cause and as brief a period as possible, according to the constitutions; but for an absence of more than six months, unless for motives of study, the permission of the Apostolic See is always required.' The exception in regard to study may be of some

importance in those days when diplomas and degrees for primary and intermediate teaching are of such importance.

The obligation of reciting the Divine Office need not detain us long. The Code has not changed its extension, so that it is still confined practically to strict Orders.[1] If it exists in Institutes with simple vows, it is derived entirely from the constitutions. As a matter of fact, in nearly all the modern Congregations, the recitation of the Little Office of the Blessed Virgin merely is prescribed, without, however, any strict obligation being imposed.[2] The new legislation has adopted the more commonly accepted view that the choral recitation is obligatory in houses in which there are at least four religious, or even fewer, if the constitutions prescribe it, who are bound to choir and who are not lawfully impeded (c. 610, § 1). Apart from this point the old discipline is unmodified.

The right of free communication between Superiors and subjects is fully confirmed. According to Canon 611 'all religious . . . can freely send letters, exempt from all control, to the Holy See and its Legate in the country, to their Cardinal Protector, to their own higher Superiors, to the Superior of their house, when absent, to the local Ordinary to whom they are subject, and, in the case of nuns subject to the jurisdiction of Regulars, to the higher Superiors of the Order; and from all these the religious . . . can also receive letters which nobody has the right to open.'

The Code has, therefore, definitely settled the much disputed question whether correspondence between religious and their Cardinal Protector was privileged or not. Of the others mentioned in the Canon, Papal Legates and local Superioresses were the only ones with whom free communication was not guaranteed under the old discipline.[3]

Canon 612, the last in this chapter, declares that ' . . . if the local Ordinary prescribes, from a motive of public utility, the ringing of bells, certain prayers or sacred solemnities, all religious, even exempt, must obey, without prejudice to the constitutions and privileges of each Institute.' The recent novena for the welfare of Ireland,

[1] Cf. Vermeersch, op. cit., n. 314 ; Piat, op. cit., tom. i., q. 346 et seq.

[2] *Normae,* § 156: 'Sororibus chori commendanda est plerumque recitatio communis officii parvi B. M. Virginis, aut alicujus partis ejusdem officii, ita tamen ut ad illam recitationem non obligentur sub peccato.' Cf. Battandier, op. cit. n. 270.

[3] Cf. *Normae,* § 179, 180 ; Battandier, op. cit., n. 242.

ordered by the Bishops, is a very good example of the kind of prayers contemplated. The decree *Conditae a Christo* contains a similar regulation, so that the position of Institutes with simple vows has undergone no change.[1] As far as we know, however, Orders were not in this matter previously subject to the Ordinary's jurisdiction.

PRIVILEGES

At the very beginning of this chapter there is an enumeration in general terms of the privileges of religious. 'Each Institute,' it is stated, 'enjoys those privileges only which are contained in this Code, or may have been directly conceded to it by the Apostolic See; every communication of privileges is henceforth excluded.' We believe some difficulties have been raised in regard to the interpretation of this section. From the clause, 'every communication of privileges is henceforth excluded,' some are prone to conclude that privileges which have been received by communication in the past still remain.[2] We can see no justification whatever for this view. This section divides the privileges which religious Institutes enjoy into two classes: (*a*) those contained in the Code itself; (*b*) those directly conceded by the Holy See. Now, privileges received by communication come under neither of these heads; in fact, the express mention of direct concession of itself evidently involves the exclusion of privileges indirectly granted through communication. For Institutes of women in this country, however, the point is not of much practical importance, as very few of them, we think, enjoyed the right of communication. One species of communication is, however, still retained in the new discipline. It is expressly declared that the privileges of a regular Order belong also to the nuns of the same Order, in so far as they are capable of enjoying them (c. 613, § 2).

According to Canon 614, 'religious, even lay religious and novices, enjoy the privileges of clerics enumerated in Canons 119–123.' that is to say, the privileges of the *canon*, the *forum*, immunity, and competence. These have been dealt with in a previous article; but for nuns and sisters in this country they are really not of much importance.

[1] 'Episcoporum similiter est solemnia et supplicationes quae publica sunt ordinare.'

[2] Cf. *Il Monitore Ecclesiastico*, June, 1918, pp. 193 and 194.

The general principle regarding the exemption from the jurisdiction of the local Ordinary is unchanged; nuns, except those who are not subject to a Regular Superior, enjoy this privilege; sisters do not, unless it has been specially granted to them. But even nuns and others who have received this privilege are not exempt in certain cases specially provided for by law (c. 615). With most of these cases we have already dealt in this and the two preceding articles, e.g., in regard to the election of Superioresses, the administration of temporalities, etc. A few more are given in Canons 616 and 617. (*a*) Nuns who are unlawfully absent from their house, even under the pretext of having recourse to their Superiors, do not enjoy the privilege (c. 616, § 1). (*b*) So, too, if they commit any crime outside their house and are not punished by their own Superioress, after she has been warned of the fact, they may be punished by the local Ordinary, even though they may have lawfully left their house and have returned to it (c. 616, § 2).

(*c*) If abuses have crept into the houses and churches of exempt nuns, and the Superior—we presume the Regular Superior to whom the nuns are subject—having been warned of the fact, neglect to provide a remedy, the local Ordinary is bound to refer the matter immediately to the Holy See (c. 617, § 1).

(*d*) Every non-formal house, that is, a house with less than six members, remains under the special vigilance of the local Ordinary, who, if abuses arise and be a source of scandal to the faithful, can himself provisionally deal with them.

Although Institutes with simple vows, whether of men or women, do not enjoy the privilege of exemption without a special concession—in the case of sisters we doubt if the concession is ever made—yet in regard to those Institutes approved by the Holy See the Ordinary in certain matters has no jurisdiction:—

(*a*) He cannot make any change in the constitutions;

(*b*) He cannot inquire into the temporal administration, except in so far as we have indicated in a previous article;

(*c*) He cannot interfere in the internal government and discipline, except in the cases specified by law; he can, however, and must inquire 'whether the discipline is maintained conformably to the constitutions, whether sound doctrine and good morals have suffered in any way, whether

there have been breaches of the law of enclosure, whether the reception of the Sacraments is regular and frequent; and, if the Superioresses, having been warned of the existence of grave abuses, have failed to duly remedy them, the Ordinary himself shall provide; if, however, something of greater importance, which will not suffer delay, occur, the Ordinary shall decide immediately, but he must report his decision to the Holy See' (c. 618). The Ordinary's quinquennial visitation is the usual time for making these inquiries, though it seems clear enough that they may be made at any time whatever.

The other cases in which these Institutes are subject to the Ordinary in regard to internal government and discipline have been already indicated and discussed in the course of these articles, e.g., the election of Superioresses, the appointment of Confessors, the enclosure, etc.

According to Canon 620, 'every indult lawfully granted by the local Ordinary, dispensing from the obligation of the common law, avails likewise for all religious living in the diocese, without prejudice to the vows and particular constitutions of their own Institute.'

The pre-existing regulations on collecting alms, so far as Institutes of women were concerned, were contained in the decree, *Singulari quidem*, issued by the Congregation of Bishops and Regulars in 1896. The Code has made one or two rather important changes in them. Hitherto the permission of the Holy See was never required; now it is necessary for religious belonging to Congregations approved by the Holy See (c. 622, § 1). The decree *Singulari quidem* prescribed the permission of the Ordinary of the place of residence in all cases; according to the Code sisters belonging to diocesan Congregations require it always, but those attached to Institutes approved by the Holy See only when the place of residence is also that of collection (c. 622, § 1, 2). Whenever any Ordinary's permission is necessary, it must now be given in writing; whereas formerly a merely verbal concession would suffice.[1]

Apart from these few points the old discipline is unchanged. Local Ordinaries are still forbidden to grant the necessary permission 'until they have satisfied themselves of the real necessity of the house or pious work, and the impossibility of otherwise obtaining help; and if it is

[1] Cf. Decret. *Singulari quidem.*

possible to provide for this necessity by seeking alms within the locality, the district, or the diocese in which these religious live, they are not to accord them more ample authorization' (c. 622, § 3). Superioresses, too, should not entrust the collection of alms to others than professed subjects of mature age and character (c. 623). In regard to the method to be followed in collecting, and the discipline to be observed by those engaged in it, religious are commanded to conform to the regulations of the *Singulari quidem.*

It must be remembered that there is no prohibition whatever against receiving alms which are spontaneously offered, or even against looking for them by letter; the rules with which we have just dealt are concerned merely with religious who travel about from place to place and appeal in person for assistance.[1]

ON PASSING TO ANOTHER INSTITUTE

Under the new discipline 'no religious can pass to another, even stricter, Institute, or from one independent monastery to another, without authorization from the Apostolic See' (c. 632). So far as Institutes of women are concerned, this will involve very little change. The restriction always affected nuns, on account of the enclosure; and, as it was embodied in the *Normae,*[2] we may conclude that for sisters also it was, generally speaking, obligatory. As religious are such only while their vows continue, it follows that, on the cessation of temporary vows or dispensation of perpetual ones, this prohibition no longer obtains.

When a religious, with the necessary permission, passes to another Institute, she is bound to make the usual novitiate. Her position, however, differs very much from that of the ordinary novice. Whilst the rights and particular obligations which she had in the former Institute cease indeed, yet her vows continue, and she is bound to obey the new Superioresses and the new Mistress of Novices in virtue of the vow of obedience. She is also bound to return to the old Institute, if, at the expiration of novitiate, she fails to make profession in the new one. In the case, however, in which a religious passes from one independent convent or monastery to another of the same Order, a new novitiate or profession is not necessary (c. 633).

[1] Cf. Vermeersch, op. cit., n. 372, etc.

[2] § 61.

Generally speaking, it is required that temporary should precede perpetual profession. Canon 634, as we have had already occasion to remark, excepts the case of those who, after having taken perpetual vows in one Institute, join another. Although in these circumstances the temporary profession is not even permitted, the Superioress may, however, prolong the period of probation, but not beyond one year after the completion of the novitiate.

The effects of joining another convent or another Institute enumerated in Canon 634 are produced, in the former case, on the day of transition, in the latter, on the day of the new profession. A brief summary of them will suffice :—

1°. All the rights and obligations of the former convent or Institute are lost, all those of the new convent or Institute are assumed.

2°. The former convent or Institute retains all the property which it has already acquired through the religious. With the disposition of the dowry and its interest, and also of any other personal property which the religious may possess, we have already dealt in a former article.

As to the new Institute's right to compensation for expenses involved in the novitiate, the general rule, given in Canon 570, § 1, of which we have already treated, must be followed.

According to the final Canon of this section, if a nun with solemn vows, lawfully, in accordance with the foregoing regulations, makes her profession in a religious Congregation, the solemnity of her vows is by that very fact abolished, unless an apostolic indult expressly determine otherwise.

ON ABANDONING RELIGION

Religion may be abandoned under various circumstances. First of all, it is quite clear that those who have taken only temporary vows, may freely leave when the term of their vows has expired. It is further stated that 'the Institute, for just and reasonable motives, can exclude religious from renewing temporary vows or from making profession of perpetual vows, not, however, because of ill-health, except it be clearly proved that the religious, before profession, had fraudulently hidden or dissimulated the illness' (c. 637).

Hence, for such exclusion, no special process is required :

certainty as to the existence of the cause, however obtained, will suffice. Nor is any appeal in the strict sense permitted, though, of course, against any action of the kind recourse to the Holy See, without the suspensive effect, may be always made. The prescription in regard to ill-health is reminiscent of a similar regulation in the old discipline for those who had taken simple triennial vows in strict Orders.[1] We shall see later on that the Code requires greater formalities for the dismissal of temporarily professed religious prior to, than for their exclusion after, the expiration of their temporary vows.

Religious may also leave their Institute in virtue of the indult of a Superior. If the indult allows them to remain outside temporarily, it is called an indult of exclaustration; if perpetually, an indult of secularization. Even the local Ordinary may grant these indults for diocesan Congregations; for Institutes approved by the Holy See, however, the Roman authorities alone are competent (c. 638).

The effects of the temporary indult are very little changed. According to Canon 639, 'whoever has obtained from the Apostolic See the indult of exclaustration, remains bound by her vows and the other obligations of her profession compatible with her state; but she must put off the religious habit; she shall be without active and passive voice during the period expressed in the indult, but she enjoys the merely spiritual privileges of her Institute, and she is subject, not to the Superioresses of her own Institute, but to the Ordinary of the diocese in which she resides, and this even by virtue of the vow of obedience.'

Some important modifications, however, have been made in regard to the indult of secularization:—1°, Religious who are perpetually secularized will in future be freed altogether from their vows; and 2°, as a direct consequence, it follows that, should they, in virtue of an Apostolic indult, re-enter the Institute, they are obliged to make a new novitiate and profession. Under the old discipline the vows were unaffected, and, consequently, no new novitiate or profession was required. Otherwise, the effects of the perpetual indult are unchanged:—1°. A perpetually secularized religious is still cut off altogether from her Institute, and, in regard to the use of the Sacraments, is in the same position as a laic. 2°. She is not bound to

[1] Decret. *Sanctissimus*, 12 Jun., 1858, n. v.: 'Nemo autem ex causa infirmitatis post professionem votorum simplicium superventae dimitti poterit.'

recite the Divine Office, even though the choral obligation existed in the Institute, nor to observe any of the other rules and constitutions (c. 640).

'Whoever leaves her Institute, whether on the expiration of the term of temporary vows, or by virtue of an indult of secularization, or whoever has been dismissed, cannot seek compensation for services rendered by her to the Institute' (c. 643, § 1). The justice of this regulation will be evident, if it be remembered that a religious, in virtue even of the temporary vow of poverty, transfers her services entirely to the Institute, so that she is no longer capable of acquiring anything for herself by her own industry. We have already seen that when a religious leaves her Institute under any of these circumstances she has a right to receive the dowry which she brought with her when entering. 'If, however, a religious has been received without any dowry, and cannot provide for herself out of her own resources, the Institute should, in charity, give her what is necessary for her to return safely and becomingly to her home, and provide her, in accordance with natural equity, for a certain time, to be determined by mutual consent, or, in the case of disagreement, by the local Ordinary, with the means of living decently' (c. 643, § 2). The reasonableness of some such arrangement is self-evident. The *Normae* required provision to be made only for the journey home,[1] but clearly this did not meet all the needs of the case. Battandier, in discussing this point, held that the Institute was bound to pay the expenses of the journey home, even though the religious had a dowry.[2] This certainly will not hold in the new discipline.

Religion may be also abandoned by apostasy and flight. Hitherto, these terms, in their strict sense, could be employed only in connexion with the abandonment of an Order with solemn vows[3]; under the Code, however, they have a wider application. According to Canon 644, § 1, 'an apostate from religion is one who, having made profession of perpetual vows, whether solemn or simple, unlawfully leaves the religious house with the intention of not returning, or who, with the intention of withdrawing herself from religious obedience, though she has left the house lawfully, does not return to it.' It is further added that this perverse intention 'is legally presumed when the

[1] § 200. [2] l.c., n. 325. [3] Vermeersch, op. cit., n. 340, etc.

religious, within a month, has neither returned nor manifested to her Superior her intention of returning' (c. 644, § 2). This presumption of law did not exist under the old discipline. Its special value consists in this, that it relieves Superiors from the burden of proving the existence of the intention of not returning to the Institute, should the question of inflicting punishment upon the crime of apostasy arise. It is scarcely necessary to remark that, if the intention of not returning really exists, the crime is complete from the very first moment of departure.

On the other hand, 'a fugitive is one who, without the permission of her Superiors, deserts the religious house, but with the intention of returning to the Institute' (c. 644, § 3). Though this definition is none too clear, still, on the analogy of the old discipline, we presume that flight and apostasy differ only in regard to intention. A fugitive is to be distinguished from one who leaves the house secretly for a special occasion and returns immediately; the former withdraws herself from obedience to the Superioress and from the common exercises and observances, the latter does not.

'Neither apostate nor fugitive is freed from the obligation of her rule and vows, and must without delay return to her Institute' (c. 645, § 1). 'The Superiors must seek them with solicitude, and receive them if they return animated by a sincere repentance; but as to apostate and fugitive nuns, the local Ordinary shall prudently see to their return, and the Regular Superior also in the case of an exempt monastery' (c. 645, § 2).

DISMISSAL

Ipso facto Dismissal.—There are certain crimes to which the punishment of dismissal from the Institute is attached *ipso facto*. In these cases, however, although no condemnatory sentence of any tribunal is required, still the higher Superioress, with her Chapter or Council, in accordance with the constitutions, must give a declaratory sentence as to the existence of the crime, and must preserve all the evidence regarding it in the register of the house. The crimes to which the penalty of dismissal is attached in the Code are:—1°, Public apostasy from the Catholic faith; 2°, Flight from the monastery or convent with a person of the opposite sex; 3°, Marriage, attempted marriage, or even the so-called civil marriage (c. 646). The

decree on the dismissal of religious, issued by the Congregation of Religious, in May, 1911, contains a similar arrangement, but only for men; it, however, attached the penalty to a fourth crime, viz., apostasy from the Institute for a period exceeding three months.[1]

Dismissal of Religious with Temporary Vows.—The dismissal of religious with temporary vows is to be effected:—

1°. In the case of nuns, by the local Ordinary, and, if the convent is subject to Regulars, by the Regular Superior, after the Superioress of the convent with her Council has given a written attestation of the motives of dismissal;

2°. In the case of sisters belonging to Congregations approved by the Holy See, by the General Superioress with the consent of her Council, manifested by secret voting;

3°. In the case of sisters belonging to diocesan Congregations, by the Ordinary of the place in which the house is situated; but he must not exercise this right without the knowledge or against the just opposition of the Superioresses. (c. 647, § 1).

The Superiors in question, in dismissing religious, must observe the following conditions:—

'1°. The motives for the dismissal must be grave;

'2°. These motives can be either on the part of the Institute or the religious. The absence of the religious spirit, which is a cause of scandal to others, is a sufficient motive for dismissal, when a repeated admonition, together with a salutary penance has produced no effect; ill-health is not a sufficient motive for dismissal, unless it be proved with certainty that it had been fraudulently hidden or dissimulated before profession;

'3°. Although these motives must be really known to the Superior who effects the dismissal, it is not necessary, however, that they be proved by a judicial process. But they must always be manifested to the religious, and full liberty to reply given her; and her replies must be faithfully submitted to the Superior effecting the dismissal;

'4°. The religious has the right to appeal to the Apostolic See against the decree of dismissal; and, pending the appeal, the dismissal has no juridical effect;

'5°. . . . the prescriptions of Canon 643, § 2, must be observed' (c. 647, § 2).

It will be remembered that Canon 643, § 2, deals with the

[1] *Acta Ap. Sedis,* vol. iii. p. 237.

provision to be made for a religious who has been admitted without a dowry and who has no property or money of her own.

A religious with temporary vows, dismissed in the manner just described, is freed straightaway from all her religious vows (c. 648).

Dismissal of Religious with Perpetual Vows.—For the dismissal of religious with perpetual vows, whether solemn or simple, grave external reasons are required, together with incorrigibility, experience having proved, in the judgment of the Superioress, that there is no hope of amendment (c. 651, § 2). The religious, however, has the right of defending herself; and her replies must be faithfully reported in the acts (c. 651, § 2).

'In the case of diocesan Institutes, the Ordinary of the place in which the house of the professed sister is situated, must examine the motives for, and issue the decree of, dismissal' (c. 652, § 1). 'If there be question of nuns, the local Ordinary shall transmit to the Sacred Congregation all the acts and documents, with a statement of his own judgment of the case and that of the Regular Superior, if the monastery be subject to Regulars' (c. 652, § 2). 'In the case of other religious approved by the Holy See, the Mother-General likewise shall transmit to the Sacred Congregation the whole matter with all the acts and documents' (c. 652, § 2). In all these cases the usual provision should be made for a dismissed religious who has no dowry or other means of her own.

The procedure just outlined should be followed in ordinary circumstances. According to Canon 653, however, 'in the case of grave external scandal or of very serious imminent injury to the community, the religious can be dismissed immediately by the higher Superioress with the consent of her Council, or even, if there be danger in delay and time does not admit of recourse to the higher Superioress, by the local Superioress with the consent of her Council and of the local Ordinary; the religious must immediately put off the religious dress; the Ordinary, however, or the higher Superioress, if she be present, must without delay submit the matter to the judgment of the Holy See.'

We have now brought this question of 'Nuns and Sisters in the New Code' to a conclusion. We feel, however, that we have dealt with it only very inadequately. The matter is so extensive that only the briefest commentary

was possible within the limits to which we were confined. When we first approached this subject, the English translation of that part of the Code dealing with religious had not yet appeared, and the need of an explanation such as we have given was more pressing than it is at present. Yet, even though the translation is available, the want of a commentary is still felt; we hope our articles will help a little towards supplying it.

J. KINANE.

DIRIMENT IMPEDIMENTS IN THE NEW CODE

By Rev. M. J. O'DONNELL, D.D.

The diriment impediments constitute the basis of the Matrimony tract. A priest must know what they are, and what in a crisis are the means for their removal : else there will be more invalid marriages than his peace of mind, or perhaps the indulgence of his superiors, can tolerate. Understood in the wider sense, the impediments are cited in a few Latin versicles—'Error, conditio, votum,' etc.—generally given in our text-books, and immortalized, in their opening stage, in the famous *I Promessi Sposi* of Manzoni. On some of these the following article will have nothing to say. 'Error' has, we hope, been dealt with sufficiently already[1] : 'conditio' (1083, § 2, 2°) involves slavery, unknown in these countries except in a metaphorical sense ; 'fear' has been mentioned before[2] ; and 'clandestinity'—involving the changes made by the *Ne Temere* decree, and by the Code even in the *Ne Temere* itself—had better be reserved for separate treatment. None of those just named is an impediment in the strict sense, or is mentioned in the special section on 'diriment impediments' (1067–1080), with which we are just now concerned. On the others, however, a few remarks may be advisable. And, in obedience to the directions of the Holy See, we will sacrifice the usual order of the manuals, and take the impediments as arranged in the Code itself.

Age.—Canon 1067 runs :—

1. A man, before completing his sixteenth year, or a woman, before completing her fourteenth, cannot enter into a valid marriage.

2. Although a marriage contracted after the age just mentioned is

[1] I. E. Record, October, 1918, Fifth Series, vol. xii. pp. 274 sqq.

[2] Ibid., p. 277. It may be contended that the new definition (1087) covers even the case in which a person, to free himself from fear inflicted by A, makes a matrimonial arrangement with B (a rank outsider). The point is one for debate.

valid, pastors of souls must be careful to dissuade young people from contracting it until they have reached the age at which, according to the accepted customs of the country, marriage generally takes place.

As will be seen at once, this introduces a change of great importance in theory but, so far as this country is concerned, of slight consequence in practice. The previous condition of things may be briefly summarized as follows. According to the natural law anyone might contract marriage as soon as he had attained the use of reason, for no serious cause could be shown for differentiating in this matter between marriage and the other contracts. But public policy suggested a more advanced age, and so the positive law of the Church fixed on the age of puberty.[1] That will vary with different individuals: a distinction, consequently, came to be drawn between 'natural' puberty, attained when the person is capable of having children, and 'legal' puberty, attained when the law *presumes* that the capacity has been secured. For purposes of her impediment the Church selected 'legal' puberty: fixed it, in conformity with the old Roman law, at the ages of 14 and 12, in the case of boys and girls respectively: and decided that marriages contracted after that age were valid, whether 'natural' puberty had been reached or not. But she did not neglect the latter altogether. If evidence were procurable that the individuals were capable at an earlier age, there was no diriment impediment to their marriage. And, since evidence to that effect was difficult to secure except sinful conduct had actually resulted in conception, the exception came to be formulated in the uncomplimentary phrase, 'nisi malitia supplet aetatem.'

So in regard to invalidity. But the boundaries of 'unlawfulness' extended further. Even when 'malice' did secure validity, permission from the Bishop, granted only for very urgent reasons, was required to render the marriage lawful. And all were agreed in emphasizing the important point that, even after the ages specified, priests were to discourage marriage until the parties had attained the development and strength that indicated their fitness to be the fathers and mothers of another generation. The period varied in the various localities.

The second section of the Canon merely embodies the

[1] Decret., B. 4, t. 2, c. 6; *only* positive law (Bened. XIV, *Magnae Nobis*).

recommendation just specified. But the first substitutes the numbers 16 and 14, for 14 and 12 respectively. This implies, 1°, that 'legal' puberty, though retained in the Code for other purposes (88, § 2), is abandoned as a standard for valid marriage; 2°, that even 'natural' puberty is less of a determining factor than before—for, unless we are prepared to claim that 'legal' puberty is an utterly mistaken concept, we must admit that the old law came closer to the natural standard. And, because the natural standard *is* discounted, we are driven, apart even fron the silence of the canon, to hold that the subsidiary clause, 'nisi malitia supplet aetatem,' must be disregarded in the new legislation. Its correct application would, in Southern countries at all events, make the new law the exception rather than the rule.

On other points there is no change. If marriage is to be contracted before the age specified, a dispensation from Rome will be required; it is quite possible, though, that, in view of the new standard, the Holy See may take a more lenient view of the new period than it did of the old.[1] Even though the age falls only a very little short of the standard, the impediment still holds.[2] The former rules governing cases in which the girl's age cannot be determined for certain,[3] may still be followed in practice. And, to validate a marriage invalid by reason of age, lapse of time will not be enough; renewal of consent, in the form prescribed by law, is essential (1133, 1135, § 1).

Impotence.—Since the impediment is one of the natural law, we might expect that the Code would have little to add to the old legislation. The words of Canon 1068 justify the expectation:—

§ 1. Impotence, antecedent and perpetual, whether on the part of the man or of the woman, whether known to the other partner or not, whether absolute or relative, voids marriage by the law of nature itself.

§ 2. If the impediment of impotence be doubtful, whether the doubt be one of law or of fact, the marriage is not to be prohibited.

§ 3. Sterility neither voids nor prohibits marriage.

No light is thrown on the question whether the impediment implies merely the impossibility of carnal intercourse,

[1] Under the old law a dispensation was hardly ever given.

[2] Cf. St. Alph., vi. 1066, 1067.

[3] See *Acta S. Sedis*, xxxvi. p. 116.

or whether it involves, moreover, the impossibility of performing acts that *per se* lead to conception. Perhaps Canon 1015 might be quoted in favour of the first view, and Canon 1081, § 2, in favour of the second. Neither, however, is quite decisive: so the subsidiary question, relating to a woman whose womb or ovaries have been removed, still awaits a solution. So do certain problems connected with vasectomy and similar matters.

The only change we detect, if it can really be called a change, is this. Writers generally used to state that, when the impediment was doubtful, marriage was unlawful, unless the individual affected notified the other partner of the fact, and secured a fairly satisfactory assurance from his medical advisers.[1] The second section of the present canon is, at first sight, somewhat more liberal. But, when the obligations of natural justice are fulfilled, the difference in practice will be slight.

We may note in passing that this same section, as well as the corresponding statement in previous laws, forms an exception to the principle—often given without modification by even our best commentators—that 'if there be a doubt regarding an impediment of the natural or divine law, it is altogether unlawful to contract marriage while that doubt remains, inasmuch as the person so acting is in permanent danger of doing something intrinsically evil.'[2]

Previous Marriage.—The impediment is one of the divine positive law and, to some extent, of the natural law as well. The Church, therefore, cannot restrict it, though she might extend it, as she did in the case of consanguinity, if the public welfare so demanded. She never did extend it, though, nor does she extend it now. Canon 1069 leaves the law in precisely the same position as before :—

> § 1. Without prejudice to the [Pauline] 'privilege of faith,' an attempt to contract a marriage is ineffective, so long as the person who makes the attempt is held in the bonds of a previous, even though non-consummated, marriage.
>
> § 2. Though a previous marriage be void or voided for any reason, it is not on that account lawful to contract another before there be legal and convincing proof in regard to the nullity or dissolution of the first.

There is nothing new in all this. The main sentence in the first section only repeats elementary Catholic teaching: the first subsidiary clause only guarantees a privilege

[1] Cf. St. Alph., vi. 1102 : H. A., xviii. 75 : etc.
[2] Translated from Lehmkuhl, *Th. Mor.*, ii. 956 (11th edition).

almost as old as the Church herself (cf. 1120–1127); the second ('even though non-consummated') is inserted to condemn once more an error that once found prominent supporters[1]—even Popes,[2] it would seem—but was finally repudiated by the Holy See,[3] viz., that a second marriage, when consummated, took precedence over a previous marriage, when the latter was only 'ratified.' The second section, also, is a re-statement of previous law. When a marriage is invalid, a declaration from an ecclesiastical judge is generally required before another may be contracted: but a statement from the Ordinary will most probably suffice for the forum of conscience, when the fact of the previous marriage is unknown in the locality.[4] When the former marriage has been dissolved by Papal dispensation or Religious profession, authentic evidence of of the facts must, of course, be producible.[5]

Difference of Worship.—The impediment, as it now stands, is defined in Canons 1070 and 1071. They may be translated:—

1070, § 1. A marriage is void if contracted by a non-baptized person with one baptized in the Catholic Church or converted to the same from heresy or schism.

§ 2. If, at the time the marriage was contracted, a person was generally looked upon as baptized, or if his baptism was doubtful, the validity of the marriage is, in accordance with Canon 1014, to be upheld until there be convincing proof that one partner is baptized and the other not.

1071. What has been prescribed in Canons 1060–1064, in relation to mixed marriages, must be applied also to marriages to which the impediment of difference of worship is a bar.

This involves two changes—both of great importance to missionary priests, especially in countries where non-Catholics are numerous.

The first is that the impediment is now restricted to marriages in which the Christian partner has been baptized in, or converted to, the *Catholic* Church. In deciding who exactly *is* so baptized or converted, the rule to be followed, will, we presume, be the same as that in vogue for ten years past in connexion with Art. xi. of the *Ne Temere* decree—re-stated, with one slight modification (§ 2) in

[1] e.g., Gratian; Cf. the *Summa Parisiensis* and the *Summa Coloniensis* (12th century), etc.

[2] Alexander III (*Decr.*, B. 4, l. 4, c. 3) refers to them.

[3] By Popes Innocent II, Alexander III, and Innocent III.

[4] Cf. Gasparri, i. 723: and cc. 1960–1992.

[5] Gasparri, ibid.

Canon 1099 of the Code. That may occasion some difficulties still, but they are slight when compared with those removed by the new regulation. There used to be trouble about the marriage of heretics converted to the Church; and there are many Roman declarations dealing with the complicated issues that used to arise.[1] One heretic, for instance, very probably baptized, was married to another heretic, very probably unbaptized. They were converted. What was to be thought of the marriage? Were they to be regarded as both baptized, or both unbaptized, and the marriage, therefore, valid? Or was one to be regarded as baptized, the other as not, and the marriage, therefore, invalid? When a heretic married a pagan, and was afterwards converted, the case was nearly as bad.[2] Was a converted Anglican, married to a Jew, to be considered unbaptized and validly married, or baptized and not married at all? These were the questions raised: and the Roman decisions put together were not extensive enough to cover all the cases. But the trouble is over. All these marriages will be valid now. From the point of view of validity of marriage, it makes no difference whether the partners are pagans or have been baptized as Anglicans, Calvinists, Methodists, or non-Catholics of any other type. Nothing less than the Catholic baptism of one, combined with the non-baptism of the other, will now give rise to the impediment.

Of course, there will be difficulties still when a Catholic is married to a doubtfully-baptized non-Catholic.[3] But even they are lessened. That is the second change. And the new regulation covers also the much rarer case in which one of the partners is a Catholic about whose baptism doubts arise after the marriage has been contracted.[4]

The problem has exercised canonists for a long time past. The Roman replies agreed in stating that, in so far as the validity of marriage was concerned, a doubtful baptism was to be regarded as valid and certain.[5] But what was the consequence of the 'legal presumption' so

[1] e.g., Holy Office, 20th July, 1840; 5th February, 1851, etc.

[2] Cf. ibid., 20th July, 1840; 7th July, 1880, etc.

[3] Cf. ibid., 17th November, 1830; 9th September, 1868, etc.

[4] Cf. S. C. C., 4th March, 1737 (the Delfini case). If the doubts arose before marriage, the proper course would be to administer baptism conditionally: that would obviate all trouble.

[5] 'Censendum est validum baptisma in ordine ad validitatem matrimonii' (e.g., 9th Sept., 1868) sums up the essential points of the replies.

established? Did the validity of the marriage depend on the 'presumption,' or on the baptism itself? To make the case concrete. X (a Catholic certainly baptized) was married to Y (a Protestant, or even a Catholic, doubtfully baptized). Objectively, of course, Y was either baptized or not; subjectively, he held a kind of intermediate position. Now the Roman attitude was that Y's baptism was to be considered valid 'in ordine ad matrimonium.' Did that mean, 1°, that the marriage *was* valid, even though Y was really unbaptized, or, 2°, that the marriage, like the baptism itself, was only *presumed* valid? In the first hypothesis the marriage would remain unaffected, even though evidence were afterwards secured that Y was really a pagan; in the second, the supposed marriage would collapse as soon as such evidence was procurable.

There were three main opinions as to what the law prescribed in the past. They were discussed very fully and fairly in a contribution to the I. E. RECORD some five years ago,[1] and we need not give them in detail. It will be enough to say: 1°, many able writers (Santi-Leitner,[2] Gasparri,[3] etc.) held that the marriage *was* valid, no matter whether the baptism was valid or not; that, in the case given above, X and Y were married, even though Y was afterwards proved to be unbaptized; 2°, equally able men (Wernz,[4] Scherer,[5] etc.) claimed that the marriage was only *presumed* valid and depended entirely on the baptism itself; that X and Y were never really married if Y was actually unbaptized, and would have to be told so if the fact was ever discovered; 3°, others (Lehmkuhl,[6] for instance) tried to steer an even course between the two extreme views, and to gather up, as they thought, the best points on either side. Judging by the evidence available, the writer of the article just mentioned claimed that the first opinion was the true one. In all probability he was correct. The fact that it finds no echo in the Code proves nothing. Canon 1070 may, for all we know, have introduced an entirely new policy. Cardinal Gasparri, we may be sure, had no small influence in settling the wording of the Canon. He may, of course, have condemned his own view; but it is, we think, more likely that the Canon marks a new development, and implies no interpretation whatever of the past.

[1] Jan., 1914, Fifth Series, vol. iii. pp. 35-53.
[2] *Prael. Jur. Can.*, iv. pp. 68 sqq.
[3] Nn. 686 sqq.
[4] *Jus. Decret.*, iv. nn. 507 sqq.
[5] Apud Wernz, loc. cit.
[6] ii. 752.

But, whether we have a change from one law to another or not, we have at least a change from conflicting views to definite statement. For the future the second view stated above represents the law. When the baptism is doubtful, or when a person (though really unbaptized) is generally looked upon as baptized, the marriage is to be upheld, but only *until* there is proof that one partner is baptized and the other not. In other words, X and Y (above) are 'presumed' to be validly married, and will be declared so in an ecclesiastical court, so long as the doubt continues; but, once Y is found *not* to be baptized, the 'presumption' yields to the evidence, and the marriage will be declared null and void.

Canon 1071 introduces nothing new, except in so far as the canons cited (1060–4) involve a change in the mixed marriage guarantees. That matter has been discussed already.[1] We may remind our readers, however, of a comparatively recent Roman decision,[2] which makes it clear: 1°, that a dispensation, granted in virtue of faculties from the Holy See, is invalid, if the guarantees are refused or neglected; 2°, that, in such a case, the Bishop is empowered to declare the marriage null and void, without having to appeal to Rome for confirmation of his decision. That does not mean, of course, that the validity of the dispensation depends on the fulfilment of the guarantees: it depends only on their being given.

Orders, Vows, Abduction, and Crime.—We now come to four canons (1072–5) which re-state old impediments, with no modification at all, or with only the very slightest. They read respectively :—

1072. An attempt at marriage made by clerics in Holy Orders is ineffective.

1073. Equally ineffective is the attempt at marriage made by Religious who have made profession either of solemn vows, or of simple vows to which the effect of voiding nuptials has been attached by a special prescription of the Holy See.

1074, § 1. Between the man who abducts and the woman who is abducted with a view to marriage, no marriage can take place so long as the woman remains in the power of the abductor.

§ 2. But if the abducted woman, when separated from the abductor and put in a place of security and freedom, consents to have him as a husband, the impediment ceases.

§ 3. So far as the nullity of the marriage is concerned, forcible retention

[1] I. E. Record, December, 1918, Fifth Series, vol. xii. pp. 485 sqq.

[2] For the text see I. E. Record, September, 1912, Fourth Series, vol. xxxii. p. 312.

of a woman—i.e., when a man, with a view to marriage, forcibly detains a woman in the place where she lives or to which she has come of her own free will—is put on the same footing as abduction.

1075. Marriage cannot be validly contracted by :—

1°. Those who, during the course of one and the same lawful marriage, have committed full adultery with each other, and have either given each other a mutual promise about entering marriage or, even by a civil ceremony merely, have made an attempt at marriage itself ;

2°. Those who, likewise during the course of one and the same lawful marriage, have committed full adultery with each other, and of whom one has [in addition] murdered the married partner [of either] ;

3°. Those who, by mutual physical or moral aid, have inflicted death on the married partner [of either], even though adultery has not taken place.

To anyone acquainted with the pre-existing legislation, it will be clear at once that these regulations merely sum up previous enactments or define opinions that in the past were held by the majority of canonists. The first (1072) makes no change whatever : since it applies only to the Latin Church (1), even the special Eastern customs remain unaffected. The second also (1073) is merely a re-statement of the older law ; the special reference to certain simple vows is only a continuation of Pope Gregory XIII's regulation in regard to the vows taken after the two years' novitiate in the Jesuit Order.[1] It will be remembered, however, that in another canon (2388) the penalties inflicted for violation of the law are somewhat modified. The excommunication—incurred even in the case of civil marriage, as the Holy Office had already declared[2]—affects, as before, all clerics in Holy Orders and all Regulars and nuns with solemn vows, but is now reserved, not to the Ordinary, but to the Holy See. There is also a *ferendae sententiae* deprivation of office and degradation in the case of contumacious clerics. And—an entirely new censure arising even when there is no diriment impediment—an excommunication reserved to the Ordinary and directed against all offenders who have taken simple, but perpetual, vows in any Order or Congregation (2388, § 2).

The first and second sections of the third canon (1074) state the law practically in the very words of Trent.[3] The third section marks an advance, but only in the sense that an opinion, pretty commonly held in the past,[4] is now

[1] *Ascendente Domino*, 25th May, 1854.
[2] 22nd December, 1880.
[3] Sess. 24, *De ref. Matr.*, c. 6.
[4] Cf. Marc, *Inst. Mor. Alph.*, ii. n. 2004, 2°.

officially sanctioned. The penalties, we may add, are less severe. The excommunication, infamy, etc., decreed by Trent [1] have disappeared, and their place has been taken by 'exclusion from legal acts' and other such punishments as the Superior selects (2353). But, as the same canon indicates, the penalties that do remain are of wider application: they extend to cases in which a woman is abducted for immoral purposes, or a girl under twenty-one without the knowledge, or in opposition to the wishes, of her parents or guardians, even though she herself consent.

The canon on 'crime' (1075) seems to effect no change in the law as laid down in the Decretals [2] and amplified by subsequent commentators. The statement about a 'mutual promise' (§ 1) confirms the view held by the best expositors [3] and uniformly accepted in Curial practice—that the promise must be complete on both sides. The special reference to a civil marriage (§ 1) goes further than the Decretals, it is true: but is in harmony with so many decisions of the Penitentiary [4] that it can hardly be said to have changed the legislation. There is no mention (§§ 2, 3,) of an 'intention' of contracting marriage; but neither was there in the express statements of the old law, and yet the commentators were practically unanimous in claiming that, without such intention, there would be no impediment. Until we hear to the contrary, we are, therefore, justified in insisting on it still, and in understanding the law 'according to the accepted interpretations of approved authors' of the past (6, 2°).

There are two points, however, on which our views must be modified, though the Canon itself says nothing about either. When a dispensation is given in the case of a 'ratified but non-consummated' marriage, or when permission is given to contract a new marriage on the presumption that the previous partner has died, it is quite possible that the impediment of crime (§ 1) may have arisen, and that neither the parties themselves nor the priest concerned may advert to the fact. To provide against invalid marriages in such circumstances, the Congregation of the Sacraments declared, on the 3rd June, 1912,[5] that the dispensation or permission in question

[1] Sess. 24, *De ref. Matr.*, c. 6.

[2] B. 4, t. 7, cc. 6, 7.

[3] Cf. Marc, ibid. 2036, 2°.

[4] They are cited by De Angelis, B. 4, t. 4, n. 11.

[5] *Acta Ap. Sed.*, iv. p. 403. The document may be seen in the I. E. RECORD, August, 1912, Fourth Series, vol. xxxii. p. 220.

always involved a dispensation in crime of the first species; and the liberal rule is embodied, in almost identical words, in an earlier canon of the Code (1053). That is the first point. The second is this. Authorities of no mean standing had come to believe that ignorance probably excused from the impediment.[1] They admitted that the impediment, like an irregularity resulting from crime, was a disqualification rather than a penalty. But they argued, 1°, that both impediment and irregularity were ultimately imposed as punishments for crime, and that the liberal view, which exempted the ignorant from the irregularity, should exempt them from the impediment as well; 2°, that this was especially so, since the impediment was one of those 'extraordinary' punishments which, according to the accepted view, would be incurred only by those who adverted to their existence.[2] The Code would seem to deprive the opinion of whatever degree of probability it once possessed. The liberal view regarding the irregularity is pronounced untenable (988); and, on the broader issue, we are told in uncompromising terms that 'no ignorance of voiding or disqualifying laws excuses from them, unless there be an express statement to the opposite' (16, § 1).

Consanguinity.—The new rules on consanguinity read as follows:—

1076, § 1. In the direct line of consanguinity marriage is void between all ancestors and descendants, legitimate or natural.

§ 2. In the collateral line it is void to the third degree inclusive; so, however, that the matrimonial impediment is multiplied only as often as the common stock is multiplied.

§ 3. Marriage is never to be allowed if there be any underlying doubt as to whether the parties are related by blood in any degree of the direct line or in the first degree of the collateral.

The first section repeats the previous law, and still leaves us our old-time controversies as to whether the impediment in the second and further degrees arises from the natural law or not. The third paragraph is merely an application of the principle to which we have cited a subsidiary rule on impotence as one of the very few exceptions.[3]

The changes are outlined in the second paragraph, and deal with the collateral line. One affects the 'simple' impediment, the other the 'multiple.'

[1] e.g., Lehmkuhl, ii. 1008-9: he cites the supporters of the view and gives the reasons.

[2] v. Lehmkuhl, ibid.

[3] *Supra*, p. 124.

The Council of Lateran reduced the diriment degrees from seven to four; the Code goes further and removes the fourth. Marriage will be possible for the future unless the parties are related in at least the third degree, i.e., unless, in ordinary language, they are 'second cousins' or still more closely related. In determining the degree, moreover, the old rule still holds—the longer line is the decisive factor (96, § 3). So that if, in canonical language, two individuals are related 'in the fourth degree touching the third'—are, in common parlance, 'second and third cousins' or 'related in the third degree once removed'—there will be no impediment whatever. Nor is it necessary that the nearer degree be the third; it may equally well be the second or first; if natural inclination were as favourable as the Canon law, a girl might now be married to her great-grand-uncle.[1]

The rules on 'multiple' consanguinity used to be stated somewhat as follows: Multiplication arose, 1°, when two individuals had more than one common stock; 2°, when they descended in a double line from the same common stock; 3°, when both conditions were verified in the same case. We may take the headings separately:—

I. Under the first, two cases were generally cited:—

1°. When two members of one family married two members of another. A and B, e.g., (two brothers) married X and Y (two sisters). C was the son of one marriage, Z the daughter of the other. Between C and Z there was a double impediment of consanguinity in the second degree, because each descended from JK (the parents of the two brothers), and from MN (the parents of the two sisters). There were two common stocks.

2°. When a person married two relatives. A, e.g., married successively two sisters (X and Y). C was the son of the first marriage, Z the daughter of the second. Between C and Z there was a two-fold impediment: one of the first degree, because C and Z had a common father, A; another of the second degree because each descended from MN (the parents of X and Y). The case illustrates the peculiar canonical fact that relationship may be lessened by being 'multiplied.' If C and Z were children of the same mother, as well as of the same father, they would be more closely connected than they actually were; yet in that case the impediment would be 'single' and 'simple.'

[1] The rule might be given briefly:—Two individuals can be married unless their parents are at least first cousins.

II. Under the second heading, only one case was generally given. It arose when a marriage of relatives occurred before the lines of the two individuals met in the one common stock. A, B, and X, e.g., were first cousins. C was the son of A and B (married by dispensation), Z the daughter of X. Between C and Z there was a two-fold impediment of the third degree, because, though they had only one stock in common (JN, the grand-parents of A, B, and X), C descended from that common stock in a two-fold way (through A and B).

III. Of the third class also only one instance was generally given—that in which, before the lines met in the ultimate common stock, another common stock had intervened.[1] C and Z, e.g., were first cousins whose common grand-parents (AX) were also first cousins—descending from a common stock (JN). Between C and Z there was a three-fold impediment: one of the second degree, because each descended from the common stock AX; two of the fourth degree, because each descended also from the common stock JN—and that in a two-fold way (through A *and* X).[2] There were two common 'stocks,' and two 'lines of descent' from one of them.[3]

[1] It must be distinguished from the case given under II.

[2] The case was at one time much debated. It was settled by decisions of the Holy Office, 11th March, 1896, 22nd February, 1899—the principle being accepted that, in the ultimate stock, only one person is considered, but, in an intermediate stock, both.

[3] The cases are enumerated in different ways by different authors. As a good few of our readers may have got their ideas from Lehmkuhl, we may translate the passage in which he deals with the matter (ii. 988), and compare his cases with those given above:

'Multiple consanguinity [he states] may exist between two individuals (Julius and Anna, say) in various ways: (1) When the line of descent of Julius and Anna leads to several common stocks; (2) When they descend from the same common stock in a double or multiple fashion; (3) When both these things take place. The *first* holds: (*a*) when the nearest common ancestors of Julius and Anna were related to each other; when, e.g., the wife of the common grandfather of J. and A. was also his niece—in which case J. and A. are related both in the second degree and in the fourth touching third. [This is the case given above under heading III—except that first cousins are replaced by uncle and niece. J. and A. are really related *doubly* 'in the fourth degree touching third,' or, perhaps more correctly, *both* in the third degree *and* in the fourth. The case does illustrate heading I; but, since it involves a double descent from one of the stocks, it is better placed under heading III]: (*b*) when among the ancestors of J. and A. there occur marriages in which several relatives on one side married several relatives on the other; when, e.g., the grandfather of J. and the grandfather of A. were brothers who married two sisters—in which case you have two common stocks for J. and A., and they [J. and A.] are twice related in the third degree. [This is case I, 1°, above]; (*c*) when the mutual relationship of J. and A. arises from a levirate marriage, i.e., from the union of an

That was the old law. The new regulation makes it clear that the multiple 'stock' is still to be taken into account, but the multiple 'line of descent' disregarded. Applying that principle to the three classes enumerated, we find that the two cases under No. I remain as before, and that the case under No. II disappears completely. As for problems occurring under No. III, the double impediment arising from the two 'stocks' may still remain, but the third—resulting from the 'double' descent from the more remote ancestors—is a thing of the past. So in theory. In practice there will hardly ever be more than one impediment. For, since (as before) marriage between a brother and sister is never allowed (§ 3), the relationship arising through descent from the more remote stock will be found, in the vast majority of cases, to be of the fourth degree at least, and, consequently, of no importance whatever as a matrimonial impediment (§ 2).[1]

Affinity.—The definition of this relationship has been fundamentally changed, and most of the information given about it in the text-books becomes absolutely meaningless. In the old law it was based on carnal intercourse; now it is based on valid marriage exclusively—irrespective of whether the marriage has been consummated or not (97, § 1).[2] In other words, a person is now connected by affinity with

ancestor with several persons related to one another; when, e.g., the grandfather of J., after the death of his wife, married her sister, and J. is the [mediate] issue of the first marriage and A. of the second; in which case they [J. and A.] are related both in the second and in the third degree. [This is case II, 2°, above.] The *second* holds, i.e., there is descent in multiple fashion from the common stock: (*a*) when, among the ancestors of J. or A., before you come to the common stock, there occurs a marriage of relatives [case II above]; (*b*) when you have a second marriage of a widow with a widower, whose son and daughter (by the previous marriages) are themselves united in marriage and want to give their daughter to their common brother—the issue of their parents' second marriage. [Anyone who has leisure enough may work out this problem for himself. We agree with Father Barry (I. E Record, April, 1915, p. 355), that it is a case *sui generis*. It cannot be classified under any of the headings. Still, it strongly suggests a double relationship of some kind. If anything like it ever occurs, the proper course would be to draw a diagram illustrating the situation, and then let the dispensing authorities settle the matter for themselves.] From all of which it is easily understood how the *third* case (embracing first and second) takes place: e.g., if, in the last case given, the widow was already related to the widower.' [For the reasons just mentioned, we prefer not to touch this case, but to take number III above as our illustration of the third principle.]

[1] As for Lehmkuhl's *sui generis* case, the answer will depend on whether the parties should be regarded as coming from two stocks, or from the same stock in different ways. It is hard to say which alternative, if either, is correct.

[2] It will be noticed, however, that intercourse renders a dispensation more difficult (1043).

those, and *only* with those, who, in popular language, are termed his 'relatives by marriage.'[1] Some of the old principles are re-admitted; but their meaning is modified by the fundamental change in the relationship itself. The bond exists only between a married man and his wife's blood-relations, and between a married woman and those of her husband—the old principle *affinitas non parit affinitatem* in a more restricted field of operation (97, § 2). The degree and line, as before, are determined by the degree and line of the corresponding consanguinity (97, § 3).

Canon 1077 tells us how far the relationship, understood in its new sense, operates as a bar to marriage:

§ 1. Affinity in the direct line voids marriage in all degrees; in the collateral line as far as the second degree inclusive.

§ 2. The impediment of affinity is multiplied:

1°. As often as the impediment of consanguinity from which it proceeds is multiplied;

2°. When a subsequent marriage is contracted with a blood-relation of a deceased partner.

To students of the old law the words have a familiar ring; but, in consequence of Canon 97, they convey a very different meaning. The statements and discussions about 'unlawful affinity' go by the board. So we shall never have to trouble again about the physical or physiological conditions of its existence,[2] the various views as to whether it arose from several classes of invalid marriages,[3] the special deprivation of marital rights it entailed in the case of a married offender,[4] etc. The new impediment, it will be noted, is confined to the limits within which the old impediment of 'unlawful affinity' used to operate—all the degrees of the direct line,[5] but only the first and second of the collateral. The two rules given for the 'multiple' impediment are borrowed from previous legislation. It will be remarked, however, that the second is modified to suit the new definition; and that there is no mention, even in a correspondingly modified form, of the additional rule that used to accompany them—'when each of the parties has had intercourse with a blood relation of the other.' As for the old distinction between 'antecedent' and 'subsequent' affinity, the thing has now no meaning.

[1] The principle of the Roman, and of most civil laws.
[2] Cf., e.g., Lehmkuhl, ii. 998, etc.
[3] Cf., e.g., Marc, op. cit., 2028, etc.
[4] Lehmkuhl, ibid., 1000, etc.
[5] This was at least the more probable view.

The impediment is purely ecclesiastical—most probably even in the first degree of the direct line. There used to be a controversy as to whether it affected converts who had contracted the relationship in their pagan days. The opinion was at one time strongly against the enforcement of the impediment in such cases, and even a succession of unfriendly Roman decisions[1] had not quite destroyed the belief that the general law left the converts free.[2] The fact that the decisions in question dealt with an impediment very different from that described in Canon 97 will probably strengthen the liberal view in the discussions on Canon 1077.

Public Propriety.—Here, too, the fundamental concept has been changed. The impediment of 'public propriety,' as if to justify its name, used to be based on a union of 'wills,' while 'affinity' rested on carnal intercourse. Their rôles have been reversed. 'Affinity' is now purified of its lower associations; whereas, in regard to 'propriety,' as we remarked before in some other connexion, one might almost sum up the situation by saying that there is no 'public propriety' now unless there is public impropriety.

That is evident enough from Canon 1078:—

> The impediment of public propriety arises from an invalid marriage, whether consummated or not, and from public or notorious concubinage; and it voids nuptials in the first and second degrees of the dire t line between the man and the blood-relations of t e woman, and *vice versa.*

Which means that the impediment, as we understood it, has almost disappeared. The disability arising from engagements has gone; so has that resulting from valid marriage, except in so far as it reappears as 'affinity.' Of the old definition nothing remains but the little clause—'even from invalid marriage'—that used to be added half-apologetically and with many exceptions; and the additional statement about 'concubinage,' intensifying as it does the unpleasant character of the new impediment, is a poor compensation for what has been lost. To complete the rout, only two degrees of the direct line have been left; all the collateral impediments—the most important in practice—have vanished.

There is, therefore, little to discuss. Even the small controversy as to whether the impediment arises from an

[1] 23rd August, 1852; 28th August, 1891; 16th December, 1898, etc.
[2] Cf. Lehmkuhl, ibid., 999; *Casus Cons.*, ii. 977, etc.

invalid consummated marriage is settled by the terms of the canon. It may, perhaps, be contended that the exceptional cases—in which 'propriety' did *not* arise from an invalid marriage—must still be taken into account. With all reserve, we think they need not. One of them—that in which a return to a previous fiancé or fiancée was allowed —has no meaning now, inasmuch as a marriage with his, or her, relatives in the first degree is no longer invalid. The others—in which consent was defective, or the marriage civil [1]—will, we think, disappear as well. Seeing that invalidity or concubinage is now made the test (1078), it would seem strange to hold that the impediment does not exist when there *is* concubinage,[2] or when the marriage is, if we are pardoned the expression, very specially invalid.[3]

The impediment is merely ecclesiastical. It does not affect a convert who fulfilled the conditions in his pagan days.[4]

Spiritual Relationship.—The new impediment is defined in the simple statement that 'the spiritual relationship described in Canon 768, and that alone, voids marriage.' We have made some remarks on the matter already.[5]

Adoption.—In pre-Code days there were canonists who claimed that, in regard to adoption, the Church sanctioned the attitude of the civil law now in force in each particular country; i.e., that, when the present-day civil law recognized adoption as a bar to marriage, the Church accepted the position and decreed an impediment of her own.[6] But that was not the common view. The more widely-accepted opinion was that the Church took the old Roman law as the decisive test; i.e., that she decided for or against the impediment according as the adoption recognized by the modern law did, or did not, present the essential features of its Roman prototype.[7] In the Roman system itself there were two forms of the relationship, the 'perfect' and

[1] On all of these cf., e.g., Lehmkuhl, ii. 1102-3. The declaration on civil marriage (of Catholics) comes from Pope Leo XIII (17th March, 1879), and involves, we think, a departure from previous principles.

[2] The Leonine declaration just cited.

[3] The case of defective consent.

[4] So (at least in regard to the old impediment) the Holy Office declaration, 9th April, 1837.

[5] I. E. RECORD, Fifth Series, December, 1917, pp. 450-3 ; March, 1918, pp. 214-5 ; Oct., 1918, pp. 320-2.

[6] De Angelis, B. 4, t. 12, n. 3 ; Rosset, Santi, etc.

[7] So, e.g., Gasparri, n. 852, sqq.

the 'imperfect'[1]—the former attended with greater formality and involving a more radical change in the social status of the person adopted—and it was freely debated among the learned whether, in the eyes of the jurists, the 'imperfect' type involved any matrimonial impediment at all.[2] Be that as it may, the supporters of the commoner view, just referred to, were inclined to claim that the re-appearance, in modern legislation, of even the 'imperfect' Roman type was sufficient to constitute a canonical impediment.[3]

To put the rival theories briefly, we might say that, according to the less common view, the Church 'canonized' the modern law: according to the other, the Roman law exclusively.[4]

Now, as in the case of 'difference of worship,' these unaccommodated differences of view in regard to the past still furnish ground for friendly and legitimate discussion. The new canon on the subject need not be taken as embodying a decision on any of the old-time controversies. But, again as in the case of 'difference of worship,' only one view will be tenable for the future. And that view is not the 'commoner' view of the past In deciding whether a canonical impediment arises or not, in connexion with marriages contracted since the Code came into force, we must leave the Roman law out of our reckoning, and be guided exclusively by the effect attached to 'adoption' by modern civil legislation. If the civil law voids or prohibits marriage by reason of 'adoption,' the Canon law will recognize an impediment—diriment or impedient—irrespective, altogether, of the question whether the modern adoption does, or does not, retain the substantial elements of the Roman relationship.

That is the principle expressed in Canon 1080 :—

Those who are considered by civil law incapable of contracting nuptials with each other, by reason of legal relationship arising from adoption, are disqualified by Canon law [also] from contracting a valid marriage with each other.

[1] The distinction became especially acute after the change effected in the law by the Emperor Justinian (L. 11 c. *De Adop.*). Cf. Bened. XIV, *De Syn.*, B. 9, c. 10, n. 4.

[3] The various authorities are cited by Gasparri, n. 858.

[3] So Gasparri, n. 863. See Ferraris, *Biblioth*, v. 'matrimonium,' etc.

[4] On these rather indefinite principles the decisions given for various countries differed considerably. They favoured the existence of the impediment in France (17th May, 1826), Naples (23rd February, 1853), etc.: not so in Bulgaria (16th April, 1761), China (24th January, 1802), etc.

and, as regards the prohibitive impediment, in Canon 1059:—

In those countries in which legal relationship arising from adoption renders nuptials unlawful by civil legislation, marriage is unlawful by Canon law as well.

So the question to be asked for the future is, not whether the adoption in force is substantially the same as the Roman, but whether it constitutes an impediment in the eyes of the modern civil law. That involves an inconvenience strongly emphasized by the supporters of the common view in the past—what gives rise to a diriment impediment in one country may have no effect whatever in another.[1] But even that is more than counterbalanced by the advantages of the new regulation. The controversies about the Roman law need trouble us no longer; and we are spared the task of deciding whether a modern law presents the essentials of its classical prototype.

On the new principle now formulated, we think that there is no impediment of any kind in this country, and that most of the American States are free as well. The ordinary law-books state the matrimonial impediments, diriment and impedient, in great detail, but 'adoption,' so far as we can see, is never classified among them. On custom and common feeling, as a guide to law, we may appeal to experience. Even the readers of fiction will help us. They can recall no more threadbare theme than that of the wealthy son of the family united at last to the adopted outcast—with the parental blessing and no hint of a violation of law or public decorum.

In confirmation of our view we may quote Father Slater, S.J.[2] He wrote under the old régime, but his statement will apply even under the new:—

In England [he stated] adoption exists as a private contract between the parties, but is not otherwise recognized by law, and so in England there is no room for the impediment of marriage arising from legal adoption. In most of the States of the Union there seems to be a form of adoption recognized by law sufficient to make it the basis of the ecclesiastical impediment.

The last statement is confirmed, and amplified, in a 'Note' added by Father Martin, S.J.[3] The test applied,

[1] So Gasparri, n. 852. etc.
[2] *Manual of Moral Theology*, ii. p. 305.
[3] Ibid. Cf. article in the *Catholic Encyclopedia*, i. 148.

however, is the common test of the past—agreement in essentials with the 'adoption' of the Roman law. For that the principle of Canons 1059 and 1080 must now be substituted. How far the change will affect conclusions is a matter on which the ecclesiastical authorities of the various States are in the best position to decide. We suspect that it will restrict the impediment within even narrower limits than before.[1]

We might sum up the new legislation by saying that, apart from 'difference of worship,' the important changes are confined to the canons on 'relationship.' In each and every one of these, however—whether affecting consanguinity, affinity, propriety, or spiritual or legal relationship—the law has been modified very considerably, in some cases almost beyond recognition.

M. J. O'DONNELL.

[1] Since the above was put in type, we have been favoured with a reply—which we are kindly allowed to quote 'if occasion arises'—from one of our foremost civil-law experts, James A. Murnaghan, Esq., M.A., LL.D., Professor of Jurisprudence and Roman Law in the National University. His first paragraph, it will be noted, bears on the pre-Code legislation: the English form of 'adoption' was very different from the Roman model. From the standpoint of the Code the second paragraph is the more important: the statement that 'Adoption, is no bar to marriage in English law' effectively disposes of any doubts that might survive the previous assurance that 'Strictly speaking, [adoption] is not an idea in the English system.'

'Adoption [Dr. Murnaghan states] as known in Roman legislation, involving the transfer of parental authority, does not exist in English law. Strictly speaking, it is not an idea in the English systêm ; e.g., an adopted child has no share in the adopter's inheritance upon intestacy. It has however certain consequences, such as this. If I purchase land or stock in the name of a stranger, unless the motive of gift is positively proved, the stock or land belongs to me, and the stranger is a trustee. If, on the other hand, I purchase in the name of a son, the land or stock belongs to the son, even in the absence of proof of gift ; and the same rule is applied in the case of purchase in the name of an adopted child—the presumption is that the purchase belongs to *him*.

'Adoption is no bar to marriage in English law. The only bars are the relationships set out in 1563 in the table attached to the Book of Common Prayer. If you look at this table, you will find that adoption is not touched upon at all. In 1907 the table was altered as regards marriage with a deceased wife's sister.'

The 'table' referred to is given, in complicated fashion and with much historical lore, in the more advanced text-books. Most of us will prefer it as it stands in, say, *Every Man's Own Lawyer* (p. 360, 1916 edition).

NOTES ON THE PSYCHOLOGY OF RELIGIOUS EXPERIENCE

By JOHN HOWLEY, M.A.

IV

CONVERSION AND THE NEW BIRTH

Before proceeding to discuss the various types of religious conversion considered as a psychological process, we would like to restate very briefly our general position. For the postulates of the sublimenal self and sub-conscious elaboration in which the school of Myers and James seek the answer to the enigma, we would substitute :

(1) The existence in our states of consciousness of certain centres of instability. In the various consolidated groups of sensations, images, passions, concepts and volitions, potential or actual, which form together that complex which we call the field of consciousness, there is some one psychic element or small group of elements, which, being disturbed, the group of which it forms part breaks up, with a more or less general re-arrangement of the whole field as a result.

(2) The psychic dynamism of nascent ideas. By a nascent idea we understand, not a bare concept, but some psychic element, which may even be a complex of sensations, images, passions, concepts, and volitions, yet has a certain unity and simplicity taken as a whole, and which is a novelty in consciousness, either as coming *suddenly* from without, as in ordinary apprehensions, or from within, from the deeper memory, or by being evolved from the break-up of some psychic complex.

For such nascent ideas we claim a psychic energy far in excess of their force as ordinary elements of consciousness, just as nascent hydrogen is more chemically active than when fully evolved. Some degree of psychic passivity, as in automatic and spontaneous attention, is needed for the full display of this nascent activity which is controlled or controllable by conative attention.

We have now to examine how far these new postulates will serve to account for the phenomena of religious conversion, and we propose to deal first with those types known as evangelical or revivalistic conversions. The conversion-psychose in Protestant religious experience is so sharply marked off by its ordinary phenomena from nearly all types of Catholic experience, as seemingly to belong to another psychic order. There is, of course, a vast mass of Protestant religious experience where the conversion phase appears to be absent and the general gradual line of religious growth seems parallel with the ordinary spiritual development on Catholic lines, psychologically speaking. Starbuck has studied a very large number of such non-conversion cases among American Protestants, and his conclusions are rather striking.

> The result which seemed to be attained in conversion, and that which was working itself out during adolescence among those persons who have not experienced conversion are, at bottom, essentially the same, namely, the birth of human consciousness on a higher spiritual level. This is attended by the awakening of a fuller and keener self-consciousness, and at the same time, by the birth of a social instinct, which leads the person to reach out and feel his life one with that of the larger social, institutional, and spiritual worlds.[1]

A little further on he says :—

> But when we follow up the events which mark the trend of life after conversion, the crucial question we have just raised is almost directly answered, for we find that nearly all the persons are, sooner or later, beset with the same difficulties that ordinarily attend adolescent development. Indeed, the percentage of those difficulties in this group of persons is slightly greater than in the case of those whose growth was not attended by conversion.

From this it would appear that James's classification of religious types into the 'once-born' and the 'twice-born' is a division rather of psychic process than of psychic result, and we might consider the conversion-psychose as an adaptation of the Spiritual Exercises a l'Americaine, a sort of religious quick-lunch.

Starbuck in his enquiry has dealt with ordinary cases where the conversion experience was claimed, and has based his results on his statistics of such ordinary cases, quite normal in the various denominations to which the cases belonged, rather than on a few limited and striking cases where the conversion-psychose presents abnormal

[1] Starbuck, *The Psychology of Religion*, 3rd Edition, p. 354.

and almost morbid features. The Catholic director would be inclined to regard the majority of his cases as forms of sensible consolations viewed by their recipients through Protestant spectacles, otherwise illusion of interpretation to some extent, or simple natural emotions interpreted by pious imaginations. Such errors and illusions are far from uncommon among devout Catholics.

Some persons, on account of their penances, prayers, and vigils, or even merely because of debility of health, can receive no spiritual consolation without being overcome by it. . . . The more they lose self-control, the more do their feelings get possession of them, because the body grows more feeble. They fancy this is a trance and call it one, but I call it nonsense; it does nothing but waste their time and injure their health.[1]

Few of these milder types of the conversion-psychose present psychological difficulties. They are reducible to the process we studied when dealing with the Spiritual Exercises. It must be borne in mind that the dogmatic systems of these evangelical denominations are much more simple, psychologically, than that of the Catholic Church, and the process of an effective retreat might well be compressed into a meditation. The subjects, too, are rather more emotional than Catholics as a rule. All these tend to psychologic simplification and abbreviation. We must look, then, for the cases we require rather to the extreme features of revivals and such like, than to the ordinary sort of conversion cases. Some even of the more striking cases may be reduced psychologically to the process referred to, if we bear in mind the Evangelical Protestant view of faith.

Sed fides est specialis, seu potius personalis, qua quis credit hic et nunc sibi sua peccata non esse imputata ; fides haec est ergo fiducia, et quidem firma et certa, suae propriae justificationis hoc instanti habitae. Hunc autem elicientes, seu potius hoc animi motu perculsi, praesertim in conventibus Methodistarum, quasi extra se rapti, altos saepissime edunt clamores, et etiam aliquando spasmis et convulsionibus agitantur.[2]

Dr. Murray cites many examples, among others the following from the diary of Isaac Septimus Nullis (1828–1865), an English Methodist preacher well known in Ireland in his day.

Jan. 12th, 1851. Brother George Smith came home with me from chapel. Just as dinner was over, I said, 'I believe Jesus died for me;

[1] St. Teresa, *The Interior Castle*, IV, c. 3, § 11. The English does not render the quip in the original: 'y en su seso les parece arrobamiento; y llámole yo abobamiento.' *La madre fundadora* of Carmel was rather more critical of religious experience than some Protestant ministers.

[2] Murray, *Tractatus De Gratia* ; Dublin: M. H. Gill et filius, 1877, p. 316.

don't you, George?' 'Yes,' was the reply. 'Don't you, Maria?' (our servant). 'Yes,' she said. I said, 'I believe my sins are pardoned; don't you, George?' 'Yes.' 'Don't you, Maria?' No reply. I said, 'Let us pray.' We knelt down and prayed—got into the conflict: after an hour and a half hard fighting, deliverance came; she believed and was filled with joy and peace, filled full of heavenly influence. We did shout. A young man came in weeping, and said he felt the glory out in the road, so that he was constrained to come in.[1]

Doubtless the preacher's prayer was very eloquent and argumentative, full of considerations expressed with much force and unction, and would suffice to incline the servant's mind to a solution to which it was already predisposed. Psychologically the case is on all fours with an Ignatian meditation. The resultant excitement and joy was the very natural consequence of a sense of relief from the feeling of reprobation. The Methodists of that day did not hesitate to preach Hell fire with a vigour which shocks the modern psychologist very profoundly. Yet their sermons do not appear to have been much stronger, in descriptive work at least, than those preached by Catholic missionaries. It was in the certainty of damnation, rather than in its terrors, that their sermons differed. A man was infallibly lost unless he could feel that his sins were forgiven. Hence these comminatory discourses were psychological depressives and reduced the hearers to a state of most acute misery. Another doctrinal feature was the total depravity of human nature, its total incapacity to elicit any spiritual act, with the logical corollary that the presence of spiritual emotion was a manifest sign of grace and regeneration. With this dogmatic basis for the field of consciousness, we have two potent factors of disintegration ready to hand, (1) a general state of acute tension and stress, the fear of hell, and (2) a well marked and *known* centre of instability, the conviction that a spiritual consolation was a certain sign of regeneration. The whole revivalist 'method' tended to the creation of these two factors, if they did not exist already. All that remained to complete the conversion was to evoke the nascent idea which could act through the centre of instability; in other words, to evoke some spiritual emotion of a consoling nature in the subject's consciousness. To secure an effective conversion, the three factors must be energetic. A moderate apprehension of eternal damnation, such as is found in the Catholic sinner, would not work in this process. The fear

[1] Op. cit., p. 346.

must be great and imminent, the subject must be made to see himself as in the Enfield sermon of Jonathan Edwards :

> The unconverted are now walking over the pit of hell on a rotten cover, and there are innumerable places in this covering so weak that they will not bear their weight, and these places are not seen.[1]

Only by such strenuous present terror could the necessary psychic tension be secured. With less tension the relief-reaction would be too feeble, the field of consciousness might oscillate, but it would hardly disintegrate, at least as a general rule. Hence the efforts of revivalists to provoke, and reinforce this tension.

The second element, the dogmatic position which secured the existence, and, as it were, located the position of the centre of instability, had also to be sharply and firmly defined in consciousness. If a consolation does not of necessity imply a state of grace and acceptance before God, as Catholics hold, it might come and go, but it would not, unless very extraordinary, overwhelm the whole field of consciousness. Hence the extraordinary difference in reaction to milder spiritual stimuli between the Catholic and the Evangelical Protestant. We may trace the decline in the frequency and violence of revival conversions to a certain weakening of Protestant confidence in the significance of consolatory religious experience. The elder generation had no doubts about it, or about the reality, certainty, and imminence of eternal damnation for the " unconverted " and thus their religious consciousness was the exact spiritual analogue of a Rupert's drop, ready to fly into fragments the moment the centre of instability was touched.

The touching of this vital spot was, however, the great difficulty. All that was needed was a vigorous nascent idea in the shape of some marked consolation, the sense of the Infinite Mercy, that Christ died for sinners, etc. All the efforts of the Protestant evangelist were devoted to suggesting some such consolation to the consciousness of those under ' conviction.' But the psychic stress of ' conviction ' tended to inhibit all consoling thoughts. The unhappy subjects were so obsessed with the idea of their parlous state, that no inlet could often be found for any contrary psychic element. It needed great tact to find the requisite

[1] Quoted in Davenport, *Primitive Traits in Religious Revivals.* London : Macmillan, 1910, p. 110.

opening, and it often happened that the liberating nascent idea found an entrance almost as it were by accident. Where a direct suggestion was repelled, some casual text or line from a hymn found its way and effected the needful change.

It would be an error to look upon these psychic revolutions as merely the logical results of Calvinistic dogmatism, even in cases where sudden conversion is unaccompanied by any abnormal phenomena, and but for its suddenness is a quiet process. Doctrine is a great factor in the process, but in itself it is a psychological rather than a logical process, and dogma can only be regarded as one of the factors. With the decline of dogmas in modern Protestantism we find a corresponding decline in the conversion-psychose, the types are milder in character and more infrequent at revivals. That Universalism which is now so common among Protestants that they are gravely shocked at an old-fashioned booklet like Father Furniss's *Sight of Hell*, has made it much more difficult for revivalists to secure that initial tension necessary to the full development of the conversion-psychose. The ordinary careless healthy Christian is unimpressed where his sire and grandsire were terrified almost to madness. To-day, as of old, we get cases of this psychose, but with people of somewhat different moral and physical temperaments. The public sinner, stricken with keen remorse, or the more unstable and neurotic among lesser offenders, now furnish the bulk of cases, where conversion is of the sudden and overwhelming kind. Save in Wales, during the Evan Roberts' revival, we seldom find crowds swept off their feet as in the great historic revivals, and the reason we suggest is the weakening of the dogmatic factor in the Protestant consciousness.

The following case[1] illustrates the process we have outlined :—

At Penrhiw, the Revivalist, in his address to the unsaved, used an illustration describing a man collecting sea-birds' eggs on a rock-bound coast. While his friends above hold the rope which was tied around him, he descends on his perilous quest. It is a stormy day, the winds swing him in the void, and the rope rubs against the teeth of the rocks. To his consternation, he observes that the sharp precipice has already

[1] J. J. Morgan, *The '59 Revival in Wales: Some Incidents in the Life and Work of David Morgan, Ysbytty*; Mold: J. J. Morgan, 1909, p. 60. A delightful and touching account of David Morgan the Revivalist's work, by his son.

severed one strand of the rope. He shouts apprehensively to his mates above, but his cry is lost in the whistling of the wind. 'Haul me up! Haul me up!' he shrieks as he swings, horror-struck to see another and yet another strand sundered by the jagged crag. 'You hang by a frail and fraying rope over the abyss of eternity. What means that shooting pain in your head? A strand in the rope is gone. What is that crick in your back? Another strand parted. You lost your sleep the other night! Another fibre severed! The last strand will snap one of these next days. You may be raised to safety to-night and your feet set upon a rock.'

The arch-swearer of the parish was in the service, listening with such an insolent and offensive air that some of the deacons thought he ought to be asked to leave the building. When some overflowing saint broke out in 'praise' old Isaac would burst into contemptuous laughter. When David Morgan was in the midst of his conversation with a bevy of young women, who had that evening chosen the good part, Isaac rushed in with a distracted countenance, every hair on end with excitement. 'What has brought you *back*?' asked the preacher quietly. 'I failed to go *on*,' was the reply. After finishing with all the others, the Revivalist asked again, 'What made you return?' 'I was afraid to advance,' said Isaac. 'The abyss you described gaped before my feet; I could see devils, and hell ready to swallow me alive. When I turned back the road was clear. I turned homewards again, and the mouth of hell immediately yawned in front of me. Here I am, but I don't know in the world what for?' 'Would you like to enter the society?' 'No, I haven't thought of that.' 'Why have you come back, then?' 'Man, haven't I told you it was because I failed to go on?' 'Why shouldn't you join the Church?' 'I am a fearful swearer; I have oftentimes cursed and swore out of fun just to shock these deacons.' 'You must give up swearing.' 'Oh, I couldn't possibly do that.' 'Will you do this, then? Each time you swear, drop on your knees and say, "Lord, help me not to swear, for Christ's sake. Amen." 'I will, by ——' promised Isaac. Having asked the Church to give the right hand of fellowship to the seventeen young women, he brought before them the case of Isaac as a special sinner. 'Isaac has failed to go on, but he has come back. He has been eminent in blasphemy; he intends now to become eminent in prayer. Are you willing to receive Isaac, once the great swearer, henceforth the great in prayer?' All wept, save Isaac, whose every gesture testified, 'I'm but a stranger here.' The converts of '59 generally bowed their heads, weeping—Isaac sat bolt upright, staring around. When the Revivalist asked for the usual show of hands, Isaac leaped to his feet, and looked around sharply to see whether everyone signified willingness to accept him; then he turned towards the deacon's seat, and when he saw that they all held their hands up in his favour, the surprise made the strain insupportable, and he began to moan like a wounded animal, and he could not be silenced. The habit of swearing disappeared like a pricked bubble, and soon his gift of prayer became one of the assets of the Church at Penrhiw.

We have here the stages of the process very well marked: (1) The sinner's original state of consciousness, profanity and impudence dominant over religious feelings. (2) The stress

developed by the Revivalist, fear of hell, here and now. (3) A centre of instability, formed by the assurance of possible salvation, here and now. (4) The stress operating on the religious consciousness, and inducing vivid conviction of sin, so keen as to produce visual hallucinations and inhibitions. He could not return home. (5) Confession of his state, and willingness to amend, induced by this stress, and the hope of relief. (6) The hope of relief is the nascent idea, and it becomes operative when he sees that the church members are willing to receive him. *Then he breaks down.* (7) This acceptance breaks up the whole field of consciousness, and so rearranged it that the habit of profanity is driven out.

It will be noted that our purely psychologic analysis, places the crisis of the psychose later than the author, who is looking at the conversion solely from the religious point of view. He seems to regard Isaac as technically converted before he knew whether he would be voted into membership of the church or no. But the psychic revolution, as revealed in the break-down, came, evidently, later, when he saw the actual vote.

Another case from the same revival reveals very clearly the extraordinary psychic dynamism of the nascent idea.

> At Barmouth, Evan Phillips, Emlyn, preaching on Luke xvi. 26, remarked that the conscience of a careless sinner carried within itself the materials of eternal woe. 'There is a guilty conscience asleep in the sinner's breast, as a man carries a match-box in his pocket without thinking of it; but in a day to come, I behold Justice striking the match across the throne of God, and the guilty soul is a flame for ever.' In the crowd sat a shoemaker of superior intellectual capacity, but irreligious. Pulpit admonitions fell as unheeded upon him as anvil sparks on the blacksmith's dog. He was fifty years old, and had a crop of black hair. The remark quoted above crashed into his soul, like an explosive bullet into a soldier's breast. He gave himself to God and to His people, but passed through bitter experiences before entering into peace. In that storm of soul, his black hair grew snow-white in two nights; then every hair dropped off, until his head was as bare as the back of his hand, and after a short season of baldness another crop of white hair grew on his naked pate. This again dropped off, and was replaced by a crop of black hair such as he had at first. He became eminent as a praying man, and when he saw Mr. Phillips some years afterwards, he told him, 'You pulled all my hair out, my boy, but God gave it back again, and the hope of eternal life has grown along with it.'[1]

We see here the stress between the religious tendencies, and the irreligious, inhibiting the entrance of the nascent idea in its conventional forms, but when it slipped through

[1] Op. cit., p. 109.

in the shape of a rather quaint figure of speech, it produced such a fearful shake-up of all the field of consciousness, that the physical reaction was quite extraordinary. Here, the fear of hell was the centre of instability, but masked by the shoemaker's irreligious bent. The novel image circumvented the habitual inhibitions.

It is not easy to parallel revival cases with an instance of Catholic conversion, but the following will show the working of a similar psychic process where the factors of religion and race are far other than in the Wales of '59.

> I found myself, one day, at the end of my course of sermons, in the presence of an old man, who had formerly occupied a high position. 'Father,' he said, 'I wish to make my peace with God. I am eighty years old. I cannot remember, during all that time, one single act of religion. I am sure, however, that I was baptized a Catholic, because I had to get the baptismal certificate when I was married. That's all.' 'You have not even made your first Communion?' I asked. 'I have no recollection,' he said, emphasizing his words with a slow, hesitating, circular gesture, as if including his whole life. 'But you must have had reasons to keep away from religion?' 'Evidently. I did not believe in it.' As he was a man of education, I thought I ought to reason with him. 'Would you tell me,' I said, 'some of your reasons; we will discuss them, and I will tell you, on my side, why we believe.' 'Oh, no!' he cried, 'not that. I would never get there. It would only bother me. You quoted the other day a phrase of Diderot: "He who knows not the reasons for faith, is only an ignorant fellow." That settled me. I saw I was an ignorant fellow before the awful problem. As an ignorant fellow I surrender.' I could not get him away from that point: his sense of faith was so genuine that I gave up the idea. The day after the old man made his first Communion; he died shortly after.[1]

Old age, the sense of approaching death, the mission supplied the tension, the question put to self on the verge of eternity. The hidden centre of instability was the sense of ignorance revealed and touched by the nascent idea, a quotation! Need we remind the reader again that we are only analyzing these cases from the point of view of psychology, and studying their psychic mechanism? The other questions they suggest are beyond our jurisdiction as psychologists.

There are three fairly well marked stages in the conversion-psychose: (1) *Awakening*, that is the initiative of psychic stress by the realization of one's unsatisfactory spiritual state; (2) *conviction*, the stress resolving itself under the influence of the nascent depressive idea into an acute psychic crisis with the formation of centres of psychic

[1] R. P. A. Gardeil, O.P., *La Crédibilité et l'Apologètique*; Paris: Lecoffre, 2nd Ed., 1912, p. 142.

instability, and (3) *deliverance*, the stress dissolved by some other nascent consolatory idea with disintegration of the field of religious consciousness and formation of a new field. In Catholic religious life, these three stages would correspond with the first week of the Spiritual Exercises, awakening in the various meditations, with conviction developed by the examens of conscience, and deliverance coming with repentance and sacramental absolution. The analogy of the quick-lunch is not too far-fetched after all. The Exercises accomplish slowly and quietly those psychic changes which the revival method rushes. We may observe in passing that the decline in revival methods corresponds curiously with the decline in Calvinistic doctrine, and a growing Pelagianism, which greatly complicates the conversion-psychose. Doubtless, the David Morgans of the future will conduct retreats rather than run revivals. Finney to-day would be Father . . . ; we leave the reader to supply the missing word.

The stages of Conviction and Deliverance, in the more extreme revival types, are of chief interest to the psychologist on account of the remarkable character of their somatic phenomena, quite apart from their psychic manifestations. Before considering this aspect of revival conversions, we will briefly examine a point of some interest, post-conversion inhibitions, as we have here a marked divergence between Catholic and Protestant religious experience. When a man is converted, and becomes a reformed character, what, psychologically speaking, becomes of his old vices ? Do they still remain as elements of consciousness, controlled, checked and neutralized by opposing virtues as we saw in our study of the Exercises, or do they pass away from consciousness altogether ? Does the converted drunkard become a sober man by recovering his will power to resist the craving for alcohol, or does the craving itself vanish ?

The cessation of the craving for alcohol, as a sequel to the conversion-psychose, is, we think, well established in a large number of recorded cases. But before we invoke the fact, as evidence of a moral miracle, we should ascertain whether the alcoholism of the convert was a substantive, or an adjective vice ; did he drink for drink's sake, or did he drink to relieve depression otherwise caused ? Or through mere good-fellowship ? If the drink passion were secondary, an effect of other psychic causes, their removal would abolish the craving in all probability. If a passion is merely

a secondary dependent psychic element in our field of consciousness, we can suppress it by a change in that field, by switching off attention, by breaking it up in its cause. So with the drink craving. A change of scene, of occupation, above all, of interest, may effect a cure, and destroy the craving. The passion for drink may be merely a morbid sympton of nervous disorder ; cure the nervous malady, and the craving will pass away. By breaking up the old field of consciousness, and giving the convert a new centre of psychic attention, a new grouping, and subordination of the psychic elements which constitute his field, the conversion-psychose tends to throw out these elements it fails to adjust and assimilate. Alcoholism is such an aggressive psychic element, not so much in itself as in its physiological consequences, that it cannot be assimilated ; it must be smothered, or cast into oblivion, or it will dominate consciousness. Hence we have two types of expulsion : one to the surface, the other to the deeper memory. The desire may be there, but controlled more or less perfectly ; or it may cease altogether. To the onlooker, the latter may seem the more marvellous, yet the vice so consigned to oblivion may have been but a symptom of general moral disorder, and in itself psychologically unimportant. But where the vicious tendency subsists, but is chained and controlled, there it may well have been the capital sin. The story of 'Old Born Drunk,' in Begbie's *Broken Earthenware,* is a picturesque and very striking case of abolition of the craving for alcohol, produced by a well-marked conversion-psychose, but though the result was marvellous to the onlooker, the interior change may very possibly have been less, *as regards the specific vice of drunkenness,* than in the following, where the craving was not abolished :—

> He had been the champion fighter of Beaufort Hill, a daily terror to his family, and always in trouble with the police. When he came home from the public-house, his wife and children fled from his fury until the morrow, and his first proceeding in the morning was to go through every room in the house, trembling with misgiving lest he had murdered one of them during the night. This son of Belial was brought to God during the Revival. By-and-by he approached the Lord's Table. At this time non-intoxicating wine was not used, and on the Monday he said : 'I felt all the devils of Gehenna stirring in my bosom after drinking the wine. If there had been a tavern in sight when I came out, I would have plunged headlong into it.' He was elected an elder in a few years, and died full of days and honour.[1]

[1] *The '59 Revival in Wales,* p. 105.

In the first case we quoted from the '59 Revival in Wales, we had an example of the post-conversion inhibition of the dominant vice of profanity. We have a more curious instance in the following :—

In an evening service, a coarse and callous farmer was strangely affected. Previously the dialect of Gehenna contained no shibboleth too difficult for his tongue. In the morning he was alarmed by the consciousness of a mysterious and revolutionary change in himself. *He was unable to swear.* He said to himself, like Samson, 'I will go out as at other times before, and shake myself.' But his evil strength had departed, and he was weak and was as another man. He sought his servants at their work, imagining that he would there find sufficient reasons for the exercise of his cherished habit, but for the life of him he couldn't rap out a single oath. Then he realized that his ailment required a drastic remedy, and thought, as a last resort, that if he could see some neighbour's sheep trespassing on his pasture the lost faculty would be recovered. So he climbed a hill that was near, but nothing availed. He began to tremble in every limb. 'What is this ?' cried he. 'I can't *swear* ; what if I tried to *pray* ?' He fell on his knees among the furze-bushes, and continued a man of prayer as long as he lived.[1]

Here was the will to swear, but not the capacity, the *velle* without the *posse*. Is it a paradox of grace, or post hypnotic suggestion ? The author, throughout, lays much stress on this inhibition of profanity. Like drink, blasphemy is a very manifest vice, and peculiarly shocking ; but like drink, its psychological importance may be small. With the vast number of foul-mouthed people, the oath or obscenity is but a vocal automatism, practically a reflex act, with but little of the self in it. It has become a nervous 'tic,' and needs no great psychic revolution to get rid of it. The conversion-psychose meant for the farmer a sort of aphasia, affecting his centres of profanity. Unfortunately, we are not given an account of the sermon he heard the night before, and how he was impressed, but it is clear that if his conversion-psychose led him to acts of prayer, and impressed him with the need for prayer, and the malice of its opposite profanity, the inhibition is a quite natural sequel. It is not necessary to assume either a miracle or hypnotic suggestion. The nascent idea in itself has sufficient dynamism to produce many of the effects of hypnotism proper if we consider it in its totality. We must not regard it as something abstracted from the psychic conditions of its origin, if it arises from the sermon of the evangelist, his personality is a factor in it. The vivid phrase which smites the centre of instability has

[1] Op. cit., p. 21.

an added psychic momentum from the personal qualities of the man who sends it forth, as a winged word, to the revival congregation.

Now, nearly all the great revivalists, notably Wesley, Finney, and David Morgan, were very remarkable for their personal power over individuals and crowds. Wesley's portraits represent a man of mild temper, yet he again and again faced and tamed hostile mobs, as at Wednesbury and Bolton.[1] Finney's portrait shows a face of quite extraordinary power.

At Evans Mills a powerfully-built and very evil man went to one of the meetings with a loaded pistol, with a plan to shoot the evangelist while he was preaching; but instead, he was so transfixed by the personality which confronted him that he sat down, shrieking in an agony of terror. Next morning, Mr. Finney met this man on a street of the town. 'Good morning,' he said to the would-be murderer, 'how do you feel in your mind this morning?' The man related to Finney his experiences during a sleepless night. He had wrestled with God in prayer, but with no sense of relief. He had even lost the conviction of sin which was present in his mind the evening before, and had come away from the place of unsuccessful communion with the Almighty. 'But,' said he, 'when I saw you, my heart began to burn and grow hot within me, and instead of feeling as if I wanted to avoid you, I felt so drawn that I came across the street to see you.'[2]

David Morgan had also a very striking countenance, and the first quotation we have given, shows what was his influence over individuals. Coming from such men, a mere phrase, which, in cold print, is nothing, becomes a power of suggestion, easily capable of causing inhibitions of muscular action, and even visual hallucinations.

Their personal power, too, was increased by the nature of their usual audiences. They were crowds, psychological crowds. There is a certain psychic passivity in the very act of listening, and it is vastly increased when we listen, not as individuals, but as a crowd. It is not necessary to assume with Davenport, following Le Bon and Durkeim,[3] any more or less fanciful analogy of the mind of the crowd, and the mind of primitive man. All we need postulate is an increase of psychic passivity. The crowd is more receptive of nascent ideas and more disturbed by them than the component individuals taken privately. There is a drop in conative

[1] *Wesley's Journal,* Pitman, pp. 114 and 175.

[2] Davenport, *Primitive Traits in Religious Revivals,* p. 196.

[3] Cf. Davenport, op. cit., chap. iii., the whole chapter is important, though the point of view is not ours.

attention, a lowering of the sense of personal responsibility. The field of consciousness of a crowd is shallow and mobile. *Mobile Vulgus*, the very name of mob is psychological. Not only is the field shallow, but it is more limited than in the individual, *qua* individual. A crowd can only attend to one thing at a time. A field of consciousness which is shallow, restricted and mobile, with strong reaction to suggestion, and forming in itself a sort of artificial personality, what is it but *hysteria* ?

> The hysterical subject reacts more strongly than a normal person to certain types of experiences; this impressionability does not exclude apathy and indifference towards other things which interest a normal person. The hysteric sees everything at a particular angle. As to assimilation, such dispositions result in shutting the subject up in a narrow round of personal anxieties and make him incapable of seeing the situation in a comprehensive and objective manner. As to reactions, the hysteric displays a change in co-ordination, is impulsive and capricious, with brief enthusiasms, so that anything he takes up eagerly he soon drops through boredom and fatigue.[1]

Thus Pierre Janet describes the hysteric ; will not the description fit any ordinary crowd ? With the absence of conative attention in any individual, any nascent idea can exercise its full and natural dynamism from the moment it evokes automatic attention, or mere psychic curiosity, until it is absorbed by the spontaneous attention of interest. Most of the individuals in a psychological crowd are victims of psychic determinism, for they will not exert their conative attention; they drift mentally and morally. Hence it is that in revival crowds we find the conversion-psychose in its most acute forms.

Throughout the Welsh Period of '59, as pictured in the book we have been quoting from, the psychological crowd was a foremost feature. What is such a crowd ?

> It is not the mere physical sense of the word, the mass of men, of which Le Bon is thinking (in his study *The Crowd*). He means a group of persons, small or large, who are for the time being in some kind of mental agreement; who are a mental unity or practically so. A lynching party is a crowd. A political meeting is a crowd. Le Bon reasons that the individual is one thing in such a company, and another thing out of it. The crowd for the time being swallows him up, and has feelings of its own, thoughts of its own, a character of its own.[2]

[1] De la Vaissière, *Eléments de Psychologie Experimentale*, p. 299.
[2] Davenport, op. cit., p. 25.

The open-air revival meetings, the chapel gatherings, were all marked examples of the psychological crowd.

A certain service was overwhelmed by the 'rapture' of the students. Later the minister asked, 'Why in the world did you make such a commotion to-night, boys? What was the matter with you, Thomas Charles?' 'Mr. Hughes,' he replied, 'had you offered me a thousand pounds a month ago for shouting like that, I couldn't; but to-night, if you had placed a thousand pounds in my hand for being silent, I could not refrain from praising God.'[1]

At an open-air meeting in Carnarvonshire where some 30,000 were present, we read the account[2]:—

The moment the preaching ceased, prayer-meetings would begin around the waggons scattered over the field. . . . With every striking petition, a great shout from the throng rent the welkin, now at this point of the field, now at another. . . . Taking one another by the hand, they would at times dance, leap, sing, pray, exhort, shout, and 'rejoice' incessantly working their several ways through the maze, like a hive of bees that have discovered a virgin bed of flowers. Suddenly, perhaps, the social bond would be dissolved, and each would become absorbed in the contemplation of his own treasures. If a chair became empty for a moment, some one would immediately jump upon it, and from that coign of vantage shout a hymn or a verse at the top of his voice. Many were cast into trances or swoons, when, unconscious of their surroundings, they would declaim or soliloquise with unintermitting fluency, even as they were borne out of the field by their friends.

Another instance of crowd psychology, revealing *psychic automatism* as a sequel to excitement :—

A Methodist lady was yoked to an Episcopalian husband, who disdained to accompany her to the Revival meetings in her chapel, saying he did not believe in revivalistic excitement, and bidding her go alone to her own place. Her importunity finally prevailed, and he accompanied her. The atmosphere of the service was heavily charged with heavenly magnetism, and the Churchman soon grew uneasy. 'I'll have to shout,' he whispered. 'No, don't,' she curtly replied. The surge of his emotions becoming nigh intolerable, he said again, 'I *must* shout.' 'Go to your own place to shout,' rejoined the wife dryly. The rising tide threatening to submerge him, he said, 'I must shout, or die.' 'Well, shout if you must,' answered the wife. Immediately he began to cry with a loud-sounding, recitative voice: 'I believe in God the Father Almighty, Maker of heaven and earth, etc.'[3]

This repetition of the Creed by the Anglican, shows the psychic automatism of these external manifestations. Conative and reflex control having ceased, the surface memory

[1] *The '59 Revival in Wales*, p. 121. [2] Ibid. p. 145. [3] Ibid. p. 185.

projects its immediate content. With the Anglican it was a well-remembered part of his usual service ; it would be probably a mosaic of Bible texts with the Dissenter, or verses of some well-known hymn. An unsympathetic but careful observer of the '59 revival in Ulster wrote to the late Dr. Salmon :—

The reality of the 'Conversion' is supposed to be tested by 'the gift of prayer.' The converts cannot be restrained from trying their newly-found power, and I have been sometimes surprised by the appropriateness of their language. This *latter* feature, however, as we might have expected, is by no means common. They have got off by heart a few common texts of Scripture, and one or two set phrases, which they hear at the revival meeting, and which they cast into the shape of a prayer.[1]

The following instance, taken from the '59 Revival in Ulster, illustrates rather well the psychic influence of the psychological crowd, and the character of the liberating nascent idea. There was a huge open-air meeting in Coleraine, some 4,000 were present, and it was decided to divide up the meeting into four, each one to be in charge of a minister. Mr. Canning, one of the ministers, states :—

On set purpose he determined that anything he should say should be as little exciting as possible, and that he should endeavour simply and calmly to preach the Gospel. He read his text, and made a few remarks; but, on looking into the countenances of the people he was struck with the intensity of their gaze, for which he could not account. He could see distinctly that there was an anxiety and earnestness to hear what he was saying, such as he had never witnessed before. He went on for five or six minutes, and at the end of that time a strong man in the crowd fell to the ground, as if smitten with a severe blow. In five minutes or so in the other congregations similar scenes took place, until there were thirty individuals lying prostrate in the market square of Coleraine. Of course he immediately brought the services to a close, and made his way to the man who had first fallen, whom he found perfectly conscious, but helpless as a child. Upon being asked what was the matter with him, the man, with a cry of horror such as he had never before heard, said it was a consciousness of sin—that it was as if hell was before him; that he had often heard and talked about sin before, but had never seen it; and that cry once again went forth from the lungs of that strong man. . . . In these circumstances he used all his powers to pour into the distressed man's mind the comforts of the Gospel in his own language; but his efforts were vain, and the man made no signs until he did what he should have done at first—repeated the very words of Scripture, and put the truth in the form in which the

[1] George Salmon, D.D., F.T.C.D. *The Evidences of the Work of the Holy Spirit*: A Sermon preached at St. Stephen's Church, Dublin, on July 3rd, 1859, with an Appendix on the Revival Movement in the North of Ireland; Dublin: Hodges, Smith & Co., 1859, p. 47.

Spirit of God puts it. Instantly the closed eyes were opened, and a change came over the man's countenance; the cry ceased; and in five or six minutes more the change so graphically described had taken place on that man's countenance; and in five minutes more that strong man rose up, apparently as strong physically as ever he was; and from that day to this he was indeed a changed man, walking in the fear of the Lord, and, he believed, in the comfort of the Holy Ghost.[1]

Here we have the crowd, rather than the preacher, as the generator of tension. It is to be noted that the consolatory idea took the form of well-known texts, to which the pious narrator seems to attach a sacramental efficacy. They were familiar, however, while his exposition of them demanded an exertion of intelligence, of which the state of stress in the convert did not allow. The well-known text circumvented the psychic inhibitions.

The psychological crowd had a far greater role in the '59 Revival in Ulster, than in Wales, where the personal influence of the evangelists was so marked. The preachers in Ulster were almost reduced to mere spectators ; the movement sprang from the crowd, and swept the ministers in its train. They had very little to do with the originating crisis ; their part was limited to administering consolation to those who had 'taken' the revival. It was a crowd-psychose all through, and widely differed in spirituality from the Welsh movement. With all its extravagances, the latter appeared profoundly religious in tone, quaint, but with an almost Franciscan quaintness. The Ulster Revival is more akin to tarantism and the 'convulsionaires' of St. Médard.

In one of these circles we noticed a case of terrible severity—one in which visions of unspeakable horror must have been pictured to the imagination of the unhappy sufferer. A young woman lay extended at full length—her eyes closed, her hands clasped and elevated, and her body curved in a spasm so violent that it appeared to rest, arch-like, upon her heels and the back portion of her head. In that position she lay, without speech or motion, for several minutes.

Suddenly she uttered a terrific scream, and tore handfuls of hair from her uncovered head. Extending her open hands in a repelling attitude of the most appalling terror, she exclaimed, 'Oh ! that fearful pit ! Lord Jesus save me ! I am a sinner, a most unworthy sinner—but, O Lord, take *him* away, take *him* away ! O Christ, come—come quickly ! Oh, Saviour of sinners, *remove him from my sight* !' During this paroxysm three strong men were hardly able to restrain her.[2]

[1] A Visit to the Scenes of Revival in Ireland, Parts II & III of *Revivals in Ireland*, by James William Massie, D.D., LL.D., Secretary of the Irish Evangelical Society; London: John Snow, 35 Paternoster Row, E.C., 1859, p. 80.

[2] Ibid. Part I, p. 23.

So common were these morbid phenomena during the Ulster Revival of '59, that many cases of insanity resulted. Dr. Salmon quotes a sympathiser with the movement as writing:[1]

> There is another side of the picture which I am almost afraid to turn to you, but I feel that I would not be doing my duty if I would keep it back. There are three or four persons in this locality who have not got better from their conviction, and are raving maniacs as yet. I cannot look upon them without shuddering. They seem to answer the description of those given in the New Testament as possessed of devils. This is, as I think, God's mysterious work, but I cannot fathom it.

The prostrations, inhibitions, trances, and other abnormal phenomena throughout the Ulster Revival are almost of an exclusively morbid type. Except in some American revivals, it would not be easy to find such extreme manifestations. They are of great interest to the alienist, and the student of morbid psychology, but they are only a side issue in the study of the conversion-psychose. Davenport has dealt at length with such physical outcrops in his *Primitive Traits in Religious Revivals,* and regards them as much more substantial features than we are inclined to do. He uses them as proofs of recrudescence of primitive instincts in these psychoses. There is more than a little of 'medical materialism' in his system. We must account for these explosions more simply, for we cannot ignore their comparative absence in the largest body of Christian religious experience, that of Catholics. They are also rare among Anglicans. During the Ulster Revival of '59, the then Established Church was, on the whole, opposed to the Revival, at least, in its more orgiastic features. It was only in certain parts of Ulster that the Revival was at all general among Protestants. It left the Catholics untouched, save a very doubtful sporadic case or two, and what is more, did not notably affect Protestants in those parts of Ireland where Catholics were in the majority. Dogma, of course, was a great factor, but as far as regards Calvinism, there was little to choose between the Episcopalians and other Irish Protestants in '59. Liturgy, and the sense of church order, were the restraining forces. Neither in the Catholic, nor in the Established Church was the ecclesiastical 'crowd' suffered to become a mob. There was a discipline which repressed 'singularity,' and the 'note' of every revival, in the Protestant

[1] Salmon, *Evidences,* etc., p. 31.

Evangelical sense of the word, was precisely 'singularity.' Stress was laid on the necessity of 'personal religion,' that is, of spiritual singularity, of individualism. Singularity in matters of devotion easily runs to extravagance, and has always been discouraged by Catholics and by Anglicans, who have a sense of corporate worship. It was felt to be disorderly, from the liturgical point of view, and even in private devotion, was regarded as objectionable. There are few points more strongly insisted on by Catholic spiritual writers than the duty of avoiding singularity in one's devotions, even those which are strictly private. Hence, the idea of a layman leading the congregation in prayer, or interrupting a service with ejaculations or extempore collects is quite unthinkable. Take this element of sporadic prayer out of the Welsh or Ulster Revival meeting, and its characteristic feature is gone. During the Evan Roberts Revival, De Fursac remarked that attempts to restrain spontaneous exuberance, to create more order and discipline in the services, only resulted in a damping down of the revival spirit.[1] The repression of singularity inculcated as a duty by Catholic directors is, in the eyes of the revivalist, a quenching of the Spirit.

We find some curious examples of this 'singularity' in devotion in Wales.

> It is described in Welsh by a variety of words, such as *gorfoleddu*, 'rejoicing'; *mwynhad*, 'rapture'; and *moliannu*, 'praising.' At its best, this 'praise' would be characterized by a delightful spontaneity and *abandon*, and illuminated by a glow of spiritual insight and passion that lifted it to the highest levels of that worship which is spirit and truth. Sometimes it would be a soliloquy addressed to the speaker's own soul, dilating on one's hopes and fears, triumphs and defects, experiences and prospects, solaces and aspirations. Not seldom it would be a doxology of rapturous homage to the power and beauty of the Redeemer. . . . Sometimes a cry of despair. . . . Some would wail as if the pains of death had got hold of them. . . . The reader should remember that the popular mind did not recognize that the Revival, *par excellence*, had broken out in a place until religious emotion had reached this point of ebullition in open rapture.[2]

What would be very beautiful in private devotion was sometimes found inconvenient in church,

> It (Sion chapel) was the religious home of the pious old Sister Jane Williams, of Bryn, commonly known as 'Sian Seion.' Many things are

[1] De Fursac, *Un Mouvement Mystique Contemporain*; Paris: Alcan, 1907, p. 159.

[2] *The '59 Revival in Wales*, p. 19.

reported of 'Sian's' sayings and doings. One of them appears in the Welsh Autobiography of Robyn ddu Eryri. . . . Robyn states: 'As I was going along the street one Saturday, Mr. Preece beckoned to me, and in my hearing asked Sian y Bryn if she did not feel chilled walking bare-footed in that snowy weather, and she replied that she did. Exacting a promise from her that she would not shout (glorify) on the following day whilst he was preaching, he bought her a pair of shoes. Sunday morning came, and I went to Sion Chapel before Mr. Preece had arrived, and took care to secure a place near Sian. Mr. Preece's text was 'Behold the Lamb of God.' He preached with much fervency, and Sian began to be ill at ease. Presently she stooped down and took off her shoes. Then she stood up and flung the shoes at the preacher, shouting, 'Thy shoes to thee, Preece; Christ for me. Glory and praise be to Him for ever and ever.'[1]

Another and more curious example of singularity :—

Another hymn was started, and suddenly a very quaint scene was witnessed. Between the big seat and the pews there was a clear space, some yards across, in most chapels in Wales at that time. A godly old woman, named Nell, eighty years old, who had failed to attend the afternoon service owing to very severe rheumatic pains in her limbs, and had only crept painfully to the evening meeting, advanced briskly across the open space and put her hand on Enoch Davies, a lame and decrepit deacon of seventy-two, who sat in the 'big seat.' This was high-backed and a seat ran around it outside as well as inside. As if electrified by Nell's touch, Enoch stood on his feet, and with one vault cleared the high obstacle between him and her; and the two soon joined by others, began to leap and dance as if the days of youth had returned to them . . . the subjects of these physical manifestations were frequently, indeed generally, men and women of piety and spiritual-mindedness; and when they were moved in this manner, they were swayed spontaneously, irresistibly, and often unconsciously. In one neighbourhood a respectable middle-aged lady, the sister of an eminent Welsh minister, when intensely moved by the truth in sermon or prayer or hymn, would leave her pew, walk gravely into the clear space in front of the big seat, and there she would literally fulfil the Psalmist's injunction and 'praise the name of the Lord *in the dance*.' After leaping and dancing with rhythmical movements for a few minutes, she would cease and return to her pew, not one word having been uttered by her throughout the whole scene.[2]

Spiritual jubilation of this extraordinary character is far from unknown among Catholics. There is a variety of mystical religious experience known as *Ebrietas seu crapula amoris,* of which we find many details in the lives of the Saints. St. Teresa on one occasion sang and danced in the

[1] *Robert Humphreys, An Early Methodist Preacher in Wales,* by Edward Rees, J.P.; translated from the Welsh, and edited by Howel Thomas; London: Charles H. Kelly, 26 Paternoster Row, E.C., p. 70.

[2] *The '59 Revival in Wales,* p. 27.

excess of spiritual joy. But it was within the cloister, not in a public church.[1] This amazing physical outpouring of spiritual exultation has so characterized certain phases of mystical life, that it is recognized by Lopez Ezquerra and Scaramelli as a distinct stage, though Poulain only regards it as a variety of 'the prayer of quiet.'[2] But though it is recognized as a possible effusion of the Holy Spirit, all approved authors look on these manifestations with deep suspicion and counsel the greatest self-restraint, caution, and privacy.

'Quia hae actiones praecipites possunt interdum procedere, vel a spiritu lunatico, vel ab indole, et genio facili, et hilari, vel a nimia fatuitate, vel denique (et hoc frequentius) ex hypocrisi, et simulatione, quae aliquae falsae Beatae suae virtutis quaestum portare volentes, dum superbia et avaritia tument, credi appetunt divini amoris incendio crepare.' And Lopez Ezquerra concludes: 'Ingenue fatemur, quod omnes insolitas, et exteriores gesticulationes, motus, jaculatiorias, suspiria, et his similia, quibus aliqui in conspectu hominum utuntur; praeter modestiam hilarem, circumspectam gravitatem et inaffectatam devotionem, immortali odio prosequimur.'

If the Ulster Revivalists had possessed a little of the spiritual science of this Spanish priest of the seventeenth century, they would have damped down many scandalous scenes. One of the most striking features in all these Protestant revivals is the lack of that science, 'the discernment of spirits,' in nearly all the ministers concerned. 'No excesses of excitement, no hypnosis, no diseased imaginings, provided they have the cloak of religion, are too extreme to be regarded by certain persons as normal and healthy.'[3]

De Fursac, in his account of the Evan Roberts Revival, mentions[4] another phenomenon, not however confined to revivals, which presents also rather marked mystical features, somewhat akin to what Poulain calls '*la quietude priante*,'[5] or even certain forms of ecstasy, but distinguished from these forms of experience by its unconscious character. Psychologically it seems a secondary state, but without the

[1] *Minor Works of St. Teresa*, London: Baker, 1913, p. 71.

[2] Ezquerra, *Lucerna Mystica*, tr. 5, cap. 23; Sacramelli, *Direttorio Mistico*, tr. 3, cap. 7 and 8; Poulain, *Les Graces d'raison*, ch. 11 § 7 (5me Ed.).

[3] Starbuck, *Psych. of Relig.*, p. 164.

[4] De Fursac, op. cit., p. 170.

[5] Poulain, *Les Graces d'Oraison*, chap. 14, § 23 (5me Ed.).

ordinary defects of such secondary states. This is the celebrated Welsh *hwyl*. Ordinarily the word merely signifies a species of oratorical chant, but it is a psychological process as well, as the illustration De Fursac gives shows.

Several years ago, well before the Revival, a Welsh minister was preaching on the Passion of Christ. When he came to speak of the bloody sweat in the Garden of Olives, he entered into an excess of *hwyl*, rose to the chanting tone which characterizes this state, and continued to preach or rather to chant in this way for ten minutes, then he regained consciousness and resumed the ordinary tone of a sermon. When the sermon was over, he remembered vaguely that the moment when he began to speak of the sweat of blood, he felt choked, but could not recall a word of what he had said during the *hwyl*. That ten minutes were blotted out of his life, as it were—yet it appears that he was never more eloquent.

De Fursac does not, of course, admit the last point in an objective sense. He looks on the eloquence as the result of the contagious character of the *hwyl*, which affects the mentality of the hearers as a species of hypnotism.

'A few minutes of *hwyl*,' said a Welsh minister to me, 'make a stronger impression on the soul than hours of preaching.'

We are not bound to accept M. de Fursac's psychologic prejudices. He admits that the *hwyl* is a plaintive and very impressive chant, but as he did not speak Welsh he could hardly judge the intellectual and moral value of the *hwyl* he heard.

This phenomena of the *hwyl* and much of the whole spirit of Welsh Protestant piety, as shown in these revivals, remind the Catholic student of hagiography of much in the lives of the early Franciscans, even in its very extravagances. There is something amazingly Catholic about these Calvinists. The Ulster Revival is convulsionary Jansenism, morbid and repellent, but the Welsh brings us back to the days when Francis of Assissi met the bandits with the cry, 'I am the Herald of the Great King,' when Brother Juniper boiled all the fowl in the larder, feathers and all, that there might be more time for the Brothers to sing the praises of the Most High, when Jacopone da Todi gave the world the *Stabat Mater*.

There were two very striking non-morbid features of the Ulster Revival of '59.

I was told by the Rev. Mr. Park, of Ballymoney, on authority which he considered reliable and decisive, that in the district of Excise, of which Coleraine is the centre, comprehending a radius of perhaps ten or

twelve miles by no means densely peopled, the falling off in the duty paid on spirits for the month was no less than £400 sterling.[1]

Many cases might be reported in which the persons convinced of sin, and professing to have found peace with God, have not only given up their drinking habits, but although their desire for strong drink has hitherto overpowered every resolution for improvement, since their conversion they have no appetite for the insidious draught. They are not only saved from the consequences of their sin, but the desire to commit it has also been taken away. That is one peculiar phase of this movement worth recording as a fact in Christian ethics.[2]

These conversions to physical sobriety we have heard were lasting in many cases. The other feature is no less striking, the decline in the party spirit during the revival.

I was in the town and vicinity of Belfast on the 12th of July. Never since the distinction of political partizanship stigmatized different classes of the community, was so *little* personal rancour exhibited; never was the spirit of persecution so allayed.

On the 12th of July, not so much as an offensive coloured ribbon was displayed throughout the length and breadth of Durham Street, nor, indeed, in any other locality in Ulster in which the people had become seriously impressed.[3]

The Chief Baron Pigott referred to this general cessation of party feeling as a result of the revival in a charge at the Down Assizes.[4]

From these two effects we may form some idea of the energy of conversion-psychose and its wide-spread character in Ulster.

The statistics tabulated and plotted by Starbuck have led him to regard the conversion-psychose as normally a phenomenon of adolescence and puberty; it is not so however in these revival cases, where subjects of all ages are converted. The coincidence of religious development with physical changes like puberty, is, of course, to be expected when stress is laid on the emotional characteristics in religious experience. Analogous nerve disturbances have been observed in Catholic children at the time of First Communion, before the late Pope had lowered the age. The type of preparation usual in France was very emotional and contributed much to the large crop of cases of psychasthenia, whose originating scruples can be traced back to the

[1] *Revivals in Ireland*, Parts II. and III. p. 37.
[2] Ibid. p. 40.
[3] Ibid. p. 62.
[4] Ibid. p. 91.

preparation for First Communion.[1] But we must not take effects for causes.

Nor can we, with Freud, give undue weight to the sex-instinct in the conversion-psychose. It has its role in our spiritual life, as was well known to the Fathers of the Desert. For the physically normal person the sex-instinct forms perhaps the greatest centre of instability in his whole psychic field. But it is philosophically absurd and morally disgusting to try to reduce all other psychic elements of an abnormal character into terms of our bestiality. Sex-obsession is even worse than sex-agnosticism in the spiritual life. You have one or the other when the rules of a sane asceticism are ignored. A little of that lore which the Catholic Church has inherited and cultivated, that codified spiritual experience of twenty centuries, would have saved these Revivals from many painful scandals. We may snub the devil and cut the world, but the flesh is always with us. 'But I chastise my body, and bring it into subjection; lest, perhaps, when I have preached to others, I myself should become a cast-away' (1 Cor. ix. 27).

JOHN HOWLEY.

[1] Eymieu, *Le gouvernement de soi-même: L'obsession et le scruple*; Perrin, 1913, p. 130.

DOCUMENTS

DECREE PRESCRIBING THE SUBJECT-MATTER OF EXAMINATIONS FOR DEGREES IN CANON LAW

(*October* 31, 1918)

S. CONGREGATIO DE SEMINARIIS ET DE STUDIORUM UNIVERSITATIBUS

DECRETUM

DE EXPERIMENTIS AD GRADUS IN IURE CANONICO ASSEQUENDOS

Legum canonicarum Codice promulgato, Sacra Congregatio de Seminariis et de Studiorum Universitatibus, litteris datis die VII augusti elapsi anni, viam et rationem praescripsit, quam in disciplina Iuris posthac Pontificia Athenaea sequerentur. Huic autem rationi, seu methodo, ut ipsa doctrinae pericula, quae fiunt ad gradus academicos assequendos, sint consentanea, eadem S. Congregatio experimentis in iure canonico moderandis has leges constituit.

I. Quoniam in praelectionibus Codex Iuris canonici est tamquam textus adhibendus, periculorum materia sint ipsi Codicis canones, vel omnes vel partim, pro diversitate gradus adipiscendi, remoto quolibet indice thesium, vel quae doctrinam exhibeant in ipsis canonibus contentam.

II. Candidati ad academicos gradus exegesim seu interpretationem exponant canonum, prout habentur in Codice, sive singillatim considerentur, sive coniuncte cum aliis.

III. Candidati non modo singulos canones interpretari et explicare, quantum gradus ratio exigit, probe noverint; sed etiam de uniuscuiusque instituti iuridici ortu, progressu et historia, doctrinae suae specimen dabunt.

Quas leges SSmus D. N. Benedictus PP. XV ratas habuit et confirmavit, atque in omnibus Athenaeis seu Universitatibus vel Facultatibus, quae e Codicis praescripto (can. 256, § 1) huic Sacrae Congregationi subsunt, servari iussit ab anno academico, qui propediem incipiet. Contrariis quibuslibet non obstantibus.

Datum Romae e Secretaria S. Congregationis de Seminariis et de Studiorum Universitatibus, die 31 octobris, anno 1918.

C. CARD. BISLETI, *Praefectus.*
✠ I. SINIBALDI, Ep. Tiberien., *Secretarius.*

L. ✠ S.

CERTAIN ITALIAN PUBLICATIONS ARE CONDEMNED AND PUT ON THE INDEX OF PROHIBITED BOOKS

(*December* 14, 1918)

SUPREMA SACRA CONGREGATIO S. OFFICII

DECRETUM

Feria IV, die 27 *novembris* 1918

In generali consessu Supremae huius Sacrae Congregationis Sancti Officii Emi ac Rmi Domini Cardinales in rebus fidei et morum Inquisitores Generales damnarunt ac proscripserunt et in Indicem librorum prohibitorum inserenda esse decreverunt opuscula :

1. Ernesto Bonaiuti, *La genesi della dottrina agostiniana intorno al peccato originale.* Roma, Tipografia del Senato di Giovanni Bardi, 1916.
2. Ernesto Bonaiuti, *Sant' Agostino.* A. F. Formiggini, Editore in Roma, 1917.

Et insequenti feria V, die 28 eiusdem mensis et anni, Sanctissimus Dominus Noster Benedictus divina Providentia Papa XV, in audientia R. P. D. Assessori Sancti Officii impertita, relatam sibi Emorum Patrum resolutionem approbavit, confirmavit ac publicari iussit.

Datum Romae in aedibus Sancti Officii, die 14 decembris 1918.

A. Castellano, *S. R. et U. I. Notarius.*

THE HOSTS OR PARTICLES INTENDED FOR THE HOLY SACRIFICE OF THE MASS SHOULD BE RECENTLY MADE AND AN ADVERSE PRACTICE IN CERTAIN DIOCESES IS CONDEMNED

(*December* 7, 1918)

SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM

SS. EUCHARISTIAE

Relatum est huic S. Congregationi de disciplina Sacramentorum in nonnullis Dioecesibus quosdam Vicarios Foraneos, aut Decanos, vel Parochos solere singulis duobus vel tribus mensibus hostias comparare easque distribuere in propriis et filialibus Ecclesiis pro Missae sacrificio peragendo ac pro fidelium eucharistica communione. Elapso hoc temporis spatio, nova fit acquisitio et distributio hostiarum, quae pariter duobus vel tribus mensibus sufficiant, ac ita deinceps. Et exquisitum est an probari possit huiusmodi praxis adhibendi, pro SSmo Eucharistiae sacramento, hostias a tribus vel duobus mensibus confectas.

Haec S. Congregatio, omnibus mature perpensis, proposito dubio respondit: *negative, et servetur praescriptum Ritualis Romani et Codicis Iuris Canonici.*

Rituale Romanum (tit. IV, cap. I, *De Sanctissimo Eucharistiae*

Sacramento) haec praecipit : 'Sanctissimae Eucharistiae particulas frequenter renovabit (parochus). Hostiae vero seu particulae consecrandae sint recentes; et ubi eas consecraverit, veteres primo distribuat vel sumat.'

In Codice Iuris Canonici haec statuuntur: Can. 815: 'panis (pro Missae sacrificio) debet esse mere triticeus et recenter confectus ita ut nullum sit periculum corruptionis. Vinum debet esse naturale de genimine vitis et non corruptum.' Can. 1272: 'Hostiae consecratae sive propter fidelium communionem, sive propter expositionem Sanctissimi Sacramenti et recentes sint et frequenter renoventur, veteribus rite consumptis ita ut nullum sit periculum corruptionis, sedulo servatis instructionibus quas Ordinarius loci hac de re dederit.'

Propter maximam autem quae debetur reverentiam erga SS. Eucharistiae Sacramentum mandat haec S. Congregatio ut in cunctis ecclesiasticis Dioecesium ephemeridibus datum responsum edatur, quo facilius omnibus patescat et ab iis, ad quos spectat, fideliter ac religiose servetur.

Datum ex aedibus S. Congregationis de disciplina Sacramentorum, die 7 decembris 1918.

PH. CARD. GIUSTINI, *Praefectus*.
✠A. CAPOTOSTI, Ep. Thermen., *Secretarius*.

L. ✠ S.

'THE PIOUS MISSIONARY UNION OF CLERICS' IS ENRICHED WITH SPIRITUAL FAVOURS

(*November* 18, 1918)

SACRA POENITENTIARIA APOSTOLICA

PIA UNIO CLERI PRO MISSIONIBUS, QUAE VULGO 'PIA UNIONE MISSIONARIA DEL CLERO' NUNCUPATUR, SPIRITUALIBUS FAVORIBUS AUGETUR.

Beatissime Pater,

Praeses generalis Piae Unionis Cleri pro Missionibus (vulgo *Pia Unione Missionaria del Clero*), a Sanctitate Vestra iam benigne approbatae, cuius finis est, iuxta vota eiusdem Sanctitatis Vestrae, efficere, ut in corde omnium sacerdotum illa exardescat, qua nemo prorsus carere deberet, sacri Apostolatus flamma; ad osculum s. Pedis provolutus, humiliter petit ut, ad facilius huiusmodi finem assequendum, dignetur Sanctitas Vestra sacerdotibus, in praedictam Piam Unionem cooptatis, sequentes spirituales favores concedere:

I. Indulgentiam plenariam, sub consuetis conditionibus lucrandam, in festis: (1) Epiphaniae, (2) SS. Apostolorum, (3) S. Michaelis Archangeli, (4) S. Francisci Xaverii, (5) semel in mense, die ad proprium cuiusque arbitrium eligenda, (6) in articulo mortis, servatis servandis.

II. Indulgentiam centum dierum pro quolibet pietatis opere in favorem Missionum expleto.

III. Facultatem, dummodo adscriptus ad sacramentales confessiones audiendas sit approbatus: (1) benedicendi, extra Urbem, unico crucis signo, coronas, rosaria, cruces, crucifixos, numismata et parvas statuas, cum applicatione indulgentiarum apostolicarum (de quibus in *Acta Apostolicae Sedis*, sub die 5 septembris 1914; (2) benedicendi, unico signo

crucis, coronas, iuxta typum Rosariorum B. M. V. confectas, cum applicatione indulgentiarum, quae a PP. Crucigeris nomen habent; (3) benedicendi ac imponendi, servatis ritibus ab Ecclesia praescriptis, scapularia Passionis D. N. I. C., Immaculatae Conceptionis B. M. V., SS. Trinitatis, B. M. V. Perdolentis, B. M. V. a Monte Carmelo, ab Apostolica Sede approbata, firmo onere legitimae inscriptionis pro tribus postremis; (4) benedicendi, unico signo crucis, crucifixos, cum applicatione indulgentiarum pii exercitii a Via Crucis nuncupati, in favorem fidelium, qui quominus sacras visitent 'Stationes,' legitime impediuntur; (5) benedicendi, unico signo crucis, crucifixos, iisdemque applicandi plenariam indulgentiam, in articulo mortis ab iis acquirendam, qui praescriptis expletis conditionibus illos osculati fuerint, aut saltem aliquo modo tetigerint.

IV. Indultum personale altaris privilegiati, quater in qualibet hebdomada, dummodo simile indultum pro alia die non obtinuerint.

Et Deus. . . .

Die 15 *novembris* 1918.

SSñus D. N. D. Benedictus, div. Prov. Pp. XV, in Audientia infrascripto Cardinali Poenitentiario Maiori impertita, benigne annuere dignatus est pro gratia in omnibus iuxta preces. Praesenti in perpetuum valituro, absque ulla Brevis apostolici expeditione. Contrariis quibuscumque non obstantibus.

O. CARD. GIORGI, *Poenit, Maior.*
F. BORGONGINI DUCA, *Secretarius.*

L. ✠ S.

A REPLY TO A PETITION OF CERTAIN RELIGIOUS RETURNING FROM MILITARY SERVICE

(*December* 23, 1918)

SACRA CONGREGATIO DE RELIGIOSIS

RESPONSIO CIRCA PETITIONEM QUORUMDAM RELIGIOSORUM E MILITIA REDEUNTIUM

SSño Dño Nostro Benedicto Papae XV humillimae porrectae sunt preces ut consulere dignaretur iis Religiosis, qui, bello perdurante, militiae nomen dare coacti, impares forte se sentiant ad regularem vitam instaurandam.

Porro Sanctitas Sua preces remisit ad H. S. Congregationem, ut, habito respectu ad peculiares horum Religiosorum circumstantias, paterna sollicitudine provideat in casibus particularibus. Hoc autem Eadem Sanctitas Sua publici iuris fieri voluit.

Datum ex Secretaria S. Congregationis de Religiosis, die 23 decembris 1918.

R. CARD. SCAPINELLI, *Praefectus.*
MAURUS M. SERAFINI, Ab. O.S.B., *Secretarius.*

L. ✠ S.

DECREE OF THE SACRED CONGREGATION OF THE COUNCIL ARRANGING FOR THE CELEBRATION OF A CUMULATION OF MANUAL MASSES

(*June* 16, 1918)

[This Decree was not published until December, 1918]

SACRA CONGREGATIO CONCILII

DIOECESIS *N.*

MISSARUM MANUALIUM

15 *iunii* 1918

Species facti.—Nonnulli parochi civitatis *N.*, datis supplicibus ad H. S. C. libellis, exponunt in suis ecclesiis complura colligi Missarum stipendia a fidelibus oblata, ad rationem 1,70-2 francorum seu libellarum, quum taxa dioecesana ibi vigens sit libellae unius cum dimidia (L. 1.50). Hactenus poterant reperiri sacerdotes qui Missas illas celebrarent, et inde provideri ne deficerent sacra in suis ecclesiis, ad quas magna semper multitudo fidelium concurrit. Nunc vero id fere impossibile evasit, quum singulis sacerdotibus diebus ferialibus dentur in ea civitate pro Missa lib. 2,50 et diebus festivis lib. 5 saltem; quamobrem magnus iam cumulus stipendiorum Missarum non celebratarum in manibus Oratorum excrevit. Deficientibus hinc aliis reditibus legatorum aut capellaniarum quibus stipendi defectus fortasse compensari posset, urgente inde necessitate ne Missae, statis horis, populo ecclesiam celebranti deficiant, postulant Oratores facultatem, qua ex cumulatis stipendiis atque ex colligendis in posterum, possint, capellaniae creari, ita ut quivis capellanus accipiat pro Missis 5-7 libellas diebus festis, 2,50–3 ceteris diebus.

Adnuit quidem precibus, de expositorum veritate testatus Ordinarius, ea tamen lege ut reducendi facultas offerentibus nota fiat per publicum monitum in sacristiae tabella ponendum, et singulis annis ratio reddatur Curiae de Missis collectis et celebratis, a cumulatione autem excipiantur Missae quarum prompta celebratio ob specialem causam aut pro re gravi petitur.

Animadversiones.—Quoad petitionem hisce supplicibus libellis contentam, primo loco habenda prae oculis est specialis quaedam difficultas, quam praesefert cumulatio Missarum *manualium* a diversis fidelibus oblatarum, earumque reductionem ad pauciorem numerum, prae cumulatione ac reductione Missarum *fundatorum* aut piorum legatorum. Nam Missae fundatae et pia legata pro plurimarum Missarum celebratione continent obligationem ad *unam* determinatam intentionem pro qua fundator aut testator voluit Missas celebrari: reductio igitur solum fit in *numero* Missarum, nec idcirco gravem praesefert difficultatem, cum Ecclesia numerum reducendo suppleat in reliquis ex spirituali thesauro cuius est dispensatrix; atque ita ex minori Missarum numero detrimentum non capiat *finis* ob quem Missae fundatae vel relictae sunt. E contrario, quum res est de Missis manualibus, singillatim collectis, cumulatio et consequens reductio in eam impingit gravissimam difficultatem, quod singulae Missae oblatae sint *in finem distinctum*, expresse

intentum et determinatum ab oblatore, qui in offerendo stipendio, intendit contractum quemdam inire, vi cuius Missa sit applicanda pro sola intentione designata, non cumulatim cum aliis intentionibus. At vero, si cumulantur stipendia manualia singillatim collecta et deinde reducuntur ad minorem numerum, nulla Missa determinate offertur pro intentione postulata, sed omnes, ad pauciorem quantitatem reductae, cumulatim pro omnibus intentionibus offeruntur. Igitur videtur inito cum oblatore contractui minime satisfieri : adeo ut facile praesumi debeat, si ipsi dixisset quis ita satisfactum iri oneri imposito, vix non abstinuisset oblator a dando stipendio, quaesiturus potius alium sacerdotem qui pro particulari necessitate et intentione vellet celebrare.

Haec quidem non evincunt defectum potestatis in Romano Pontifice ad cumulanda et reducenda etiam stipendia manualium Missarum singullatim collecta, quum infinitus sit thesaurus Ecclesiae ei concreditus, ad quascumque necessitates supplendas idoneus : sed utique ostendunt longe graviorem causam requiri in Missarum manualium quam in legatarum aut fundatarum reductione. Haec autem gravior causa in casu adesse non videtur, quoties finis seu utilitas ab Oratoribus intenta alia via et ratione obtineri possit.

Et revera causa allegata non est propria ac particularis ecclesiarum Oratorum, sed communis omnium ecclesiarum dioecesis, immo complurium dioecesium : quod nempe sacerdotes nunc facilius stipendia constituta dioecesana taxa potiora inveniant, ac propterea nolint sese obligare ad celebrandas Missas statis loco et hora pro inferiore stipendio. Igitur, loco accedendi singularibus petitionibus, opportunius videtur generale remedium quaerere, quod ceterum in promptu est : immutatio videlicet taxae dioecesanae, cuius actualis constitutio in L. 1,50 solummodo, parochis vetat ne ab oblatoribus maius stipendium exigatur (cfr. can. 831, § 1), eiusque elevatio ad eam, quae, teste Ordinario, in dioecesi iam est usualis, in L. 2,50. Qua in re, animadvertere iuvat, licet verum omnino sit, non necessarium esse ut eleemosyna pro Missa oblata tanta sit, quanta ad integram sustentationem sacerdotis, ea die qua celebrat, requiritur, quia, ut optime animadvertit Benedictus XIV ex Suarez, 'actio sacrificandi non requirit integrum diem nec maiorem eius partem, ideoque non est cur sacerdos propter hoc solum ministerium integre alatur ab eo, pro quo sacrificium offert' (*De synodo dioecesana*, lib. V, cap. 8 ; cfr. *Quaest. canon.* 506) ; attamen non minus verum est, stipendium sacerdoti celebranti vere dari ob partialem sustentationem ipsi procurandam, huncque esse titulum, propter quem ex mente Ecclesiae recipi atque adeo exigi stipendium possit. Inde autem efficitur, stipendium debere esse proportionatum illi partiali sustentationi, pro qua datur, ita ut sufficiens sit pro illa comparanda ; ideoque in illius taxatione habendam esse rationem circumstantiarum loci et temporis, et signanter caritatis vel vilitatis annonae, uti, plurimis allegatis, prosequitur Pasqualig. *De sacrif. N. Legis* quaest. 925. Et consequenter ubi victualia pluris veneunt, requiritur maius stipendium, et ubi minoris veneunt, sufficit minus stipendium : ex quo criterio resolutionem dedit haec S. Congregatio in una *Nullius Lerinae* 7 dec. 1675.

Iamvero communis est sententia Doctorum, quantitatem eleemosynae et iustam eius taxam desumendam esse, *vel* a communi consuetudine quae vigeat in dioecesi, *vel* a lege synodali, aut a decreto episcopi. Quam communem sententiam saepius firmarunt huius Sacrae Congregationis decisiones, v. gr. in causa *Aprutina*, 15 nov. 1698, ac in praesentiarum legis firmitate donavit Codex I. C. canone 831. Quum igitur hinc taxatio exsistat in dioecesi *N.* facta per statutum synodale in quantitate libellarum 1,50 pro diebus feriatus; inde vero taxa usualis seu consuetudine inducta, iam sit ab ipsa difformis, et attingat saltem libellas 2,50 pro missis diebus feriatis et libellas 5 pro missis diebus dominicis et festis celebrandis, idque effectum sit, testante Episcopo, urgente iam habituali et ordinaria annonae caritate, dicenda est *de facto* taxae synodali substituta alia ex consuetudine seu usu, et quidem rationabili: itaque non restat nisi quod substitutio fiat quoque *de iure*.

Et id quidem necessarium est omnino et sufficiens ad removendum inconveniens quod praesentibus petitionibus causam dedit. Quamdiu enim decreto Episcopi non definiatur illam taxam usualem esse in dioecesi tenendam, non facile poterunt induci fideles ut in postulanda celebratione Missae *usualem* stipendii taxam solvant, et ex adverso *exactio* stipendii supra taxam sacerdoti non est permissa, licet non prohibeatur uberiorem eleemosynam *a sponte dantibus* accipere. At si per decretum episcopale mutaretur taxa atque elevaretur ad eadem quae de facto est usualis, sacerdotes tuto possent stipendium ita taxatum *exigere*; quo facilius adducerentur fideles, ac paulatim assuescerent, in postulandis Missis, maius seu congruum stipendium offerre, praesertim si decretum Episcopale publice in sacristia cuiusque ecclesiae proponeretur.

Nec si taxa synodalis in synodo fuit approbata, idcirco caret Episcopus potestate illam per novum decretum immutandi. Nam decreta synodi dioecesanae sunt mutabilia, sicut ceterae leges; et cum illa decreta suas vires et efficaciam unice mutuentur ab auctoritate et iurisdictione Episcopi, quae eadem prorsus est sive in synodo sive extra synodum exerceatur (Benedictus XIV, *De Syn. dioec.*, lib. XIII, cap. 5), poterit itaque Episcopus per suum decretum constituere novam taxam, revocata antiqua; et sicut decreta synodi promulgantur audito consilio Capituli Cathedralis, ita ad hoc decretum episcopale promulgandum consultum esset prius Capitulum audire, quamvis id de rigore iuris no requiratur.

RESOLUTIO.—Propositis itaque cum supradictis animadversionibus Oratorum precibus in plenariis comitiis diei 15 iunii 1918 in Palatio Apostolico Vaticano habitis, Emi Patres rescribendum super his censuerunt:

Non expedire et ad mentem. Mens es *ut Ordinarius N. studeat elevare taxam synodalem, et quoad Missas non celebratas vel cumulatas, nisi agatur de Missis oblatis ob urgentem causam, provideat ad tramitem can.* 841 Cod. Iur. Can.

Facta subinde relatione de praemissis SSmo Dño Nostro Benedicto Div. Prov. Pp. XV in audientia infrascripto Secretario concessa die 16 eiusdem mensis et anni, Sanctitas Sua resolutionem Emorum Patrum approbare et confirmare dignata est.

I. MORI, *Secretarius.*

REVIEWS AND NOTES

Apologetics and Catholic Doctrine: A Two Years' Course of Religious Instruction for Schools and Colleges. By the Rev. M. Sheehan, D.D., St. Patrick's College, Maynooth. Part I: Apologetics. M. H. Gill & Son, Ltd., 50 Upper O'Connell Street, Dublin. 1918. Pp. iv. and 141. Price 1*s*. 6*d*. net.

The transition from Christmas holidays to the full swing of the second academic term is not one over which students or professors, in Maynooth or elsewhere, are likely to feel unduly enthusiastic. Chiaroscuro may be dear to the artist, but in actual life it means often too much of a contrast for comfort. And if anyone had told me a few weeks ago that, in this of all years, a book on 'Apologetics' would smooth the passage, I could only have thought him, at best, a harmless simpleton or an out-worn humorist. The very title suggests work of the usual theological type; and, of all the possible introductions to work, work itself is the last that a reasonable being would think of suggesting.

But, strange to say, and for once in a century, the harmless simpleton would have been correct. I had heard that Dr. Sheehan had published a book, and was mildly anxious to know what it was about. Chance threw a copy in my way. More out of curiosity, I admit, than for any higher reason, I opened it, and found (p. 9) a finely worded exposition of the latest contribution of Science to the proofs of God's existence—the argument from 'the dissipation of energy,' that I had heard for the first time after a four years' course of Dogmatic Theology. In a little treatise of 141 pages, prepared for schools and colleges, this surprised me. Turning back a few pages, I found the argument from design illustrated by the famous König-Réaumur problem, that baffled the mathematician but was solved correctly by the bees in the light of the instinct that God had given them. Then I became really interested; looked up the table of contents; selected the chapter headed 'Jesus Christ, True God,' and found, in its opening pages, a sketch of 'the human character of Christ' that no similar work I ever read had attempted in anything but the barest outlines. By this time, I may say, the Christmas holidays were forgotten. I took the eleven chapters in order—on the 'existence of God,' the various proofs, and a treatment of Atheism in its several forms: on the 'human soul,' its spirituality, freedom and immortality: on 'natural religion': on the 'signs of revelation,' embracing the main objections against miracles: on the 'historical value of the Gospels,' including a refutation of Strauss, Harnack, and the Tübingen school: on the fact that 'Jesus Christ claimed to be God'; on 'Jesus Christ, True God,' giving, in addition to

the section already referred to, the other proofs of Christ's divinity: on the foundation of the Church by Christ: on the 'characteristics of the Church' so established: on the 'identification of the Church of Christ'—a splendid chapter, containing an account of the Protestant, Greek, and non-Christian religions, that will be looked for in vain in many a tome of a thousand pages, and a vindication of the claims of the Catholic Church to which leading Protestants of the last century are made to contribute their quota: finally, on 'the government of the Church of Christ,' stating in measured language the case for the Primacy and Infallibility of the Pope, and defending both dogmas against all attacks, ancient and modern. As an appendix to the book I found the monologue of Napoleon, as expressed in the words of Newman. It is one of the finest passages ever penned. Added to most books, it would only bring out their defects by comparison. In Dr. Sheehan's, I can say with truth, it is just the conclusion that we should have expected. When we have read the eleven chapters, we are just in the frame of mind to appreciate the words of Newman, and to accept the striking antithesis without a shadow of doubt or reservation.

We have had books like Dr. Sheehan's already. The Superiors of secondary schools know them well. They admire them, too; and so do I. But I must say they seemed to me, in the main, to suffer from three defects: 1°, they aimed at comprising *all* the minutiae of scholastic divinity, and discouraged the student with their endless details; 2°, they weakened our position by admitting the questionable statements of over-zealous enthusiasts; 3°, they were, if I am pardoned the expression, too objective and disconnected: the touch of personal sincerity and enthusiasm was wanting; and there was no principle that could combine in a unified whole the myriad of separate statements. Dr. Sheehan has, in my humble opinion, avoided all three defects. He shows a fine contempt for details that have little effect on the main issue, even when those details have the sanction of an honoured tradition: I might cite, for instance, his silence on the puerile objections to the divinity of Christ drawn from the Gospel (St. John's) that is, by universal consent, *the* Gospel of the divinity. He commits neither himself nor his Church to positions that an honest man would feel qualms in defending: I may instance his treatment of the Galileo case—one of the best things in his book (pp. 128-130)—and his refusal to deal with the Spanish Inquisition (p. 134) on the ground that it was merely an abnormal development of a local, and secular, tyranny. And, running through all his book, unifying the chaotic facts and grouping them all around the central motive, there is the great principle, not so much expressed as suggested, of a personal friendship with the human Christ, and of a loving pride in the Church that, persecuted and defamed, is still the 'mother of all blessings,' the only institution that has stood the shock of centuries and will live on, unscathed and spotless, until 'the last syllable of recorded time.' Once that principle is grasped, as it will be wherever Dr. Sheehan's book is taught sympathetically, the rest may be viewed with confidence. The growing man may discover defects in the Church's representatives or

in their practical policy, as he will even in the face of the mother that bore him. But these defects will take their stand in their proper perspective. And, whatever trials or temptations come, the fall will be only temporary: the call of Christ and of His Church will triumph in the end.

The book—of which the second volume will appear in due course—is intended for schools and colleges. I see no reason why its use should be so restricted. Even priests, who have studied a scientific course of Theology, will find it an inspiration. And, in every parish in Ireland, there are men and women (especially those who have read—or heard of—the publications of the Rationalist Press) who would welcome this little book as a veritable God-send. When they read it—and I hope priests will give them the opportunity—they will be able to meet, on fairly equal terms, the genuine exponents of science, and, *a fortiori*, the million camp-followers who glibly repeat, in the name of 'science,' the very statements that science repudiates.

On the style of the little volume I need say little. Past students of Dr. Sheehan will recall the delicate touch, the artistic reserve, the mastery of tone and diction that marked his contributions—all too few—to the records of our literary societies. They will find them all in his latest work. Among the general public, no one will question his classical qualifications: Irish-Irelanders recognize him as an expert writer in the Irish language; this work, to complete the cycle, proves him a master of purest Anglo-Saxon. That is a record to be proud of. And, if I am allowed to pass from 'form' to 'matter,' I may recall the trite statement that, whatever a priest's work may be, there are always the great claims of 'nationality' and 'religion.' Dr. Sheehan has answered the first already in Irish publications that are part of the national heritage: he answers the second now in a little book that will, I feel convinced, be remembered when the ponderous tomes of more ambitious authors are dead and doomed and forgotten.

Some of my encomiums on Dr. Sheehan's book may appear extravagant. I can only give my assurance that they are fully deserved: if anyone doubts, let him get the volume and judge for himself. I read it, as I stated, at a time when works of the kind could make little, or no, appeal: still it produced an impression that, in all sincerity I say it, I can never forget. It gives all the facts recorded in more lengthy volumes; its style leaves them so far behind that comparisons may be neglected; and its price is so small that almost anyone may have it.

Unless I am surprised, it will be adopted in practically all the Catholic secondary schools of Ireland—and of every English-speaking nation that hears of it. And, unless I am still more surprised, its adoption will lead to results of which every Irishman and Catholic will be delighted to hear. Two small works recently have pleased me beyond measure. With one (on Moral Theology and Canon Law) I hope to deal in the next issue of the I. E. RECORD. The other is Dr. Sheehan's.

M. J. O'D.

THE WORLD PROBLEM: CAPITAL, LABOR, AND THE CHURCH. By Rev. Joseph Husslein, S.J. New York: Kenedy.

THE object of this book is to bring home to the everyday reader the social message of the Catholic Church to all mankind. She alone succeeded in solving the greatest of social problems in the past, and her lessons are of equal importance in the present time. Naturally a discussion of Socialism bulks largely in the work. As a popular statement of the Church's attitude towards Socialists the following is well worth quoting: 'The attitude of the Church towards Socialists themselves, at least those who have been misled to follow its will-o'-the-wisp, is one of sorrow and not of anger. The situation was analysed with admirable skill in the Pastoral Address of the Archbishops and Bishops of Ireland, assembled in special meeting at Maynooth, February 11, 1914, when they thus explained the motives that too often led men into a mistaken acceptance of Socialism: "The desire of ownership which, within due bounds, is natural and legitimate in man and may be highly commendable, springs from the laudable purpose of providing a stable way for himself and those depending upon him. The real explanation why multitudes of men, otherwise as good as their neighbours, have swelled the ranks of Socialism seems to be, not that they hated private property on principle, but that by nature and in fact they loved to have it, and saw no avenue leading to participation in it except the fantastic way that opens on the dismal swamp where there is to be State ownership of the instruments of production and distribution, and State intrusion everywhere. It is, indeed, the duty of the State to see that the natural resources are turned to good account for the support and welfare of all the people; and, consequently, the State or municipality should acquire, always for compensation, those agencies of production, and those agencies only, in which the public interest demands that public property rather than private ownership should exist." Here, then, is the Catholic point of view both of Socialism and of that State ownership of which we shall have more to say in future chapters. Voluntary Communism of any kind, which does not wish to impose its methods upon others, is quite another matter.'

Father Husslein contrasts the solution of economic and social problems in pre-Reformation days, based as it was on the religious sense of justice and equity, with modern solutions. He has neglected no salient aspect of his subject. He deals with rationalistic capitalism, the ethics of just prices, morality of monopolistic prices, the problem of the middleman, the State and Labour, the State and Wages, duties of Labour and Capital, Strikes and Trade Agreements, the sympathetic strike, the problem of unemployment, the great farm problem, social legislation, domestic control of industries, co-operation, the woman-worker, and Christian democracy. All these subjects are treated clearly and in the light of Catholic principles. In the chapter on Social Legislation there is one remark which we should like to quote as bearing on a state of things arising in our own social system. 'From the lack of a living wage,' says Father Husslein, 'follows in the next place the need of State support

for social insurance of every kind. Thus the workingman becomes a ward of the State, though his contributions of honest labour to the social welfare entitle him to an honourable independence. Obligatory social insurance will, indeed, remain a wise provision under any system of social laws, but with a living wage the labourer will be able to pay in full his own rate, thus preserving his self-respect and not transferring to the State the expenses saved to the employer.' Wise words—for the weakening of individual effort and responsibility, through State interference, is a danger only too threatening.

M.

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ETERNAL PUNISHMENT

BY THE BISHOP OF SEBASTOPOLIS

OF all the doctrines taught by the Church there is not one that is so terrible in itself, or that so scares and harrows up the soul, as the doctrine of eternal punishment. It so terrorizes the sinner, that he scarcely dares to allow his mind to dwell upon it. In fact, there is a strong disposition, outside the Church, to dismiss it altogether as a relic of a barbarous and bygone age, when designing priests sought to influence their superstitious subjects by the wildest appeals to an already overwrought imagination. In these days unbelievers are already showing an indignant impatience of the doctrine, and a vast number have absolutely ceased to believe in it.

It is almost universally felt [says Rev. R. Campbell, a Protestant minister] that belief in hell and belief in divine love are not mutually compatible, especially if hell be unending. Even divine justice is difficult to understand in such a connection ; for the worst sin that could be sinned hardly seems to deserve on human analogies an eternity of punishment.

And again :

Most people feel, and very naturally, that if God visits wrong-doing with pain, His object must be the good of the transgressor, and not the vindication of His own dignity, or the maintenance of His own security. A God who merely tortures the damned, without hope of remission, cannot, it is urged, or rather assumed, be benevolent in any intelligible sense.[1]

W. H. Greg expresses himself in similar terms. He says :—

The common feelings of humanity and the common sentiments of justice which lie deep at the heart of our nature, have, in this instance, proved too strong for the reiterated assertions of an eternity of punishment, and have steadily refused to accept so terrible a tenet. . . . No subtlety of logic, no weight of authority, will induce rightly constituted minds, which allow themselves to reason at all, to admit that the sins or failings of Time can merit the retribution of Eternity—that finite natures can, by any guilt of which they are capable, draw upon themselves torments infinite, either in essence or duration. Divines tell us that no

[1] See *Pearson's Magazine*, for June, 1916.

virtue on the part of frail and feeble creatures like ourselves can merit an eternal Heaven—and we all accept the saying—but when they demand our assent to the opposite and contradictory assertion, that the shortcomings and backslidings of the same creatures can and do merit an everlasting Hell, we are revolted by the inconsistency, and shrink back from the corollary involved in the latter proposition.[1]

High authorities, even among Anglicans, are beginning to proclaim the doctrine to be as unscriptural as it is revolting.[2] Such are fair specimens of the average non-Catholic opinions, held at the present day. We meet similar views in the poets, both grave and gay. Take the following lines, for instance, from Tennyson :—

> Hell ? If the souls of men were immortal,
> As men have been told,
> The lecher would cleave to his lusts, and
> The miser would yearn for his gold,
> And so there were hell for ever. But were
> There a God, as you say,
> *His Love would have power over hell, till*
> *It utterly vanish'd away.*

Or, read the following effusion from a lesser songster :—

> The elderly gentlewoman died,
> And for her sins, which were numerous
> And heinous
> (Oh, yes, they were !)
> Went plunk to Hell,
> And on the third day
> The devil eyed her and said,
> You don't look a bit upset.
> Well, no Sir, replied the old dear.
> To tell you the honest truth,
> I'm very comfortable !
> I was just saying to Joan
> We ought to be very thankful—
> The place seems so full
> Of people of one's own class.

This almost sounds as if it might be a quotation from Dr. Mivart's 'Happiness in Hell.'[3] But to continue. The doctrine of eternal punishment is such a deterrent and has saved such countless millions from falling into sin, and perhaps a still larger number from remaining in their sins, that it is not to be wondered at that the devil should exert every effort to eradicate this dogma from men's

[1] W. R. Greg's *Enigmas of Life*, p. 255.
[2] See, e.g., a paper by 'Anglicanus,' in the *Contemporary Review* for May, 1872, and F. W. Farrar's 'Eternal Hope,' etc.
[3] See *Nineteenth Century*, for December, 1892, February, 1893, March, 1893.

minds. At the same time, his votaries are but too ready to second his efforts, and to welcome any argument, however unsound, that would remove such an obstacle to self-indulgence. Indeed, they feel that it is the one appalling truth which they must get rid of, at any cost. It offends their pride; it humbles their self-love; it hinders their enjoyment; it interferes with their liberty; it hampers and checks and harasses them at every turn. With the dreadful spectre of hell before them, they feel quite unable to give full rein to their passions and vicious appetites. Hence they seek to throw doubt upon it, and try and persuade themselves that God is too good and too merciful to condemn anyone to unending torments.

So far we have spoken of those outside the Catholic Church. But even within the Church there seems to be a strong tendency, not, of course, to deny the doctrine, which would be heresy, but to soften it and to pare it down, so that it may become more acceptable to the average man. If we compare the presentation of this dogma now, by certain learned and zealous teachers, with the pictures drawn of it by saints and sages, in the past, we shall hardly realize that they are all speaking of one and the same thing. In former days, when men were less refined, and when tortures of every kind were applied to breakers of the law of the land, the penalties of the damned were brought much more frequently before men's minds than in these days.

> All during the twelfth and following centuries, the agonies of hell seemed to be the central fact of religion, and the perpetual subject of the thoughts of men. The whole intellect of Europe was employed in illustrating them. All literature, all painting, all eloquence was concentrated upon the same dreadful theme. By the pen of Dante and by the pencil of Orgagna, by the pictures that crowded every church, and the sermons that rang from every pulpit, the maddening terror was sustained. The saint was often permitted in visions to behold the agonies of the lost, and to recount the spectacle he had witnessed. He loved to tell how, by the lurid glare of the eternal flames, he had seen millions writhing in every form of ghastly suffering, their eyeballs rolling with unspeakable anguish, their limbs gashed and mutilated and quivering with pain, tortured by pangs that seemed ever keener by the recurrence, and seeking in vain for mercy to an unpitying heaven. Hideous beings of dreadful aspect and of fantastic forms hovered around, mocking them amidst their torments, casting them into boiling cauldrons of boiling brimstone, or inventing new tortures more subtle and more refined. There was no respite, no alleviation, no hope.[1]

And so forth.

[1] Lecky's *Rationalism in Europe*, vol. i. p. 317.

There is less disposition now, to harrow the feelings and to curdle the blood of sinners, by detailed accounts of the bottomless pit. Perhaps the last to indulge in any excessive degree in this questionable method was the Rev. Father Furniss, C.SS.R. His little volume, entitled *A Sight of Hell,* which contains some of the crudest and most fanciful descriptions of the infernal regions, makes painful reading, and we very much doubt if it is not calculated to do more harm than good. In fact, as we turn over his awful descriptions and imaginary scenes, we are left wondering how he was ever able to secure the *permissu superiorum* which stands at the beginning of the volume. Here is a picture of a boiling boy :—

> Listen; there is a sound just like that of a kettle boiling. Is it really a kettle which is boiling ? No. Then what is it? Hear what it is. The blood is boiling in the scalded veins of that naughty boy. The brain is boiling and bubbling in his head. The marrow is boiling in his bones.

One more specimen will suffice. Let us take that of *The small child in the red hot oven* :—

> Hear how it screams to get out ! See how it turns and twists itself about in the fire ! It beats its head against the roof of the oven. It stamps its little feet on the floor of the oven. You can see on the face of this little child what you see on the faces of all in hell—despair, desperate and horrible.

With such treatises before him, we can well understand Mr. Greg, or indeed any other writer, drawing the erroneous conclusion, that: 'The torments assigned by ordinary Christianity to the future life are peculiarly and exclusively those appropriate to this. They are all bodily ; they are all corporeal ; yet we are told that our coming existence is a spiritual one.' [1]

Though the fashion now seems to be passing away, there is no doubt but that even the greatest saints and the most celebrated Doctors of the Church were accustomed to draw pictures of the infernal regions and even of Purgatory, which would make one's blood run cold, and fill one with speechless horror and consternation. They multiplied the agonies, they piled one terror upon another, they depicted every circumstance that could aggravate and intensify the eternal castigation, and seemed to exhaust human language, in their attempts to set before the trembling sinner the appalling fate that awaited him, unless he made his peace with his Almighty Judge.

[1] W. R. Greg, p. 252.

We might fill the whole of this magazine with specimens, but the following will serve our purpose.

Damnatus in suis sensibus et membris patietur dolores et poenas omnes possibiles, quarum capax est, et quidem junctim; non solum unam vel alteram; neque praecise eas, quarum notitiam noster intellectus habet; sed omnes omnino actu possibiles, ac a nobis excogitandos dolores; et quidem junctim simul ac collectim. 'Omnis dolor irruet super eum' (Job xx. 22).

Et quidem patietur in gradu intensissimo, finito tamen ac peccatis congruente.

Auctore St. Thoma minimus doloris stygii gradus major est omnibus martyrum tormentis morborum cruciatibus, latronum suppliciis simul et collectim sumptis. 'Idque continuo, sine ulla unquam intercapedine aut intervallo, sine ullo unquam lenimine aut solatio; sed semper, continuo, indesinenter, sine ullius miseratione aut socio levamine.'—(Bellecio, S.J., p. 120.)

Singulae istae sensuum afflictiones per se et seorsim consideratae tantae erunt, ut quaelibet satis sit ad hominem mox interimendum, si mori possit. Sicut enim sancti in caelo tantas habebunt oblectationes in singulis sensibus, quantas nemo in hac vita percipere potest etiamsi omnia mundi oblectamenta illi suppeterent; ita iniqui tantas in singulis sensibus patientur afflictiones, quantos nemo in hac vita sustinere potest. —(Leo Lessius, S.J., *De Perfectionibus Divinis*, p. 512.)

Who [asks Archbishop Kirby] can comprehend the greatness of the torments which await the sensual in this tremendous fire, which is directed and managed by the hand of God Himself in order to avenge the outrages He received from them? If His sole will be so powerful—*voluntati ejus quis resistit?* If His simple touch can set whole mountains on fire—*tangit montes et fumigant*—O! who shall withstand Him, when He shall have 'drawn this sword of fire out of its sheath,' to smite therewith His enemies without mercy! And the dreadful flame, obedient to the will of its Maker, executes its tremendous commission with the most awful fidelity. For the creature, serving Thee, the Creator, is made fierce against the unjust for their punishment—*Creatura enim tibi factori deserviens exardescit in torm ntum adversus injustos.* Nor will the terrible flames blindly or indiscriminately assail all the damned in the same manner. No; but, by a well-directed discerning and almost rational instinct, they will assail, envelop, and torment each with more or less fury, according to his greater or less guilt. And in each individual it will torment with greater vehemence the faculties and senses, which were more abused to the purposes of sin.—(Most Rev. Dr. Kirby, Archbishop of Ephesus, *Medit.*, p. 84.)[1]

Compared with this dreadful fire [says St. Augustine],

[1] The above suggests the still more terrible picture drawn by the well-known Spanish Dominican. 'Los ojos deshonestos y carnales serán atormentados con la visión horrible de los demonios, los oídos con la confusión de las voces y gemidos que allí sonarán, las narices con el hedor intolerable de aquel sucio lugar, el gusto con rabiosísima hambre y sed, el tacto y todos los miembros del cuerpo con frío y fuego incomportable. La imaginación padecerá con la aprensión de los dolores presentes, la memoria con la recordación de los placeres pasados, el entendimiento con la consideración de los bienes perdidos y de los males advenideros.'—P. Luis de Granada, O.P., p. 34.

the most grievous torments of this life are not only trifling, but absolutely nothing at all—'non tantum parva sed nulla sunt.' [1]

Even as regards Purgatory, the pictures drawn are unspeakably terrible, e.g. :—

> Ita plane quamvis salvi per ignem, gravior tamen erit ille ignis quam quidquid potest homo pati in hac vita.—(St. Augustin. in Ps. xxxvii.)
>
> St. Thomas, in Sup., q. 72 : 'Respondeo dicendum quod in purgatorio erit duplex poena ; una damni, in quantum scilicet retardantur a divina visione ; alia sensus, secundum quod ab igne corporali puniuntur ; et quantum ad utrumque poena *purgatorii minima excedit maximam poenam hujus vitae.*
>
> Cogita [says P. A. Petit, S.J.] omnia hujus vitae tormenta, omnes corporis afflictiones et cruciatus nullo modo cum iis doloribus, quibus ibi vel uno die animae conficiuntur, in comparationem venire posse. . . . Cogita longe mitiorem doloris sensum fore ejus, qui aliquot annorum lustris igne hoc nostro vivus ureretur, quam qui unico tantum die purgatorii cruciatus sustineret.—(Page 71-2.)

Some modern writers seem to attach but very little importance to such authorities, and calmly dismiss their carefully weighed and solemn words as undeserving of any attention or consideration. Thus, Father Bede Jarrett, O.P., declares that 'All these accounts, whether by canonized writers or not, COUNT FOR NOTHING, since they know no more of that after life than we ; they know only as we do, that the real punishment of it is the loss of God.' [2]

Is not this judgment somewhat too sweeping ? The saints do not, of course, speak with the authority of the Church. They are not infallible ; and we are under no obligation to accept all they say as though it were Gospel truth. But, when the good Father says that, when dealing with this subject, the deliberate assertions of even canonized saints count for nothing, we feel that he says too much. Not only were many of these saints men of profound learning, but what is still more to the point, they were so closely related to God, and intimately united with Him, that they possessed a far higher degree of spiritual insight than ordinary men. Their minds were constantly occupied with the things of God, and the Holy Spirit, who dwelt within them, flooded their intellects with a knowledge, often withheld from the great and the learned. 'Thou hast hid these things from the wise and prudent, and hast revealed them to little ones' (Matt. xi. 25). We read that the learned Cardinal de Lugo had such respect for and

[1] Serm. 109, de Temp.

[2] *Meditations for Lay-folk,* p. 74.

such confidence in the knowledge that comes from a close union with God, that sometimes, in his subtle perplexities, he would go and consult the boyish novice, John Berchmans (whose sanctity was already beginning to be recognized), 'being persuaded that God might reveal to the prayers of the novice the knowledge withheld from his own comprehensive intellect.' Did not St. Thomas himself confess that he learnt more through prayer, at the foot of the crucifix, than he ever acquired by any purely natural means? Are we, then, to attach *no weight whatsoever* to the affirmations and the teaching of the greatest favourites of heaven? Are we to say with Father Bede Jarrett, that all the accounts of the suffering of the damned, given by even canonized saints, 'COUNT FOR NOTHING'? On that point we must decline to follow the learned Dominican. We are of opinion that the carefully weighed words of such glorious saints and such intimate friends of God, do count at least for SOMETHING.

Some persons would like to think that the fire of hell is, after all, but a metaphorical fire. They find a difficulty in believing that a material fire can afflict a spirit, so would persuade us that the word is used figuratively. But such an interpretation is quite inadmissible. Our Lord, in the day of judgment will say to the wicked: 'Depart from Me, into everlasting *fire*,' etc. (Matt. xxv. 41). Now, a judge does not indulge in metaphors, when he is sentencing a criminal. That is no time for figures of speech. It is a time for clear, simple, and unmistakable utterance. Besides, there is surely no greater difficulty in believing that material fire can act on a spiritual substance, in the case under consideration, than there is in believing that a material substance, like the human body, can act on a spiritual substance, like the soul. Yet, though no philosopher can explain HOW it comes about, yet they are all forced to admit, that the body does, in very truth, affect the soul, and that the soul also affects the body. We cannot understand this, but we admit it as a fact. What difficulty can there be on the part of Him, who created both spirit and fire, to put one in relation to the other, just as He has united such opposites as body and soul, in forming a human being?

In any case, no one can call it in question, without incurring the theological note of 'rashness.' Though it is not absolutely a defined doctrine, yet it is theologically

certain. On this point, we cannot do better than quote the very forcible words of the learned Cardinal Bellarmine, supported by St. Gregory and St. Augustine :—

> De supplicio ignis nulla dubitatio esse potest. Neque vero existimandum est, ignem gehennae esse ignem metaphoricum, aut spiritualem, qui praeparatus est diabolo et angelis ejus, ut legimus apud Matthaeum. Nam S. Gregorius, disertis verbis affirmat ignem illum esse corporalem, et corpora cum spiritibus crematurum, atque cum omnis schola Theologorum sequitur. Quemadmodum autem possint ab igne corporali spiritus cruciari, longam disputationem requirit. S. Augustinus UNO VERBO REM TOTAM ABSOLVIT, cum scribit, id fieri miris, sed veris modis. Quod idem responderi potest, si quis petat, unde suppeditantur fomenta igni perpetuo, et quomodo corpora reproborum semper urantur, et aeterno tempore non consumantur ita enim omnia fieri miris sed veris modis Ecclesia Catholica credit, et secura credit, quia qui facit, omnipotens est, et qui id revelavit, infinita sapientia, et prima veritas est.[1]

The main difficulty that the doctrine of hell presents arises from its endless duration. To our finite minds and limited knowledge, and time-tied experience, it seems wholly impossible that any act, on the part of a weak, ignorant, and impulsive creature, such as man is, can ever really merit so atrocious and so agonizing an eternity. Since, however, the infallible authority of the Church asserts the doctrine, and in the clearest and most emphatic manner, we Catholics, of course, accept it whole-heartedly and without reserve, just as we accept the doctrine of the Blessed Trinity, or any other mystery beyond our comprehension.

The difficulties of the position would be much relieved probably, if we could form a more accurate notion of eternity than we now possess. The whole condition of our being undergoes such a radical change, in passing out of Time into Eternity, that what seems quite feasible, and even right and proper, on this side the grave, may easily prove, on acquaintance, to be utterly meaningless and absolutely impossible, on the other.

A piece of soft clay, before it is placed in the heated oven, may be formed and fashioned, and modelled and remodelled and changed a thousand times, without difficulty; but once it has been exposed to the fierce heat of the furnace, it assumes a brittleness and an unwielding rigidity, which fixes its form, and render all further alteration impossible. Similarly, the soul may sin and repent,

[1] *De Gemitu Columbae*; auctore Card. R. Bellarmino, p. 85.

and fall and rise again, a thousand times over, so long as Time lasts. But, so soon as ever it passes into Eternity, it finds itself amid new and wholly different conditions, and its orientation irretrievably fixed. It is simply incapable of change. Yet, without a change of heart, a sorrow for past sin, a repentance of some sort, it is impossible that it should ever again enter into friendly relations with God. Just as its attitude towards sin remains unchanging and unchangeable, so must its banishment continue for ever, unchanged and unchangeable.

The following words, written by Father Tyrrell, S.J., before his unhappy fall, are full of suggestion, and deserve to be quoted :—

> The same impetus of Divine love which hurries along to their bliss those souls that yield themselves to its sway, crushes to powder those who dare to oppose it or stand stiff against it; the same light which fills the eyes of the saints with glory, dazzles and darkens and withers the eyes unanointed by grace; the same fire which warms and gladdens and comforts God's friends, scorches, torments, and consumes His enemies. God is the life of the soul, and God is the death of the soul 'for our God is a consuming fire.' No one, save those to whom it is given, can see Him and live. When the unpardoned soul passes from out the bourne of time and space into the changeless instant of eternity, where longer or shorter have no meaning, and joy and sorrow no divisible dimension of duration, it finds itself for ever fixed in a state of destruction; 'for ever shattered and the same for ever.' In that first eternal pang its punishment is complete, for it is not more shattered because it is longer shattered. 'As the tree falls there shall it lie.'[1]

To the foregoing may be added the following yet more interesting extract from the same book :—

> For those who die in mortal sin the punishment is eternal. Not that it lasts time without end, nor yet does it cease after a time—for Time is no more; but because, as Aquinas points out, the state of the departed is unchangeable, unprogressive. They are stayed, and, as it were petrified in their first conscious instant of other-world existence. And over and above the pain of personal antagonism and opposition to God—their lost treasure—there recoils upon them all the evil that they have caused in God's creation, in themselves, and in others, so that the balance of the moral order is restored, and truth and right are triumphant.[2]

St. Bernardin, who will be accepted as a higher authority, expresses himself in similar terms :—

> Duo sunt in poena, duratio et intensio. Intensio respondet intensioni libidinis, quae finita est. Duratio vero respondet durationi peccati, et in hac vita quoad voluntatem, et in alia quoad obstinationem;

[1] Tyrrell's *Hard Sayings*, p. 113. [2] Ibid. p. 116.

quia in inferno *in ea voluntate qua discessit, in ea remanet*; peccatum enim, licet sit finitum, tamen durat in infinitum; ideo punitur poena infinita duratione, acerbitate tamen finita.[1]

St. Catherine of Genoa, who seems to have been favoured with some wonderful lights on the subject both of hell and purgatory, explains the difficulty much in the same way :—

It is the will's opposition to the Will of God which causes guilt, and as long as this evil continues, so long does the guilt continue. For those, then, who have departed this life with an evil will there is no remission of the guilt, *neither can there be, because there can be no more change of will*. . . . In passing out of this life, the soul is established for good or evil, according to its deliberate purpose at the time.[2]

Our last quotation will be from the great Cardinal Newman, whose wise and prudent observations deserve respectful attention :—

We read of a day when the Almighty will condescend to place His actions in their completeness before His creatures, and will 'overcome when He is judged.' If till then, we feel it to be a duty to suspend our judgment concerning certain of His actions or precepts, we do no more than what we do every day in the case of an earthly friend or enemy, whose conduct in certain points requires explanation. It surely is not too much to expect of us that we should act with parallel caution and be *memores conditionis nostrae*, as regards the acts of our Creator.[3]

. . . Eternity or endlessness is, in itself, only a negative idea, though punishment is positive. Its fearful force, as added to punishment, lies in what it is not; it means no change of state, no annihilation, no restoration. But it cannot become a quality of punishment, any more than a man's living seventy years is a quality of his mind, or enters into the idea of his virtues or talents. If punishment be attended by continuity, by a sense of duration and succession, by the mental presence of its past and its future, by a sustained power of realizing it, this must be because it is endless and something more; such inflictions are an addition to its endlessness, and do not necessarily belong to it because it is endless.[4]

In conclusion, let me say that enough is not made in these days, of the doctrine of eternal punishment. Many appear unwilling to set such an appalling truth before the faithful, or to pierce their hearts with the holy fear of God's awful judgments. This squeamishness is quite in keeping with the spirit of the age. Suffering of any kind is decried and denounced. Criminals must not be flogged.

[1] St. Bernardin, tit. 4, s. 18, 3xtr. apud Loghner.
[2] St. Catherine of Genoa, vol. i. p. 282.
[3] Newman, *Grammar of Assent*, p. 421.
[4] Ibid. p. 422.

Capital punishment must be done away with. The schoolmaster scarce dare use the cane or the birch against even the most refractory truant in his school. Even irrational animals are to be carefully protected from any undue application of the whip or the spur; and the whole law is set in motion, if some careless tradesman puts too many ducks or chickens into a crate, or dares to send them to market without sufficient food or water for the journey.

So again, owing to the use of opium, ether, chloroform, laughing gas, and other anaesthetics, man has reduced all pain to a minimum. He may now undergo the most searching operations, and be cut to pieces by the surgeon, without feeling a pang or a spasm. Even our prisons and places of detention, compared to what they used to be, are comfortable, and even luxurious. And man cannot bear to think that any sentient being, whether man or beast, is in a state of suffering. As a consequence, hell has become an unpopular subject. It is kept in the background. Its mention, especially in the more aristocratic churches, is resented. The preacher is thought to be wanting in tact and consideration for the feelings of his very sensitive audience if he does more than allude to such a place.

But, whatever people may think, there is no doubt but that the fear of the Lord is still the beginning of wisdom, and that we cannot afford to dispense with any subject that can inspire it.

Once, in the reign of Pope Leo XIII, and once again, in the time of Pius X, it was my privilege to preach the Lenten Course, in Rome. On both occasions all the Lenten preachers were summoned before the Holy Father, *ad audiendum verbum.* On both occasions the Sovereign Pontiff spoke to us of our duty as missioners. He especially charged us to lay emphasis on the great and fundamental truths; to speak of the four last things, and above all of the future punishment of sin. Call to mind, he went on, the chastisement of the unrepentant sinner. Dwell upon the nature and the eternal duration of those divine torments. If preachers and missioners placed these subjects more frequently and more zealously before the people (he added) the world would not be in the shocking state in which it is now. Let Death, Judgment, Hell, and Heaven enter largely into the subject matter of your addresses. Our Divine Lord did not hesitate to speak of such matters, even to His chosen apostles and disciples. And were not such

warnings called for? Were they not very much to the purpose? Evidently. If His hearers, on their part, had only listened more attentively, and had taken His words more to heart, perhaps we should never have had to lament the reiterated denial of Peter nor even the shameful betrayal of Judas. Season your discourses with these solemn thoughts. For, if you do not, you will be as one beating the air.[1]

In a matter of this kind perhaps we shall not be far wrong if we give heed to the advice of the Sovereign Pontiffs, and endeavour to follow it, when exercising the pastoral office, and labouring for the salvation of immortal souls.

✠ JOHN S. VAUGHAN.

[1] These, so far as I can recall them, were the substance of the words of Pius X; and what Leo XIII said, though somewhat differently expressed, was practically precisely the same.

MATRIMONIAL DISPENSATIONS IN THE NEW CODE

By Rev. M. J. O'DONNELL, D.D.

When the preliminary investigation (1019-34) has resulted in the discovery of an impediment (impedient or diriment) two courses are open. The marriage project may be abandoned, or an attempt may be made to have the impediment removed. If a priest were inclined to be selfish, the first course might please him best: it would certainly free him from a great amount of difficulty. But the wishes of the parties must be taken into account: and, apart from that, there will often be, from the priest's own standpoint, serious reasons of religion or morality suggesting that the project be *not* abandoned and that help be sought from someone who has power to deal with the prohibitive or diriment law. And that opens up the whole question of matrimonial dispensations.

It would be impossible, in a short article, to present fully the scores of principles that are considerably modified, though left substantially intact, by the new legislation. We can only take the canons (1040-57) as they stand, and, in the light of previous laws and of other portions of the Code (especially cc. 36-62 and 80-86), try to discover how far they affect the practice followed in the past. To save our readers trouble, we will take the statements in Lehmkuhl's text-book [1] as a working basis, and, in our closing paragraph, indicate, as fully as space allows, the changes in its pertinent sections that the new legislation would seem to necessitate.

Preliminary Matters.—In Canon 1040 we are told that

> No one except the Roman Pontiff can abrogate impediments of the ecclesiastical law, whether impedient or diriment, or derogate from them; neither can he dispense in them, unless this power has been granted [him] by the common law or by special Indult from the Apostolic See.

[1] *Th. Mor.* nn. 1012-50 (11th edition, 1910).

This introduces no change in principle. The impediments are imposed by general law; and with general laws no one but the supreme legislator himself, or his delegates, can interfere, whether wholly ('abrogation') or in part ('derogation'), or even by relaxation in particular cases ('dispensation'). It must be admitted that, in the past, this last faculty was often exercised, even when no special text of law could be quoted in its favour: custom and common opinion were held to justify the policy.[1] It will be noted, too, that, on the general question of dispensation, another canon (81) still provides for 'implicit' concession and for special action in urgent cases. But, as regards matrimonial cases, it would seem that these tendencies must not be allowed to operate. The 'special' regulation prevails over the 'general' (cf. 22, 48, § 1). If the concession is granted at all, it comes from 'common law' or from 'special Indult': in either case it is 'explicit.' And, as for the 'urgent' case of Canon 81, it is fully provided for, in the matrimonial line, in subsequent sections of the marriage law itself (1043-5).

But a change in principle *is* involved in the next regulation (1041). Custom used to play an important part, not merely in abolishing impediments but in introducing them. It was responsible for the impediment of 'difference of worship'[2]: and, even in a matter so jealously guarded as the law of clandestinity, it sometimes swept away the impediment, as even Popes admitted.[3] Among ourselves it set up an impedient impediment of 'closed time,' above and beyond what the general law provided.[4] But its day is over. Its influence, whether in the positive or negative line, is 'reprobated' (1041): consequently, it must be looked on as a 'corruption' of the law, must be abolished wherever it exists, and not allowed on any account to revive for the future (5). Its sentence is conveyed in Canon 1041:—

A custom introducing a new impediment or opposed to those in existence is reprobated.

From the point of view of dispensation (1054), the distinction between impediments of the 'minor,' and those of the 'major,' grade, is of considerable importance. If the impediment be of the first class, the dispensation

[1] *Th. Mor.*, nn. 1013, 1014.
[2] Ibid. 983.
[3] Ibid. 904.
[4] I. E. Record, Nov., 1917, Fifth Series, vol. x. pp. 365, 366.

granted will be valid, no matter what falsehood has been alleged, or truth suppressed, in the petition (1054): if of the second, at least *one* 'motive' cause must be stated correctly (42, § 2) and—except when the phrase *Motu proprio* is added to the rescript (45)—the requirements of the 'Curial style'[1] must be duly complied with (42, § 1). The distinction between the two classes, as well as the lenient regulation in regard to the minor grade, is borrowed from the *Normae Peculiares* of Pius X,[2] and is reproduced in the Code without substantial variation. On the distinction itself Canon 1042 says:—

> § 1. Some impediments are of the minor grade, others of the major.
> § 2. The impediments of the minor grade are:
> 1°. Consanguinity in the third degree of the collateral line;
> 2°. Affinity in the second degree of the collateral line;
> 3°. Public propriety in the second degree;
> 4°. Spiritual relationship;
> 5°. Crime [arising] from adultery [combined] with a promise of marriage, or with an attempt at contracting marriage even by a civil ceremony merely.
> § 3. All other impediments are of the major grade.[3]

And, on the lenient regulation, Canon 1054 states:—

> A dispensation from a minor impediment is not voided by any defect of 'obreption' [statement of falsehood] or 'subreption' [suppression of truth], even though the one and only final cause assigned in the petition was false.[4]

Comparing Canon 1042 with the *Normae,* we find, however, three small changes introduced: 1°, some of the old impediments disappear in accordance with other Canons of the Code—consanguinity in the fourth degree of the collateral line (as demanded by Canon 1076, § 2), lawful affinity in the third and fourth of the collateral (1077, § 1), unlawful affinity in every line and degree (97, § 1), and public propriety arising from an engagement or valid marriage (1078)[5]: 2°, two impediments are added to the 'minor' list—the *new* impediment of propriety (1078) in the second degree (direct line), and 'crime' of the first species (1075, 1°): 3°, there is no mention of the restrictions (affecting 'mixed' degrees) embodied in the older

[1] They are substantially as given by Lehmkuhl, ibid. 1035-8.
[2] 29th Sept., 1908, c. 7, art. 3.
[3] With this compare the old list (of 1908), Lehmkuhl, ibid. n. 1026.
[4] Cf. ibid. n. 1027. On punishments for these offences, see Canon 2361.
[5] On all these cf. I. E. Record, Feb., 1919, pp. 131-7.

law. Does the omission imply that, by a rigid application of Canons 6 (6°) and 22, we should regard these restrictions as abolished—or does it mean that, by emphasizing the *implicite* of 6 (6°) and combining it with 6 (4°), we should take the old law as still in force? Even in theory, but still more in practice, we incline to the second view: if the impediment involves the first degree, the safer course will be to classify it as one of the major grade. The matter is of importance only in connexion with consanguinity and affinity (1°, 2°): the second degree of the new 'propriety' (3°) cannot, except in the most deplorable circumstances, be 'mixed' with the first (1078).

Dispensing Authorities.—Leaving out of account the Pope and the Roman Congregations or Tribunals—about whose power to dispense in all merely ecclesiastical impediments there can be no question—we have to see what power is given to Bishops and priests. To get a satisfactory idea of the new regulations, we must keep the old legislation in view. In pre-Code days, the Bishop had power, 1°, in case of doubtful impediments,[1] 2°, in occult urgent cases,[2] 3°, when there was danger of death,[3] 4°, in virtue of *Formulae* and special rescripts.[4] A priest's powers were more circumscribed. He could deal, some said, with the 'perplexed' cases[5]: he could, of course, utilize any faculties that Rome or his Bishop gave him: and, when there was danger of death, he had sometimes almost as much power as the Bishop himself.[6] So far as the Code went, each and every one of these faculties was left intact or extended considerably. But a subsequent decree struck a severe blow against the general *Formulae* of the Bishops. And the wider powers guaranteed by the Code are very much reduced in value by what, from his own point of view, the missionary priest will be tempted to term the unwelcome declaration of April 25th, 1918.[7]

It will be useful to keep the powers of Bishops and of priests distinct, and to trace the recent developments in both.

Powers of Bishops.—A Bishop's faculties, as we have seen, used to be classified under four headings:—

A°. *Doubtful impediments.*—The power was generally

[1] Lehmkuhl, 1014.
[2] Ibid. 1014.
[3] Ibid. 1015 (and note).
[4] Ibid. 1017 sqq.
[5] Ibid. 1054, 1055.
[6] Ibid. 1015 (note).
[7] Vide *infra*, p. 196.

admitted. But, perhaps in deference to the rigorous interpreters who restricted it to doubts 'of law,' those who extended it to doubts 'of fact' spoke with caution, and were willing to withdraw the claim when there was a strong presumption in favour of the existence of the impediment. They were influenced by certain Roman declarations, and by the fact that there was no text of law to which they could appeal.[1]

The text of law has come. There need be no hesitation for the future in stating the claim. If the doubt be one 'of law,' there is no need for any dispensation, for the law does not bind. If it be one 'of fact,' the Ordinary has full power, provided, of course, there be question of an impediment, in which the Pope himself is accustomed to dispense. These are the principles guaranteed by an earlier canon (15).

B°. *Urgency.*—To justify the Bishop's action three conditions were always required, five when the marriage had already been contracted: 1°, it should be impossible to have recourse to Rome in time to prevent scandal, loss of reputation, or other very great evil: 2°, the impediment should be 'occult': 3°, it should be one in which the Pope generally dispensed: 4°, 5°, the marriage should have been consummated and contracted *bona fide* (at least by one of the parties).[2] The faculty passed to the Vicar-Capitular, but the Vicar-General required special delegation. There were various theories ventured as to how far the term 'occult' might be extended: whether it might sometimes cover an impediment public 'of its very nature,' an impediment materially public but formally occult,[3] etc.

These controversies look small in the light of Canon 1045 of the Code. It tells us that:

§ 1. Subject to the clauses stated in the closing portion of Canon 1043,[4] local Ordinaries can grant a dispensation in all the impediments

[1] Lehmkuhl, 1014.

[2] For reasons and authorities, cf., e.g., Marc, 2045. No. 4° was omitted by many.

[3] Lehmkuhl, 1014. On the general question as to what *are* 'occult' impediments, Canon 1037, if taken strictly, is compatible with the old teaching (tacitly admitted in Canon 2197) that a matter might be 'occult' even though known to as many as ten persons in a large community [Lehmkuhl, 1047: cf. I. E. Record, Dec., 1911, pp. 626-32]. When, however, Canons 1742-1828 (on ecclesiastical 'proofs') are taken into account, the difference in practice will (we think) be slight.

[4] Provisions for removing scandal and for securing the mixed marriage guarantees. Vide *infra*, p. 196.

mentioned in Canon 1043,[1] whenever the impediment is discovered [only] when all preparations have been made for the nuptials, and when the marriage cannot, without probable danger of grave evil, be postponed until a dispensation is secured from the Holy See.

§ 2. This faculty is available also for the validation of a marriage already contracted, if there be the same danger in delay and no time to have recourse to the Holy See.

Leaving aside for the moment the section that refers to priests (§ 3), we see at once that the new faculty is much more extensive and generous than the old : 1°, It is shared by *all* the local Ordinaries (198, § 2) ; 2°, the clause restricting it to cases 'in which the Pope generally dispensed' need never have given much trouble—it will give still less now, for the power extends (with due cause, of course) to every impediment of the ecclesiastical law (with the two exceptions specified in 1043) ; 3°, there is no provision that the marriage be consummated, or contracted with the *bona fides* on which Trent insisted ; and, 4°, above and beyond all, the condition that the impediment be 'occult' has quite disappeared and carried many a controversy with it. The fact that an impediment is public will, we admit, often lessen the probability of evil results, and so curtail the Ordinary's power ; but the reference to Canon 1043, and the contrast between the two sections (§ 1 and § 3) in Canon 1045 itself, make it perfectly clear that the danger of 'gravely evil' results of any kind will empower the Ordinary to grant a dispensation even when the impediment is public.

C°. *Danger of Death.*—This special faculty has gone through three stages of development within our own time. Before the days of the *Ne Temere*, the decree of Leo XIII, issued on the 20th February, 1888, marked the limits of the power.[2] It enabled all local Ordinaries to dispense in all diriment impediments of the ecclesiastical law (with the two well-known exceptions), but only when at least one of the parties was in danger of death from disease, when the persons concerned were living in concubinage or had contracted a merely civil marriage, and when the case was too urgent to allow of an appeal to Rome. A parish priest, or other occupying a similar position, might be delegated for all cases, but could only act when the Ordinary could not be approached in time ; other priests could be delegated only for each particular case as it arose. The faculty might

[1] Vide *infra*, p. 196. [2] For the text, vide Lehmkuhl, 1015.

be exercised in the tribunal of Penance or outside it: extended even to the impediment of clandestinity; involved the power of legitimation, except the children were 'adulterous' or 'sacrilegious'; and, according to the best view, was available even for non-subjects. But, when deacons or subdeacons were dispensed, there were stringent rules prescribed; and there was no provision whatever made for *impedient* impediments—though, in practice, priests were advised to rely on the principles of 'epieikeia' in a crisis.

The second stage of development was reached in the seventh article of the *Ne Temere* and in the subsequent Roman declarations regarding it.[1] When danger of death arose, and when the local parish priest or Ordinary (or delegate of either) could only be approached with grave inconvenience—when, moreover, a marriage was advisable, either for the purpose of soothing the conscience of the parties concerned, or of legitimating the children born or conceived—*any* priest might validly assist at the ceremony. In these circumstances the priest assisting—whoever he might be, and *a fortiori* the parish priest or Ordinary, if *he* were present[2]—could dispense in all diriment impediments of the ecclesiastical (with the same two exceptions). This marked a considerable advance: 1°, *any* priest might exercise the faculty; 2°, it made no difference whether the danger arose from disease or from any other cause; 3°, it might *certainly* be made available for non-subjects, and, most likely, extended to the case of clandestinity; 4°, the prescriptions about deacons and subdeacons were restricted to the limits of the natural law; 5°, the power was no longer restricted to the case of concubinage or civil marriage. But one little drawback still remained. There was no provision for impedient impediments; and both priests and Bishops had still to be content with whatever extension of faculties the principles of 'epieikeia' might suggest.

That is so no longer. The previous faculties are confirmed, and the impedient impediments fall into line. So much is clear from Canon 1043:—

In urgent danger of death, local Ordinaries, to secure peace of conscience and (if need be) the legitimation of offspring, can dispense their

[1] Ibid. 891, 1015 (note). Congr. of the Sacr., 14th May, 13th Aug., 1909.

[2] The parish priest was not mentioned explicitly in the concession of 1909, but a declaration of the 29th July, 1910, made up for the strange omission. For the text see I. E. Record, Oct., 1910, p. 445. The Ordinary was, of course, included.

own subjects (no matter where they are) and all [others] actually living in their territory, not only from the 'form' obligatory in the celebration of marriage, but from each and every impediment of the ecclesiastical law, whether public or occult, [simple] or multiple—with the exception of the impediments arising from the sacred Order of priesthood, and from affinity in the direct line, in case the marriage has been consummated—when the scandal has been removed and when, if a dispensation is granted in 'difference of worship' or in 'mixed religion,' the usual guarantees have been given.

That settles many controversies. 'Clandestinity' is *certainly* included—the 'form obligatory in the celebration of marriage' (1094–1103). There is no *exclusion* of impedient impediments—and 'quod legislator tacuit noluit.' Any slight doubt that might have existed about 'multiple' impediments is gone. The added phrase, 'consummato matrimonio,' only makes the new impediment (97, § 1) the same as that contemplated in the Leonine decree and the *Ne Temere*—the 'lawful affinity' of the old legislation. The clause regarding 'scandal' and 'guarantees' only reproduces well-known regulations of the past.[1] And, to complete the concession, Canon 1044 extends the same faculty to priests *servatis servandis*.[2]

D°. *Indults.*—It is under this heading that we must, unfortunately, chronicle a diminution in the Bishop's powers. Not that the Code itself demands it: Canon 4 would seem to guarantee the faculties already granted in this way—say, for us, in the *Formula Sexta*. But, to upset our best-laid schemes, the declaration of the Consistorial came like a bolt from the blue.[3] The consequences of that decree, whether for the period of the war (still continuing) or for subsequent times, have been dealt with in detail by another contributor,[4] and we need not repeat his remarks. Only, in regard to matrimonial dispensations, we may be allowed to point out that the effect is not quite so disastrous as might appear at first sight. The withdrawal of the faculty over the second and third degrees of consanguinity,[5] and over the second of (lawful) affinity is, of course, a serious matter. But, outside that, and even on

[1] Lehmkuhl, 1015 (but in milder form), 1046. On the 'guarantees' see I. E. Record, Dec., 1918, pp. 485 sqq.; Feb., 1919, p. 128.

[2] Vide *infra*, pp. 199-200.

[3] 25th April, 1918. For the text see I. E. Record, June, 1918, pp. 521-2.

[4] Ibid. pp. 504-7.

[5] See the *Formula* in the Appendix to the Maynooth Statutes (1900), p. 146, n. 3; and cf. p. 149.

the pessimistic hypothesis that no faculties like those of the *Formula Sexta* will ever be given again, the difference in practice will be very slight. For—consanguinity in the fourth degree (collateral) is no longer an impediment (1076, § 2): neither is 'lawful affinity' in the third and fourth (1077, § 1), nor the old 'unlawful affinity' of any kind (97, § 1).[1] 'Propriety' resulting from engagements,[2] or from valid marriages,[3] has disappeared (1078); and the new impediment (ibid.) is too restricted to cause much trouble in practice. About the loss of conjugal rights[4] the Code says nothing in its Canon on affinity (1077); so we may take it for granted that the penalty has disappeared (6, 5°). As for 'spiritual relationship,' even under the *Formula Sexta* Bishops were powerless when the impediment was one between the baptismal sponsor and the child,[5] or between the child and the person who conferred the baptism[6]: they could deal with all the others, but all the others have now ceased to be diriment impediments (1079). There remains the impediment of 'crime' of the first species[7]: but it will, we may hope, arise so seldom that the loss of the power to deal with it need not be regarded as a great calamity.

Powers of Priests.—The priest's faculties are, as we have seen, derived from three sources. One of them—delegation from the Bishop or from Rome—calls for no special mention. In the Code it remains the same as before, except in so far as it is modified by the general canons on the subject (199–210)[8] and by a few little regulations to be mentioned later. For our present purpose the other two are more important.

A°. *Perplexed Cases.*—These arose, 1°, when all preparations had been made for the ceremony, and when the marriage could not be postponed until a dispensation could be got from the proper authority in an occult impediment now detected for the first time; 2°, when, after marriage, one of the parties discovered such an impediment, and found it morally impossible to avoid living a married life

[1] Cf. ibid. n. 3.
[2] Cf. ibid. n. 4.
[3] Cf. ibid. n. 3.
[4] Cf. ibid. n. 5.
[5] Ibid. n. 6.
[6] Ibid. pp. 149-150 (decree of 1902). Cf. Lehmkuhl, n. 1035 (note).
[7] Ibid. n. 5. On all these impediments, cf. I. E. RECORD, February, 1919, pp. 128-37.
[8] See article on 'Jurisdiction,' *infra*, pp. 204 sqq.

during the period required to secure a dispensation in the ordinary way. Various methods of escaping the difficulty were suggested. It was a fairly common view that the impediment probably ceased in both cases, but that, for precaution sake at least, a normal dispensation should be procured as soon as possible.[1] And it was noted by some that the most satisfactory course would be to have the Bishop delegate to his priests the powers he enjoyed himself in the circumstances.[2]

The new rule is more definite. It is given in Canon 1045, § 3 :—

> In the same circumstances [as those specified in § 1 and § 2],[3] the same faculty [covering *both* cases] is enjoyed by all those mentioned in Canon 1044 [the parish priest, assisting priest, and confessor],[4] but only in occult cases in which even the local Ordinary cannot be approached at all, or only at the risk of violating a secret.

The parish priest, assisting priest and 'confessor' are the same as those specified below in connexion with Canon 1044. The parish priest and confessor may be called upon to exercise this faculty any day, and in the normal run of circumstances: the 'assisting' priest, in so far as his function here differs from that provided for in Canon 1044, will be called upon only when it is foreseen that for the next month no more competent man can be secured (1098, § 1). The activities of all three are, however, restricted to cases in which two conditions are fulfilled: 1°, the impediment must be 'occult'; 2°, a timely dispensation from the Ordinary must be either impossible, *or* possible only at the risk of violating a secret. Some may take *secretum* here in the sense of 'sacramental seal.' That *may* be the meaning: but, until we hear more on the subject, we prefer to take the term in its unrestricted sense. Of a sacramental secret the confessor would have heard, but the parish priest and assisting priest, as such, would know nothing.

A comparison between the old law and the new would seem to justify the following statements: 1°, the conjectures of the past have given place to definite teaching; 2°, under the old law, and according to even the most favourable view, the priest was only empowered to *declare* that the impediment had ceased to bind; now he is officially commissioned to grant a real dispensation; 3°, the *two* cases are put definitely on the same footing—in the old

[1] Lehmkuhl, nn. 1054-5.

[2] Cf. Marc, n. 2048.

[3] Vide *supra*, pp. 193-4.

[4] Vide *infra*, pp. 199-200.

law there was a tendency to favour the first; 4°, the new legislation seems to make greater concessions to the natural obligation of not violating a secret: 5°, the old and the new, however, agree completely in *one* point—the impediment must be 'occult.'

B°. *Danger of Death.*—The extent of this faculty has been discussed above. It only remains to see in what circumstances the law confers it on a priest. The answer is found in Canon 1044:—

> In the same circumstances as those specified in Canon 1043, and only for cases in which not even the local Ordinary can be approached, the same dispensing power [as is described in 1043] is held by the parish priest, by the priest who assists at the marriage in accordance with Canon 1098, § 2, and by the confessor—the latter, however [being empowered to exercise it] only for the internal forum in the act of [hearing] the sacramental confession.

The confessor is new in this connexion. But the parish priest and the 'assisting' priest are not. To follow their fortunes intelligently, we must recall what has been stated above. Under the *Ne Temere* (art. vii.) any priest might validly and lawfully assist at a marriage when, in danger of death, the local Ordinary or parish priest (or delegate of either) could not be secured, and when the marriage would legitimate the children or bring peace of conscience to the parties themselves. The priest assisting in these circumstances was empowered, by a subsequent Roman declaration, to dispense from nearly all diriment impediments: and a still further declaration made it clear that the parish priest himself shared in the privilege—when the Ordinary or *his* delegate were out of reach. Now, the Code (1098) changes the *Ne Temere* provision: the clause about legitimation and peace of conscience has fallen out, and the consequence is that the 'assisting' priest (or, in his absence, the witnesses alone) will be competent in many cases for which the *Ne Temere* would have disqualified him. But, if he is called upon not merely to *assist* but also to *dispense*, the old restrictions reappear—the clause about legitimation and peace of conscience creeps back into Canon 1043. But it is accompanied by other clauses (and, if one might say so, omissions) that, as we have seen above, extend his faculties, and those of the parish priest, beyond anything the *Ne Temere* or the declarations of 1909 guaranteed. The net result is that he can *assist* in a greater number of cases (in virtue of the clause

omitted in Canon 1098) and can dispense in a greater number of impediments (in virtue of the wording of Canon 1043) than was ever possible before. Given the necessary circumstances, he can deal with *all* impediments (even the impedient) in the same way as the Ordinary himself. And the declaration in favour of the parish priest on the 29th July, 1910,[1] is paralleled in the special mention of 'parochus' in Canon 1044.

But the power of all three—parish priest, assisting priest, and confessor—is confined to the case in which the Ordinary cannot (morally speaking) be approached. That condition will not trouble the 'assisting' priest: he could not be 'assisting' at all, if it had not been fulfilled already (1098). But the parish priest and the confessor must take account of it.

Finally, we note that, for the purposes of the external forum, the parish priest, or assisting priest, must inform the local Ordinary that the dispensation has been given, and record the fact in the matrimonial register (1046). For obvious reasons there is no mention of such an obligation in the case of the confessor: *his* dispensation is covered by the seal, and would be useless in the external forum in any case (1044: cf. 1047). For similar reasons, we may take it, the same exemption will often be extended to the priest who acts in accordance with the prescriptions of Canon 1045, § 3.

Some Minor Matters.—There used to be considerable doubt as to how far a dispensation, granted for the internal forum, might be made available in the external. Many of the rescripts contained a clause stating that 'the dispensation was of no avail in the external forum'; and in such cases it might easily happen that, if the impediment became public, a separation would have to be insisted upon, externally at least. Even in such circumstances, though, the Bishop was advised to accept the statement made by the confessor with the consent of the parties affected.[2] Canon 1047 solves the difficulty. In the internal forum, a distinction is drawn between the sacramental, and the non-sacramental, sphere. A dispensation granted in the first is of no value externally, and no record is kept of it. In the second, a record *is* kept—in the secret episcopal archives (379)—and the dispensation will meet all requirements, if the impediment ever becomes public. But both these

[1] Vide *supra*, p. 195 (note 2). [2] Lehmkuhl, 1048.

regulations are subject to the general exception—'unless the rescript of the Penitentiary states the reverse' (1047).

It was always regarded as at least very unbecoming that, when a case had been submitted to Rome, any inferior authority should meddle with it, especially in the external forum.[1] But the legal position on the matter was not very definite. Canon 1048 remedies the defect by stating that the inferior still retains whatever authority he held in the matter, but that he is not to exercise it without grave and urgent reasons, and without informing the Holy See of his action. With that regulation we may couple another, given in an earlier canon. When a favour has been *refused* by Rome, the local Ordinary can do nothing without the assent of the Congregation or Office first appealed to (43).

General Indults.—The three Canons (1049–51) would have been of more importance if the decree of April last had not been issued. However, in expectation of better times, we may take a slight interest in them still.

The first (1049) contains two provisions: 1°, power from general Indult to deal with an impediment may be availed of, even when the impediment is multiple: this had been already stated in a reply of the Holy Office given on the 15th June, 1875[2]; 2°, the restrictive regulations governing 'cumulation'[3] are abolished; if a man has power over several different impediments individually, he has power over them also when they are combined in one and the same case. The former strict regulations, it will be remembered, applied *only* to Indults: they did not affect 'ordinary' power, nor, most probably, the concessions of 1888 and 1909; nor do they affect the powers now guaranteed by Canons 1043-5.

The second (1050) prescribes, 1°, that when an impediment, over which a man has no power, is combined, in a particular case, with a *public* impediment with which he can deal by Indult, the Holy See must be applied to for *both*: this is only a special instance of a well-recognized principle[4]; but 2°, by way of mitigation, it adds that he may exercise his faculties over the 'Indult' impediment, if the latter is discovered only after a dispensation in the other has been obtained from the Holy See. What if the 'Indult' impediment is occult? The Canon says nothing

[1] Lehmkuhl, 1025 (note), quoting D'Annibale. Cf. n. 1045. [2] Ibid. n. 1018.
[3] They are given by Lehmkuhl, n. 1018. [4] Cf. ibid. e.g., n. 1045.

about it, and so we may take it for granted that Rome need not be informed. That is intelligible enough if the other is a public impediment, submitted to the Congregation of the Sacraments. But if *both* are occult? There would seem to be no great reason why both could not be submitted privately to the Penitentiary. Still the letter of the law seems against imposing any obligation.

In the last (1051) we have a provision for the legitimation of children. A dispensation granted by 'ordinary' power or in virtue of a *general* Indult—not of a special rescript—involves *ipso facto* the legitimation of all children that are not 'adulterous' or 'sacrilegious.' This is much more generous than a decree of 1909 [1] which required a special rescript for the purpose when the dispensation was granted for 'defamatory' causes: and even goes somewhat beyond, though it is fully in harmony with, a more liberal declaration of the Holy Office in 1903.[2] When there is no question of an impediment, we may add, the subsequent marriage of the parents secures the legitimacy without further trouble (1116).

Concluding Canons.—One controversy is set at rest by Canon 1052[3]: if, for instance, the second degree is mentioned in the petition or reply, the dispensation is valid, though the actual impediment is one in the third degree. But the Canon goes further—and this is an addition. If there be two impediments of the same kind—say, of consanguinity—and if, through mistake or otherwise, one of them (equal to, or less serious than, the other) is left unmentioned, the dispensation granted is valid. A and B, e.g., are related in the second and third degrees: the first fact is mentioned, and the second suppressed: a dispensation is granted on these terms; the marriage is valid.

Canon 1053 reproduces a decree to which we have referred already.[4] The next (1054) has been dealt with above.[5] In No. 1055 we have an old regulation repeated almost verbatim [6]; the executor may, as a rule, we take it, delegate the extern Ordinary (57). Canon 1056 is somewhat more rigorous than previous laws[7]: strictly speaking, the fees charged for dispensation in banns would seem

[1] Congr. of the Sacr., 29th January; Lehmkuhl, 1016 (note).
[2] Lehmkuhl, 1016 (note)
[3] Ibid. n. 1035 (note).
[4] I. E. Record, February, 1919, p. 131.
[5] Vide pp. 190-1.
[6] Vide Marc, n. 2053.
[7] They are given by Gasparri, *De Matr.*, nn. 183 (325), 430, 446, 460-1.

not to fall under the regulation—for this whole section (1035-57) deals with 'impediments in general,' and, in the Code, banns (1022–31) are not classified as an impediment at all. The concluding injunction (in Canon 1057) is one of the commonplaces of matrimonial Indults. When stated in this simple form, it may be disregarded, not without sin, but without any voiding effect on the dispensation granted.[1]

Changes summarized.—Taking up the sections in Lehmkuhl's text-book[2] (1012–50), we may add, by way of hurried comment :

1012. Unchanged, except in so far as some of the impediments have been abolished. In view of cc. 1043-5, n. 1 (6), in the new terminology, and n. 2 might be stated more mildly.

1013–18. The whole section has been considerably modified. Vide *supra*.

1019–24. These sections were never of much importance in this country, except as throwing some light on the interpretation of the *Formula Sexta*. Since April 25th, 1918, their importance is still less—here or anywhere else. But, of course, they may resume their old position any day.

1025. Unchanged (except the note). Cf. Canons 249 and 258.

1026. The changes have been noted above (pp. 191-2).

1027–30. Unchanged.

1031. Possibly the statement on 'occult' impediments requires revision (1037). See above (p. 193, note 3).

1032–4. Unchanged.

1035. Nn. 1–2 must be taken in the light of Canon 47 : an error in the name of person, place, or thing, will not invalidate if, in the judgment of the Ordinary, there is no doubt about the identity (47). Some of the impediments mentioned in n. 3 no longer hold. Note 1 (p. 598) is obsolete in so far as it speaks of Confirmation (1079). On note 2 see above (p. 202). As for the 'degree' and 'number of impediments' (nn. 4-5), cf. Canon 1052 (ibid.). Note 1 (p. 599), on 'mixed' degrees seems to be true still (1052); note 2, on the change effected in 1885, certainly is.

1036. Much of this must be modified in connexion with 'minor' impediments (1054); the author calls attention to the fact in a note (2). The statement about 'declaring *all* the impediments' must be changed slightly (1050).

1037-8. Same remark as on n. 1036. And the statements on 'illegitimate affinity' must be disregarded (97).

1039–42. Unchanged. In the case stated in n. 1040, there is no affinity now (97); there may be 'propriety' (1078).

1043–44. Unchanged.

1045. The regulation of Pius X (29th September, 1908) must be replaced by Canon 36, § 2 ; the excepted classes now are all those excommunicated, suspended, or interdicted, by sentence (2265-75-83).

1046–50. Some little points may have to be changed : the statement, e.g., about 'occult' impediments in n. 1047. But substantially, we may take it, the clauses will be the same as before, and will be interpreted in the same manner.

M. J. O'Donnell.

[1] Lehmkuhl, n. 1017 (note). [2] 11th edition.

THE NEW CODE OF CANON LAW

JURISDICTION

By Rev. J. KINANE, D.C.L.

It is unnecessary to dilate upon the importance of jurisdiction, the subject of our present article. Suffice it to say that nearly all the ecclesiastical acts, which affect most intimately the lives of the clergy and faithful alike, are dependent upon it for lawfulness and very often for validity. Without this power, for example, absolutions cannot be granted, marriages cannot be contracted, dispensations cannot be given, punishments cannot be inflicted, judicial proceedings cannot be held. Since, then, such practical matters are involved, the section on jurisdiction is evidently one in which even the missionary priest has a deep interest. Fortunately, the Code has not dealt too severely with the old discipline, so that there will not be too much to unlearn. There are, indeed, some important changes in detail, but the main principles have been retained.

Divisions.—Although the Code mentions the principal divisions of jurisdiction with which pre-Code commentators have familiarized us, it undertakes the definition of only one, viż., ordinary and delegated. Ordinary jurisdiction, it states, is that which is attached by law itself to an office: it further adds that one may possess it in one's own right or merely as the representative of another (*propria sive vicaria*). Delegated jurisdiction, on the other hand, is that which is committed to a person (c. 197). According to the definition hitherto generally accepted, all ordinary jurisdiction was *propria*;[1] in other words, it was not merely attached to the office by law, but it was also demanded by the very nature of the office itself. Jurisdiction, not inherent in the office, but superadded to it by law, and consequently

[1] Wernz, *Jus. Decret.* tom. ii. n. 4. 'Illa (jurisdictio ordinaria) vi officii ex juris dispositione jure proprio alicui competit.' Cf. Branbandere, *Comp. Jures Can.*, tom. i n. 88 etc.

possessed by the incumbent of the office not in his own right, but as the representative of the legislator, was usually called quasi-ordinary.[1] For example, the power of a Bishop to legislate for his subjects, inherent in the nature of the episcopacy itself, was called ordinary; whereas his power of dispensing from certain irregularities of general law, attached to the episcopal office by the Council of Trent, was called quasi-ordinary. This distinction has now disappeared; but the practical differences involved are of little importance. So, too, the old controversy regarding the nature of a Vicar-General's jurisdiction will find no place in the new discipline.

The term 'Ordinary.'—Not every one who possesses ordinary jurisdiction is called an *Ordinary.* Canon 198 enumerates those to whom this term is applicable, unless an express exception has been made in any particular case: the Pope, a residential Bishop, an Abbot or Prelate with a distinct territory, a Vicar-General, an Administrator, a Vicar and Prefect Apostolic, the *ad interim* successors of the foregoing, and finally for their own subjects the greater Superiors in exempt clerical Institutes. With the exception of the last class, all the preceding are also called local Ordinaries.

This, we think, is in full accord with the old teaching, in accordance with which all superiors who possessed ordinary jurisdiction in both *fora* were entitled to this term. It is true, indeed, that in an enumeration of Ordinaries contained in a decree of the Holy Office, issued in 1888, there is no mention of religious Superiors; but the omission is quite intelligible, if it is remembered that this decree purported to give only the Ordinaries to whom the execution of matrimonial dispensations was committed. For the secular clergy it is important, therefore, to remember that, in accordance with this canon, the Vicar-General and Vicar-Capitular, as well as the Bishop, are included under this term, and, consequently, they have all the rights, and are subject to all the obligations, of Ordinaries, apart from express exceptions in particular matters. In this connexion it may be as well to point out that, just as in the past, habitual faculties from the Holy See, even though they are granted *nominatim* to the Bishop, may be utilized also by the Vicar-General (c. 66, § 2).

Delegation and Subdelegation.—The general principle in

[1] Cf. Putzer, *Comm. in Fac.* Ap., n. 24.

regard to the power of delegating is unchanged. A person who has ordinary jurisdiction can delegate it either partially or totally, unless in any particular case there is an express prohibition of law (c. 199, § 1). The best known of these prohibitions is that in regard to jurisdiction to hear confessions. For those who maintained, under the old discipline, the distinction between jurisdiction and approbation, theoretically, this prohibition did not exist. Theoretically, all who had ordinary jurisdiction to hear confessions could delegate it. But, the need of approbation from the Ordinary of the place rendered delegations by anyone else useless, so that for all practical purposes the prohibition really existed. In the Code the distinction between jurisdiction and approbation has disappeared, and the power of delegating is expressly restricted to the Ordinary of the place (c. 874, § 1).

There is an important restriction also in regard to delegation to assist at marriage. Canon 1096 states that 'permission to assist at marriage . . . should be given expressly to a determinate priest for a determinate marriage, all general delegations being excluded, unless there is question of Curates for the parish to which they are attached; otherwise it is invalid.'

Hitherto in discussing this question, most canonists stated that one who had ordinary jurisdiction could not delegate it totally, without the consent of a competent superior. From the reasons which they gave, however, it was clear they meant to exclude only such delegation as would deprive the person delegating of all power, and make the delegate independent and perpetual.[1] Understood in this way, this teaching will still hold under the Code.

The principles regarding the power to subdelegate are also little changed: 1°. Jurisdiction delegated by the Holy See can be subdelegated either for a single act or habitually (c. 199, § 2). The last chapter of the title *De off. et pot. judicis del.* in the Decretals of Gregory IX contained almost as clear a statement of this principle as the Code itself. Notwithstanding this fact, however, there was considerable doubt as to whether faculties from the Holy See to dispense and grant other favours could be sub-

[1] Cf. Wernz, op. cit. n. 552. 'At nequeunt ordinarii magistratus ecclesiastici inconsulto competente superiore ecclesiastico totam suam jurisdictionem alteri delegare. Eo enim in casu potius renuntiant officio suo novumque constituunt magistratum ecclesiasticum.'

delegated. A considerable body of canonists—the majority, we think—relying especially upon certain decisions of the Roman Curia in particular cases, held that they could not. Others, however, maintained that they could, and sought support for their contention mainly by an appeal to this decretal to which we have just referred.[1] The controversy was set at rest by a reply of the Holy Office, in December, 1898. Asked whether such faculties could be delegated either in a general manner, or at least for a particular case, it replied : 'In the affirmative, provided it is not forbidden in the faculties, nor the right of subdelegating is not restricted to certain persons only; for in this case the form of the rescript must be observed to the letter.'

To the general rule that jurisdiction delegated by the Holy See can be subdelegated, the Code, in harmony with the old discipline, makes two exceptions. Subdelegation may not take place (*a*) when it is forbidden ; (*b*) when the delegate is appointed on account of his special personal qualifications (*nisi electa fuerit industria personae*). The first exception presents no difficulty. Sometimes the prohibition to delegate is absolute, and sometimes it is confined within certain limits; sometimes, too, it is express, and sometimes implicit. Thus, for example, the permission to communicate the faculties of the Formula VI to two priests, etc., was regarded as implicitly restricting the Ordinary's power of subdelegation. In all cases, in accordance with the reply of the Holy Office just referred to, the form of the concession should be observed to the letter.

To determine when a delegate has been selected on account of his personal qualifications, and consequently when delegation is forbidden for this reason, we must have recourse to the old discipline. Commentators taught that this contingency was verified in three cases[2] :—

(*a*) When very grave matters were contained in the delegation, such, for example, as inquisition against heresy, provision of churches and benefices, etc.

(*β*) When the rescript contained some such words as the following : *per te ipsum* ; *personaliter* ; *tuis manibus* ; *de industria*, etc.

(*γ*) When what is called a *nudum ministerium*, or, in

[1] For an account of this controversy, vide Wernz, *Jus. Decret.* tom. iv. n. 622, note 104.

[2] Cf. Branbandere, op. cit. n 103.

other words, the mere execution of a papal rescript, is committed to the delegate. For a better understanding of this last case it is well to remember that two classes of executors are distinguished. Sometimes a rescript directly grants a favour to the person for whom it is sought, prescribing the service of an executor merely for the fulmination or application of the favour; while sometimes the concession itself of the favour is committed to the executor (c. 54). It is the office of the executor in the former case that is called the *nudum ministerium*, and that cannot be subdelegated. The acts preparatory to the execution of the rescript, such as the verification of the causes, may, however, be committed to some other person (c. 57).

2°. The delegate of a Superior, other than the Pope, who has ordinary jurisdiction, can also subdelegate in individual cases, if he is commissioned *ad universitatem causarum*, as it is said. That a person may be commissioned *ad universitatem causarum*, it is not necessary that his commission should embrace all the power of the person who delegates him: it suffices that he be delegated to one whole class of cases, e.g., to dispense from all impediments of consanguinity, to deal with all cases in particular localities, etc. Though it was certain under the old discipline that delegates of this kind could subdelegate, the teaching was not so definite as to how far this power extended. The Code makes it clear that the subdelegation can take place only in individual cases.

In this connexion it is not out of place to draw attention to the old controversy regarding the subdelegation of general delegated powers to assist at marriages. Many canonists, relying on the principle just dealt with, hold that such powers can be subdelegated. Others, however, contend that jurisdiction to assist at marriage is a *nudum ministerium*, and consequently deny the right of subdelegation.[1] Personally, we favour the former view; but the matter is by no means certain, and consequently must be regulated by the principles governing antecedently probable jurisdiction, which we shall discuss later on.

3°. In other cases delegated power can be subdelegated only when an express concession to that effect has been made: delegated judges, however, can subdelegate a non-jurisdictional matter, even without any express commission (c. 199). This principle, too, was fully admitted

[1] Vide Wouters, *Comm. in Decretum*, 'Ne Temere.'

in the old discipline. Its first part needs no explanation. The words *articulum aliquem non-jurisdictionalem* of the second refer to any portion of a judicial process which does not involve the exercise of jurisdiction. Canonists regard the examination—not, however, the decision—of incidental causes and matters of a similar nature as belonging to this category.

The most serious difficulty which we find with this principle is its reconciliation with Canon 57, which states as a general rule that the executor of a rescript, even when granted by an Ordinary other than the Pope, may substitute another to execute the rescript for him. Now, it can very frequently happen that the executor of a rescript is simply a delegate in a particular case, e.g., when the concession of a dispensation to some individual is committed to him; and the substitution of another to execute the rescript is nothing other than the subdelegation of the power which it has conferred upon him. Canon 57, therefore, must be regarded as correcting the more general principle of Canon 199, § 4.

4°. Finally, subdelegated power cannot be again subdelegated unless that concession has been expressly made (c. 199, § 5). This again is a confirmation of the old discipline: it was regarded as a direct corollary of the principle that only the delegate of the Holy See could subdelegate.

Interpretation of Jurisdiction.—According to Canon 200, § 1, ordinary jurisdiction and delegated jurisdiction, when the delegation is *ad universitatem causarum,* are to be widely interpreted: other forms of delegated jurisdiction are to be strictly interpreted. It is always understood, however, that when delegation is conferred upon anyone, everything necessary for its exercise is also granted. Hitherto there was no express law upon this matter. Canonists, however, basing their conclusions on general principles whilst admitting that ordinary jurisdiction was to be widely interpreted, taught that delegated jurisdiction without distinction should receive a strict interpretation. They regarded delegation as a *res odiosa,* on account of its interference with the rights of the Superior who possessed ordinary power in the place where the delegated faculties were exercised[1]; and it is a general principle that favours

[1] Cf. Branbandere, op. cit. n. 95; Bargillicit, *Prael. Juris. Can.,* vol. i. n. 245.

or privileges which interfere with the rights of third persons are to be strictly interpreted. It must be added, however, that notwithstanding their advocacy of this general principle, authors held that general faculties to dispense from matrimonial impediments were to receive a wide interpretation.

The statement that one form of jurisdiction is to be widely, another strictly, interpreted, does not by any means imply that the ordinary meaning of the words may be departed from. When the meaning of the words conveying the faculties, taken in their ordinary sense, is clear and definite, it must be accepted. It is only when their implication is doubtful that there is room for the application of this canon.

Subject.—In this special section on jurisdiction nothing is said as to the qualifications necessary for its active subjects, that is to say, for the Superior in whom the jurisdiction resides. Canon 118, however, confirms the old regulation that clerics alone can be the subjects of this power; and for delegated jurisdiction, in many cases, nothing further is required in the new discipline. The other qualifications for the acquisition of ordinary jurisdiction vary in accordance with the different offices to which this power is attached, and are dealt with in connexion with these offices.

In regard to the passive subject, the general principle is that jurisdiction can be exercised directly only on subjects (c. 201, § 1). As a general rule, subjection to local Superiors arises through domicile or quasi-domicile. Under the Code *vagi* also are completely subject to the Superiors of the territory in which they actually reside (c. 94, § 2). Even in *peregrini* jurisdiction may sometimes be exercised by the local authorities. This is the case, for example, in regard to crimes committed in the territory (c. 1566), in regard to certain dispensations from feasts, fasts, and abstinence (c. 1245, § 1), in regard to absolution from sins (c. 881, § 1), etc.

The direct exercise of jurisdiction upon subjects may, however, sometimes indirectly affect non-subjects. For example, a Bishop who grants a matrimonial dispensation to a diocesan to contract marriage with a non-diocesan indirectly frees the latter also from the impediment.

By stating that nobody can exercise contentious jurisdiction in his own favour, the Code clearly implies the contrary is true of voluntary jurisdiction (c. 201, § 2).

This, too, was the view held generally by canonists prior to the promulgation of the Code, though its reconciliation with more fundamental principles is a matter of no little difficulty. The exercise of jurisdiction, from the very nature of things, seems to require superiority on the one hand and subjection on the other. If that be so, how can anyone be his own Superior? We are not fully satisfied with any explanation of this difficulty which we have seen advanced.

Before passing on it may be as well to say a word on the distinction between contentious and voluntary jurisdiction, as it is an important one, and is not too very well known. Contentious or judicial jurisdiction is the jurisdiction which is exercised in a judicial process. From Canon 201, § 2, it is evident that judicial process must be taken to include the sacrament of Penance. Voluntary jurisdiction, in the wide and generally accepted meaning of the term, covers every other form of jurisdiction; and, hence, it includes not merely the power of granting dispensations and other favours, but also legislative, administrative, and executive power.[1] It is incorrect, then, to define it as jurisdiction which is exercised in *volentes*; sometimes those upon whom it is exercised are most unwilling, e.g., when punishment is inflicted extrajudicially.

Place of Exercise.—As a general rule a Superior can exercise contentious jurisdiction only in his own territory —in regard to a delegate, of course, it is the territory of the person delegating that has to be considered (c. 201, § 2). The external solemnities which must accompany the judicial process are the fundamental reason for this regulation. Their exercise by an outsider would derogate from the local Superior's authority.

The Code makes two exceptions to this general rule: 1°. Those who have ordinary jurisdiction to absolve from sin may use this power on their own subjects outside their territory (c. 881). It was from the fact of this exception having been made that we drew the conclusion that the power of absolving in the sacrament of Penance is included in contentious jurisdiction. It will be noted that the exception is confined to ordinary power: delegated faculties must be obtained from the Ordinary of the place in which the confessions are heard (c. 874, § 1). 2°. A judge

[1] Cf. Branbandere, op. cit. n. 88.

expelled from his territory or impeded from exercising jurisdiction there, may exercise it outside his territory, after giving due notice to the local Ordinary (c. 1637). The decretals, too, made a similar exception, with this difference, however, that the impeded judge was obliged, first, to seek permission from the local Ordinary; but even though the permission was refused the court could be set up.[1]

The general rule in regard to voluntary jurisdiction, on the other hand, both in the old and new discipline, is that it can be exercised when the Superior, subject, or even both are outside their territory (c. 201, § 3). Just as canonists place the reasonableness of the contrary regulation for contentious jurisdiction in the solemnities with which its exercise is attended, so they find the explanation of the present one in the absence of these solemnities.

This rule may be sometimes modified in particular cases, either by law itself or, in the case of delegated jurisdiction, by the delegating Superior. There was a well-known modification of this nature attached to the Formula VI, in virtue of which its faculties could not be exercised, unless the subject were present in the territory of the Superior.[2]

Jurisdiction of the 'forum internum' and 'externum.'—The Code devotes a canon to the relations between jurisdiction of the internal and external forum. The rules given have been consecrated by long usage, and need very little explanation.

An act of jurisdiction in the external forum is valid also in the internal, but not *vice versa* (c. 202 § 1). An example will best explain this. An absolution from a censure in the external forum avails also in the internal; but, on the other hand, an absolution in the internal forum will not be accepted in external, so that if the crime is afterwards brought into the latter forum the criminal is treated as if he had not been absolved. There is a very practical illustration of this principle in the procedure to be followed in absolving from apostasy, heresy, and schism, as outlined in Canon 2314. The absolution from these sins in the internal forum, on account of the excommunication which is attached, is specially reserved to the Holy See. The Ordinary, however, may absolve from this

[1] C. 1, t. 2, lib. ii., Clem.
[2] 'Nec illis uti possit extra fines suae dioecesis.'

excommunication in the external forum even in virtue of his ordinary jurisdiction, observing, of course, the prescribed conditions. If such an absolution has taken place, then any approved priest can absolve from the sin in the internal forum.

Power granted for the internal forum can be exercised even in the extra-sacramental internal forum, unless from the nature of things the sacramental is demanded (c. 202, § 2). It is well known that the internal forum is divided into the sacramental and extra-sacramental, according as the matters in question are dealt with in the sacrament of Penance or outside of it. The rule given is, therefore, merely an application of the general principle, *ubi lex non distinguit, nec nos distinguere debemus.* Hence, for example, faculties to absolve from censure in the internal forum may be exercised not merely in the confessional, but also outside of it. Sometimes, however, though the internal forum is mentioned, the nature of the power conferred implies that it can be exercised only sacramentally, as when faculties to absolve from reserved sins are granted.

If the forum for which jurisdiction is granted is not mentioned, the jurisdiction is understood to be granted for both fora, unless from the nature of the case the contrary is evident (c. 202, § 3). This again is merely another application of the principle *ubi lex non distinguit nec nos distinguere debemus.* When delegation is given for absolution from sin, or when its source is the Sacred Penitentiary, or in circumstances of a similar nature, it is evident that, even though the forum is not mentioned, the internal alone is intended.

Extent of a Delegate's power.—The extent of a delegate's power must be determined by his mandate. It is evident that he has authority only over those matters and persons mentioned in the letters by which he was appointed, and that outside those limits his acts as a delegate are invalid (c. 203, § 1). It must be remembered, however, that when a person is granted a commission he receives all the authority necessary for all its execution (c. 280, § 1). Hence it may sometimes happen that a delegate may indirectly receive power over matters and persons not expressly mentioned in his mandate, in so far as this is necessary for the exercise of the delegation expressly committed to him. Thus, for example, a delegated judge has power to compel all the necessary witnesses to appear

before his tribunal, even though, as usually happens, they are not mentioned in the letters of appointment.

When special forms of procedure are prescribed in the mandate, the delegate, indeed, acts unlawfully, if he does not observe them, but he does not act invalidly, unless they are attached as strict conditions (c. 203, § 2). In dealing with rescripts the Code indicates that the particles *si*, *dummodo*, and others of a similar meaning, are to be regarded as introducing essential conditions (c. 39).

Relations between Inferior and Superior.—According to canon 204, the voluntary jurisdiction of an inferior, whether ordinary or delegated, is not suspended from the fact that he is passed over and a Superior approached (§ 1). Nevertheless, should any matter be brought before the Superior, the inferior should not interfere in it, unless for a grave and urgent cause; and in this case he should immediately warn the Superior of the matter (§ 2). There is a practical application of this general regulation in Canon 1048, which states that, if a petition for a matrimonial dispensation is sent to the Holy See, the Ordinary should not use any faculties which he may have, unless in accordance with Canon 204, § 2.

Canon 43 restricts somewhat Canon 204. According to it, if a favour is sought from, and refused by, a Congregation or Office of the Roman Curiae, without the consent of the Congregation or Office in question, it cannot be granted by the local Ordinary. Hence, to go back again to the example in Canon 1048, if a petition for a matrimonial dispensation is refused by the Holy See, the Ordinary, even though he otherwise possesses faculties, is incapable of granting it.

The effect of passing over an inferior, when the jurisdiction is contentious, is dealt with in connexion with judicial processes: it is unnecessary to touch upon it here.

Solidal, Collegiate, and Successive Delegation.—Several persons may be delegated, either at the same time or successively, to deal with the same matter. When they are delegated at the same time, the delegation may be either solidal or collegiate. The delegation is solidal when every one of those commissioned receives full power, individually, to deal with the matter in question. The delegate who first takes up the business excludes all the others, unless afterwards he becomes unable or unwilling to continue it (c. 205, § 2). If contentious jurisdiction is in question, the business is

regarded as having been taken up and the exclusion effected, when the judge issues his citation (c. 1568). The Code does not specify when the same result is attained in the case of voluntary jurisdiction; but, as the old regulation on this head was the same, we may have recourse to the explanation which canonists gave of it. The exclusion, therefore, takes place when the first act which has reference to the business has been performed.[1]

If the delegation is collegiate, the delegates receive jurisdiction, not as individuals, but as a moral body; and, hence, it is the moral body, not single individuals, who must exercise it. Even for its valid exercise the presence of all the delegates is necessary, unless the contrary is stated in the mandate (c. 205, § 3). However, it is by no means unusual in collegiate delegation to find such a clause as the following: *Si omnes interesse nequiverint, reliqui mandatum exequant.* When such is the case, in the absence of any of the delegates through inability, or even through unwillingness, the rest may proceed.[2]

If it is doubtful whether the delegation is solidal or collegiate, in the case of voluntary jurisdiction it is presumed to be solidal, in the case of contentious jurisdiction it is presumed to be collegiate (c. 205, § 1). In explaining these presumptions, which were part of the old discipline too, canonists point out that in contentious matters strict justice has to be administered between two parties, and that the decision of a moral body is much more likely to be equitable than that of a single individual. On the other hand, the execution of voluntary jurisdiction gives very little room for partiality, and the knowledge that it requires is easily within the reach of any single individual; in cases of doubt, therefore, delegation is presumed to be solidal, as thus there is a much better guarantee that it will be exercised, than if it were committed to a moral body.

When several persons are successively delegated to deal with the same matter, the Code confirms the old rule that the one who is delegated first, provided his delegation is not expressly withdrawn by a subsequent mandate, is alone competent to expedite the business (c. 206). Should there be doubt as to the priority of two delegates, then the whole

[1] C. 8, tit., De officio delegati, lib. i. in 6. Cf. Bargilliat, op. cit n. 239, etc.
[2] Cf. Lega, *De Judiciis Eccl.*, vol. i. n. 95.

delegation is invalid, and appeal must be made again to the person delegating (c. 48, § 3).

Cessation of Delegated Jurisdiction.—The various ways in which delegated jurisdiction ceases are enumerated in Canon 207. With some slight differences in detail they agree with the old methods.

1°. Delegation ceases when the mandate has been executed. Formerly when there was question of contentious jurisdiction and of a *gratia facienda* in voluntary jurisdiction, it ceased, even though the execution was invalid. Now, it is abundantly clear that a delegate can correct any errors which he may have made in execution, and that, consequently, his jurisdiction remains until he has validly dealt with the business. Thus, in Canon 59, § 1, it is stated that the executor of rescript, if he has made any mistakes, can reassume the execution; and in Canon 1825, it is stated without distinction that the complaint of nullity against a judicial sentence should be proposed before the judge who has passed the sentence.

2°. Delegation also ceases when the time, or the number of cases for which it has been granted, has expired. But in case of jurisdiction of the internal forum an act exercised through inadvertence after this period is valid (c. 207, § 2). Before the Code there was a regulation to the effect that, if timely application for a renewal of faculties had been made, they could be exercised after the expiration of the time or the number of cases, even though the renewal had not been actually granted. There is no trace of this provision in the Code and, consequently, it must be regarded as having ceased.

3°. Delegation ceases, too, with the cessation of the final cause for which it has been granted. This method used not be mentioned by canonists hitherto. Really, however, the cessation seems to arise from the nature of things.

4°. Delegation also ceases by the revocation of the person delegating directly intimated to the delegate. The clause *directe intimata* implies that it is not sufficient that the delegate should hear of the revocation casually: it is necessary that he should be officially informed of it. The revocation is valid even without a cause; for lawfulness, however, a just cause is necessary. Thus Canon 880, § 1, states that 'a local Ordinary or a religious Superior should not revoke or suspend jurisdiction or permission to hear confessions unless for a grave cause.'

5°. Delegation also ceases by renunciation directly intimated to, and accepted by, the person delegating. Again mere casual knowledge that the renunciation has taken place will not suffice: the intimation must come from delegate or from some one commissioned by him for this purpose.

6°. Delegation ceases by the death or cessation from office of the person delegating in the two cases mentioned in Canon 61, viz., when the mandate contains an express clause to that effect, and, secondly, when it gives power to grant a favour to certain individuals specified therein, and the delegate has not yet begun to execute it. According to Canon 1725, § 3, a delegated judge also loses his power on the death of the person who has delegated him, if he has not yet issued the citation.

7°. When delegation is collegiate it ceases on the death or defection of even one of the delegates, unless there is something to the contrary in the mandate. This is evident from what has been already said about collegiate delegation.

When one person alone is delegated, nothing is said as to the effect which his death produces; but, of course, it is evident that, if the delegation is purely personal, it ceases. On the other hand, if it is attached to the dignity rather than the person, it continues.

With the cessation of ordinary jurisdiction we shall not deal in this present article: its proper place is in connexion with ecclesiastical offices.

Supplying Jurisdiction.—According to Canon 209, 'in common error and in positive and probable doubt, whether of law or fact, the Church supplies jurisdiction both for the external and internal forum.' Hitherto, all were agreed that jurisdiction was supplied when there was a common error and a coloured title. The same unanimity, however, did not prevail when common error merely was present. The controversy centred round the interpretation of the Canon *Infamis,* but is now of interest only from the historical standpoint: the canon just quoted makes it certain that jurisdiction is supplied without any title whatever. The common error required must be explained in accordance with the old interpretations. Hence all or nearly all of the community should consider that the Superior in question possesses jurisdiction. It suffices that the error exists in the place in which the jurisdiction is exercised. *Locus* is a rather indefinite term in Canon Law: here it seems to

mean any place with a distinct community, such as a parish, town, religious house, etc. It is necessary, too, that the error should be probable, that is to say, it should not be the result of gross negligence. All are agreed that the Church supplies when the error regards some question of fact. The same is also true when the error has reference to a doubtful law: in that contingency you would have a positive and probable doubt of law, and jurisdiction would, therefore, be supplied on other grounds. When, however, the common error is about a law which is quite clear, many canonists deny that jurisdiction is supplied.[1]

The Church also supplies, according to this canon, in positive and probable doubt whether of law or fact. In regard to doubt of law, the same teaching prevailed prior to the Code, though it was based, not upon a text of law as at present, but upon universal custom. Although not a few held that in doubts of fact also jurisdiction was supplied,[2] the contrary teaching was much more common.

The Code prescribes that the doubt in both cases should be positive and probable, that is to say, that there should be a grave positive reason for the existence of jurisdiction. Hence, merely negative doubt or positive doubt which is not based upon a solid foundation does not suffice. If, however, there is grave positive reason for the existence of jurisdiction, the authority of canonists or theologians is not necessary either in doubts of fact, or even in doubts of law; though, of course, if there is such authority, it will usually constitute a convincing proof for the existence of the grave reason required.

Nothing is said as to the lawfulness of using jurisdiction supplied in this way. The old teaching on the point will, therefore, be applicable still.

J. KINANE.

[1] Cf Branbandere, op. cit. n. 98.
[2] Cf. D'Annibale, *Summ. Th. Mor.*, vol. i. n. 80 note 78.

SOME FURTHER QUESTIONS REGARDING THE MORALITY OF HUNGER-STRIKE

By Rev. P. CLEARY, D.D.

In the October issue of the I. E. Record [1] I sought to present certain difficulties concerning the morality of hunger-strike which had engaged my attention for some considerable time previously. I took for basis an elaborate dissertation from the pen of Canon Waters, contributed to the August issue immediately preceding. I criticized the Canon's work pretty freely, partly as an aid to the better expression of my own thoughts, and partly because I believed that the Canon had not done full justice either to himself or to his subject. He had undertaken to prove that a hunger-strike is essentially immoral and criminal when it is attended by serious danger to life, and I attempted to show that the Canon had failed in his effort. I did not feel myself called upon to maintain positively the opposing doctrine, and I did not see my way sufficiently clearly to do so—I looked to Canon Waters, or some other distinguished theologian, to solve what difficulties I might raise, or give me sufficient light to solve them for myself.

Canon Waters has been good enough to contribute a lengthy article in response. I give him credit and thanks for his good intentions, but, unfortunately, I fear that he has left me in the same condition of theological suspense as before. True, he states with the utmost confidence, that he has answered all my relevant and most of my irrelevant objections, but I fear that the Canon's self-satisfaction will not be shared generally by the readers of the I. E. Record.

Canon Waters thinks me a sceptic. 'Dr. Cleary,' he writes, 'revels in scepticism. His mind is obsessed with doubt about the simplest truths. Assent or positive assertion

[1] Fifth Series, vol. xii. pp. 265 et sqq.

seems foreign to his philosophy.' To ease his mind on the matter, I hasten to assure him that I do not pretend to be a sceptic : one is not necessarily a sceptic because one questions many—or most—of Canon Waters' statements.

But the Canon says that he has answered all my relevant and most of my irrelevant objections. Some of my objections may have been irrelevant, but if so their justification lies in the fact that they were each and all directly opposed to arguments advanced by Canon Waters. Perhaps, indeed, those arguments were themselves irrelevant. This by the way. With one solitary exception, he has not merely failed to meet, he has failed even to touch any of my fundamental contentions. He does not seem to have realized their nature, for I find it hard to believe that he would have deliberately shirked an answer to them, seeing that he has gone to such pains to reply. It would be too much to ask the Rev. Editor to reprint my previous paper, yet a reprint would perhaps be the best criticism of the Canon's latest article.

Canon Waters began with the assumption that to kill oneself is always unlawful. He had quoted St. Thomas, and that ended the matter for him. Unfortunately, it does not settle the matter for me; for I should find it of small avail to quote St. Thomas to a 'heathen Chinee.' He says that he had to begin somewhere; that Lugo states that it was denied by some forgotten heretics that to kill oneself is always unlawful; that the question whether, according to the theologians, suicide is immoral intrinsically or merely because of positive prohibition or of resultant evil consequences, might be settled by quotation. The epithet 'heretic' has no terrors for me, when I have St. Thomas and St. Augustine at my back. They say that Samson killed himself under divine inspiration, and I suppose that God did not inspire him to do a thing 'which is always unlawful.' But perhaps the Canon would like the quotation to settle the question, though it cannot have been overlooked by such a keen student of St. Thomas. To the objection that it is lawful for one to kill oneself since Samson, though he killed himself, is yet numbered with the saints in Sacred Scripture, St. Thomas replies :—

In answer, we say with St. Augustine, 'Samson cannot otherwise be excused from blame than by supposing that he had received secretly a command from the Holy Ghost, who, moreover, wrought a miracle through him': and he assigned the same explanation of the action of

certain holy women whose memory is held in veneration by the Church, though they killed themselves during the persecutions.[1]

It is true that in the very same article St. Thomas says, *seipsum occidere est omnino illicitum,* but manifestly the statement has to be interpreted in the light of his teaching above quoted. How could St. Thomas hold that it is *always* wrong to kill oneself, if he thought it right for Samson to do so? Perhaps, like so many others, he thought in 'water-tight compartments'; or, perhaps, rather, in the ultimate analysis, he sought the essential malice of suicide in a divine prohibition, or at least in the absence of divine permission. One thing is plain: if self-killing is wrong on the grounds advanced by Canon Waters—viz., because of opposition to natural inclination—then God could no more command Samson to kill himself than he could to blaspheme, for the natural law does not admit of dispensations. I have already advanced this objection to Canon Waters' teaching on the morality of suicide; but, so far, he has rendered no reply. He merely seeks to side-track the discussion.

What, moreover, becomes of all Canon Waters' eloquent rhetoric regarding natural inclinations—about which I know so little—and of that principle concerning which 'I had no right to thrust doubts upon the public,' and to overthrow which would 'loosen the foundations of the world'? Even in obeying God's command Samson acted in the teeth of natural inclination—*omne ens appetit esse*—did he thereby loosen the foundations of the world as well as of the Philistine temple? Was the fundamental 'law of nature' a good rule of morals in Samson's case? Either we must reject the teaching of the 'master of all theologians' regarding Samson's death, or else loosen the foundations of the world by rejecting Canon Waters' fundamental law of nature.

But, apart altogether from the light shed upon the subject by the case of Samson, is it quite clear that, as Canon Waters says, natural inclinations are the language in which the natural law is written in our hearts? The natural function—or inclination—of the sexual organs is the procreation of children. It would, I fancy, be difficult to show from an examination of those functions that such an act as fornication is morally wrong. It is an act

[1] IIa, IIae, q. lxiv. art. v.

perfectly in accord with natural inclination, and we must seek, therefore, its malice in some source other than the Canon's fundamental law.

Canon Waters says that he had three theses to maintain: first, that hunger-strike is objectively self-starvation, and therefore killing of oneself; second, that not only do the strikers perform an act which amounts to suicide, they actually intend death and ordain it as a means to an end; third, that the evil consequences of the hunger-strike preponderate.

> Dr. Cleary [he writes] does not dispute the cogency of my arguments, nor does he express dissent from my conclusion. . . . I cannot but assume, then, that he agrees with me in condemning any hunger-strike which involves self-starvation or the election of one's own death as a means to the desired end. If he accepts so much, what, then does he object to? He suggests an alternative. He makes a distinction between the unlimited strike, for which there is no defence, and a limited non-fatal form of strike which just allows one to take a certain risk of death provided death itself be guarded against.

I do not exactly know what Canon Waters means by 'a risk of death provided death is guarded against'—the expression is not mine. When I read the above statement of the contents of my article I gasped in wonderment and did my self the honour of reading myself once more. These were my findings. The second thesis I did not challenge. It was a question of history; and though the Canon's history is not always reliable—witness his references to the date and to the contents of my previous article—I took it that he, as prison chaplain, had sources of information not available to me. The thesis in question had no interest theologically for me.

But as regards the first, I found the Canon's presentation hopelessly at fault. Beyond questioning his proofs regarding the intrinsic malice of self-killing, I did not challenge the unlawfulness of direct self-starvation. But I did contend that the Canon had still to prove that hunger-strike was necessarily direct self-killing. I suggested that perhaps we might regard it as indirect, and that granted a proportionately grave cause it might be quite lawful and, in exceptional circumstances, *even obligatory.* I shall return later to a more detailed examination of my process of thought on the point: suffice it here to say that the article did not require very close perusal to discover the main outlines of the arguments. 'The question still remains,' I

say, 'whether hunger-strike is in reality direct self-killing, or whether, rather, one might not possibly so regard the act as to find in the death merely an "incidental effect."' Having quoted a passage from Dr. MacDonald, I proceed (pp. 271-272): 'From this doctrine it seems possible to justify the hunger-strike. Hunger-strike is an abstention from food which *will result in death or danger of death* by starvation.' One would think this sufficiently plain, even if there were not a full page or two devoted to an elaboration of the argument.

The third thesis above mentioned was really not an independent thesis at all. In determining the morality of indirect self-killing, one had to consider the *ratio proportionate gravis*, the proportion between the good and evil results; and it should have been sufficiently clear that I suggested the presence of sufficient compensating causes in certain types of hunger-strike. If hunger-strike is indirect self-killing and, at the same time lawful, then there must be a fair proportion between the good and evil results.

Canon Waters, to my surprise, therefore, tells me that I am wholly concerned with a limited non-fatal form of hunger-strike. The Canon says he expected this form of attack on his doctrine, therefore, I suppose he sought for it in my article. But, no; I am not particularly interested in mock-heroics. I raised the question at all only because Canon Waters did not seem to make any distinction between fatal hunger-strike and strike which involves merely danger of death. The Canon seemed to condemn even this less extreme form; and I, on the other hand, practically took its lawfulness for granted, provided, of course, that there was a fair reason for undertaking the strike. I took it, moreover, that one might even *directly* run the risk of death for *a cause of importance*, for I could not see how any probabilist or equiprobabilist or compensationist could logically deny it. There is in the case merely question of the lawfulness or unlawfulness of an act—there is no question of means to a necessary end, and no question of injustice to another—hence the case should not be excluded from the scope of the probabilist. There is question of an act whose morality is doubtful, for when there is merely danger of death, there is a fair probability that the act is not suicide: when the chances of surviving are equal to those of perishing, even the equiprobabilist might pluck up courage to apply his system. But even if probabilist

and equiprobabilist shirk the logical conclusion of their own principles, they have still to admit that the act is only a doubtful case of suicide; and thev can, with the compensationist, apply the general principle covering acts with two effects. They will admit with him that the act is lawful, when due account is taken of the gravity of the danger of death and of the compensating good which will result from the act in accordance with the principle that we may decide in favour of liberty in doubtful cases, when the good which will result bears a fair proportion to the probable evil. This line of reasoning I advanced as a matter of course, but Canon Waters takes no notice of it. Instead he makes me base my whole argument on a certain statement of Lehmkuhl, which he thinks I completely misunderstand. Here is the statement :—

> Licet virgini ad evadendam laesionem sui sese conicere in *certum mortis periculum*, modo ne sit in certam mortem: nam si plane impossibile est vitam servari, sed illico necesse est, ut ex actione, quam virgo ponat, mors sequatur, sicut ex proiectione ex alta turri, id *agere* non licet, pati vero potius mortem quam violari omnino licet. Immo potius periculum mortis vel mortem subire consilii est, quia peccaminosi consensus periculum cum violentiae perpessione saepe coniungitur.[1]

Canon Waters' treatment of this teaching of Lehmkuhl is full of interest. He criticizes me for suggesting that there is here question of direct killing and of direct danger. Plainly, he thinks, this is not so—' one glance will show that Lehmkuhl is talking of *indirect* danger and of indirect death (in the first clause). . . The title of the paragraph is decisive.' Canon Waters has discovered a new *locus theologicus*—the titles of Lehmkuhl's paragraphs. He had already discovered another in the sayings of Arthur, who had no doubt of what killed him, when he said: ' My uncle's spirit is in these stones.' Presumably he has discovered a third in his own intellect as contradistinguished from my common sense and sense of humour. In Lehmkuhl's case he should have been more careful—he might have remembered Lehmkuhl calmly discussing the morality of acts with two effects [2] before he had settled what he meant by morality.[3]

But let us take the case in question. It was a standard case, well known to everybody, and I did not think it necessary to tell my readers that there was question of a

[1] *Theol. Moral.*, vol. i. No. 737, 11th ed. [2] Ibid. vol. i. No. 72, 11th ed.
[3] Ibid. vol. i. No. 93 sqq.

maiden's jump from a tower *to save her honour.* Of course the phrase *ad evadendam laesionem sui* gives the case its point—but against the Canon. If there were question of *indirect* death in the case of the jump to certain death, the jump would surely be lawful because the good effect is certainly sufficient to compensate for the evil. That death is a minor evil compared with dishonour and probable sin is plainly Lehmkuhl's teaching, as may be seen at once from the last sentence quoted above. If it is wrong, then, to jump to certain death to save one's honour, it is wrong only because the killing is direct—because the jump is suicide; in other words, because the act does not come properly under Lehmkuhl's heading. But surely a jump into probable death is no less *direct* than a jump to certain death. Lehmkuhl himself was not very clear on the matter, perhaps. No; Lehmkuhl's common sense was often, for him, a better *locus theologicus* than his undigested theological principles and his 'loads of learned lumber.'

But Canon Water's treatment of Dr. MacDonald's teaching, and of my deductions therefrom, is a masterpiece —nearly as good as anything in his article of last August. He ignores the only portion of it that had any essential bearing on the matter in question—the portion which I elaborated to prove that self-starvation might be indirect killing of oneself. I do not say that the Canon shirks the difficulty presented—I merely say that his treatment looks like shirking. My argument was but an application of Dr. MacDonald's principle to the case in question. It ran thus :—

> Hunger-strike is abstention from food which will result in death or danger of death by starvation. That is one, an evil, aspect of the act or omission. Can the act have another, a good aspect ? Let us see. Prisoners who have been unjustly condemned are entitled to protest against their own condemnation—they are entitled to maintain that they are innocent of crime and that they should not be treated as criminals. Refusal to take prison food might then be a refusal to acknowledge the right of the prison authorities to confine them to such food; it might involve a direct protest against an unjust condemnation, and, where the alleged crime is of a political nature, a vindication of some big national claim. Whereas, on the other hand, acceptance of food and general obedience to prison discipline might easily be construed into a tacit admission of guilt. *Per se* such prisoners are not bound to remain in prison or obey the prison rules; if they are bound the obligation arises not from any intrinsic wrong in their escape or disobedience, but from the fact that greater evils might ensue. Is it, then, intrinsically wrong to disobey the prison rule obliging one to eat prison food if obedience may be construed into an admission of guilt and of the authorities' right

to treat one as a criminal ? Now, if a big national issue is at stake, which would be very materially benefited by a strong protest against injustice, and which, on the other hand, would be seriously compromised by even an apparent admission of guilt, it would seem that in these circumstances disobedience might be not only a right, but even an obligation. It may be that incidentally the same act may result in the death of the striker: the principle is conserved not by the death but by the refusal to acknowledge the prison chains. If a Christian in the early days of the Church was entitled to refuse meat of animals killed by strangulation, or if, at the present day, one is entitled to refuse food offered to idols even when one can get no other food, why should not one be entitled to refuse prison food when no other food is offered and when its acceptance would imply the sacrifice of a big principle ?[1]

Despite this lengthy argument, which he completely overlooks, the Canon fails to see why I quoted Dr. MacDonald's doctrine. He thinks I quoted it because of the perfectly innocuous doctrine that if the act with two effects is otherwise good, then the fact that the evil effect may help to secure the good more easily does not vitiate the act ! Does the Canon, to quote himself, show a 'total disregard of the kind of argument which alone would be effective in such delicate discussions' ?

Having failed to discover that I contended, in the lengthy quotation just cited, that the death resulting from hunger-strike might, in certain circumstances, be indirect or incidental, Canon Waters subsequently discovers the line of thought for himself ; but his treatment of the case suggests a want of grasp of the difference between direct and indirect causality. Lehmkuhl was not clear on the matter, and, as somebody has said, solved his cases largely by the 'rule of thumb' method. I do not say that the Canon's method is the same ; yet the Canon displays a singular want of consecutive thought. The logical deduction from the opening statement of the following quotation is the direct antithesis of the Canon's position at the close. The quotation is rather long, but as it is full of interest, I give it at length :—

Suppose a man thought his honour compromised by eating, or by eating the only food that was supplied, might he push his abstinence so far as to endanger seriously his life or to incur certain death ? The case is very like that of duelling, and the same answer must be returned. A man in such a case would not intend his own death or danger, and

[1] I did not state, as Canon Waters says, that the prohibitions were intended to *bind* men even when no other food was available. I now state that they would be bound to abstain, even though they starved, if these foods were offered *in odium religionis.*

would not use either as a means to gain his purpose. His whole purpose is achieved simply by abstinence, and is not furthered by the danger into which he is brought. To this extent, he is more innocent than the ordinary hunger-striker, to whom danger of death is a means directly chosen to gain some end. Nevertheless, if the moment comes, when death is the only alternative to taking food, he will have to take the food; for, as I showed in my first article, not to take it would be to kill himself, and no man may kill himself even to save his honour.[1]

The phrase, 'To this extent, he is more innocent than the ordinary hunger-striker,' is somewhat of a puzzle. It suggests a less degree of sinfulness, but not perfect legality. Yet from the last sentence—from the fact that the striker *must* change his tactics when death is the only alternative, I infer that Canon Waters regards the 'limited, non-fatal' strike as lawful, when employed to save one's honour. What I wish to insist on, however, is the fact that, according to the Canon, whilst the danger which results from temporary abstinence is indirect that which results from continued abstinence becomes direct. Why, in the name of all the theologians, is the man's honour not saved by the *abstinence* in the second case as well as in the first, and why, consequently, is the death not merely an incidental effect? Of course, it necessarily results from the continued abstinence, but this surely does not make it direct—just as, in the old classic example, the procuring of abortion is indirect though it is the necessary effect of the medicine which lowers the temperature. I am glad to have Canon Waters' testimony for the statement that a man's purpose may be achieved by abstinence and in no way furthered by the danger into which he is brought: it will help, perhaps, to solve some of my difficulties on the hunger-strike, though in a way different from that intended by the Canon.

I pass by the case of the drug, which the Canon mangles beyond recognition. I merely note the extraordinary theology of the phrase (page 21): 'once the feat of swallowing the drug has been accomplished and the advantage gained, every remedy should be employed to save his life —*otherwise there would be evidence* that the man's death was intended.' I come to his treatment of the man 'whom abstinence has no power to kill by a law of his constitution' as his delicacy will have anticipated starvation. Canon Waters says (page 21) that the death of such a delicate hunger-striker would be 'incidental in reference to *the*

[1] Art. cit., p. 20.

means he took, but it would not be incidental in reference to his *intentions*.' I am glad once more to be able to quote the Canon's testimony to the fact that this particular hunger-strike *objectively* involves merely *indirect* self-killing, for it may, therefore, be justified for a sufficiently grave cause. But I cannot see why the death must be direct in respect of the striker's intentions. I cannot see why Canon Waters is obsessed with the idea that strikes necessarily 'intend their own death as a means of wringing concessions from the Government.' If a man thinks his honour compromised may he go on hunger-strike when 'abstinence will not kill him by a law of his constitution'? The death is incidental in respect of the means he takes; is it not according to the Canon's own teaching (page 20) also incidental in respect of his intentions? Once again, I wonder has the Canon a clear grasp of the nature of direct and indirect killing.

Let us resurrect our friend the Carthusian for just one moment. The Canon thinks he has a grievance against me for criticizing his answers to his own difficulties. But surely he was bound to raise and answer those difficulties, if he wished to give a complete presentation of his case. It was the way of 'the master of all theologians.' An unanswered objection means an unproven thesis—hence the justification of my criticism. I had not lost my bearings, though the Canon thinks so. 'I have no interest,' he says (page 24), 'in saving the Carthusian—my critic has, if he only knew it. If the Carthusian is a suicide the case against hunger-strike is already decided *a fortiori*.' The Canon had no interest whatsoever in saving the Carthusian—probably he is now sorry that he did—but having 'saved' him he was bound to answer the resulting difficulties. Neither have I myself the slightest 'interest' in saving him, for the Canon's *a fortiori* argument is utterly untheological. I condemned the Carthusian because I could not bring myself to believe that there is, in the case made, a fair proportion between the good and evil consequences. I did *not* condemn the striker because I thought such a proportionately grave compensating cause might be present. It is curious that the Canon should think that I would save the Carthusian if I had an 'interest' in doing so: I trust that we are both out for truth and not for victory.

Turning to the Wolfe Tone case. The reader will remember that the deduction was an *argumentum ad hominem*

based on the Canon's own assertions. He now says the deduction was unwarranted: 'what I said was that no one is obliged to take means which are obviously insufficient to preserve life—this does not warrant the extravagant inference that therefore a man may take most efficacious means to put an end to his life.' I do not know where exactly we are now. I thought that self-starvation was, according to Canon Waters, a most efficacious means of putting an end to life—he had called it self-killing, suicide, the direct cause of the closing of life. Wolfe Tone and Captain Oates anticipated their death by some time, both by *efficacious* means. Whence, then, does the difference arise? Is it from the fact that there was in the one case an act, in the other an omission? Scarcely, for according to Canon Waters, 'the difference between act and omission counts for nothing of importance in morals.'[1]

I have done with Canon Waters. I regret that I have felt compelled to 'thrust my doubts upon the public' a second time, but I think it due to the readers of the I. E. Record that no man should be allowed to fling about the epithets 'suicide' and 'criminal' without proving to the hilt that he is justified in doing so. The need for my action is all the greater because of the ecclesiastical dignity and the recognised learning of Canon Waters.

P. Cleary.

[1] I. E. Record, August, 1918, Fifth Series, vol. xii. p. 93.

NOTES AND QUERIES

THEOLOGY

AFFINITY AND PUBLIC PROPRIETY. DOUBLE RELATIONSHIP

I

Rev. Dear Sir,—In the current issue of the I. E. Record you hold that the impediment of affinity always arises from a valid, and 'propriety' always from an invalid, marriage. So the law states, I admit; but I have a suspicion that the letter of the law may be modified by expert interpretation or by practice. The matter is one of serious importance. Might I call your attention to the parallel case of 'lawful' and 'unlawful' affinity under the old law? The words there were definite enough also; but you will remember that—in the case of a marriage supposed to be valid, but *really* invalid—several canonists held that the rule about 'lawful' affinity should be applied, and that the impediment should be extended to the fourth degree. Now, in that case, the acts that led to the impediment were really unlawful: the only saving fact was that the people concerned were, on account of their ignorance, not held responsible. The test applied, therefore, was not that of objective fact, but of subjective responsibility.

My suggestion is that the same principle may now be adopted: and that—in the given case of a marriage really invalid, but regarded as valid by all concerned—the impediment arising is 'affinity' not 'propriety.' Perhaps you would refer to the matter in the next issue.

Confessarius.

II

Rev. Dear Sir,—Is Canon 1077, § 2, 2°, correctly stated? A and B are anxious to marry. A has already been married to C and D, both of them first cousins to B—one on the father's side, the other on the mother's. Is there a double relationship between A and B? If so, where are they mentioned in Canon 1077, § 2?

Scotus.

I

An appeal from the 'letter of the law' to 'expert interpretation' and 'practice' is generally the prelude to some liberal statement regarding obligations. Not so in the statement by 'Confessarius.' He wants to have certain invalid marriages rank as valid; and the practical result would be to establish impediments where otherwise none would have existed. For, comparing Canons 1077 and 1078, we find that the first is much the more serious. 'Propriety' would involve only two degrees of the direct line (1078); 'affinity' affects, in addition, all the other degrees of the direct line, and the first two of the collateral (1077).

That itself is enough to make us cautious about accepting the suggestion. And, on the plain merits of the case, we are opposed to it. 'Confessarius' states the position well, but we believe it will never be adopted—in practice at least. Our reasons are:

1°. The words of the law are opposed to it. So 'Confessarius' admits, and we need not delay on the matter. Of course, even when the law makes no distinction, we may make one of our own, if we have got a sufficient reason. But the reason suggested by 'Confessarius' is not strong enough to justify us in tampering with the law. His parallel is incomplete. 'Lawfulness,' after all, is closely related to subjectivity; 'validity' is not. Acts are, of course, objectively right or wrong; but the fact remains that many acts may be objectively wrong and subjectively right, and *vice versa.* In our correspondent's case of putative marriage the 'acts that led to the impediment' were certainly objectively wrong; it is equally certain that they were subjectively right. Should they, then, be regarded as right *simpliciter* in their bearing on affinity? That was a problem on which different views might be reasonably held: and the contradictory answers, actually given, led to the divergent results favoured by the canonists. But 'validity' is quite a different matter: it is something inherent in things themselves, and quite independent of the views, correct or incorrect, that we hold regarding them.

We may add that, even under the old law, a stronger protest would likely have been made against the view referred to by 'Confessarius,' were it not that *another* impediment, extending to the fourth degree, probably existed anyhow—the *former* impediment of public propriety.[1]

2°. Whatever about theory, the view suggested will, we think, have no effect in practice. For, unless we are greatly mistaken, the opinion we favour—based as it is on the words carefully selected by the most expert canonists in the Church—will be regarded as at least probable. That is enough for our purpose. For, as regards impediments involved in Canon 1077 but *not* in Canon 1078—two in the collateral line, and all *but* two in the direct—there will be a 'doubt of law.' And, as we know from an earlier Canon (15), when there is a 'doubt of law' there is no obligation whatever imposed by Church legislation. The result, therefore, will be the same as if the view we have expressed were absolutely certain.[1]

II

'Scotus' raises a point that, we must confess, we had not thought of before. It would seem at first sight that A and B are doubly related. The marriage with C, if it stood alone, would involve one relationship: so would the marriage with D, if *it* stood alone: when both are combined, why should there not be a double effect? The older law would suggest the same: it provided for a multiple impediment when, of two individuals, 'one had had intercourse with several blood-relations of the other.' But—apart from the exceptional case in which C and D are

[1] See Lehmkuhl, *Th. Mor.*, ii. n. 998; Marc, *Inst. Mor. Alph.*, ii. n. 2034, etc.

related independently of their descent from B's grandparents—it is quite clear that A has not yet 'contracted marriage subsequently with a blood-relation of a deceased partner' (1077, § 2, 2°).

So we may echo 'Scotus'' query, 'Yes, where are they?' In the transition from the old law to the new, the second portion of the double impediment would seem to have fallen out. That, we may take it, was the intention of the legislator. The obvious purpose of Canons 1076 and 1077 is to lessen the number of impediments, of the 'multiple' kind as well as of the 'simple.' Another old-time double impediment of affinity that would seem quite as natural as the one now suggested—it arose when 'each of the individuals had had intercourse with a blood-relation of the other'—has, in so far as it is 'multiple,' no successor in the Code. The same thing would seem to have happened in the case submitted by 'Scotus.'

It is surprising. But so are many other things that we are glad to accept.

OLD AGE PENSIONS

Rev. Dear Sir,—1°. Are septuagenarians, whose means do not entitle them to the Old Age Pension, justified in receiving it?

2°. Here is a case in which I am interested: An old lady, without means, secured the Old Age Pension, in January, 1918. In April, 1918, she came into a pension of £60 a year for life from another source. She continued receiving the Old Age Pension till October, 1918, when the officer withdrew it, and ordered her to refund the amount received since April—about £10. Is she bound in justice to do so?

Sacerdos.

The principles on which the reply depends have been stated in earlier issues of the I. E. Record. If 'Sacerdos' consults the March (1909) and June (1910) numbers—pp. 301-5 and 630-1, respectively—he will have no trouble in solving the problem.

FUNERAL OFFERINGS IN THE ROVINCE OF ARMAGH

Rev. Dear Sir,—A person retaining her domicile in parish A, acquires a quasi-domicile in parish B, being appointed probationer nurse in an institution there for a term of three years. After a year, she dies in the institution, is brought home, waked, and buried in parish A. Offerings are given, but exclusively by friends in her home parish.

I have seen some discussions on cases somewhat similar, but not identical, and so would respectfully put before you some few points for your consideration, and ask the favour of a reply in the I. E. Record.

(1) The decree *re* offerings in the Armagh Synod refers only to the case of death occurring *outside* one's parish, and its authors contemplated in this connexion only the case of a person dying outside his 'domicile'—whatever this term means.

(2) It seems to me this term should get its ordinary meaning, unless there is some overpowering reason for a different one; for (*a*) in such a decree we must believe great care was taken in selecting clear and

unequivocal terms, as the matter was of great practical importance and the scope or aim of the decree was to secure uniformity throughout the Province. Now, 'domicile' has a definite meaning, and so we are forbidden to give it a complex one, as would be involved by making it include quasi-domicile. (*b*) The occasion on which this decree was formulated seems to point to the exclusion of this latter term, as the *Ne Temere* had just been issued and had discarded the quasi-domicile in connexion with matrimony, owing to the danger of nullity to which its use exposed the sacrament. In such circumstances we are not readily to presume that such a disturbing factor was given an important status in a Council aiming at peace and uniformity—at least without notice, of which there appears no evidence. (*c*) In confirmation of this view—that the term 'domicile' in this decree was meant to be taken in its strict or ordinary sense—I may mention the fact that such also is the opinion of one who attended the Armagh Synod and took a prominent part in it, and so should have first-hand knowledge of the sense of so important a term in this important decree.

If this be the correct meaning of the term 'domicile,' the solution of the case made is simple—the nurse dies *outside* her domicile—outside her parish, and three-fourths of the offerings are due to the clergy of her domicile and one-fourth to the clergy of the parish where she dies.

(3) But in the opposite hypothesis, namely, that the term 'domicile' includes also quasi-domicile, it seems to me the case proposed is outside the scope of the Armagh decree, and so not solvable by its provisions. For in this hypothesis the nurse does not die *outside* her parish, as she dies *in* one of the two parishes she had, namely, in the parish of the quasi-domicile. The case, in this aspect, may be put as follows:—

'A person dies outside the parish of his domicile, but in that of his quasi-domicile, is waked and buried in the parish of his domicile and offerings taken up there. To whom do the offerings belong?'

I mention the *place whence the funeral starts* in this connexion, as such a place, according to my experience in this diocese, had well-recognized rights previous to this decree of Armagh Synod, and though these rights are extinguished by this decree in the case of a person dying *outside* one's parish, nothing is said or implied in the decree to this effect in case of a person dying elsewhere—and so these rights of the 'place of funeral' remain unless the person dies outside his parish. This important fact will, therefore, have to get proper consideration in apportioning the offerings if it does not determine them all in favour of the domicile.

(4) The only other point that occurs to me is that perhaps the Armagh decree—with 'domicile' used in the strict sense—has been annulled by the new Code or by some special recent decrees of the general law.

Here again, *positive proof* must be forthcoming, as a decree of such importance as that of the Armagh Synod is not to be set aside by mere surmises or doubts arising from the general law.

It has been well stated by you that appeals for the application of the general law in this connexion are very undesirable, and would lead to results that anyone would pronounce inequitable. The only evidence of the alleged relevancy to such cases as ours of the general law in the new Code and recent decisions, so far presented, is that of Canon 1236, § 1, but the important qualifying clause 'without prejudice to *particular* laws' seems to rule out its application; and as to the decision in the

August issue of the *Acta Apostolicae Sedis,* the matter referred to there was that of the place of funeral, not offerings (a quite different matter); and may we not fairly assume as implied also the clause already mentioned, 'without prejudice to particular laws'? So the application of this decision is far from clear, consequently should we not hold that the Armagh decree, as explained in No. 2 above, is still in full possession?

Thanking you in anticipation.

F.

This matter has been given so much attention in past issues[1] that, if it were not for a special request contained in a covering letter, we should have compressed the query considerably. 'F.'s' intention, obviously, is to protest against an arrangement by which the offerings over a deceased person—who has had a domicile (parental or other) in a parish where his people live, and where, out of respect to these people, the parishioners contribute generously—should go to the clergy of an extern parish, from which perhaps few offerings come, and with which, at any rate, he has had only the slender and temporary connexion sufficient to establish a quasi-domicile. That is a matter that deserves the careful consideration of the legislators: with its merits or demerits, *we* have no special concern. We would only point out that the grievance is not confined to this department. In some parts of the country, for instance, there are large marriage offerings: they go almost entirely to the parish priest of the bride: if a lady acquires a quasi-domicile outside her native parish (as she may do in a few hours, any time she wishes), and if she is married there, the offering will go to a priest whom she has perhaps never seen before in all her life. Apparently unfair to the clergy of her home: yes, but was there ever a human law that would give good results in *every* case? And this doctrine on the quasi-domicile has been found so useful in its *general* results that we may be sure it has come to stay. Through Canon Law generally we find the principle (stated in brief form in Canon 94, § 1, of the Code) that the lesser bond is just as important as the greater: that a person becomes a full member of a parish, with all the rights and obligations such membership entails, as soon as he has acquired, if we may use the expression, a 'home or quasi-home' within its boundaries.

The *certainties* in connexion with the Armagh law are:—

1°, that it deals directly only with the case in which a person dies outside his parish;

2°, that, a person does *not* die outside his parish if he dies in a parish in which he has either a domicile *or* quasi-domicile (94, § 1);[2]

3°, that, when he does die outside his parish, one-fourth of the offerings goes to the clergy of the parish in which the death occurs (no matter where the funeral takes place), and that the extern clergy are bound to see that Mass be said for the deceased;

[1] See I. E. Record, March, 1912 (pp. 301-9), April, 1912 (pp. 410-17), January, 1914 (pp. 84-7), March, 1914 (pp. 286-8), November, 1918 (pp. 404-7).

[2] Cf. I. E. Record, January, 1915 (p. 68), November, 1918 (pp. 406-7).

4°, that, in the same circumstances, however, no offerings are to go to a parish in which the custom of collecting offerings does not exist;

5°, that, when a person dies inside his parish, we must fall back on the general law as modified by Ulster custom—and of this custom we have some indications in the subsidiary principles suggested by the decree: 1°, that the parishes of domicile and of death have special claims; 2°, that no importance attaches to the place of burial; 3°, that, as above, no offerings go to a parish in which there is no offerings custom.

Outside that, our *opinion*—based partly on these principles, partly on general law and on what we venture to think is common sense, partly on the views of those who attended the Synod or are in the best position to judge, and partly on custom and practice, the 'best interpreter of laws' (29), so far as we know it—is:—

1°, that, in the decree, 'domicile' includes 'quasi-domicile.' The shorter form is used for convenience;

2°, that, when a person dies outside his parish, the 'three-fourths' should be divided equally among the different parishes in which he has a domicile or quasi-domicile [1] (cf. Canon 1236, § 2).

3°, that, when he has had a domicile and quasi-domicile and dies in the parish of domicile, all the offerings go to the parish of domicile (cf. Canon 1216, § 2). No one seems to question this.

4°, that, when he has had a domicile and quasi-domicile and dies in the parish of quasi-domicile, all the offerings go to the parish of quasi-domicile (cf. Canons 1216, § 2, and 94, § 1). This is the point that is frequently questioned—by 'F.' among others. But it seems a clear conclusion from principles that we must accept—those mentioned in our opening paragraph, stated in general law and left unmodified by Ulster custom. If it is to be changed, a special law will be necessary.

For this opinion of ours—right or wrong—we have given our reasons already, and we need not repeat them.

In reply to 'F.'s' criticism—which is very fair and reasonable—we would say, taking his points as he has numbered them:

(1) 'Domicile, whatever this term means.' It means, in our opinion, domicile or quasi-domicile. But, whatever it means, the decree has no bearing on the nurse's case. She died *in* her parish. If 'F.' denies that he must reject the Code and all recent decisions, or he must show that the Armagh legislators gave *paroecia sua* an interpretation that is admitted nowhere else in the Catholic world, and not even in Armagh in any department outside that of funeral offerings. We question whether he will attempt to do these things. If he does not, his subsequent statements, under No. 2, do not affect the issue, except in so far as they tend to establish a 'subsidiary' principle—like those referred to in No. 5° (above). *Do* they establish such a principle? We think not:—

(2) (*a*) This argument, we admit, has considerable force. But the legislators, remember, were speaking of a man who died where he had no domicile or quasi-domicile. Did they mean, in regard to the

[1] Cf. I. E. RECORD, January, 1914 (p. 86).

distribution of the 'three-fourths,' to differentiate between the rival claims of the clergy of domicile and quasi-domicile? It may be; but, since the general law puts both on the same footing,[1] we should like to have some proof of it. Apart from all designs of the kind, the legislators had reason enough for adopting the shorter term: it was much more convenient: in what we have written above, and in previous contributions, we should have followed their example—if we were not afraid of keen critics like 'F.'

(*b*) The *Ne Temere* abolished the claims of quasi-domicile in one single department. Why should the Synod get excited about that, when it was legislating on a totally different matter? In the issue of the *Acta* to which 'F.' refers, a Maltese Bishop is stated to have urged the *Ne Temere* parallel in another case of funeral offerings. The reply of the Congregation of the Council was not encouraging.

(*c*) We are aware that this has been stated by some. We are also aware that the opposite has been stated by others. Both sides are equally trustworthy. Nothing, then, remains except to fall back on the wording of the decree—as interpreted by general law and custom.

Our position, therefore, is that 'the nurse dies [inside] her parish' and that *all* the offerings 'are due to the clergy of the parish where she dies.' That is different from 'F.'s': we are very sorry, but we cannot help it.

(3) With the first two paragraphs we agree. The third is one that the local Bishops might examine carefully. It is the best statement in 'F.'s' query—the best, in fact, we have seen on the subject—and deserves every consideration. The Armagh statute certainly did *not* deal directly with the case he gives: if the custom he refers to still exists, it is, therefore, not *directly* opposed to the statute and might, in a crisis, prevail. Unfortunately, we are not in a position to say what the local customs are. All we *can* say is:—

1°, that the custom was mentioned with approval by the Synod of Drogheda (1854, p. 38)—in connexion with the case with which the Synod *did* deal—but, again in connexion with the same case, was discarded by the Synod of Armagh and replaced by the present regulation. That furnishes one of the 'subsidiary' principles that tend to convince an outsider that the custom has been abolished everywhere;

2°, that the abuses which grew up under the old system, and (we may suppose) contributed to its suppression in the one case settled by the Synod, affected 'F.'s' case just as well, and would, *in* that case, naturally lead to a similar result;

3°, that, in all the parishes about which we have been fortunate enough to secure definite information, the custom has certainly ceased.

(4) The Canon referred to does not directly affect the statute in any way. As for the decision in the *Acta* [2] we have only to note:

1°, that, according to the general law, the division of the offerings

[1] All recent decrees; Canon 94, § 1, sums them up.

[2] It will be found in the *I. T. Quarterly*, Oct., 1918 (pp. 374-8).

depends largely on the 'place of burial.' The two questions are, therefore, *not* very 'different.' 'F.' might weigh the statement that '[quaeritur] de iure [exequias] faciendi, quod iusta proventuum perceptio sequitur.' [1]

2°, that the Congregation, while leaving the way open for reasonable arrangements in the future, abolished the local decree and custom, and reaffirmed the principle of the general law.

DIVISION OF FEES

REV. DEAR SIR,—Will you kindly solve this case? Bertha has a parental domicile (A) whilst going to, and intending to reside for a half-year in, another parish (B). Whilst there a good opening presents itself in a third parish (C), but it will last for only half-a-year, or at most eight months. She is allowed to avail of it on the understanding that she will return and put in her half-year in the second parish. Accordingly, she goes to the third parish and spends half-a-year there, and leaves for the seaside in a fourth parish (D) with the family, remaining there a month and a few days, except that she returns to her master's house to look after things and take to the seaside resort some home-grown food for the following week. In all, she spends twenty-five days at the seaside and there determines to contract marriage with a young man from a different parish (E), who resides in a town where they at once get married before the urban parish priest, as there seemed no chance of the other four parish priests arranging for her marriage as promptly as she wished. Is the urban parish priest to retain the marriage fee or to restore it to one or all four rural rectors? Could each one of them assist at the marriage lawfully?

DUBIUS ET ANXIUS.

Whatever may be wanting in the *data*, there are parishes enough to satisfy everybody.

Who were the *parochi proprii* who might lawfully have assisted at the marriage?

1°. The parish priest of A was certainly one.

2°. As for the parish priest of B, the matter is doubtful. The lady had a quasi-domicile there at first: the only question is whether she lost it when she went to C. It may be reasonably claimed that she had then given up the intention required for quasi-domicile, and that the absence was too protracted to justify us in holding that her 'residence' in B still continued. But the point is not quite certain: we may quote the words of a man who wrote extensively on these matters, but was unable to come to any definite conclusion in a very similar case:—

A person buys or rents, on the 1st of January, two houses situated in two different parishes, A and B, with the intention of spending six months in A and the second half-year in B. He occupies both immediately; that is to say, he furnishes them and takes personal possession. For that purpose, he goes and spends the first two or three days of January in his second house in B, to which he is to return definitely at the beginning of July: he leaves his servants there to finish the furnishing

[1] Ibid. p. 377.

and to wait for him; then he returns to A, where he intends residing for the first six months of the year. He has obviously a quasi-domicile in this latter parish. But what are we to say of the other? And if, by any chance, he wanted to be married there during the first half-year, would the marriage be valid? [1]

He commits himself to no decisive statement. No man could, then or now. The case is too complicated to be covered with certainty by any principle at our disposal.

The statement was written in the days of the *Tametsi*—hence the query about the 'validity' of the marriage. But, substituting 'liceity' for 'validity,' we may note that the case is practically that of our correspondent. Perhaps, in the latter, the claim in favour of a quasi-domicile is rather stronger: there was certainly a quasi-domicile once, whereas (in the case quoted) even that was doubtful.

3°. The parish priest of C is qualified (cf. parish A in the quotation). The month's residence at the seaside is not long enough to cause much trouble.

4°. If 25 days out of about 34 constitute a 'month's residence,' the parish priest of D is also qualified. We do not think they do.[2]

5°. The parish priest of E was qualified (1097, § 1, 2°). He violated Canon 1097, § 2, but the rule given there is not very strict, and possibly he could give reasons enough to justify himself. Anyhow, the violation of that regulation has no bearing on the destination of the fees, so far as the Code is concerned (1097, § 3). Canon 1097, § 1, 3°, is the only section protected by 1097, § 3.

Where, then, do the fees go? The parish priest of E has violated no law involving a pecuniary penalty; so far as the Code is concerned, he may keep whatever he gets.

But the Irish regulation of the 14th October, 1908[3], stands in the way. By that arrangement a 'reasonable fee' is payable to the *parochus loci*, the 'special marriage offering for the support of the clergy' to the *parochus sponsae*. The amount of the 'reasonable' fee was not decided: it must be left to local law and custom. If the parish priest of E gets only the amount fixed as 'reasonable' in his locality, he may keep it all. If he is given anything over and above, the surplus must be divided—between A and C at least.[4] A mild, but we fear hopeless, claim may be put forward by B and D to have their names included in the list.

NOTE.—Queries by 'Confessarius,' 'Subscriber,' and 'Philip' on reservation, voting, and twilight sleep, respectively, must be held over till our next issue.

M. J. O'DONNELL.

[1] Translated from Deshayes apud Bassibey, *La Cland. dans le Mariage*, p. 119. Cf. *I. T. Quarterly*, July, 1916, pp. 305-7.

[2] See Commentaries on the *Ne Temere*.

[3] See e.g., I. E. RECORD, April, 1912, p. 415.

[4] On the rival claims of the various *parochi proprii*, see I. E. RECORD, December, 1914, p. 629.

CANON LAW

CONFESSIONS OF NUNS—THE CONDITION FOR THE 'PEACE OF HER CONSCIENCE'

Rev. Dear Sir,—Will you kindly pardon me for calling your attention to a decision which you have given in the October number of the I. E. Record, regarding the confessions of nuns. It is laid down that a nun or sister cannot lawfully or validly go to confession in a church to a priest possessed with faculties for hearing women, but having no special faculties for the nun or sister, unless the latter is motived by a desire to secure the peace of her conscience; and you rule out as invalid a confession made by such a person from another motive, v.g., to secure, the grace of the sacrament.

With much respect I venture to submit that this decision errs on the side of strictness. The question turns, of course, on what was the intention of the Church on laying down the condition *for the peace of her conscience.* Certainly this might be an invalidating clause.

But I think it is unlikely that the Church would attach a condition of invalidity to a matter that is necessarily subjective and frequently vague and indeterminate. How often would it not be impossible to say whether real peace of conscience was in question or only a mere chimera! How often, therefore, would not the validity of the sacrament remain in doubt? And would not the knowledge of this serious nature of the condition often engender scruples lest the condition in a particular case be not verified? Thus construed, the concession would really defeat itself by frequently bringing about the condition of mind it was intended to remove. The common sense interpretation, therefore, would seem to be that the condition is merely directive or prohibitive, but by no means invalidating.

Furthermore, it is laid down in Canon 11 that no law is to be regarded as invalidating, unless it is *expressly or equivalently* stated that the act is null. There is certainly no express statement of the invalidity of the confession; neither can I see how or where it is stated equivalently.

Do not these considerations warrant us at least in saying that there is a positive and probable doubt in the matter, and that, therefore, as we are told in Canon 209, the Church supplies the jurisdiction in the case, if jurisdiction is needed. Yours sincerely,

Inquirer.

To determine the precise force of this condition it is necessary to have before our minds the canon in which it occurs: 'If . . . any religious, for the peace of her conscience, have recourse to a confessor approved by the local Ordinary to hear the confessions of women, this confession, whether made in church or oratory, even a semi-public oratory, is valid and lawful, every contrary privilege beng revoked' (c. 522).

This canon, therefore, clearly imposes three conditions, in order that the privilege which it confers may be utilized. The religious must make her confession, 1°, for the peace of her conscience; 2°, to a confessor,

approved by the local Ordinary to hear the confessions of women; 3°, in a church or oratory, even a semi-public oratory. The statement that, when these conditions are fulfilled, the resulting confession is valid and lawful, clearly implies that, if any one of them is omitted, the confession is both unlawful and invalid. The declaration of invalidity is not, indeed, express, but it is certainly equivalent.

That the omission of any one of these conditions involves the invalidity of the confession becomes more apparent, when we remember that, as a general rule, special jurisdiction is necessary to lawfully and validly hear the confessions of nuns and sisters (c. 876). When, then, this canon, departing from the general rule, states that under certain conditions, the confession may be made to a confessor with ordinary approval, it is evident that the defect of any of the conditions imposed involves the invalidity of the confession.

The law on the point at issue is so clearly stated, that there is no need to have recourse to extrinsic considerations to determine its meaning. We may, however, remind our correspondent that it is nothing unusual to have the validity of acts made dependent on subjective considerations. Even confession, by the divine law itself, is invalid without certain subjective dispositions on the part of the penitent. Many other examples of the same kind might be enumerated; we shall, however, confine ourselves to one which bears a very close analogy with the point under consideration. The seventh canon of the decree ***Ne Temere*** states that, under certain conditions, marriage may be contracted without the presence of the parish priest; and one of the conditions is contained in the phrase ***ad consulendum conscientiae***; commentators are agreed that this condition is imposed under penalty of invalidity.[1]

We cannot, therefore, agree with our correspondent's conclusion that there is a positive and probable doubt as to whether the condition, ***for the peace of her conscience***, affects the validity of confession or not. We quite see, however, that in particular cases doubts may arise regarding the fulfilment of the condition. When such is the case, then, legitimate appeal may be made to the principle that in positive and probable doubt, whether of law or fact, the Church supplies jurisdiction.

CLERICS AND FOXHUNTING

REV. DEAR SIR,—I have been reading your admirable papers on Foxhunting and Clerics with the greatest interest; and, even at the risk of being dubbed as one of a class who rush in where angels might fear to tread, I am tempted to add a few observations. Needless to say I have no desire to provoke a controversy, my purpose in writing being the humbler one of offering some suggestions and bearing witness, as far as may be, to certain occurrences, the consideration of which might perhaps afford a different outlook on the question at issue. I take it,

[1] The Code retains this condition, not indeed for the celebration of marriage, but for certain powers of dispensing which it confers on Ordinaries and Parish Priests (c. 1043).

that it is not contended, that the *venatio clamorosa* of the new canon is wider in its objective comprehensiveness than the same or similar words found in the old general canons, and, therefore, whatever immunities could be reasonably claimed in the days that were, the same may still be enjoyed by later day lovers of the saddle. May I say, too, that desultory students like myself, who have been looking to the law itself rather than to the making of it, owe it to your latest contribution and to the letter of 'Dubius' that their attention has been directed to the preliminary acts of the Synod of Maynooth where the statute may be seen in its formation. To my way of thinking these acts have more than a passing importance. It now appears that at least some of the members of the august assembly boldly proclaimed the view that the *venatio* prohibited by the statutes had nothing in common with the *venatione clamorosa in Canonibus prohibita.* How many of the assembled Fathers were of this mind does not appear, but would it be too much to suppose that it must have been fairly unanimous, considering the amended form the statute subsequently assumed, and considering, too, as the Acts alluded to testify, how in its amended form it was received *unanimi ferme plausu.* Whatever may be said on this point it is quite clear at all events that the statute as it stands, with its accessory power of dispensing, emanating, as it did, from the Council, had the unanimous approval of the Bishops, who must have been satisfied that there was no general law of the Church debarring them from claiming the dispensing powers which the statute purports to confer.

I have been asking myself the question, if the decree had any further authority than that of the assembled Bishops. I am inclined to think it had, and if not a legislative one, at least a protective one. I think I am right in assuming that the decrees of the Maynooth Synod were submitted for approval to the Holy See before publication, and such approval as they received would be at least a guarantee of orthodoxy in matters of doctrine and discipline. In this connexion I note that the now notorious phrase *ad multam noctem* was substituted at Rome for the *undecima hora* which appeared in the original draft; and if, in a matter comparatively petty, the Mother of all the Churches thought it well to use the pruning knife, may we not reasonably infer that she would have been much less sparing in her excisions had she considered that a claim was set up by the Bishops at Maynooth to derogate from a general law of the Church. I feel that, perhaps, I am on somewhat dangerous ground, and I should like to pass on to another point on which, as being a question of fact, I think I can speak with much more confidence.

May I respectfully say, with all deference, that I question the existence of a custom against the law of hunting, as the law, at all events, was understood by those who might be regarded as responsible for the alleged custom. I am living in a notoriously hunting district. I have spent most of my time amongst priests who frequently, as the opportunity arose, took part in a milder sort of harrier hunting. They looked to private ownership; they looked to the princely Catholic squire who kept his pack at his own expense, who hunted over his own broad acres, who arranged his meetings for the convenience of the clerics, but always with a minimum amount of publicity, and, with these precautions, they considered that in taking a legitimate part in the pastime—some no doubt leading the chase, and others bringing up the rere with an eye for the gates and the easy places—they were infringing no law. I am not

defending or finding fault with their reasoning. I am simply stating a fact, and I can assert, furthermore, with the fullest confidence, as one fully conversant with their thoughts, that even the least thoughtful amongst them would never think of taking part in foxhunting, properly so called, and that one and all would consider themselves quite as unsafe in crossing the boundary line, as they would in taking their place on a public standhouse with a pair of binoculars to view a race-meeting.

Of necessity, my knowledge on this point, in so far as it is immediate, is purely local, but I cannot forget how in those days, when the martial spirit was rampant, every avenue that led to an expansion of liberty—except the authoritative one—was carefully scrutinised; how every vagrant canonist from far and near was skilfully tapped, and how, as the result of all inquiries, the question of taking part in foxhunting was never entertained in the absence of a dispensation. Our own local performances appeared to represent the maximum of liberty that might be enjoyed, here or elsewhere, without infringing the statute. I am, therefore, satisfied that during the decade immediately preceding 1900, when I found myself in the surroundings described, a custom in favour of foxhunting could not be alleged, and could not, therefore, be assumed as the basis of the dispensing power vested in the Bishops. Had any such existed in the preceding years, it would have been effectively recalled by the action, or shall I say it, by the legalised inaction of later days.

My personal recollections do not extend as far back as the years of the statute of Thurles, but I have been speaking with priests—men of the highest probity and the keenest intellectual acquirements—who in those days gladly responded to the sound of the horn, and they tell me, without hesitancy, that, as far as the enactment of the Synod of Thurles was concerned, they experienced no difficulty in taking part in the chase. There was, they say, a traditional view, for which they are ready to quote authorities then living, which had it that the national law, as being merely a recasting of the general law, had for its objective boar-hunting and similarly intensified forms of the sport. They say exactly, although in different words, what some of the Fathers are reported to have said at the 1900 Synod, 'talem venationem cum venatione clamorosa in Canonibus prohibita nihil commune habere.' That such a view could claim extrinsic authority in its support, apart from the Fathers just quoted, seems to me perfectly tenable. The words of Benedict XIV quoted by you in an early issue, in which he describes *venatio clamarosa*, as 'Illa magno armorum canum accipitrum apparatu et tumultu exercetur,' read like a headline. The concluding words, no doubt, of the same distinguished authority, in which he winds up his description of the *venatio quieta* with the significant words 'Paucis adhibitus canibus sine ullo strepitu,' suggest a difficulty. But, then, one has to remember that there is question of a law restricting liberty, or perhaps to speak more accurately, of an authoritative exposition of a law, and this, too, in actions against which the most that can be said is, that they are indifferent; and if, as is only too evident, foxhunting is much in excess of the limits of the *paucis canibus sine ullo strepitu*, it falls equally far below the typical description of *venatio clamarosa*, as given by the distinguished Pope and canonist, if we take his words—and why should we not so take them, in accordance with a well-known canon of interpretation—at their face value.

At this stage, I feel that I am face to face with a difficulty, but one

by no means insurmountable. How, it will be asked, is it contended that laws similarly worded, as those of 1850 and 1875 were, would have a different objective, and that, whilst under the one, there *is* claimed freedom for foxhunting, under the other no such liberty may be enjoyed. The older hunting clerics supply the answer. They tell us that, in the later sixties and the earlier seventies, hunting had become very common, so common as to amount to an abuse; *indulgere* was its note; they tell us, furthermore, that there were notable individual acts of indiscretion and clerical indecorum in the hunting-field, so much so that those who loved the old sport and who never sullied the cloth, even in the hunting-field, felt that the death knell of foxhunting, as a pastime for clerics was sounded, and that it only awaited the forthcoming Synod to give effect to the inevitable. The 1875 statutes became law, and whether it was the atmosphere of expectancy in which they were promulgated, or whether it was that individual Bishops, in their respective dioceses, made known their full import, it is quite certain that, with the advent of the law, foxhunting among clerics became a thing of the past.

May I, then, respectfully suggest that, as there is good reason for thinking—again in the words of the Fathers—that as the hunting prohibited by the statute has nothing in common with the *venatio clamarosa* of the canons, we are justified in regarding the statutes of Maynooth, and indeed of Westminster, in so far as they are directed against foxhunting, as constituting *leges praeter legem*. Such a view of the case will, I think, satisfactorily explain the powers of dispensing, vested in the Bishops by the 1900 statute, and will, it is to be hoped, help to dispel the misgivings—if any—of those who may be timorous of their privileges in consequence of the publication of the new Code.

ALTER DUBIUS.

When discussing the question of hunting, in our article on the obligations of the clergy, we felt that much could be said for the view that *venatio cum equis et canibus*, as practised in Ireland, was not *clamorosa*. Had we any doubts upon the point, however, they would have been most effectually removed by the contributions of 'Dubius' and of our present correspondent. We do not doubt that the considerations which they have so ably urged will appeal to a considerable number; we hope, indeed, that they will, as we have not the slightest desire to impose our views on the public—our leanings, in fact, are all in the other direction. So far, however, as we ourselves are personally concerned, we do not find in them sufficient justification for withdrawing from, or even modifying, the position which we originally took up. A brief examination of the present contribution will suffice, as many of the points suggested by it have been already dealt with in our article and in our reply to 'Dubius.'

I. In regard to the action of the Bishops in the Maynooth Synod of 1900 and the conclusions to be derived therefrom, the only point which need be touched upon is our correspondent's contention that, in the decade which immediately preceded 1900, there was no custom against the hunting law. We must say that from inquiries which we made in different parts of the country we were led to the opposite conclusion; but, unfortunately, we are unable to speak from personal

experience. The point, however, is not very material, either as an explanation of our position or of the statute of the 1900 Synod. The argument against our position is that, if foxhunting and staghunting were *clamorosa*, the Bishops could not claim the power—as they do in the statute—of giving the clergy permission to take part in them. We pointed out that they could, if there was a custom against the general law, and we suggested that such a custom had arisen between 1875 and 1900; and now doubts are raised as to whether this suggestion is really in accordance with facts. Now, the episcopal claim is quite as valid, if the custom was in existence prior to 1875—our correspondent states that it was. In that case, the law of the 1875 Synod, even though it called hunting, as practised in Ireland, *clamorosa*, was yet purely national, and could be changed, or even withdrawn altogether, by the Fathers of the 1900 Synod. We were inclined to think that custom had not arisen before 1875, as we learned that Bishops, for the most part, refused to dispense during the period from 1875 to 1900, and that some priests actually had recourse to Rome for permission. Perhaps, the episcopal refusal was rather an insistence upon the observance of the law, than a confession of inability to dispense. On this hypothesis, however, or on the hypothesis that *venatio cum equis et canibus* in Ireland is not *clamorosa*, we fail to see the reason for the great enthusiasm displayed in the Synod of 1900 at the change in the canon. In either theory, the Bishops could dispense from the 1875 law, and, though there is a technical distinction between such a dispensation and the permission *ob rationes speciales* required by the statute of the 1900 Synod, the practical difference is immaterial. On the hypothesis that *venatio cum equis et canibus* in Ireland is *clamorosa*, and that the custom against the general law prohibiting it arose only after 1875, the enthusiasm would be intelligible.

II. We can resolve our correspondent's doubts regarding the force of the approval usually given to the decrees of National and Provincial Councils. Whilst it confers a certain amount of external authority, all canonists are agreed that it leaves the nature of the decrees unchanged, and gives no certain guarantee of their validity and orthodoxy. But, again, this point is immaterial. Even though *venatio cum equis et canibus* in Ireland is *clamorosa*, it does not by any means follow that this statute of the 1900 Synod is invalid, or that in it the Bishops claim, as our correspondent assumes, the power to dispense from a general law of the Church. On the hypothesis that a custom against the general law had arisen, the statute, as we have already pointed out, is quite valid, and the Bishops' claim is merely to dispense from their own legislation.

III. With all due respect to the probity and intellectual acquirements of our correspondent's informants, we fear we could never force ourselves to adopt their theory in regard to the statutes on hunting in the Synod of Thurles and the Maynooth Synod of 1875, or to believe that it was ever generally accepted. *Venatio cum equis et canibus* in the Ireland of 1850 meant practically what it means at the present day, viz., foxhunting and staghunting; yet the Bishops are supposed to have come together in the Synod of Thurles at that date, and to have issued a

prohibition against *venatio cum equis et canibus* which did not affect at all the forms of it existing in this country, but referred merely to bear-hunting and other forms of sport practically unknown in Ireland. Why, if it were permissible to interpret laws in this way, it would be just as well not to make them at all! The statute covers the foxhunting and staghunting of the period almost as plainly as a law could. Let it be remembered, too, that it comes between two very practical regulations —the prohibitions to attend race meetings and theatres. Evidently, the Fathers of the Synod were not altogether divorced from the realities of Irish life in this particular section. It would be almost as legitimate to hold that the race-meetings and theatres interdicted were the chariot races and scenic representations of ancient Rome, as that the prohibited *venatio* was the boar-hunting of the Black Forest and the Apennines. But the most remarkable part of the theory has yet to come. In 1875 the Bishops again met, and a prohibition against *venatio cum equis et canibus* was again issued in practically the self-same words as those used in 1850; but now, strange to say, the law includes foxhunting. Such a position, we fear, violates the most fundamental canons of interpretation.

IV. Finally, our correspondent seeks to enlist the authority of Benedict XIV in support of the view that *venatio cum equis et canibus*, as practised in Ireland, is not *clamorosa*. To avoid misapprehension, let us give the distinguished Pontiff's definitions again: 'Alia siquidem est clamorosa, alia quieta, illa magno armorum, canum, accipitrum apparatu et tumultu exercetur . . . altera solis laqueis et retibus, aut etiam armis, sed paucis adhibitis canibus . . . sine ullo strepitu instituitur.' The clause which defines *clamorosa*, if taken by itself, is ambiguous. It may imply either that display and noise must arise from a combination of arms, dogs, and falcons, or that it would suffice if they were derived from any one of them. The context makes it abundantly clear that the latter is the implication. Evidently, the author intended to make a complete division; and, if a combination of arms, dogs, and falcons was required for *clamorosa venatio*, the division certainly would not be complete. Besides, it is clearly insinuated in the second member of the sentence that, if many dogs are employed, the *venatio* is *clamorosa*.

Another consideration which leads to the same conclusion is that, if the combination were required, *venatio clamorosa* would be a purely imaginary sport, at least, in modern times, and its strict prohibition in the Code would be unintelligible. It seems clear, therefore, that the teaching of Benedict XIV, which is typical, favours the view which we have been propounding.

Perhaps enough has now been said on this question. Our present correspondent and 'Dubius' have very ably put forward one side of it; and we have done our best to throw some light upon the other. The clergy, therefore, have sufficient *data* to enable them to make up their minds on the matter. Further discussion, we fear, would be merely a repetition of points already dealt with.

DIOCESAN CONSULTORS. THE CEREMONY OF PROFESSION

Dear Rev. Sir,—Would you kindly reply to following queries in your next issue of the I. E. Record :—

A. 1°. In dioceses in Ireland where there is no diocesan Chapter, is it the diocesan Consultors who have the right to appoint the Vicar-Capitular *now* ?

2°. If so, who has the right to convoke the diocesan Consultors for the meeting ?

3°. When and where is the meeting to be held?

4°. Has new Code effected any change in method of electing Bishops in Ireland ?

B. In regard to profession of religious, before profession with perpetual vows takes place, there must precede it a temporary profession of three years, at least, with simple vows (Canon 574, new Code). What changes will it be necessary to introduce into the ceremony of profession to meet the requirements of Canon 574 ?

Anxius.

A. 1°. The diocesan Consultors have the right of appointing the Vicar-Capitular. This is evident from Canons 427 and 432, § 1. According to Canon 427 diocesan Consultors take the place of a cathedral Chapter, and have, therefore, all the latter's powers in regard to the government of the diocese, not only when the see is filled, but also when it is vacant; whilst Canon 432, § 1, states that 'the Chapter of the cathedral church, when the see becomes vacant, within eight days from the time that news of the vacancy has been received, should appoint a Vicar-Capitular to govern the diocese in its place.'

2°. In the special regulations regarding diocesan Consultors there is no statement as to who should convoke this meeting. In accordance with general principles, however, it should be convoked by the president or head of the Consultors (c. 162, § 1); and the position of president will, we think, be occupied by him who takes precedence of all the others. In this particular case precedence will be determined by seniority in appointment, or, if appointments have been made at the same time, by seniority in ordination, or finally, if ordinations have taken place at the same time, by seniority in age (c. 106).

3°. The meeting is to be held within eight days from the time that notice of the vacancy has been received (c. 432, § 1). In regard to place there is no special prescription, and hence it will suffice to fulfil the general regulation that it should suit the convenience of the Consultors (c. 162, § 1).

4°. Generally speaking, the Code has effected no change in the method of electing Bishops in Ireland; none of its canons are in opposition to the special decree on this subject. In dioceses, however, in which there are no chapters, we are of opinion that in future diocesan Consultors, even though they are not parish priests, will have the right of taking part in the meetings in which the three names are selected. The selection of a permanent ruler for the diocese has evidently a very intimate connexion with its government, and, as we have already seen Consultors have, in this matter, all the powers of a cathedral Chapter.

It is true, indeed, that the Chapter's right to intervene in those meetings arises from a particular law; but the Code itself makes no distinction, and *ubi lex non distinguit, nec nos distinguere debemus.*

The conclusion that all diocesan Consultors have the right of taking part in these meetings is somewhat confirmed by analogy with the method of appointing Bishops in Australia, as prescribed in Plenary Council held in that country in 1887, in accordance with which diocesan Consultors and irremovable rectors are put on the same footing.[1] In the United States, too, since the Third Plenary Council of Baltimore until the publication, a couple of years ago, of a new decree on the appointment of Bishops, diocesan Consultors have had the same rights as in Australia.[2]

B. Our correspondent, of course, is concerned with institutes in which temporary profession did not previously exist. Well, in such institutes it will now be necessary to have a temporary profession of at least three years at the expiration of the novitiate. The ceremony for this temporary profession will be the same as that hitherto required for perpetual profession, except that the *formula* of profession must indicate clearly its temporary character. The ceremony for perpetual profession is unchanged.

J. KINANE.

LITURGY

THE TITULAR OF A CHURCH

WE have recently received more than one communication regarding this subject, and it may therefore be useful to state the liturgical laws which govern it. The position which the Titular holds in the liturgy of the Church does not seem to be sufficiently recognized, at least in these countries.

I. What is meant by the Titular of a church? The answer may best be given in the words of the Congregation of Rites: 'Titularis . . . is dicitur sub cujus nomine seu titulo ecclesia fundata est et a quo appellatur.' The Titular is sometimes also called the Patron of the church, but the modern tendency is to connect the word Patron with a territory, such as a parish, diocese, etc., reserving the term Titular for the saint or mystery to whom a church or oratory is dedicated. The distinction is of considerable importance. A Patron is regarded as a special intercessor with God for some locality, and as a consequence must be an angel or a saint, including of course the Blessed Virgin. A Titular, on the other hand, is the object of special veneration and devotion in the church or oratory to which it gives a name. Hence, not only an angel or a saint, but also a Divine Person, a Mystery, or a sacred thing, such as the Cross, may be selected as a Titular. Angels, collectively or individually,

[1] Coll de Prop. Fide, n. 44.

[2] l. c., n. 43.

are not unfrequently chosen, but it is unusual to select the Cherubim, Seraphim, or the other higher orders. According to an answer of the Congregation of Rites,[1] the name of a saint cannot be selected unless it occurs in the Martyrology, or at least in the supplement approved for the diocese. It may be well to give the reply in full:—

Q. An valide possit Episcopus pro Titulari alicujus novae ecclesiae designare Festum, quod neque in Martyrologia, neque in Supplemento Diocesis reperitur? R. *Negative.*

The name of a beatified person cannot be given to a church without a special Apostolic Indult.[2] We may add that the Titular has often been likened to the Christian name given to the individual in Baptism.

II. Every church or oratory which has received consecration, or even the solemn blessing, has, *eo ipso*, a Titular. The form, whether of consecration or blessing, implies as much. Hence, not only a church in the strict sense, but also a public oratory, must have a Titular, since it must be at least solemnly blessed before Mass is celebrated there. A semi-public oratory also may receive consecration or the solemn blessing, and if so dedicated, it also has its Titular. But if only temporarily destined for divine worship, it receives nothing more than the *benedictio loci,* and is in the same position, as far as a Titular is concerned, as a private oratory, which cannot have a Titular in the strict liturgical sense.

III. Who may select the Titular? There is nothing strictly defined in this matter. The Bishop may do so, but it is not his exclusive right. The parish priest, a generous benefactor, or any other person interested in the church may make the nomination. The designation generally takes place when the foundation-stone is being laid, since provision is made in a prayer of that function for inserting the name. But the Titular is not *formally* constituted until the church or oratory is consecrated or solemnly blessed; and in the meantime no liturgical notice is taken of the Titular designated when the foundation-stone was laid.

IV. The title of a church, once assigned, is lost when the church is destroyed. If a new church is erected on the site of the old one, the original title may be again selected, but not necessarily. When the Titular has been formally constituted, the name cannot be changed. It has been decided more than once that the Bishop of the diocese is powerless in this matter.[3] Permission, however, may be obtained from the Holy See to add another name as co-Titular.[4]

V. Doubtless some will be inclined to ask whether this question of the Titular is of any practical importance. For answer it ought to be sufficient to refer to one of the canons of the new Code, although the legislation contained in it is not at all new. 'Unaquaeque ecclesia consecrata vel benedicta suum habeat titulum; qui, peracta ecclesiae dedicatione, mutari nequit. Etiam festum tituli quotannis celebretur ad

[1] n. 3876, ad. v.
[2] Codex, Can. 1168, § 3.
[3] Decr. Auth. S.C.R., n. 2719, ad 2.
[4] Ibid. n. 2853, ad 2.

normas legum liturgicarum.'[1] One of these liturgical laws directs that the name of the Titular is to be added, *servatis servandis*, in the prayer *A cunctis*. In addition, the feast of the Titular must be celebrated by the clergy connected with the church or oratory as a double of the first class, with a 'common' octave. The days within this octave exclude all simple offices, and the octave day is preferred to any double which is not of the first or second class. It is not a very difficult matter to arrange accordingly the calendar for the particular week which follows the feast.

As far as we are aware, this is a matter which has not hitherto received the attention it deserves. The liturgical law is there, and binds as well as any other. One explanation of the neglect is the fact that in very many instances the name of the Titular is unknown, since records on this point were not accurately kept in the past. In such cases it is impossible, of course, to celebrate the feast. Yet the canon we have quoted seems to suggest that the defect should be supplied—*unaquaeque ecclesia consecrata vel benedicta suum habeat titulum.* We must take it for granted that each church or oratory which has at least been solemnly blessed has its Titular, even though now unknown. We have also seen that the Bishop cannot change the name. The only remedy, then, is to make application to Rome for permission to add a co-Titular, with equal rights, whose feast will afterwards be celebrated with the requisite liturgical honours. But, even where the name of the Titular is well known, the feast is not always celebrated as it should be. For this violation of law there is really no valid excuse. 'Custom' in this matter will not serve as an answer; for such a custom must rather be termed an abuse.

ADDITIONAL REQUIEM MASSES ON THE OCCASION OF A FUNERAL WHEN THE EXSEQUIAL MASS IS NOT SUNG

REV. DEAR SIR,—From a rubric after Jan. 6 (p. 4 of Latin *Ordo*), it would appear that when the exsequial Mass is not sung leave is granted for only one requiem Mass. I always thought that, whether sung or not, there is leave for more than one requiem Mass. An answer will oblige.

DUBIUS.

In order that additional requiem Masses may be celebrated on the occasion of a funeral, the following conditions must be fulfilled. 1°. The body must be present, physically or morally ; 2°. The Mass must be offered for the deceased person whose body is present ; 3°. The exsequial Mass, on the same day, must be a sung one. Regarding this last condition, Van der Stappen says[2] :—'Decretum *Aucto* requirit Missam exsequialem solemnem aut cantatam, et non loquitur de casu in quo Missa exsequialis solummodo legitur, nempe in funere pauperum.' Hence the direction given in the *Ordo* is perfectly correct. It is scarcely necessary to add that if the rite of the particular day allows, there is no restriction regarding the number of Masses which, if offered for the deceased person, may be said as *In die obitus* with only one prayer.[3]

[1] Codex, Can. 1168, § 1, § 2. [2] Vol. ii. Q. 343. [3] Ibid. Q. 324.

COMMUNION BEFORE A REQUIEM MASS

REV. DEAR SIR,—Will you please let me know through the I. E. RECORD what to do in the following circumstances? When at the altar vested for Mass I have to give Holy Communion daily before Mass; am I bound to give the blessing before commencing Mass even though wearing black vestments?

AUMONIER.

The rubric of the revised Ritual [1] makes no distinction between a requiem Mass and others, in this particular respect: 'Et ita iis, qui communicarunt, benedicit Sacerdos tam extra Missam quam ante vel post Missam.' Some doubt might therefore be raised whether the blessing should not be given in the case mentioned. 'Ubi lex non distinguit nec nos distinguere debemus.' On the other hand, no distinction is made by the Ritual between requiem and other Masses regarding the *Alleluia* in Paschal time, where such a distinction would be very natural. For it would be quite incongruous to say *Alleluia* when vested in black. Hence we hold that the old rule forbidding the blessing before or after a requiem Mass is still binding. The point was definitely decided by the Congregation of Rites [2] in the year 1868.

SHORT FORM FOR BLESSING DOMINICAN BEADS

A Rescript of the Sacred Poenitentiary, dated 23rd November, 1918, sanctions the use of the following short form, which may be used by all priests possessing the Dominican faculties:—

Ad laudem et gloriam Deiparae Virginis Mariae, in memoriam mysteriorum vitae, mortis et resurrectionis ejusdem Domini nostri Jesu Christi, bene ✠ dicatur (*) et sancti ✠ ficetur haec sacratissimi Rosarii corona: in nomine Patris ✠ et Filii, et Spiritus Sancti. Amen.

Stola et aqua benedicta adhiberi possunt ad libitum.

(*) *Si fuerint plures coronae dicatur in plurali.*

T. O'DOHERTY.

[1] Tit. iv. cap. ii. n. 9.

[2] Decr. Auth., n. 3177.

DOCUMENTS

RESCRIPT GRANTING FACULTIES TO THE 'MAYNOOTH MISSION TO CHINA' TO INCARDINATE, EXCARDINATE, GIVE DIMISSORIAL LETTERS, AND ORDAIN 'TITULO MISSIONIS'

(*January* 2, 1919)

[The concession is granted for ten years.]

SACRA CONGREGATIO DE PROPAGANDA FIDE

BEATISSIME PATER

Ioannes Blowick Rector Seminarii pro Missionibus Sinensibus et Praeses Societatis, 'The Maynooth Mission to China,' apud Shrule, Galway, in Hibernia, ad pedes Sanctitatis Vestrae provolutus, humiliter petit :

1°. Ut definitiva in Societatem admissio, quod spectat ad excardinationem et incardinationem, effectus habeat religiosae professionis; ita ut adscripti Societati vere ipsi incardinati sint;

2°. Ut Societatis membra sine litteris dimissoriis a quolibet Episcopo gratiam et communionem cum Sede Apostolica habente ordinari possint, habitis litteris testimonialibus a proprio Ordinario;

3°. Ut eiusdem Societatis membra ad sacros ordines promoveri possint 'titulo Missionis';

4°. Ut ordinationes in Seminario haberi possint etiam in festis semiduplicibus;

5°. Ut Societatis Praeses facultatem habeat retinendi et legendi libros prohibitos.

Ex audientia SSmi. habita die 2 Ianuarii, 1919, SSmus. D.N. Benedictus div. prov. Pp. XV. referente me infrascripto S. Congr. de Propaganda fide Card. Praefecto, benigne adnuere dignatus est pro gratia in omnibus iuxta preces, servatis servandis. Ad decennium. Contrariis quibuscumque non obstantibus.

Datum Romae ex Aedibus S. Congr. de Propaganda Fide die et anno praedictis.

G. M. CARD. VAN ROSSUM, *Praefectus.*

LETTER TO THE BISHOP OF LOURDES REGARDING THE SOLEMNITIES IN COMMEMORATION OF THE APPARITION OF THE BLESSED VIRGIN

(*January* 22, 1919)

AD R. P. D. FRANCISCUM XAVERIUM EPISCOPUM TARBIENSEM ET LOURDENSEM DE SACRIS SOLEMNIBUS PERAGENDIS IN MEMORIAM APPARITIONIS B.M.V. IMMACULATAE.

Venerabilis frater, salutem et apostolicam benedictionem.—Quum annus compleretur sexagesimus ex quo Immaculata Virgo Mater istic conspiciendam se obtulerat, scimus in optatis tibi fuisse, ad faustum eventum commemorandum, sacras toto anno agitare laetitias, nisi tanta belli calamitas obsisteret. Nunc vero cum, Dei benignitate ac numine, arma tandem conquiescunt, consentaneum videtur ut proximum Apparitionis festum peculiaribus sollemnibus celebretis. Nam hoc annorum spatio quot quantaque ad Lourdensem Specum facta sunt mirabilia, cum affecta desperatis moribus corpora sanitatem ex improviso reciperent, cum aversis a religione animis subita fidei lux illaberetur, cum innumerabiles inde, si non imploratae valetudinis compotes, tamen paratissimi divinae obsequi voluntati redirent. De omni hac beneficiorum copia Virgini beatissimae, cuius apud Deum patrocinio sunt tribuenda, ingentes grates persolvere officium est: quibus beneficiis illud ipsum annumerari debet quod, positis armis, reconciliandae pacis mundo spes illuxit, cum eadem et *Principem pacis* Iesum Dominum ediderit, et humani generis mater sit benignissima. Hanc vero ob causam amplius instandum est apud divinam clementiam, ut ea pax constituatur quam optimus quisque exspectat, quae scilicet, iustitia et aequitate comite, vincula inter universos populos confirmet christianae caritatis. Quod cum de praesentissima Mariae ope ac suffragio Nobis spondeamus, quas ubique supplicationes nuper indiximus, eas maxime in aedibus marianis celeberrimis, quo in numero Lourdensis eminet, haberi gratum est. Quare sacra sollemnia, quae istic propediem fient, vehementer Nobis intelligis probari. Atque ad eorum augendum splendorem ac fructum, de spirituali Ecclesiae thesauro, cuius apud Nos dispensatio est, omnibus qui rite confessi et sanctissima Eucharistia refecti Lourdensem Aedem adierint *Indulgentiam Plenariam* non solum die XI februarii proximi, sed etiam singulis diebus anniversariis ceterarum Apparitionum Virginis Immaculatae hoc anno redeuntibus, lucrandam concedimus; pari Indulgentia munere eisdem condicionibus fruantur volumus quicumque earum sollemnium peregrinationum ad Lourdensem Basilicam participes erunt quae hoc vertente anno, ut scribis, suscipientur. Ita ad pedes divinae Matris in ista benignitatis eius nobilissima sede Nos quoque vobiscum vel in agendis gratiis vel in precibus adhibendis, populi christiani causa, praesentes animo adesse videbimur. Tuae vero pietatis et observantiae erga Nos officia paternâ benevolentia rependentes, caelestium auspicem munerum tibi, venerabilis frater, tuoque clero ac populo apostolicam benedictionem amantissime in Domino impertimus.

Datum Romae apud S. Petrum, die XX ianuarii MCMXIX, Pontificatus Nostri anno quinto.

BENEDICTUS PP. XV.

CREE CONFIRMING THE LONG-ESTABLISHED CULT TO THE SERVANT OF GOD, JOHN PELINGOTTO, OF THE THIRD ORDER OF ST. FRANCIS

(*November* 13, 1918)

SACRA CONGREGATIO RITUUM

URBINATEN.

DECRETUM CONFIRMATIONIS CULTUS AB IMMEMORABILI TEMPORE EXHIBITI SERVO DEI IOANNI PELINGOTTO, TERTII ORDINIS S. FRANCISCI, SANCTO ET BEATO NUNCUPATO.

Ioannes Pelinus Gothus, vulgo Pelingotto, vir saecularis e tertio Ordine S. Francisci, Urbini claro genere ortus anno 1240, paterno in domo christianis virtutibus, potissimum ab anno aetatis duodecimo, eluxit. Id enim constat ex testimoniis et scriptoribus coëvis, qui eius quoque vitam et sanctitatem illustrarunt. Praecipuus fons historicus recensetur *Vita* ab Urbinate saeculi XIV scriptore in vulgus edita, ex qua Bollandiani Patres aliique agiographi auctores haud paucas de Servo Dei hauserunt notitias et in suis operibus inseruerunt. Adolescens, mercaturae a patre addictus, non tam suae suorumque rei familiari quam aliorum fortunae augendae prospexit; qua agendi ratione ab inita negotiatione se alienum palam ostendit, et paulo post, patre annuente, mercaturam reliquit. Tum Deo se tradidit atque solitudini, orationi et eleemosynis vires opesque suas impendit. In christiana perfectione proficiens et S. Francisci Assisiensis exemplo permotus, terrena animose despiciens et ad caelestia ferventer aspirans, Iesum Christum pauperem et humilem secutus est. In tertium Franciscalem Ordinem cooptatus, sodalibus et civibus clariora virtutis incrementa et exempla patefecit. Parentibus et cognatis, qui eum domum revocare tentabant, respondisse fertur: 'Nolite, quaeso, fratres mei, nolite mihi molesti esse. Sentio enim me thesaurum reperisse absconditum, quem cupio, venditis omnibus, acquirere et quaesitum conservare: habeo enim Dominum Iesum Christum, qui pretiosior est omni lapide, pulchrior omni luce, suavior omni odore, dulcior omni sapore, superior omni thesauro et excelsior omni virtute.' Videns quod eos quietare non posset, parentibus insistentibus, etsi reluctans, cessit, et cum eis domum rediit ea conditione, ut iam nil sibi cum mundo commune esset. Revera, domi degens, Christo Domino servire ac placere constanter studuit in variis poenitentiae, pietatis et charitatis operibus, omnium aedificatione et admiratione, Deo ipso Servi sui, adhuc viventis, sanctitatem mirifice probante. Vertente anno 1300 cum Iubilaeo a Pontifice Maximo Bonifacio VIII indicto, Ioannes Romam venit peregrinationis gratia ad spirituales indulgentias lucrandas; eique cum duobus sociis per urbem incedenti obviam occurrit homo quidam extraneus et incognitus, qui Servum Dei indigitans in haec verba erupit: "Nonne hic est ille vir sanctus de Urbino?' Obstupescentibus sociis, Pelingotto, ad partem conversus, flevit amare, satis demonstrans suae humilitatis sensus suaeque mentis elevationem ad Deum, ore et corde ingeminans: 'Soli Deo honor et gloria.' Postquam vero sacra Apostolorum limina visitaverat, accessit cum aliis peregrinis et civibus ad

eleemosynam recipiendam quam Summus Pontifex pauperibus quotidie erogari iusserat; at quum dispensator eum intuitus esset, distribuenti sic ait: 'Noli huic sicut et aliis partem minimam dare, sed, ut petierit, quantum et quanto semper impende.' Superno enim lumine viderat in illo paupere peregrino interiorem hominem et quandam virtutis perfectionem. Tandem Dei Famulus, iam meritis bonisque operibus dives, vitae austeritate fractus gravique infirmitate correptus, quum proximum sibi obitum praesentiret, sacramentis Ecclesiae devotissime receptis, sanctos tutelares, Deiparam Virginem et Iesum Christum frequenter invocabat: quibus praesidiis maligni spiritus aggressiones reiecit et ad imminentem transitum pacificum se paravit. Adstantibus et petentibus confratribus: 'Quo ibis, Pater?', 'Ad gloriam Paradisi,' respondit; atque, haec dicens, sereno atque hilari vultu ad caelestem patriam migravit die 1ª iunii 1304. Magna cleri et populi frequentia exequiae, praesente cadavere, persolutae sunt; ipsumque corpus in communi coemeterio et in sepulcreto Fratrum honorifice conditum. Quod statim signis seu prodigiis clarescere visum est; et, confluentibus undique fidelibus, Fratres statuerunt sacras exuvias exhumare et in ecclesiam S. Francisci deferre, prouti Ioannes vivens elegerat atque iusserat. Deinceps, auctis signis seu prodigiis, piorum oblationibus super ipsum loculum Servi Dei altare rite erectum fuit, in quo Missarum solemnia ad eius commendationem et gloriam celebrari coepta sunt. Super cultu immemoriali Servi Dei Ioannis Pelingotto Processus Informativus in Curia Urbinatensi, auctoritate Ordinaria, die 11 augusti 1911 inceptus, die 15 iulii subsequentis anni, favorabili Ordinarii sententia, absolutus fuit. In eo continentur necessariae et opportunae testium depositiones et documenta multa et varia compulsata, diligenter selecta ex scriptoribus coëvis aliisque antiquis et recentioribus, ex archiviis conventus S. Francisci, Illmi Municipii, Curiae et Secretariae Archiepiscopalis et Capituli Ecclesiae Metropolitanae Urbinatensis, quibus argumentis suffulti Causae actores cultum immemorialem Servo Dei Pelingotto exhibitum ab anno 1486 ad annum 1866 et ad haec usque tempora comprobare student. Speciatim vero ex statutis Illmi Communis Urbini afferunt quae sequuntur: 'Per eosdem Dominos Priores, cum assistentia Potestatis et civium, alia fiat luminaria et oblatio in honorem S. Pelingotti die ultima maii, de sero, honorifice discedendo ab ecclesia S. Augustini et eundo ad ecclesiam S. Francisci, ubi illius sanctissimum corpus residet.' Addunt quoque acta triplicis canonicae recognitionis exuviarum Servi Dei ab Archiepiscopis Urbinatensibus peractae anni 1666, 1753 et 1910; nec non acta visitationis a tribunali factae tum domus natalis eiusdem Servi Dei, tum altaris sub quo quiescit eius corpus. In praedicta domo exstat cubiculum, ab antiquo tempore conversum in sacellum, in cuius superiori parte interna habetur haec inscriptio: 'B. Pelingottus hic in lucem venit anno 1240 ex nobili familia Urbinatensi, mercaturae addicta, ortum duxit, hac in domo habitavit annis circiter 64. Sanctitate et miraculis clarus, obiit kal. iunii anno 1304. Eius corpus in templo S. Francisci sub ara maxima iacet, ab immemorabili publico cultu honoratus fuit.' Ad ecclesiam autem S. Francisci tribunal accessit et, ex

auditu et visu, authenticum testimonium reddidit de cultu publico immemoriali et perseverante ad exuvias Servi Dei translatas ab altari principe Familiae Albani, simulque retulit se adspexisse signa cultus et pietatis fidelium, nempe vota argentea, cereos et similia cum notis P. G. R. (pro gratiis receptis). Perpensis itaque testimoniis et documentis supradictis. Iudex Ordinarius, sub die 15 iulii 1912, suam protulit sententiam de cultu publico et ecclesiastico ab immemorabili tempore praestito, id est ante annum 1534, nunquam interrupto ad hanc usque diem feliciter continuato, Servo Dei Ioanni Pelingotto, seu de casu excepto a decretis sa. me. Urbani Papae VIII. Actis omnibus processualibus Romam ad Sacram Rituum Congregationem transmissis atque obtento decreto diei 16 ianuarii 1918 servandi in hac causa ordinem iuris ante decreta dierum 11 novembris 1912 et 31 ianuarii 1913 praescriptum, cum altero decreto diei 8 maii 1918 de non reperitione scriptorum Servi Dei et de nullo obstaculo quominus procedi possit ad ulteriora, instante Illmo et Rmo Dño Dominico Jacquet, archiepiscopo tit. Salaminae, Ordinis Fratrum Minorum Conventualium et Causae Postulatore, universae suae Familiae religiosae vota depromente, attentisque supplicibus precibus hodierni Rmi Archiepiscopi Urbinatensis una cum Capitulo Ecclesiae Metropolitanae ceteroque clero et cum conspicuo Ordine et populo civitatis et archidioecesis Urbinatensis, infrascriptus Cardinalis Antonius Vico, Episcopus Portuen. et S. Rufinae, eiusdem Causae Ponens seu Relator, in Ordinario sacrorum rituum Congregationis coetu ad Vaticanas aedes subsignata die coadunato sequens dubium discutiendum proposuit: *An sententia lata a Rmo Vicario Capitulari Urbinatensi super cultu ab immemorabili tempore praestito praefato Servo Dei, seu super casu excepto a decretis sa. me. Urbani Papae VIII, sit confirmanda in casu et ad effectum de quo agitur*? Et Emi ac Rmi Patres sacris tuendis Ritibus praepositi, post relationem ipsius infrascripti Cardinalis Ponentis, audito voce et scripto R. P. D. Angelo Mariani Fidei promotore generali, omnibus accurate perpensis, rescribendum censuerunt: *Affirmative seu sententiam esse confirmandam.* Die 12 novembris 1918.

Quibus omnibus Sanctissimo Domino Nostro Benedicto Papae XV per ipsum infrascriptum Cardinalem Sacrae Rituum Congregationi Praefectum relatis, Sanctitas Sua rescriptum eiusdem Sacri Consilii ratum habuit et confirmavit, die 13, eisdem mense et anno.

✠ A. Card. Vico, Ep. Portuen. et S. Rufinae,
S. R. C. Praefectus.
Alexander Verde, *Secretarius.*

L. ✠ S.

REVIEWS AND NOTES

Summarium Theologiae Moralis : ad recentem Codicem Juris Canonici accommodatum. Auctore Antonio M. Arregui, S.I. Ed. Elexpuru Hnos. (Bilbao). 1918. Pp. xx + 651. Price 7*s.* net.

In these days of generous professions and small achievement—in the canonical line, as well as in the others—it is refreshing to find a book that does almost more than it promises. Father Arregui's is certainly one of them.

The author modestly refers to it as 'hic qualiscumque liber.' Judged by its size, it might deserve all the disparaging adjectives and diminutive suffixes he could employ ; for, notwithstanding its 670 pages, it is little bigger than an ordinary sixpenny manual. But its contents are quite another matter : they are neither small nor contemptible. It is primarily a compendium of our best Moral Theology text-books. But it gives in addition all the more important sections of the new legislation, not (as some books do) by way of mere juxtaposition, but by combining the two elements into a thoroughly consistent and satisfactory whole. That, of itself, would enable it to rank among our most up-to-date publications. But another small advance was possible : and Father Arregui has made it. The first edition announced itself as 'accommodated to the recent Code of Canon Law' ; the second—that under review, written two months later—tells us, in a sub-title, that the contents are 'in accordance with the most recent declarations of the Pontifical Commission appointed to interpret the Code of Canon Law.' Beyond that there is no going—for the present.

On his treatment of the Code the author himself says 'Codicem abunde adhibui.' There is no doubt whatever that he has. There are, of course, many sections of the Code that have little bearing on Moral Theology, or indeed on practical life generally ; and on these the author is silent. Canons 145-195, for instance, dealing with 'ecclesiastical offices,' are not likely to effect much change : so he barely mentions them. The section on Legates, Patriarchs, Vicars-Apostolic, etc. (265-328) shares the same fate ; so does that on 'patronage' (1448-71). Certain Canons (626-99) are of great interest to those who have adopted the Religious state : in the eyes of the rest of us, denied the higher perfection, the author's omission to discuss them will not be regarded as a very serious offence. The fourth book (1552-2194)—including ecclesiastical trials, and the canonization of Saints—is not likely to affect us very deeply in this country ; and Father Arregui's remarks on the subjects are few and meagre. But, outside these and a few minor sections

of a similar kind, practically every canon of the Code is cited or quoted —some of them in as many as half a dozen different places. And, to make matters still more satisfactory, the author gives us, in his closing pages, two parallel lists—one of the canons themselves, the other of the sections of his manual in which the canons are discussed. So that, when we have read the canons, we have only to consult the lists, turn to the corresponding sections of the manual, and brush up our pre-Code theological lore till it entitles us to an entrance into the most up-to-date canonical circles.

When so many subjects are discussed, scores of views will, of course, be expressed, with which someone or other is sure to find fault. Within the space at his disposal Father Arregui is unable to meet the criticism of the various schools, or of independent writers who belong to none of them. It need hardly be added that the reasons for his views are not set out in detail; though, as he states with truth, he 'hardly ever fails to suggest them.' Making allowance for these inevitable deficiencies, we must say that, within the limits prescribed, the book is nearly as perfect as it could be. The order and clearness are delightful; the facts and conclusions are stated simply and carefully, and some half-dozen styles of type draw attention to their comparative importance. The old and the new are worked into a well-balanced, composite picture: and the result is that a reader of the little manual will, in all probability, have a clearer idea of the present legislation than less fortunate students who devote six times as much attention to more elaborate, but less orderly, commentaries. In short, while the defects of the work are imposed by necessity, the merits are very specially its own.

The work is published in Spain. But our readers can have it nearer home. Messrs. M. H. Gill & Son, O'Connell Street, Dublin, are the agents for this country. It is to their energy and enterprise that the Irish public owes the opportunity of consulting as brief, complete, and inexpensive a book as the most hopeful could have expected. At the present stage of development in matters canonical, the favour is one for which, we believe, Irish priests will have reason to be grateful.

M. J. O'D.

Amhráin Muighe Seóla: TRADITIONAL FOLK-SONGS FROM GALWAY AND MAYO. Collected and edited by Mrs. Costello, Tuam. London: The Irish Folk Song Society, 20 Hanover Square, W.; Dublin: The Candle Press, 44 Dawson Street. 1919.

AT a time when world movements have a tendency to centralize human interests, it is pleasant to find that the culture that takes its rise out of circumstances that are local and natural has not been altogether forgotten. Mrs. Costello's work is thus in a particular manner welcome, and all lovers of Irish music and song will, we hope, give to it a real *céad míle fáilte.* The author is carrying on the tradition of Bunting and Petrie after a manner that would, we are sure, give them unfeigned delight were they now to witness it. Mrs. Costello's work gives evidence that she has both the competency and the enthusiasm

requisite for her task. The distinctive merit of the book is, that it gives both air and words together, and this very often for the first time. Others have edited some of these poems already, but they lose half their charm without the airs; and Mrs. Costello's work gives the melodies. The words of many of the songs here given belong to quite a modern strata of poetry, and must, therefore, be regarded as traditional in only a limited sense. They serve, however, as a supplement to modern Irish literature, such as is edited from time to time from eighteenth or nineteenth century MSS. Indeed, the attempt to supplement modern Irish literature in the traditional field, often aids one to catch glimpses of the environment of the poets, when, in the localities where they once lived, traditions are sought for among the people. It is, however, in the main only the poems of the later modern poets that are remembered; but it is deeply significant as to how far this field may be worked, when it is recalled that a poem of Donnchadh Mór ua Dálaigh's was, in the last century, heard recited by a native speaker near Belmullet, in the County of Sligo (Hyde, *Literary History of Ireland*, p. 271). Since Ó Dálaigh died in 1244 (Meyer, *Primer of Irish Metrics*, App., p. 37), this fact is as though one were now to find in Kentish tradition Chaucer's 'Sir Thopas'—modernized, no doubt—but still essentially the same. From these remarks it follows that Irish poets fall into three main categories:

i. Those whose works are found only in MS., such as MacLiag;

ii. Those whose works are found both in MS. and tradition, such as John Lloyd;

iii. Those whose poems are found only in tradition, such as, perhaps, the poet of Iveragh.

The biographical facts concerning these writers fall almost into the same classification, and it may be stated as true, in the main, that early and medieval poets belong to the first class, that a great body of modern poets belong to the second category, and that to the last class belongs a great amount of poetry that is either anonymous or else is the production of minor modern bards. It is to the second and more particularly to the last category that the poetry in Mrs. Costello's work contributes.

Since most of the poems in the collection are modern, their comparative setting must find a basis in psychology rather than in historical connexion, though, indeed, it must be admitted that the work includes some really primitive matter. What informs these songs for the most part is a knowledge of human nature and of human action, not too minute but clear and sound. They lack, to a large extent, the classical allusions that so often occur in Munster songs, and they seem to resemble the genuine type of folk-song by their lack more or less of humour and of the mere wonder element. Folk-song, unlike the *märchen*, is generally serious and credible, and, as has been well said, 'the burden which is at least as important as the instrumental accompaniment of modern songs, sometimes, in these little tragedies, foreshadows calamity from the outset, sometimes is a cheerful-sounding formula, which in the upshot enhances by contrast the gloom of the conclusion.' The burden seems, in a particular manner, to have attached itself to the songs of occupation,

such as Óró, 'ṁíle ġráḋ and Sal-ıú-nú-aer-í. The reason, probably, lies in the fact that such burdens suited quite well the repeated acts of some definite occupation. This is admirably illustrated by the 'water-chorus' referred to in the Romance of *Richard Cœur de Lion* :—

> 'Roweth on fast! Who that is faint,
> In evil water may he be dreynt.'
> They rowed hard, and sung thereto,
> With hevelow and rumbeloo.

The lullaby is likewise a song of occupation, though, so far as I know, it has not been so regarded by collectors. It, therefore, naturally carries with it a burden, though in this case the burden may fulfil the function of a mere croon with which it is sought to lull the child off into the land of slumber. As regards Suantraidhe (p. 66), Mrs. Costello writes: 'I have been told . . . that the mothers of Connemara have a great reverence for the tune, believing that it was used by the Blessed Virgin in putting her Child to sleep.' Even though not true to fact, the legend is well found, for it illustrates the effect of Christianity in elevating the conception of the home. 'It is,' as has been well said, 'a commonplace to say that Christianity brought fresh and peculiar glory alike to infancy and to motherhood. A new sense came into the words of the oracle—

> Thee in all children, the eternal child. . . .

And the mother, sublimely though she appears against the horizon of antiquity, yet rose to a higher rank—because at the highest—at the founding of the new faith. Especially, in art she left the second place that she might take the first. The sentiment of maternal love, as illustrated, as transfigured, in the love of the Virgin for her Divine Child, furnished the great Italian painters with their master motive, whilst in his humble fashion the obscure folk-poet exemplifies the self-same thought.'

Most folk-songs, like the lullaby, tend to be of purely domestic interest, to belong to the heart and the home rather than to the great world without. The folk-poet's one lament is often that he is *not* at home. Connḋae Ṁuiġeo is full of the grieving of the exile, and Raftery well expresses the homing instinct of the Celt :—

> ''S dá mbéinn-se mo sheasamh i gceart-lár mo dhaoine
> D'imtheóchadh an aois díom agus bhéinn arís óg.'

In the folk-songs of dialogue and repartee the people found the pleasure that we find, in a more developed form, in the drama, and it must be remembered that these folk-songs, especially when they are of the nature of games, touch the very origin of drama itself. It would, I am sure, interest many readers of this book, were I to say that 'S Óró, Downey, represents a type of rude acting that precedes, perhaps, even the drama of the Greeks. Mrs. Costello does not seem to recognize, at times, what is exactly the value of the material she has unearthed; she has given us a book with matter, to the antiquity of which she does not profess to give the secret. She is like, in some respects, the 'peasant building his hut

on the site of Halicarnassus or Ephesus: he builds, but what he builds is full of materials, of which he knows not the history, or knows by a glimmering tradition merely: stones "not of this building," but of an older architecture, greater, cunninger, more majestical' (Arnold, *Study of Celtic Literature*).

Just as the matter of these songs is sometimes primitive, so also is the music. The melody is often uninfluenced by our modern major and minor scales. The modes most frequently found are, as is nearly always the case with folk airs, the Dorian, Mixo-Lydian, and Æolian. Examples of these modes are: in the case of the Mixo-Lydian, Sail óg Ruaḋ; of the Dorian, Máir' ní Ġríoḃṫa; and of the Æolian mode, Ṫugamar féin an ṡaṁraḋ linn. The pentatonic scale, with its gapped sequence, rendered so familiar to us by the Scotch airs, is also found in this collection as in the case of Oileán Éadaiġ. Mrs. Costello wisely avoids any comment on these musical forms, knowing, no doubt, that it would most probably lead to a controversy barren of any result. She gives, however, in the case of Fuinnseaċ Ṫír Eóġain, an instance of a recent folk-air creation. The possibility of one of the folk making a new traditional air, would appear to me possible, by reason of the fact that the folk have at their disposal a large stock of traditional musical phrases, just as in the case of the words they possess commonplaces. This tendency to a particular kind of phrasing leads to the division of folk airs almost into types, and we find in one case at least, namely, A Ṫomáis, a Ṁíle Stóirín, that the air is built up by merely the repetition of the same musical phrase four times. I am not, however, going to deny that, in the ultimate analysis, the inventive faculty must be found somewhere; it is impossible to conceive a mere indefinite borrowing of musical phrase, just as it is impossible to conceive an indefinite borrowing as regards words in relation to the folk-poem itself. What, however, I wish to note is, that the folk-singer has, as regards phrasing, a kind of musical stock-in-trade, and that he is capable of using it with some sense of variation.

One of the greatest difficulties in recording folk-melodies is the occurrence of mixed rhythms. Mrs. Costello seems to have successfully encountered this difficulty, a fact which proves that she has herself a well-trained ear, and, more important than is sometimes imagined, has procured for the purposes of her records a good set of folk singers. Mixed rhythms, such as occur in Nellí a Ċaraid or Caisleán uí Néill (ii), demand considerable skill in recording them, and Mrs. Costello has not failed to be very accurate in so doing. A slight change in rhythms might, perhaps, be due to accident, and, in some cases it would almost appear that the manner of word-phrasing (for the folk-singer is usually particular about his words) tends at times to break the musical rhythm. It has to be kept well in mind that bars, as an artificial indication for interpretation, do not exist for the folk-singer, and that, therefore, he exercises over the air complete control, and like a great executive musician, casts aside mere artificial restraints and gives to the melody its fullest interpretation.

Mrs. Costello might have made some attempt to classify her songs in the usual categories, such as songs of occupation (Óró, 'ṁíle gráḋ); lullabies (Seó h-ín Ṡeó); dialogue songs (Ḃás agus an Muilleóir); songs of local interest (Doċtúir Jennings); songs of sports or the hunt (Frinseaċ Ṫír Eóġain); poems for occasions such as Anaċ Ċuain. Commonplaces, such as exist in stanzas 5 and 6, p. 121, and stanza 4 (p. 140), could with profit be noticed, and the connexion between the folk-songs Nos. 41 and 51 ought to have been indicated. But these are only trifling defects in a really well achieved piece of work.

Mrs. Costello has one exceedingly good trait in her manner of folk-song collecting; she knows the value of variants. Songs such as Moll Dubh an Ghleanna may not be considered exactly local, in the sense of belonging exclusively to *Magh Seóla*, but whether such be found elsewhere or not, a variant, either as regards music or words, is always a matter of interest. Much valuable tradition escapes being recorded, because people assume that what they find has been recorded before. This is quite a mistake. Mrs. Costello's work is therefore to be welcomed, even where it seems to go over familiar ground. It is quite necessary to understand this, for tradition is now being recorded, not indeed because it is secure amongst us, but because it is insecure, and, like fairy gold, may pass at any moment beyond recall. Of these old-world things it may be truly said that their existence is every day imperilled and that their recording is indeed a matter that is imperative. Nor is the cause for this far to seek. A new world is being born, and one of its tendencies is in the direction of unsympathetic centralization. Into the vortex of this great movement the folk-singer is getting caught, and he, unfortunately, often takes to himself the worst results of the new system. He breaks, so to speak, his connexion with the great traditional culture that is his inheritance to become an anaemic worker in the fields of modern economic exploitation.

When it is possible to find 'Villikins and his Dinah' set to a traditional tune, and when words embodying modern literary tendencies pass as current for the coin of the folk-song, then, indeed, a change is at hand. *Tempora mutantur*—yet it is, at least, pleasant to think that a work such as Mrs. Costello's, retains for us some of the old gold. And it is wonderful what different sheens the folk poet can throw over the simple life that he knows. At one time a tragic note pervades his theme, at another a mysticism peculiar to our people enshrouds the action, while again the lighter element of our nature asserts itself, and off we are with Reynard to the hunt. There is one mood, too, which these songs often catch, it is the dream-mood of our race—the folk poet can watch, perchance, Finvarra and his fairy host ride up the gentle slopes of Knockma, or catch other visions while he lingers dreamingly on the mountain sides above the valleys that he loves :—

Is aoiḃinn aéreac ar ṫaoiḃ an t-sléiḃe
  Ag breaṫnuġaḋ síos ar Ḃail'-ui-Liaġ,
Ag siúḃal 'sna gleanntaiḃ 'ḃaint cnó agus sméara,
  'S geall ceileaḃar éan ann le ceóltaiḃ síḋe.

Human feeling and emotion pervade so genuinely these folk-songs that one instinctively applies to them the great phrase of Molière, 'La passion parle là toute pure.'

It remains for me to say that the style and format of this work are all that could be desired. The music is in a very clear type, which renders it distinct to the eye; while three different types are used for the Irish text, the translation, and the comment. The task of seeing the work through the press has been admirably done by the Rev. Dean Malachy Eaton, Maynooth. The fact that the Irish text of the songs is so good is mainly to be attributed to him, and he has brought to bear on the elucidation of the poems a prose translation that is at once accurate and yet has not failed to catch much of the simple charm of the original folk-songs. There is also in this work an occasional free rendering of the poems, such as greatly enhances the volume. The preface is a simple direct resumé of how the work came into being, and gives evidence that those concerned in its production hardly ask for any other return than the pleasure they have found in preserving some of the songs from oblivion.

We heartily congratulate Mrs. Costello and her collaborators on the appearance of a work of first importance in its department.

JOSEPH J. MACSWEENEY.

ACCIDENCE OF HEBREW GRAMMAR. By Henry J. Coffey, S.J. St. Louis and London: B. Herder Book Co. 1918.

IN 113 pages the author of this work aims at putting before the beginner the main heads of Hebrew Accidence. The book is essentially practical. All the examples and exercises are based on five pages of extracts from Exodus, Samuel, and Psalms, printed at the end of the book. The student's intelligence and progress are tested at the end of each section by exercises of translation from, and into, Hebrew. The arrangement of the details is, in some respects, new, and suggests that the author has learned much from practical experience in teaching. Apart, however, from a slight novelty of disposition, and the plan of basing the study of forms and constructions altogether on the Chrestomathy contained in the Grammar, there is little in the work that calls for praise. It makes no attempt to trace the growth of forms, or to make Hebrew a really interesting subject of study for the adult student, such as the Christian student of that language usually is. Unfortunately, the Grammar is also seriously defective in points of the most ordinary detail. The exercises for translation from Hebrew into English at the end of each section might reasonably be expected to be grammatically correct. Yet the exercises on pages 19, 21, 42, 44 contain elementary blunders in connexion with the use of the indefinite accusative, and the construct state.

It can scarcely be regarded as other than misleading to the student to be told without discussion (p. 35) that Jahve means 'He that is'; and that *yesh* and *'ayin* are *adverbs* (p. 44). Misprints are fairly frequent throughout.

The general appearance of the book is good, and it is very convenient in size. In the hands of an experienced teacher who would supply details of historical explanation, and correct the misprints and other defects, the book might serve as a useful introduction to the study of Hebrew. It cannot, however, be recommended in its present form to the unguided private student.

B.

CHRIST'S MASTERPIECE: A Study of the One True Church;
HIS ONLY SON: The Truth of the Divinity of Christ. By William F. Robinson, S.J., Professor of Theology, St. Louis University. B. Herder Book Co., St. Louis, and London. 1918.

THESE two volumes contain two courses of apologetic lectures delivered in St. Louis during the Lents of 1916, 1917. The first volume presents in sermon form the familiar Catholic teaching concerning the foundation, character, and mission of the Church. The second volume develops the proof of Our Lord's divinity, which is based on His account of Himself and of His mission as recorded in the Gospels. The truth of the Gospel narrative is obviously presupposed in both sets of lectures. It is only in the second, however, that the credibility of the Gospels is established.

In his account of the origin and nature of the Church the author keeps fairly well in view the difficulties raised by modern criticism against the Gospel narrative of the founding of Christ's Kingdom. In a series of popular instructions the author could not treat many of the real problems of Ecclesiology. What he gives us, however, is clear and easy to understand, and it will be helpful to many Catholic readers.

His Only Son rightly bases the chief argument for Our Lord's divinity on Christ's own estimate of Himself, and treats the arguments from miracles and prophecy as secondary and subservient. But here everything depends nowadays on minute analysis of the Gospel-texts, and one doubts whether the proof of Our Lord's divinity can really be effectively stated in a sermon. The author, however, deserves praise for the useful collection of Gospel material which he has brought together. The tone of the two works is, throughout, warmly pious, and, no doubt, the appeal which they will have made when delivered was much greater than that which they make in the coldness of the printed page.

B.

AN ELEMENTARY HANDBOOK OF LOGIC. By John J. Toohey, S.J., Professor of Logic and Metaphysics in Georgetown University, Washington, D.C. New York: Schwartz, Kirwin and Fauss.

A VERY useful little book, *An Indexed Synopsis of Newman's 'Grammar of Assent,'* compiled and published by Father Toohey some years ago, has made the author's name familiar to students of philosophy. 'The present volume,' he tells us in the Preface, 'makes no pretensions to being anything more than is implied in its title. It is *elementary*, and it is a

Handbook.' It makes no mention of induction, confining itself to the subject-matter of the scholastic *Logica Dialecta seu Formalis*. The treatment is concise, and at the same time it is sufficiently clear—assuming, as it does, the help of the teacher in explaining, developing, and illustrating its defininitions, and theses. Its fidelity to the scholastic method and terminology is a feature to recommend it. There are a number of points which display freshness and originality—or at least independence of thought in their manner of presentation. None of these, however, are of fundamental importance, and the controversial discussion of them is very properly relegated to an appendix. They should serve the useful purpose of prompting the pupil to search farther afield when once he has been initiated into the elements of the science. And we have no doubt that the present Handbook will help to make this process of initiation agreeable and interesting. We have no hesitation in recommending it to beginners.

P. COFFEY.

BOOKS, ETC., RECEIVED

America: A Catholic Review (February).
The Ecclesiastical Review (February). U.S.A.
The Rosary Magazine (February). Somerset, Ohio.
The Catholic World (February). New York.
The Austral Light (January). Melbourne.
The Ave Maria (January). Notre Dame, Indiana.
The Irish Monthly (February). Dublin: M. H. Gill & Son, Ltd.
The Catholic Bulletin (February). Dublin: M. H. Gill & Son, Ltd.
The Month (February). London: Longmans.
The Dublin Review (January-March). London: Burns & Oates.
Études (February). Paris: 12 Rue Oudinot (VIIe).
Revue Pratique d'Apologétique (February). Paris: Beauchesne.
Revue du Clergé Français (February). Paris: Letouzey et Ané.
The Fortnightly Review (February). St. Louis, Mo.
The Lamp (February). Garrison, N.Y.
Revue des Jeunes (January). Paris: 3 Rue de Luynes.
The Homiletic Monthly (January). London: Burns & Oates.
The Universe (February). London: Effingham House, Arundel Street.
Mater Christi: Meditations on Our Lady. By Mother St. Paul. London: Longmans.

AN OFFICIAL VISITOR

By 'PETRA'

EVERY schoolboy knows that Molière wrote his comedies for the laughing millions, and that before submitting them to the ear of the gay Parisians, he read them, not to any of the higher critics, but to a very humble person, his cook. When she understood and laughed, the wise and witty man had his approval from a typical member of the class for whom he wrote, and he knew that they must succeed.

I, following his example, submit my philosophic efforts to my dear friend, Father Luke, my *anamchara*, my soul friend, before whom I kneel weekly, and this is what he writes: 'I have examined your corrosive sublimate. It may and may not have the effect which you intend it to have, if it ever see the light. You, young men, are far too wise and far too witty. Probably, you are hinting at the great need for minute visitation of my parish. Look to your own. For my motto, for my parish, is the old imperial motto: "Il cielo me la diede, guai a chi la tochera.—Heaven has given it to me and woe to him who dares touch it." Most senior priests can afford to laugh at your mordant puerilities. I rejoice to think that you are not my curate. As to your hints, I repeat the words of Herodotus : "εγὼ μὲν ὦναξ, πρεσβύτερός τε ἤδη εἰμὶ καὶ βαρὺς ἀείρεσθαι· σὺ δέ τινα τῶνδε, τῶν νεωτέρων κέλευε ταῦτα ποιέειν" (Her. iv. 150). I translate them for you : "I am too old, O king, and slow to stir : so bid thou one of the younger men here to do these things." I will further judge your pretentious efforts, when we meet next Friday (*D.V.*).' Alas ! for poor authors.

But the new Code of Canon Law tends to destroy the putting in practice of the imperial motto, quoted by my good and sincere friend, Father Luke. For, Canons 445-450 define more explicitly than was formerly expressed the duties of the official visitor :—

In addition to any special commission he may receive, he is to supervise the conduct of the clergy of his district ; to see that the Bishop's

visitational decrees are executed, that sacred functions are carried out according to the rubrics, that Church property is rightly administered and the obligations attaching to it fulfilled, . . . and, in pursuance of these duties, he should visit the other parishes of his district and give his Ordinary a yearly account of all matters, good or bad, that demand attention.

Looking through the clerical directory, I notice that, just as Abraham entertained angels unawares, so, too, have I often entertained vicars-forane, quite unaware of their dignity. Perhaps this essay may further entertain them, nay, perhaps aid them, and thus make amends. For the main object of it is, to gather bliss by seeing my fellows blessed. We are to have official visitors and we must prepare for their advent. Rome has spoken, not to mention the Synod of Maynooth, which said :—

Quo melius insuper provideatur tum ovium saluti tum ecclesiasticae disciplinae observationi, praeter Vicarium Generalem, qui toti praeest dioecesi, alios solent Episcopi determinatis quibusdam dioeceseos regionibus Vicarios praeficere, ut sui quisque territorii paroeciis diligenter invigilet. Hi Vicarii Foranei nuncupantur, seu Decani Rurales.

Inter cetera, pro jurisdictione diversa ipsis collata, quae ab arbitrio Episcopi omnino pendet, quaeque extendi vel restringi pro ejus lubitu potest, Vicariorum Foraneorum erit quasdam dispensationes concedere; . . . enixe navare operam ut Statuta tum Dioecesana tum Synodorum Provincialium et Plenariarum ab omnibus accurate serventur, et ut sacra munia presbyterorum erga greges sibi creditos digne et fideliter impleantur; sedulo et frequenter inquirere num absentia negligentiave sacerdotum religio aliquid detrimenti capiat.

Vicarii Foranei insuper erit Ordinario saltem semel in anno, aut saepius si opus fuerit, relationem mittere de statu religionis et de moribus clericorum in suo decanatu.

Si quis vero sacerdos auctoritatem Vicarii sui Foranei contempserit ejusve spreverit monita, res ad Episcopum vel Vicarium Generalem deferenda est, ut hujusmodi sacerdos condigne secundum Canones puniatur.[1]

Hence, home and foreign legislation bind us to receive this official visitor, and to receive him and his advices with respect. Sane and earnest people welcome this enforcement of very old Church law. But, of course, some dread all departure from the belauded and alleged perfection of things in the distant and immediate past. They cannot see even a foot-print or a thumb-mark on the immaculately pure and careful working of the Church all around them, in the past. Its perfection is, in their eyes, *perfectio simpliciter simplex*; but time will show Rome's traditional wisdom in this, as in so many other matters.

[1] Maynooth Synod, 267-271.

The State guards and watches its interests by many inspectors and much close inspection. The superior officers in the army inspect, by fixed inspection and by incidental visits, its officers, men, equipment, billets, barracks, and stores. Into every parish, monthly, comes an officer to inquire into the works of the guardians of the peace, the police. Before their eyes, daily, are the noble and grammatical 'Barrack Regulations.' Zealously is examined the patrol book, in which each man has recorded the route, the duration, and the observations of his walks. Anxiously is scanned the barrack orderly's interesting diary. Eagerly is the sergeant's diary perused. The store register of public property is not forgotten, nor is the men's mess book flung aside as lost provender. All circulars and copies of Acts of Parliaments issued to the good men are inspected and examined on, along with Sir Andrew Reed's books. But this is not all; the Crimes Book—a most important record of local sin, shame, and scandal—is carefully read, before a tour of the rooms, with their beds and trunks and presses and cupboards, is made. Then, the premises are viewed to see if there be dilapidations, and if any repairs be needed. Inspectors call at any hour, day or night; and every three months an officer called a C.I., from the county town, comes, and goes through all these books and inspections again, and writes his comments in the inspector's book. And yet some clerics may complain of the hardships of *their* coming visitations.

To the village and rural schools come junior, senior, divisional, and chief inspectors. To the railway come the inspectors, auditors, directors, engineering inspectors. The guardians of the poor law and of local government make things perfect by inspection. The worn, wan clerk of a poor law union has to present to the inspectors and auditors thirty-six books of accounts, including such interesting works as ledgers, paying order books, diet class book, daily diet book, weekly abstract of provisions, half-yearly summary of provisions, requirements book, separate register, and abstract of guardians' accounts. To these thirty-six learned works he adds seventeen others for the good order and upkeep of the rural district council. His inspectors call often and at all hours. And yet murmurs shall escape pastoral lips. Banks have their inspectors and officers; and bland bankers have long, long sessions over their ledgers, daybooks, current account, bill books, etc. So we,

priests, who have been for so long practically immune from serious and methodic inspection and examination, must prepare to shake off the *laissez faire*, the *laissez aller*, and the *cui bono* habits, if they be ours. For, under this section of the new epoch-making code, the *sicut-erat-in-principio-et-nunc-et-semper* methods are all condemned to death. We must bury them.

The new official visitors do not come as a wolf on the fold. They come as friends, helpers, advisers. Even the most pluperfect pastor needs help. The paragon parish can be improved. There are spots on the bright face of the sun. The official visitors will be well selected, not hypercritical, over-officious; men of judgment, not straining at straws and swallowing camels, yet men who carry out *adamussim* the Ordinary's list of subjects to be attended to. Some officials—young army officers, to wit—have the knack of irritating their co-workers, by silly orders, by flippancy, and by harshness. The old satirist talks of a man who never breaks an eggshell with a mensal instrument, but with a sledge hammer. Readers probably have met such individuals in Church and State.

But what are likely to be the duties of such officials? Every Ordinary may exclude or include certain lines and matters of inspection and examination, but, speaking generally, the duties of our new visitors are expressed in the Statutes of the Maynooth Synod (214-524). The Westminster decrees and the Baltimore decrees may guide in English and American preparations for the advent of these officials. Of course, diocesan and provincial synodal legislation add other and proper matter to the laws of national synods. Occasionally, the national synod matter is explained and applied according to local diocesan wants and ways. But, speaking generally, the first visits of the new official visitors can be creditably faced by a study of the national decrees, and an effort made to observe their wise and useful and easy commands. It may be observed that I mention the study and observance of more than three hundred decrees (214-524), but, to the righteous, such study and observance is a mere pastime. Indeed, the study must become a delightful concomitant of a blazing hearth and a good armchair in a long winter evening. Many a presbytery shall glow with joy at this study, and many a pastor shall wonder at his easy success in putting in practice the

some few, which, through an oversight, he may previously have omitted. 'There is no nation under the sun that love equal and indifferent justice, better than the Irish, or will rest better satisfied with execution thereof, although against themselves.'[1] 'No nation of the Christian world, that are greater lovers of justice than they (the Irish) are; which virtue must of necessity be accompanied by many others.'[2] Dr. Patrick Murray sang, 'O'er all the world no land so true as our own dear Catholic Isle.' Yes, surely, true to Rome, always and ever, was Ireland; and now Rome commands.

In America, this systematic inspection of ecclesiastical matters has, for many years, been in force; and American text-books give detailed lists of matters, which are subjects of examination, inspection, and report. Great blessings have come from this inspection, and the marvellous organization and concentration of Catholic effort in America are, in no small way, due to the stimulus to quick, accurate, business methods in the clergy, engendered by this official visitation by rural deans. The American system of census-taking, of parish book-keeping, of tabulated statements of church funds and church property is a model to be enviously and accurately copied. Cardinal Moran's heaviest labour, in his early days in Australia, was the gathering together of accurate information on Church property in his immense diocese. He found slipshod methods everywhere—churches built on unleased land, defective property titles, church houses and church schools built by Catholic subscriptions, and held in the name of a layman or laymen. Several valuable Church properties were irrecoverably lost, and, as minor matters, he discovered Church funds misapplied, squandered by rash investment, and altogether missing. While some churches were left like Bethlehem's stable. But the lesson was not lost on the great Churchman, and his spirit lives.

The supervision of conduct and Bishops' orders are outside my scope. But, sacred functions, Sunday and week-day functions, sometimes need supervision. The supervision of Sunday functions may entail incidental visits, to see if the Maynooth Statutes (Nos. 295-299) are carried out, and that the instructions issued by the Bishops

[1] Sir John Davies, Attorney-General to James I.
[2] *Coke's Institutes*, chap. 56.

in 1905, on the Encyclical *De Christiana Doctrina,* are carried out faithfully. They are briefly :—

1. Classes for the teaching of Catechism are to be organized in each church of the parish by the parish priest, or by his curate, under his directions and with his express sanction.

2. The Catechism is to be taught in each class for at least half-an-hour.

3. The work is to be personally superintended by the parish priest or curate.

4. At the close of the class teaching, an instruction on some part of the Catechism is to be given by the priest in charge, for at least a quarter of an hour.

Instructions on first confession and first Communion are to be attended to, and a Christian Doctrine Confraternity established. The programme of Catechetical Instructions for adults to be followed. In churches where there are evening devotions, this instruction is to be given at this service and ordinary Sunday sermon at Mass, or *vice versa.*

In churches in which there are no Sunday evening devotions, the sermon being preached at one Mass, the instruction is to be given at another; or, if there be only one Sunday Mass in a church, the sermon and instruction may be on alternate Sundays, the order of the Episcopal programme being followed. See also Maynooth Statutes 295-299.

This constructing and sermoning and supervising catechism and instructing children, with the celebrating of Mass and the incidentals of priestly work, e.g., hearing confessions, churching women, interviews with parishioners, and long drives in wintry or wet weather, make Sunday a day of toil for priests.

The official visitor is to supervise Sunday services and other services, to see that rubrics are carefully carried out. My pastor, who has visited Harrogate, Buxton, Irish, English, and foreign health resorts, tells me that he met many priests who honestly believed that they follow the Roman rite as laid down in the Roman missal. Whereas, they merged on the Mozarabic, ambled in the Ambrosian, and whispered, gurgled, or wailed in the Greek methods. And the merest junior has seen excited scrimmages for the thurible and the Missal at High Mass functions, even in high places. The extempore musical compositions, the cross-country styles of singing, the flat-racing style, and

the falling away from pitch—fearing its defiling power, of course (Ecclus. xiii. 1)—are concomitants of every dirge. The visitors must ask *all* old stylists to live in harmonious silence with the men of neums. For Ireland is the land of song.

Perhaps it may be useful to my peers to give, from an American text-book, some tabulated heads of matters of inspection in a parish.

A—Places and Things

Of the Eucharist

Tabernacle, veil, lining—corporal in tabernacle—ciborium, gilt within—veil of ciborium—particles, how often consecrated—key, silver or heavily plated—lamp, always burning—canopy for procession—pyx for the sick—white burse with cords for carrying Communion to the sick—Monstrance—lunette and box—Humeral veil—torches, steps for Exposition.

Of the Baptistery

Font—water renewed twice a year—drain—shell—holy oils—salt—white and violet stoles—towels—veil.

Of the Confessionals

In a public position—crates—devotional picture—lock on middle door—violet stole—provision for the deaf.

Of the Altars

High altar—steps up to it—crucifix—candlesticks—statues—pictures—charts—antependia, how many—coverings—consecration—altar stones—wax cloths—altar cloths, blessed—predella, sacrarium—rails—privileged altar—prayer cards.

Of the Church and the Cemetery

Choir—nave and aisles—walls—pictures and images—pulpit—windows—vaults—seats—bell tower—bells, their blessing—roof—spires—cross on gable or tower—pavement—doors—keys—use of bells—alms boxes——holy water stoups—titular of church—consecration—both festivals, how observed—consecration—Forty Hours' Devotion—Stations of the Cross—cemetery, how enclosed—cross in cemetery—improper epitaphs.

Of the Sacristy

Lavatory—towels—prayers for vesting—altar cloths—finger towels—communion cloths—box for altar breads—bier, pall—ordo celebrandi—pictures—cushions—missals, binding covers, markers—missal stand—crucifix at vesting bench—chalices—patens—purificators—corporals and palls—veils—burses—amices—albs—surplices—cassocks—safe—windows—walls—roof—kneeling desk—cards for prayers before and after Mass—cinctures—stoles, maniples, and chasubles of five colours—dalmatics—tunics—capes—Humeral veils—vessel for washing corporals—ritual—cruets—lavabo dishes—little bells—thurible and boat—processional cross—holy water vase and sprinkler—banners—vases of flowers—triangular candlestick—paschal candlestick—doors—keys—table of obligations.

Registers

Of Baptism, First Communion, Confirmation, Matrimony—the Dead—Status animarum—cemetery register—Liber Actorum Ecclesiae (History of Parish)—Liber Inventorii Bonorum Ecclesiae (Inventory of Church goods), moveable and immoveable—Liber Oeconomicus (Book of Church accounts, day book and ledger—Liber Coetus Aeditorum (Book of Minutes of Trustees).

B—Persons

Name—surname—age—when appointed—obligations satisfied—faculties—ceremonies, High and Low Mass—blessing font—Paschal candle—administration of sacraments—Baptism, delayed, in private houses—sponsors—confessions, where and at what time—instructions for first Communion—sick calls register—attending the dying—marriages, with nuptial Mass—other functions—Lent sermons—funerals—residence—Mass, how often—sermons—publication of feasts, fasts, pastorals—catechism—vespers—procession—customs—Mass servers—blessings of ashes, candles, palms—Holy Week services—blessings of houses—missions—study of moral and dogmatic theology—priests' library—dress—character of church music—Gregorian chant (Solesmes)—beneficial society—church society—sodalities.

School

Building—location—condition—exits—entrances: number, kind—rooms: number, kind—desks: number, kind, position—number of pupils per room—sanitary arrangement—light—heat—ventilation—equipment, maps, charts, black-boards, sacred emblems—playground, size, condition—closets, location, number, condition—number of pupils—teachers.[1]

Father Schulte says that his list 'is an abridgment of more extensive lists given by Benedict XIII, *Opuscula*; Ferraris, *Bibliotheca*; Gavantus, *Praxis compendiaria Visitationis Episcopalis*. From the list given above for sacristy inspection, a suitable query sheet for the inspection of presbyteries can easily be formed.

This minute inspection of persons, places, and things ecclesiastical has been a special feature of the established Church in England. And our Anglican brethren, to judge from their published manuals and rules, go about it in a thorough and business-like way. It is, like so many items of their Church law and procedure, a relic of old Catholic times:—

Portions of our Church system and Church law have had an exclusively ecclesiastical origin, by canon or otherwise, and have been adopted or acquiesced in by the State. Further portions have been created by the joint or concurrent action of the Church and the State.[2]

[1] From *Benedicenda*, by Rev. A. J. Schulte; Benziger Brothers, New York.
[2] *The Legal Position of the Clergy*, a Manual of Anglican Church Law, p. 3.

The archdeacon is, in his archdeaconry, next in the point of dignity after the bishop. . . . He is sometimes called *oculus episcopi*, being the bishop's vicar, charged with the duty of inspecting that portion of the diocese which is under his charge and of reporting anything that is amiss. Besides this general supervision, he holds an annual visitation of his archdeaconry, except in years of episcopal visitation, when he is inhibited from performing his functions, and these are exercised instead by the bishop in person. . . . At his annual visitation, and at other times, as occasion arises, it is the business of the archdeacon to satisfy himself that churches, and especially chancels, are in proper condition and to require that any proper repairs be executed; to take note to ascertain that the services and offices of the Church are everywhere duly performed and administered. The clergy are bound to assist the archdeacon in his inspection and inquiries, and to attend his visitations.[1]

Rural deans have within their deaneries the same functions and powers of inspection and report as an archdeacon in his archdeaconry.[2]

These extracts are a neat statement of the Canon Law as laid down in several Catholic synods in medieval England, and embody the general Church legislation on this matter. It is interesting to compare these extracts with those given above, from the decrees.

Perhaps it may interest and instruct my peers if I give some actual reports of visitations. I have one made in an Irish diocese, in the eighteenth century. But it contains matter offensive to pious ears, and probably might be offensive to modern benefice holders in those lonely counties. So, being a man of peace, I forbear. This first visitation report was made by the Dean and Chapter of St. Paul's, London, in 1251 :—

In the Chapel of Twyford on the morrow of the Conversion of St. Paul in the year of our Lord 1251 were found :—A silver chalice gilt on the edge of the foot with a white paten and blessed hand gilt (? blessed gilt handle) (*Manu benedicta decaurata*); a chalice, a little broken in the foot; a stone altar not dedicated and super altar blessed and sufficient and one altar cloth old and broken; one linen frontal partly cut through; likewise another frontal of red silk good and sufficient; likewise two altar palls blessed and whole and sufficient of which one had a narrow edging of silk worked by the needle with a silk fringe; also a handsome vestment with silk furnishing, and a good chasuble with ample gold embroidery on the back, and stole, maniple, etc. belonging to it whole and sufficient, and that vestment had other veil (*amictum*) whole and ornamented with silk. There were there also other vestments much worn and ornamented with silk with their belongings whole but stained (or tarnished); with a white fustian chasuble not ornamented and another good silk frontal fringed. Likewise there are there two

[1] Ibid., pp. 17 and 18; cf. Phillimore, *Eccl. Law*, Part i. chap. iv. pp. 194-207, and Burn, *Eccles. Law*, vol. i. pp. 93-97.

[2] Op. cit. p. 18.

altars outside the choir with wooden tables and little old frontals and two old palls apparently not blessed. There were found there likewise two surplices, the larger of which was torn and the smaller whole; and two Rochets, the smaller of which is whole and the larger torn. Likewise there was there a small missal without notes and insufficient, and the rubric destroyed in the Canon of the Mass and several other places, without Calendar and having many defects. There was there also a Gradual and Troparium in one volume and almost sufficiently noted. There was found there also an Antiphonary with hymns, chapters, and collects of the order of Sarum headed by a Calendar noted, and almost sufficient. Likewise a Reader old and broken having many defects in the beginning and at the end. Also there is there a Psalter cut and badly prepared. If it were bound it would suffice. Also a Handbook having many Masses and divers offices for baptizing the living, anointing, and for burying the dead, having at the end the Common of Saints, antiphons not noted, and almost sufficient if it were bound. There is also here an old Pyx, for reserving the Body of the Lord, without bolt, and a wooden vessel for Chrism without bolt and insufficient. Likewise two tin cruets whole. There is here also a cross upon the altar of painted wood. Also five tin candlesticks whole. There is no income for the lamp (i.e., for oil for it), unless by favour of the Lord of the Manor. Likewise there is here a leaden bowl for Baptisms. Also a tin water vessel (? for the asperges) . . . The chaplain has ten acres of arable land, and a house with three cottages. It is the Chapel of the Patron Bartholomew de Capella. Also there are two bells, also an old thurible.

Want of space prevents me from giving one of the model reports of visitations, and the order and rules issued by Cardinal Orsini, Benedict XIII (1645-1730). But those given may suffice.

Probably, before this essay sees the printing press, some gentlemen, acting as official visitors, may have started on their rounds. They have received their commissions to well and truly view, with true deliverance give, between their lords ordinary and the senior and junior clergy. Others may be about to start, and Father Luke hopes that all selected may be men of grace, go, and gumption. In their travels, they shall realize the truth so neatly expressed by Eliu, the son of Barachel the Buzite, who, being exceedingly angry with Job's aged friends, said, 'Great men are not always wise, neither do the aged understand judgment' (Job xxxii. 9). They shall meet the wise and the unwise, the energetic, the capable, the useless, and La Fontaine's *l'âne vetu de la peau du lion*, a joyous find. They shall meet with the imperial motto blazoned in unthought of places, at unexpected points. They must, perforce, listen to biographies of the heart and romances of the liver.

The classic notes on travel and guide for travellers are Bacon's. May I save trouble by giving a few of them here? 'The wisest, wittiest, meanest of mankind' wrote: (1) 'Let Diaries, therefore, be brought in use'; (2) 'Let him not stay long in one Citty or Towne, more or lesse as the place deserveth, but not long'; (3) 'For Quarrells they are with care and Discretion to be avoided'; (4) 'And let a Man beware how he keepeth Company with Cholerick and Quarrelsome Persons; for they will engage him into their own Quarrells.'

Regarding the second monition, I may conclude this meditation by quoting from the visitation report of an abbey and its dependent churches, made by Cardinal Carafa and his helpers in June, 1645. They spent ten days with the good abbot and his holy monks, and noted all things carefully, terminating the report with the words: 'Ut Rmo. abbati in posterum uti mitra auro contexta et gemmis ornata interdictum sit, cum hujusmodi abbatibus tantum permissus sit usus mitrae ex simplici serico confectae.' The poor abbot!

The dear old man, who taught me, in my boyhood, the gentle art of essay writing, laid down the canon that every essay should be pleasant reading for the examiner, and, that to score extra-superfine marks it should end with a telling phrase. He gave us a dozen quotation tags to add on to our blots, bad spelling and crude sentences, as telling phrases. The one I give here is not one of his. The reading of these canons of the new code and the remarks—pithy, but not polished—on the text, by Mr. Spurgeon, make me certain that it is a telling phrase. Commenting on words written by St. Paul, the popular preacher asked his audience if they ever had seen a cat walking on a well-glassed garden wall! The Christian who in life walks thusly, fulfils the apostle's monition, 'walk circumspectly.' It is a motto for an official visitor, in his visits and in his compositions of place.

'PETRA.'

CATHOLIC ACTION

IN FRANCE, GERMANY, SWITZERLAND, ITALY (AND IRELAND ?)

By Rev. MYLES V. RONAN

The all-important and engrossing problem of the day is undoubtedly the reconstruction of society. Whilst politicians are debating and wrangling about their pound of flesh, it is inspiring to see Catholics, in countries lately warring with one another, hurriedly lay aside bitter contentions and go back to the fundamental principles of the Gospel to construct their future national edifice. On account of the interest that, as Catholics, we take in the welfare of the Church in continental countries, and on account of the stimulus their Catholic action may be to us in the solution of our own particular problems, we have thought the following pieces of information may be worth placing before the readers of the I. E. Record.

FRANCE

In response to the wishes of his clergy, Mgr. de la Villerabel, Bishop of Amiens, recently delivered a discourse, from which we take the following remarkable passage :—

How shall we clearly designate the great work that devolves upon us in 1919 ? A single word will express it for us : Union. The Catholics of France are wanting in organization. Victory will produce its full effects only through the doctrine of the Gospel, the principle of our civilization, national as well as Catholic ; national in the temporal order, Catholic in the religious order.

A Religious Union is necessary in order that we may organize practical Catholics and sustain them in their life of faith and piety, as well as in the outward expression and in the claims of their beliefs. A Civic Union is necessary also, broader in its framework, more extensive in its plans, since its object will be the religious, political, economic, social progress of the greater France.

At the basis of the Religious Union we shall place not only the proper organization of our parishes and of our diocese, according to the decrees

of Canon Law, but the institution of Confraternities of the Sacred Heart or of the Blessed Sacrament, in which men will be grouped together, under the guidance of their pastors, solely for the adoration of Our Lord, for the more devout frequentation of the sacraments, so as to nourish their faith and their piety, to develop in themselves the holy pride of their beliefs.

Here the Bishop recalls what has already been done for the other classes of the faithful in the diocese of Amiens, to unite and organize them. He then continues :—

As to the Civic Union, how shall we define it? France may be divided into two camps: on one side, men of order, realists, who wish to make their country worthy of its glory through its economic activity, its commercial and colonial expansion, but, especially, by its moral and religious worth, namely, its civilization; on the other, men of disorder, who arm citizens against one another, raise up class hatreds, threaten the prosperity of the country and its future, and risk the rendering of the blood of our heroes and the victory of our generals fruitless.

This Civic Union claims for the country the conditions indeed of all national greatness, a strong and decentrali ed power, respect for traditions and for the meaning of our history, of order, of method, of harmony. None of us, in order to bring about this Union, should sacrifice truth. It would be wrong to serve the cause of the country by beginning with concessions. Error brings forth only disorders and injustice. However, the firmest minds can be at the same time the broadest if they seek the basis of a Union in the ideas on which they agree with their fellow-citizens. This Civic Union will not be a mixture of every doctrine but the coalition of all enlightened patriotisms, putting an end to all religious persecutions, and concentrating every effort and every activity not on fratricidal struggles but on the greatness of France. Who shall invent this formula? Who shall inspire confidence whilst showing us a clear plan, with the powers of authority and guidance capable of assuring the triumph of this Civic Union? We know not, but it will find a warm welcome not only among the Catholics of Picardy, but also among all men of order who, in passing through our desert and seeing our ruins, recognize what faults have prepared our misfortunes and what dreamy ideologies have made the invasion possible. Victory is in our hands, and we have paid dearly enough not to profit by so costly, but perhaps salutary, an experience.

The *Croix* of the 15th Jauuary, 1919, publishes an article from the pen of Jean Guiraud, which is, as it were, an echo of the discourse of the Bishop of Amiens :—

In the beautiful conference, in which he has laid down, in terms as broad as precise, the programme for 'Youths.' Father Sertillanges has laid stress on the breach that has widened in France between the religious training and the civic training of Catholics. The first, even among superior minds and 'intellectuals,' is most often vague, summary, primary; the second is sometimes pushed very far, even among the children of the people. This breach places religion in an inferior,

subaltern position in public and private life, and causes the religious ignorance that is the never-dying worm of our modern society.

Steadily denounced, for forty years, by people of the highest authority, this evil, at last, is attracting the attention of Catholics, and successful measures are taken to fight it energetically. Let us mention, for example, beside the splendid work of the Lady Catechists, the higher courses of religion that are going to be opened at the Catholic Institute for gentlemen devoting themselves, under the guidance of the clergy, to teaching catechism to the young people of the parishes and industrial clubs of Paris.

There is another breach not less important, and as fatal, which should interest every Catholic worthy of the name and call forth instantly the most energetic measures. It is what exists, in the Christian of our days, between his training as a private individual and his training as a citizen.

The moral law of Christ has not been framed for individuals only, for the interior forum of conscience and strictly private relations. It is, at the same time, social, and should rule governments, institutions and laws; and not only the laws that are more particularly called social, but all laws, of whatever nature they may be, because they all should be inspired with justice and charity, and tend to make God reign 'on earth as in heaven.'

Now, public morality holds, in the training and in the attention of Catholics, a much smaller place than individual morality. It did not make its appearance in our catechisms until the end of the last century, when intellectual initiatives, such as that of Mgr. Gouthe-Soulard, Archbishop of Aix, caused the young people to be taught civil and electoral duties. It found an entrance into most of the free schools only when an initiative on the part of our adversaries laid down for all schools, public and private, the obligation of a civic teaching; and, in our days even, if we examine the civic manuals in the hands of our Catholic children, even in many Christian schools, we shall find that the civic principles that they teach are those of the Revolution, of the Rights of Man, and of atheistical philosophy, rather than those of the Gospel and the Church. In this case, the instruction received is worse than ignorance, because it is made up solely of errors and prejudices.

In consequence of this breach, too many Catholics are insufficiently trained in the exercise of their rights and in the carrying out of their duties as citizens.

Before taking up a trade, they are apprenticed, and they become good workmen and, later, good masters, only if they have served a serious and methodical apprenticeship. So, in the industrial clubs we have done well in organizing many technical courses, and we are justified in considering as splendid organizations those professional schools where we try to make out of our Catholic youth the best workmen possible.

Our future soldiers are also trained with great care. The societies for military training are prosperous among our works for youth. Every Sunday are performed physical exercises that train and develop the body. Who is there that is not acquainted with so useful and vast a work as that which, for several years past, the Sporting League of the Clubs of France has carried on? In this matter, on their own admission, we have outstripped our adversaries.

Whilst thus the future workmen and the future soldiers are being prepared, do we bestow the same care on the training of the citizens of

to-morrow? Do these young people, whose muscles are being developed and for whom professional courses are being held, learn the duties that devolve upon them in public life on attaining their majority? Do they know the relations between Church and State, the questions regarding teaching which are being discussed, the position of the Pope, the liberties that Catholics should claim, at least as well as they know the laws of football? Are they at least as eager about these vital questions as they are about matches? When they chat among one another, what do they talk about? Is it about the sufferings of the Church of France, the calumnies directed against the Holy See, the crisis that threatens our Catholic teaching . . . or about cycles and aeroplanes?

The question that I propose to the young people of our clubs, I propose also to the older pupils of our great Catholic colleges. Are they acquainted with the great heroes of our Catholic struggles of yesterday and to-day, Montalembert, Veuillot, de Mun, as well as they are with the heroes of aviation and the winners of matches?

And yet, it must be so; for political questions, being often very complicated, require study; and we must indeed admit that a good citizen is not more easily turned out than a good workman or a good soldier.

Whilst enjoying his civic rights, every Frenchman ought to make himself worthy of them in following up, as closely as possible, public affairs. If there is an obligation on him to vote, as the Catechism teaches, there is necessarily the obligation to provide himsel with all the lights necessary to vote properly, with a thorough knowledge of the matter and according to the laws of social morality. Is there for Catholic citizens a civic teaching? And by that I mean not only courses given to some privileged beings in some select re-union, or even those conferences organized a little haphazardly, and which, too often, leave no trace in the mind of the hearers, but a continuous and methodical training carried out for the mass of the people as well as for the more privileged ones.

Socialist workmen themselves receive it in their Syndical re-unions, their labour exchanges; Masonry gives it regularly to its members in its lodges and in its offices. What is the association that gives it to Catholics? In the Church, we hardly dare to depart from general principles, for fear of 'being political'; which would be the abomination of desolation in the holy place. But, besides, are there places where a practical civic teaching is given to Catholics? What makes me doubt about it is the statement that has been made in many re-unions where Catholics and Socialists meet together, especially in organizations that deal with the orphans of the nation, and, as a Vicar-General related to me only a few weeks ago, our adversaries are often more conversant with the laws than our friends are.

The cause of the evil has been mentioned by Mgr. de la Villerabel, Bishop of Amiens, with all the authority that his dignity and personal worth give him. Speaking recently to his clergy, he ardently appealed for a Civic Union of Catholics, 'broad in its framework, extensive in its plans, since it will have for its object the religious, political, economic, and social progress of the greater France.'

This Union does not exist: with the Bishcp of Amiens we ardently appeal for its formation.

GERMANY

A NEW GERMAN CENTRE PARTY

From the *Echo der Gegenwart* (Aix-la-Chapelle), of the 27th December, 1918, we take the following account of the political and social programme of the New German Centre Party :—

The world war and the revolution have destroyed the old Germany. It is in the midst of tumult and passions that the new is growing up. A free and social democracy is about to be born; all branches of the German family, all classes, all professions, all citizens, without exception of religious faith or party, should find themselves at home there. The foundation of this new Germany ought to be the work, not of a party assuming to itself a dictatorship, but of the entire people. All parties wish, and ought, to contribute to it. But, to attain this, all parties must undergo modifications, both in their essence and their form.

A new Centre must, then, be created; the changes of our time will contribute to it. Recognition, without any mental reservation, of a democratic Republic, struggle against all class domination, of whatever kind; order in liberty, public renunciation of modern Mammonism and materialism, worship of ideal values, alone capable of making a people and a State healthy; such are the secure foundations on which we must reconstruct the edifice.

Inasmuch as it is the popular Christian party, the new Centre must include all social classes, men and women, who recognize these principles; it is with this mandate that we must go to the elections of the National Assembly. The Centre must not perish; it must prosper anew, but with new objects and on broader principles than heretofore. This change and this reconstruction rest on the following principles :—

1. *International Policy*

1. Immediate conclusion of a preliminary peace; conclusion, as rapid as possible, of a world peace, with an *entente* and reconciliation of nations.

2. The fixing of the relations of nations and States among themselves on the basis of eternal right and not of violence. Constitution of an international law conformable to Christian principles. Complete independence of the Holy See guaranteed by international law.

3. The setting up of a League of Nations with equal rights for great and small nations; obligatory arbitration for all differences. Extensive disarmament, reciprocal and simultaneous.

4. Protection of national minorities in all States.

5. Complete reform of diplomacy from the point of view of personnel and of methods. Abolition of secret treaties.

6. Freedom of economic development and equal treatment of all peoples. Freedom of the seas.

7. The fixing of an international code concerning production and the securities for labour. Adoption of similar measures for employes.

8. Constitution of colonial possessions sufficient for the needs of Germany. Encouragement to the education and Christianising of the natives. Abolition of slavery under all forms.

2. *Internal Policy*

A—CONSTITUTION

1. Immediate convocation of the National Assembly for the setting up of a new Constitution.

2. Preservation of the unity of the Empire and consolidation of the imperial idea. Respect for German particularisms by means of a federalist Constitution on a democratic basis.

3. Right of equal voting with proportional representation and right of vote for women in the empire, federal States, and communes.

4. Democratic government, resting on confidence in national representation, and provided with a strong executive power in the Empire and in the federal States.

5. For all classes of the nation, equal right in participating in public offices or posts, without recognizing class spirit or class privileges.

6. Maintenance of a body of professional office-holders, independent, and with guaranteed tenure.

7. Liberty of speech and of the press, liberty of re-union and association.

B—ECONOMIC AND SOCIAL POLICY

1. Methodical realization of a national administration for the general good and for the purpose of production. Absolute respect for particular administrations resting on private property. Public administration, by the State or the townships, by societies or corporations, of the crafts that consent thereto. Abolition of all monopoly created by private capital.

2. National victualling assured by encouragement to agricultural production.

3. Protection and encouragement of trades necessary to a healthy economic body; preservation of a vigorous agricultural class, encouragements to the constitution of a healthy working class, respect for the legitimate interests of commerce. Equal protection of the producers, of the consumers, and of their organizations. Formal preference given to the general good over all individual or corporative interests.

4. Continuation of a social policy favouring urban or agricultural populations, whilst respecting in the most absolute manner, in legislation, human personality and dignity.

5. Territorial policy for the general good. Complete reform of living within the Republic and of colonizations. Interior colonization. Increase of agricultural activity by the purchase of suitable State lands and large official domains.

6. Distribution of fiscal charges proportionate to contributable capacity. Rigorous taxation of large revenues, large fortunes, and unearned increases of wealth. Valuation as rigorous as possible of profits made during the war. Improvement of the methods of distribution of taxes. Prevention of fiscal frauds and of the flight abroad of capital. Abolition of gross differences in the fiscal charges of townships. The taking into consideration of family conditions and of the number of children in the division of taxes.

7. Conscientious solicitude in looking after the needs of the invalids of the war and the families of deceased soldiers. Improvement in the system of fixing pensions. Vote for legislation on rents which will contain special clauses in favour of combatants.

C—MORAL POLICY

1. Encouragements to the moral development of the nation, on the basis of Christian principles.

2. Effective policy of repopulation. Measures in favour of large families. Protection of childhood and of youth. Preservation and consolidation of the ideal of the Christian family.

3. Remodelling of education and teaching in a democratic, national sense, on the basis of equality, at the same time absolute respect for, and constant practical application of, the moral and religious factors of education. Maintenance of denominational primary schools. Respect for the right of parents over their children. Freedom of teaching and of science.

4. Possibilities of a free development of individual capacities by the abolition of old-fashioned privileges and of all caste spirit in school.

5. Freedom for women to collaborate in the restoration and the preservation of German everyday life; pursuit of this object by the consideration and full utilizing of female personality.

6. Liberty of conscience. Freedom of religious exercises. Neither favour nor disfavour on account of religious beliefs in any department whatsoever of public life. Freedom of religious associations, of ceremonies in churches and of religious societies of different denominations. Intelligent collaboration of Church and State. No violent modification in the relations of Church and State; respect for the convictions and legitimate aspirations of the conscience of peoples of different persuasions.

SWITZERLAND

THE CATHOLIC SWISS PARTY

The Swiss journals published in January this programme of the Swiss Catholic Party, that is still called indiscriminately, 'Popular Conservative Party,' or 'Catholic Conservative Party,' or 'Conservative Party':—

DEAR CITIZENS,

The undersigned Committee met at Berne, on Tuesday, 17th December. It unanimously decided, considering the gravity of the present times, and without waiting for the general re-union of the Conservative Party, which will be summoned at a very early date, to publish by manifesto the principles and the opinions of Swiss Conservatives regarding the burning questions of the day.

CATHOLIC ACTION IN FAVOUR OF THE MASSES

The powerful commotions that are shaking society at this moment and that are the consequences of the evils of war, are caused by something that we must seek deeper and farther than in the calamitous events of the last five years. This general explosion of revolt against the social order is the consequence of the dechristianising of the world. To bring about a real peace in the world, there is only one means, that is to reconstruct the social order on the basis of Christianity.

The modern State, in order to be able to fulfil its mission for the public safety, must be organized according to the principles of Christian democracy. Does it not seem that Leo XIII saw into the future with

a prophetic look when he asked Catholics, now twenty-five years ago, to unite in a strong action in favour of the masses, in a fraternal agreement with the other classes of the people, and when, in his Encyclical on the Christian constitution of States, he condemned the monopoly of power by the higher classes as well as the regime of a proletarian republic which would exclude from public life the citizens of the other social categories ?

PROTECTION OF THE FAMILY AND DEFENCE OF PROPERTY

The State ought, then, to guarantee to all the people a suitable portion of the good things of life. The first object of a Christian economic policy should be to help the workman to lift himself out of his precarious condition, so as to give him access to property, to acquire a home of his own, and to raise himself to an independent position.

By that means, we shall protect the family. Its well-being, its growth and its indissolubility should be the object of our liveliest solicitude, in a time when Socialism is working feverishly to destroy it. For this purpose, we shall struggle against every project of abolition of private property, because the right of property is a natural right, sanctioned by the Decalogue, and besides, we cannot conceive either family or even State without it; for it is an institution indispensable for their well-being and their progress. The most ingenious measures that could be imagined to supply its place would never supplant it in the important part that it plays as a stimulus of general activity.

CHRISTIAN FRATERNITY AND FREEDOM FROM THE SOCIALIST YOKE

The reconciliation of the classes by a fundamental social reform, that is what we want, and not the struggle between the classes. The disappearance of personal contact between the employer and the workman has been fatal to the cause of social harmony. The idea of Christian fraternity must be re-established between the members of the different classes of society. That is one of the tasks that particularly devolves upon our association. We must needs snatch from the yoke of socialist organizations the Christian and patriotic working-class elements; the lesson of recent events forces it upon us with the most earnest pleading: we are imperatively bound to favour all associations that are a support to social order, to religion, and to country.

ORGANIZATIONS TO BE PROMOTED OR DEVELOPED

Moved by these considerations, we propose for your acceptance the following programme of organization :—

1. It is recommended to all workmen and employes belonging to socialist syndicates and associations to leave these organizations that, as we have seen, are a prey to anti-social conspiracies, and to club together in workmen's Christian associations and social syndicates.

2. The project of the foundation of a Christian Social Workman's Federation taking its place on the patriotic platform receives the approbation of the Swiss Conservative Party, that will give its whole strength to its realization.

3. We recommend the development, and the erection to the level of actual necessity, of the professional organizations of the middle class, so that they may provide a solid protection for the peasant class, the artisan class, and the commercial class.

4. Political and religious parties and their committees will consider it a duty, on account of the gravity of the times, to redouble their zeal and diligence in the work of the propagation of ideas and in that of the concentration and organization of Catholic forces, whether in the religious and charitable domain or in that of social policy.

LEGISLATIVE REFORMS OF THE POLITICAL AND SOCIAL ORDER

Amongst the numerous political and social projects that occupy at this moment Swiss public attention, the following should occupy a place in our programme:—

1. Remodelling of the federal constitution with a view to its simplification.

2. Reform of our military institutions, namely, disarmament as complete as the need of our security will permit; extirpation of all abuses and the improvement of institutions that have for their object the well-being of the soldier and chiefly of those of the medical corps.

3. Revision and completion of our social legislation, namely:—

(*a*) Establishment of more just conditions of wage and profit in favour of the working classes. The fixing of minimum salaries and the participation of workmen and employes in the benefits of limited liability companies. Democratization of property, so as to facilitate for all the establishment of one's own home and the benefit of independent existence. Housing reform, with the help of the Confederation, in canton and townships.

(*b*) Establishment of a general Assurance Fund for invalids, the aged, widows and orphans, by the Confederation, with the co-operation of employers and of the assured. Revision of the law of assurance against sickness and accidents.

(*c*) Revision of the factory laws as a result of the information that will be furnished by a popular inquiry. The reform should primarily aim at the shortening of the working-day, in a manner compatible with the economic interests of Switzerland, and taking into consideration the different conditions of the professions; it should tend, besides, to improve the regulations regarding rest for the workers, and those that have for their object the protection of young people and of women; it should finally decide on the appointment of female inspectors of factories and the drawing up of rules for home industry.

(*d*) Protection of the right to work by legal regulations on the right to strike.

(*e*) Measures in favour of the idea of solidarity among professional classes and for the settling of conflicting interests. Appointment of salary bureaux and bureaux of conciliation; promulgation of a law on trades.

4. Measures against grabbing, usury, and the exploiting of the masses by means of trusts and industrial and commercial monopolies. Revision of the law concerning limited liability societies. Taxation of large enterprises for the relief of the social charges of the cantons and the townships.

5. Protection of small agricultural holdings and measures in favour of rural and Alpine economy. Improvement of poor lands. Resistance to the contracting of debts on land and to speculation on landed property.

6. Measures in behalf of public health, chiefly against tuberculosis and alcoholism.

7. Defence of our general economic interests against the threat of a ruinous foreign competition.

8. Defence of the Christian foundations of marriage and of the family. Resistance to attempts at the destruction of private property and of the right of inheritance and to the poisonous ideas in what concerns the position of woman in the family and in public life.

In regard to the resources necessary to the State for the accomplishment of its mission of general utility, we think that, having regard to present economic conditions, it is big property and big incomes that ought to provide the largest contribution.

DUTY OF GIVING TO THE CHURCH ITS FULL LIBERTY

It is only by a re-awakening of religious life that our country can defend itself successfully against the destruction of moral ideas which is the consequence of the war. For that purpose, the Church must have full liberty. The laws that impede its healthy action should be abolished. Whilst we recogni e in the State full liberty of action and full authority in its own domain, we also claim for the Church every facility for action in its own sphere. It is a fact universally recognized that wherever the Church exercises its influence over the heart of the people love of order, respect for authority and devotion to the common good are met with. The events that we have lived through have proved it once more.

Harmony between the Church and the State is a fundamental condition of the cure of the wounds that the war has made in poor humanity.

BERNE, *17th December*, 1918.

In the name of the Central Committee of the Swiss Conservative Popular Party.

President, DESCHENAUX.
Secretary, HANS VON MATT.
(*National Councillors.*)

THE OCCASION AND THE OBJECT OF THIS PROGRAMME

(*Necessary information for those who wish to understand its bearing is given in a letter from Berne to the 'Liberté' of Frieburg, 7th January,* 1919.)

The social programme of the Central Committee of the Swiss Popular Conservative Party has been cordially welcomed, in general, by the Catholic press. Drawn up, as we know, in the re union of 17th December, at Berne, in the presence of most of the Catholic deputies to the Federal Houses, this programme aims, especially, at strengthening the social action of Swiss Catholics, in consequence of the events that have demonstrated with such acuteness the necessity of an organization better adapted to the situation. Of necessity, this programme deals almost exclusively with questions of propaganda and social organization. It provided for the most urgent cases. Besides, the Catholic Conservative Party is founded on a general programme and on principles that are not out of use. It is, then, idle to look for, in the manifesto of the 17th December, declarations on points that have been already settled and that are not contested by anyone. We have only to read the programme of the foundation of the Catholic Conservative Party to know that this Party claims full religious freedom and that it considers 'Christianity as the

foundation of the life of peoples, the foundation of public and social institutions, the foundation of teaching and popular education.'

From the beginning, the Catholic Conservative Party set out to 'work for the consolidation of Christian strata in State and society.' It has always declared that it wants 'equality of treatment for all denominations,' that it rejects and wages war against 'all exceptional laws and measures against denominational minorities in the Confederation and the Cantons.' The whole programme of the Conservative Popular Party equally guarantees its fidelity to the federal traditions and institutions of Switzerland. The same programme asserts that the Conservative Party takes its place on the platform of Christian social reform, that it condemns class warfare, and that it will endeavour to substitute for social rivalries the solidarity of the entire people.

It is enough to say in what spirit the Catholic Conservative Party will set about to revise the Constitution completely.

The manifesto of the Central Committee retracts nothing of this former programme. It would be wrong, then, to reproach it with silence on matters that are not in dispute. The object of the re-union of 17th December and the thought that has dictated the manifesto of the Central Committee have been, above all, to rekindle the zeal of Swiss Catholics in favour of social reforms, according to the principles of the immortal Encyclical of Leo XIII, which should remain for all time, and, with greater reason at the present time, the charter of Christian social action.

As for the rest, and especially for the serious problem of the total revision of the Constitution, the assembly of the 17th December limited itself to taking cognisance of the present state of the question in Parliamentary circles, according to the data furnished by the introductory report of M. President Deschenaux. It goes without saying that definite decisions, in this matter, as also in kindred questions, are reserved to the general assembly of the Conservative Party, the convocation of which M. Deschenaux has announced with the least possible delay.

To-day it is a question of profiting by the terrible lessons of recent events and of preparing Swiss Catholics for the formidable struggles carried on all around us by the international social revolution.

If the Christian social movement increases in Catholic Switzerland, there is no reason for the Catholic Conservative Party to ignore it and the Parliamentary Right shows its clear-sightedness in associating itself with the efforts of Dr. Feigenwinter and his associates with a view to turning the Catholic people into this path.

Our friends of German Switzerland are perhaps in advance of Romande Catholic Switzerland in the matter of syndical organization. Let us, however, not forget the great stride of the workmen's organizations in Frieburg and in the other neighbouring cantons, under the guidance of the Secretary of the Romande Union of Catholic workmen, so well aided by its journal, *l'Action Sociale*.

As M. Feigenwinter has said, the social policy of the Parliamentary Right and of Catholics in general should not be inspired by the false and out-of-date principles of economic liberalism. We have, to guide us in the present disturbance, the light of the highest and the surest teachings. Our mother, the holy Catholic Church, that has known how to find in all times efficacious remedies for social diseases, will yet have the last word in the supreme struggle that is impending.

ITALY

THE 'POPULAR UNION'

This Union of Catholic Social Workers of Italy, inspired by the address of Benedict XV to the Cardinals last Christmas, has set itself thinking as to the best means of giving effect to the programme of social restoration outlined by the present Pontiff and by his predecessor. The General Committee has issued a manifesto to the Catholics of Italy and to all the organizations that devote themselves to Catholic social action. A congress of the presidents and representatives of the Diocesan Committees is to be held early this month. The activity of the Union will be entirely devoted to the education of the popular conscience on the observance of its religious, civil, and social duties in harmony with the teaching of the Church, and to the work of uniting all Italian Catholics in the assertion and in the defence of the principles on which the Christian restoration of society depends. As we have not yet received the official programme of the Union, we take the liberty of giving the following extract from the *Irish Catholic* of February 22, on the subject:—

THE UNION'S PROGRAMME

The first point of the programme—namely, the education of the popular conscience in the observance of religious, civil, and social duties—implies that the Union must do all in its power to convince the general public that the greatest factor of civilization, justice, and social progress in the world is the Catholic religion, and to secure its being regarded not as a mere private matter, but as a force that must influence the laws, customs, and life of the nation. For this end it will be necessary to combat the indifference of modern legislatures and bring statesmen to take account of the truths that it teaches, and the virtues that it inculcates, and the rights of the immense majority of citizens who profess it in the State. The educated Catholic conscience, which is to be the instrument that will impose these views on the legislature of the country, must in consequence be formed to give to the Sovereign Pontiff the respect due to his exalted office as Vicar of Christ, Head of the Church, and infallible teacher of the faithful. His perpetual spiritual sovereignty needs to be guaranteed in full liberty and independence, and effective inviolability from every attack of sectarian animosity It is, moreover, necessary that the public regard the principle of order and authority as the fundamental condition of all civil well-being. Love of country must be represented as an active Christian virtue adapted to further the prosperity and self-respect of the nation—a virtue which calls on all to co-operate according to their capacity and circumstances in the development and progress of the public good. Finally, it will be necessary to show that Catholic social doctrine contains the surest principles of charity, justice, and fraternal equality, encouraging the feeling

of solidarity in mutual help, and in the defence of lawful rights and interests of class and such like.

The assertion and defence of the principles on which the Christian restoration of society depends demands vigilant and constant effort that these principles, as proclaimed by the Gospel and the Catholic Church, be not ousted by the atheism and laicism of public life and by the renascent paganism of private life. It demands the sanctification of the Church's feast days by the observance of religious practices and abstention from work, both as acts of homage to God and as a means of securing needed rest for workmen. The family, both in the indissoluble bond in which it is founded and in the integrity of all its native rights, must be recognized and guarded as the cradle of every private and social virtue, and the vital nucleus of civil society, and the source of social order. Then public morality requires above all things the suitable training of youth, and insistence on having education emancipated from undue State control. It is likewise the purpose of the Union to fight for all social liberties against every form of State or class monopoly, and especially for the liberty of labour, with full equality of rights for all its organizations, in the face of every contrary preference and privilege. It likewise proposes to use all constitutional means to combat every law and institution tending to destroy or clog the operation of Catholic social principles on the life of the country.

On the ground of these general principles, the Union hopes to hold together Catholics working in the most varied fields of social activity, and as practical means of securing the necessary unity and organic strength, it advocates the most filial and intimate co-operation with the Bishops and the parish priests, maintained through the agency of diocesan committees and parochial groups, the enrolment of all Catholics under the banner of the Union, the maintenance of a central secretariate and local executive offices, the continued publication of the two organs of the Union, the monthly *Alarm*, and the weekly entitled *The Social Week*; the continuation of the agitation, commenced about ten years ago, for the liberty of the schools, the holding at least annually of local congresses, the celebration of solemn feasts with popular pilgrimages to the great national shrines of religion and art. What we might call the educative activity of the Union is to be carried on as heretofore by the distribution of popular works and pamphlets dealing with apologetic and current questions from a Catholic standpoint; by coming to an understanding with the principal Catholic periodicals with a view to making their educational influence more widely felt; by continuing the reunions of social study known as 'Social Weeks'—these are held periodically for the discussion and study of questions of actual interest. Finally, they advocate lectures on social questions to the people, the foundation of higher courses of religion and apologetics in the universities, periodical, local, and national conferences as means of influencing the people more thoroughly, drawing the bonds of fraternal union more closely, securing unity of action and invigorating the fidelity of the members towards the Church and the Holy See.

On the subject of the 'Popular Union,' the *Daily News*' Roman correspondent makes the following significant remarks :—

The active participation of Italian Catholics in the political life of

the country, and the formation of a new Catholic political party, with an essentially democratic programme, tacitly approved by the Pope, has already led to a most significant result—the weakening of anti-clericalism. New political parties, and old ones with altered programmes, are renouncing their anti-clerical tendencies. Separation between Church and State is no longer urged even by the Socialists, so that it will not be necessary for the new Catholic party to waste time in waging war against the so-called enemies of religion, who, acknowledging their weakness, have laid down their arms beforehand.

Conciliation between the Pope and Italy will be comparatively easy in the near future, as a matter of course, since it will be advocated by the Catholics, now united into a well-organized political party, approved by the Government, which cannot retain power if the Catholics join the opposition.

IRELAND

Turning our attention now to our own country, we may well ask ourselves, have we done anything on these or similar lines ? Is there any need in this country for Catholic social action ? The letters that have appeared recently in the *Freeman's Journal* on the subject show that we have reached a turning on the right road. Interest in the matter has been genuinely aroused. Rumour has it that something practical is in contemplation. We sincerely hope so. The Cork employers and workmen have formed an Arbitration Board, with a priest, Father Thomas, O.S.F.C., as its chairman. That is a sign-post on the straight road. The worthy Order to which Father Thomas belongs has done nobly in the uplifting of the masses, especially in Dublin. Yet, there is one feature of social action that calls for immediate attention in Ireland, namely, Catholic Social Propaganda. The nations have spent huge sums in propaganda work. Evidently it pays. We, Irish Catholics, may well learn a lesson from the French Committee of Catholic Propaganda, under the direction of Mgr. Baudrillart, Rector of the Catholic Institute of Paris. No doubt we have excellent publications of the Irish Catholic Truth Society, the *Messenger* Office, and chiefly of the English Catholic Truth Society on social problems from the Catholic standpoint. But these do not sufficiently penetrate the popular masses. The Catholic Truth box in the church is not enough. Some time ago a priest wrote a letter, published in the *Leader*, telling how he disposed of such booklets. He selected a book of the Catholic Truth Society, prepared a sermon from it, which he delivered to his congregation the following Sunday, and told them the

book would be sold outside the church doors after Mass. The result was that hundreds of copies of the book were sold. The same occurred every Sunday. This, we believe, took place in the country. We ourselves, some years ago, had a similar success in a city parish. That is one way of bringing home to the people information on Catholic questions, religious and social. We have noticed that several provincial papers publish every week a column or so from Leo XIII's famous Encyclical. That is an example that might well and easily be followed by the Catholic press throughout the country.

But what we rely chiefly on is propaganda by pamphlets. A Catholic Social Union of Ireland, composed of priests and expert laymen, might compile and issue these pamphlets on all problems that obtain in Ireland to-day. We have seen during the recent elections in what a telling manner essential points may be presented by pamphlets and how effectively they may be used for propaganda work. Pamphlets on social questions might be produced cheaply on these lines and sent round to the parishes for distribution at the Church doors. Thus, by pulpit, press, platform, and pamphlet, a great Catholic social propaganda could be carried on. For Ireland, as for the rest of Europe, social issues will soon dominate the situation; and, it must be remembered, that religion is not confined to church. Irish Catholics must necessarily apply Catholic principles to the labour programme. Our apology for these few remarks is the concluding sentence of the recent address of His Holiness to the Italian Popular Union: '*The heart of the Pope is with those who organize unions and with those who form part of them.*'

Myles V. Ronan.

VALIDATION OF MARRIAGE IN THE NEW CODE

By Rev. M. J. O'DONNELL, D.D.

When the regulations, to which we directed attention in previous issues, have been carefully observed, it will happen very rarely indeed that a Catholic marriage is null and void. Existing impediments are detected in the course of the preliminary inquiry (1019-34), and an appeal is made to the proper authority to have them removed (1040-55): if the reply be favourable the marriage is contracted in the form prescribed, and, humanly speaking, is as safe from attack as the inherited wisdom of centuries can make it. But perfection is reserved for a higher sphere; in ours, defects and mistakes are always possible. The persons directly concerned may have been too much engrossed in the coming event, or perhaps too anxious for it, to advert to obstacles in the way, or to let others know of their existence; outsiders, who could set matters right, may think it unwise to intrude, or may be excused from taking action; the obstacles may be too well hidden to be discovered by anyone not endowed with the combined gifts of an incurable gossip and a canonical expert; the matrimonial consent may have been withheld, or vitiated by error, duress, or by the insertion of an immoral or unfulfilled condition; or, even when none of these hypotheses are verified, the priest may, perhaps without much fault on his part, have failed to comply with the varied and complicated requirements of the *Tametsi*, *Ne Temere*, or Code. As a result of one or other of these things, the marriage may prove to be invalid: if so, all concerned, the priest perhaps especially, are confronted with the task of rectifying the mistake—of 'validating' the marriage invalidly contracted.

In these circumstances, the natural impulse of Catholic partners would be to secure a dispensation—if the im-

pediment had not disappeared already—and, with as little publicity as possible, renew their matrimonial consent in the ordinary manner prescribed by the Church. Feeling that there was something radically wrong, they would refuse to rely on their past efforts, and would proceed with a second ceremony, almost as if the first had never taken place. Nothing less would convince them that they were as really and truly married as more fortunate friends who had never been troubled with impediments. That natural instinct, we believe, lies at the very basis of the Church's policy; it is accountable for practices adopted and enforced long before a scientific analysis of the process was attempted. Adapting herself to that instinct, the Church demanded something more than a mere dispensation. She insisted—and, to some extent, still insists (1133-7)—on a new consent from each of the contracting parties; she recommended, and in certain cases required, the assistance of the parish priest and witnesses[1]; and, by way of concession to that same instinct, she dispensed with publicity, except when the impediment was public and when (as a consequence) grave scandal would result if she sanctioned the continued married relations of the parties, without giving public notice that the impediment had been removed and the marriage validated.[2]

So much for the Church's policy. But, *apart* from Church intervention, and in the very nature of things, how much of all this was really essential? Very little, indeed. Granted a true matrimonial consent, once given and never effectively revoked, the only thing really necessary for a valid marriage was that the impediment should cease—by dispensation or otherwise. For—what kept the expressed matrimonial consent of the two partners from producing its natural effect (1081, § 1) at the beginning? The impediment, and it alone. And, during the period between the first ceremony and the validation, what continued to keep it ineffective? In the natural order of things, the impediment and nothing else.[3] Once *it* were removed—whether by lapse of time, dispensation, or other cause, as in the case, for instance, of 'age,' 'consanguinity,' and 'difference of worship,' respectively—the two wills would coalesce. And, once *that* occurred, the natural

[1] Cf. 1135, § 1, 1136, § 3, 1137.
[2] Cf. Gasparri, *De Matr.*, n. 1400.
[3] Cf. Lehmkuhl, 1056.

result would follow: the marriage would be full, complete, and irrevocable (1081, § 1).

That is the rule, as everybody knows, in all other contracts: when obstacles are removed the agreement is complete and entails its mutual obligations without any new act of will on either side. It is the rule all through nature: if two magnets are kept apart by a leaf of paper, the removal of the leaf will result in their union without any re-magnetising process. And, without travelling outside the matrimony tract, we may parallel the case with another (1092, 3°)—in which, according to the best view, the Church allows the natural law to operate. A and B exchange matrimonial consent, but on condition that their parents agree to the marriage. The parental assent is delayed for a day, a month, a year, or any period we may like to mention, A and B remaining faithful to their purpose in the meantime. When, finally, assent is given, A and B may not be thinking of the marriage; they may be unconscious and not thinking of anything at all; still, without further action on their part, they become at that very moment husband and wife.[1] Why? For the reasons stated in the previous paragraph. The parental veto was the only obstacle that kept their wills apart at the beginning: it was the only thing that continued to keep them apart as time went on: once it was removed the wills were irrevocably knit in the sight of God, and the marriage was final and complete. That is the accepted teaching in this department—apart from the intervention of the Church, it would be the accepted teaching in the sphere of 'validation' as well. For 'parental veto' substitute 'diriment impediment,' and the two cases are identical.

Now, if all this be true, as we believe it undoubtedly is, what happens when a *sanatio in radice* is conceded? Simply this. The impediment ceases by dispensation or otherwise; then the Church stands aside and allows the natural law to operate. For, apart from the legitimation of children (1138, § 1)—which may or may not extend to the past (§ 2), and which in any case affects only canonical disabilities and presents no special difficulty[2]—the essential effect of the *sanatio* is that a *new* consent, not required by

[1] A few question it: reason and authority are against them. Cf. Marc, *Inst. Mor. Alph.*, 1974.

[2] For a similar effect in case of penalties, cf. Canon 2232, § 2.

the natural law, is not required by Church law either. The process is sometimes referred to as being 'mysterious' and 'unintelligible.' There is nothing 'mysterious' about it, except the very mysterious legends that imaginative commentators have woven around it. Some few of them speak as if, by some metaphysical impossibility, the marriage was 'healed' from the beginning (*ex tunc*), as if (that is) a marriage invalid for (say) twenty years past now became valid during those same twenty years.[1] If theorists of that kind deserve a refutation, they will find it in the homely proverb that 'what is done cannot be undone'—the 'factum infectum fieri non potest' of the theologians, or the 'non tamen irritum quodcunque retro est efficiet (Pater)' of the pagan poet.[2] And, having recovered their sanity, they will perhaps give some sound advice to their less extreme, but equally misguided, partisans who endow the Church with a kind of *scientia media*—claiming that, in connexion with marriages otherwise invalid, she withdraws her voiding law from the very beginning whenever a *sanatio* will, as a matter of fact, be granted at some future date by the Holy See.[3] Minds that are capable of formulating theories of that kind stand in sore need of a *sanatio in radice* themselves. The marriage *was* invalid, and even the infinite power of God cannot alter the fact. If the partners were conscious of the real state of things, every usurpation of marital rights was, and could never be other than, a formal mortal sin—'luendum aut lachrymis aut gehenna.'[4]

To sum up these remarks. The effect of a *sanatio* on a marriage is that the marriage becomes valid *now* without a new consent. That is in full harmony with the principles of the natural law. In ordinary life we have a *sanatio in radice* whenever two parties to an agreement secure the assent of a third person whose approval is required to give the contract full binding force. There is a *sanatio* when the leaf is removed and two magnets come into contact. So is there when parental assent is given to a marriage contracted on that condition. In none of these cases is a new act required on the part of the agents concerned. And, if it were not for very special legislation in *this*

[1] e.g., Scavini, iii. 1050; De Angelis, iv. t. 17, n. 3.
[2] Horace, *Odes*, iii. 29.
[3] See *I. T. Quarterly*, July, 1912, p. 308.
[4] Gasparri, 1426.

department, the *sanatio in radice* process would be the ordinary natural method of validating every marriage that is void (not through defect of consent, but) by reason of a diriment impediment.

In what we have stated, we have taken it for granted that, notwithstanding a diriment impediment, a true, matrimonial consent is possible. That is the common view. A few reject it; others admit it only in a half-hearted fashion—claiming, almost in the same breath, that the consent is not 'defective' but that 'a true consent is impossible' all the same.[1] Perhaps the wording of the phrase 'sanatio in radice' is to some extent accountable for the confusion. It seems to suggest that the 'root' stands in need of a cure. Now, the *marriage* is 'cured' undoubtedly, and in the fullest possible sense—it passes from death to life, from non-existence to existence. Not so the consent, the 'root' itself. *It* is no more cured than a musician released from prison and allowed to sit at a piano. The musician is no better now than he was before, but, obstacles being removed, he produces more satisfactory results. So with the consent. It was 'valid' from the beginning, but an impediment prevented it from producing its effect: now the impediment is removed, and the consent is not merely 'valid' but 'effective.' To employ the words of the Code, it was always 'naturally sufficient' but till the present moment 'juridically inefficacious' (1139, § 1).

As the matter, however, is of fundamental importance in the whole discussion, we may be allowed to digress for a moment and take it on its merits.

Matrimonial Consent in Face of an Impediment.—There are, as we have seen, writers who claim that the thing is impossible. If a diriment impediment exists, they say, there is no suitable 'matter' on which the consent can fall; the consent is, therefore, invalid; and what is invalid has no existence—*invalidum esse et non esse paria censentur.*[2] That view, we may remark at once, is condemned in Canon 1085: 'conviction, correct or incorrect (*scientia aut opinio*), of the nullity of a marriage does not necessarily exclude matrimonial consent.'[3] At the other extreme we have the view that, no matter what the impediment be—divine or

[1] Cf. *I. T. Quarterly*, July, 1912, pp. 305, 311.
[2] e.g., Sanchez, ii., a. 35; Anacletus, iv., n. 591, etc.
[3] 'Non necessario excludit' would, we think, express the meaning better.

human, real or supposed—a true matrimonial consent is always possible. It is discountenanced slightly by the Code (1139, § 2), but we think it correct notwithstanding. Anyhow, between these two extremes there are innumerable positions that may be, and have been, assumed. They are all quite tenable, so far as the Code is concerned: the wording of Canon 1085 is too vague to compel their friends to renounce them.

Everyone admits, of course, that when a diriment impediment exists, the marriage is invalid. But the question at issue is whether the invalidity arises from the impediment *merely*, or whether, like the marriage itself, the consent *also* is vitiated. The various cases may be summarized under the following headings:—

I. 1°. *An ecclesiastical impediment exists, but is unknown to the parties.* A and B, for instance, are second cousins, but neither is aware of the fact: can they exchange a real matrimonial consent? Some have denied it[1]: their principle is the one given a moment ago:—an impediment exists; therefore, marriage itself being impossible, matrimonial consent is equally so. The position, it will be noted, is even more extreme than that directly condemned in Canon 1085: if an impediment, really existing and known to the parties, is compatible with their giving true matrimonial consent, a hidden impediment cannot surely be so fatal as the writers in question would have us believe. And, as a fact, the opinion is so much opposed to reason and practice that it hardly calls for refutation. The parties are perfectly *bona fide*; there is surely nothing to prevent their *wishing* to grant and accept full, perpetual, and exclusive marital rights—even though, by reason of a hidden obstacle, the wish is rendered ineffective. Moreover, these men will admit, even the Church cannot do the impossible: yet, in countless cases of the kind, she grants a *sanatio*—an utterly impossible concession, unless the consent given in the past was naturally 'sufficient' (1139, § 1). Independently, therefore, of ecclesiastical pronouncements on which we might rely,[2] we can have no hesitation in saying that the consent given in the past, though 'ineffective' at the moment, was 'true' and 'valid' all the same.

And the distinction just given, may we add, will meet

[1] Those cited already.
[2] e.g., that of Boniface VIII, *de spons. in VI°*.

nearly every difficulty raised in connexion with the remaining cases.

2°. *There is no ecclesiastical impediment at all, but the parties think there is* ('opinio nullitatis,' c. 1085). A and B imagine they are second cousins: as a matter of fact, there is no relationship: can they give matrimonial consent? The case need cause no trouble: even the rigid men of the last section admit the possibility; and Roman replies show that they are right.[1] The only disquieting feature is that, in this case and in others to be mentioned in a moment, the parties, thinking marriage impossible, may *intend* a life of concubinage. In given cases the Roman authorities thought that the evidence supported that presumption.[2] But that is a matter for proof in each individual instance. The decisions do not prove that matrimonial consent is impossible; they only prove that, in certain cases, matrimonial consent was not actually given.

3°. *An ecclesiastical impediment exists and is known to the parties* ('scientia nullitatis,' c. 1085). A and B are second cousins and they know it: can they possibly intend married life? The case is more difficult than those already given but not by any means hopeless. The arguments given above hold good: for, 1°, even in this case, a *sanatio* is occasionally granted; 2°, if it be asked how people can *wish* to do what they *know* to be impossible, we may answer that

> there is nothing to prevent a person (notwithstanding his conviction, correct or incorrect, that a diriment impediment exists) from *wishing in his own mind* to grant and accept marital rights, either because in his own mind he abstracts altogether from the voiding law, or because for some reason or other (however absurd) he fancies himself excused from it, or because he thinks that matters may be set right in the future, or even because he takes up a definite stand against the law, saying (as it were) in his heart: 'I am well aware that it has been so ordained, but, notwithstanding that, I, in so far as it depends on my own will, wish to grant-and-accept matrimonial rights.'[3]

It would be a strange position for a Catholic to adopt, but, unfortunately, many do adopt it when they

[1] e.g., a Constantinople case, decided 1st October, 1785. The parties contracted before a Turkish judge, and *thought* that the *Tametsi* bound them. This is not reckoned an 'impediment' in the Code, but the principle is the same (1139, § 1).

[2] e.g., in a Parisian case, decided 15th August, 1882. The girl contracted marriage in a registry office in London. For particulars, see Gasparri, n. 906.

[3] Gasparri, n. 906. Cf. I. E. RECORD, October, 1918, p. 289.

contract a merely civil marriage. And—the important point—however much we condemn it from the moral standpoint, we must (we believe) admit that it is psychologically sound and accurate.

II. When the impediment is one of the divine or natural law the case is more troublesome. It is harder to sanction a psychological attitude opposed to what God demands or nature dictates. But, when there is question of the divine positive law merely—in the case of *ligamen*—we can imagine a man saying, 'The divine law prohibits marriage now, but that was not always the case: if the Patriarchs of old could intend a second marriage, so can I; I want the contract that nature sanctions.' And, even when the contract is one that nature does *not* sanction, we can imagine him eloquent still. If there be question of 'impotence,' he may say, 'Rights are distinguished from their exercise: the exercise is impossible, for the present at least, but the rights I can and will grant-and-accept.' Or, if the impediment be one of consanguinity in the first degree of the direct line, 'I propose to enter on a career that, physically, is indistinguishable from married life as generally understood; a moralist may detect differences; but I take my stand on physical facts, and I want the contract that *they* make possible.' All very deplorable and repulsive, of course: but, again, we believe, from the psychological point of view, quite defensible.

Taking up the different cases:—

1°. *A natural or divine impediment unknown to the parties.* A and B are anxious to marry. A has been married already but thinks that his wife is dead; so does B. The wife, however, is alive: what of the matrimonial consent of A and B? Opinions differs widely: but, for the reasons given above, we think the consent quite possible. To Gasparri, we note, the matter 'seems evident.'[1]

2°. *There is no impediment, but the parties think there is.* In the case just given, let us suppose that A and B think the wife is alive, whereas, as a matter of fact, she is dead. What of the consent? Our opinion is the same as before. And this time we can point to a Roman decision.[2]

3°. *The impediment exists, and the parties know it.* This is the really doubtful case. Views differ so much

[1] n. 907 (towards the end).

[2] A Smyrna case, 9th September, 1752. The facts were as described in the text.

that we can only record them in outline. Some authorities claim that both parties can give a valid consent; others deny that either can. A third class try a *via media,* and inquire—in the case of *ligamen,* for instance—whether the individual is directly affected by the impediment or not: if he is (like A in the above example), he cannot give a valid matrimonial consent; if not (like B), there is nothing whatever to prevent him.[1] Our sympathies are altogether with the first view: but we grant that the other opinions may be supported by arguments that we should prefer not to have to meet. And, finally, we admit that, in this even more than in the other *mala fide* cases, there is always a strong presumption that the intention is to enter on immoral relations and not on married life.

As illustrating the difficulties of this last case, and the contradictory solutions offered by the highest experts, we may recall two Roman decisions of our own time. The first has been discussed in detail in an earlier issue of the I. E. RECORD.[2] A Paris lady was married in 1867, but soon got a civil divorce. In 1872, while her husband was still alive, she contracted a civil marriage with a nominal Catholic; and some years later, when the former died, she tried to induce the latter to renew his consent in the presence of priest and witnesses. This he refused to do on any account; the civil marriage, he declared, was quite enough for him. She then appealed to Rome; and, on the 25th April, 1890, the Penitentiary commissioned the Archbishop to 'grant a *sanatio in radice* of the aforesaid marriage, invalidly contracted, provided the consent persevered, and to legitimate the children—except those conceived in adultery.'[3] This certainly seemed to indicate that the civil marriage consent, given *mala fide* and with full advertence to an existing impediment of the divine law, was perfectly valid notwithstanding. And we are not surprised at the comment: 'The Church can give a *sanatio* when parties knowingly contracted an invalid marriage, if they had a prevalent intention of transferring to one another matrimonial rights, and if the matrimonial consent thus given has persevered.'[4]

But, fourteen years later, the question of principle was

[1] Gasparri, ibid.
[2] April, 1913, Fifth Series, vol. i. pp. 411-3.
[3] See the original reply, ibid. p. 412.
[4] Ibid. p. 412.

reviewed by the Holy Office. And, strange to say, the investigation ended in the following decision: 'there can be no *sanatio in radice* of a marriage contracted with an impediment of the natural or divine law.'[1] What were canonists to say in face of two decisions like these? Some of them claimed that the consent 'healed' by the Penitentiary was that given after the first husband had died: but the plain facts of the case were strongly against them. Others—Gasparri among them—candidly voted for the Holy Office, partly on account of its greater authority, partly because it had examined the principle, while the Penitentiary had only dealt with a special case.[2] But even Gasparri admitted that the Holy Office decision was not irrevocable.[3] And he drew attention to the fact that, even at its best, it failed to settle the question as to whether the consent was valid or not. If it were even *probably* invalid—and we all admit so much—the Church would have to refuse a *sanatio*. She would have to do the same in a case of grave 'fear,' though some of our best authorities maintain that consent inspired by that fear is *per se* quite valid.

Nor does the Code settle the question. More than that—it adopts neither of the decisions. *If* the Penitentiary granted a *sanatio*, or cancelled canonical disabilities, even from the time of the first husband's death, then the Penitentiary is repudiated—for 'a marriage contracted with an impediment of the natural or divine law, even though the impediment afterwards ceased, is not "radically healed" by the Church, even from the moment at which the impediment ceased' (1139, § 2). But, on the other hand, the *non posse sanari* of the Holy Office is replaced by the *Ecclesia non sanat* of the Code. The *possibilities* of the case are left out of account: only the *facts* are stated. And the problem of the validity of the consent is as far from solution as ever.

The first section of that same canon (1139, § 1) is more than an echo of Canon 1085. It assures us that, when the obstacle is the law of clandestinity, or a diriment impediment of the ecclesiastical law, every marriage may be 'healed,' provided the consent, still persevering, was 'naturally sufficient.' So, though it does not define what kind

[1] 2nd March, 1904: 'matrimonium . . . non posse sanari in radice.'
[2] n. 1444.
[3] n. 907.

of consent *is* naturally sufficient, it gives us greater confidence in dealing with obstacles of merely ecclesiastical origin, and in summarizing our results as follows :—

A°. The existence of an impediment, even when fully known to the partners, furnishes no decisive argument against the validity of their consent. Absolutely certain. (1085, 1139, § 1.)

B°. When there is question of an obstacle of ecclesiastical origin—the law of clandestinity or a diriment impediment—the consent is valid :—

1°. When the parties imagine that an impediment exists, whereas, as a matter of fact, it does not. Absolutely certain.

2°. When they are *bona fide*, i.e., do not know of its existence. Almost absolutely certain.

3°. Even when they know that it does exist. Practically certain.

4°. But all three statements presuppose that the partners *intend* to give matrimonial consent, not a consent to concubinage; that, in other words, they intend to contract marriage, in so far as they can.

C°. When there is question of an impediment of the divine or natural law, the consent is valid :—

1°. When the partners are *bona fide*. Highly probable.

2°. When they merely *imagine* it exists. Very highly probable.

3°. Even when they *know* that it exists. Only probable.

4°. But the remark made under B° (4°) still holds. And in *this* case, the condition it implies is much more likely to be fatal.

D°. The granting of a *sanatio* implies that a *true* consent was given in the past and never recalled. Though the consent remained 'juridically ineffective' until the moment of validation, if must have been 'valid' at first and 'naturally sufficient' (1139, § 1).

The Method adopted by the Church.—We are now in a position to recognize the wisdom of the Church in abandoning what we called 'the ordinary, natural method,' and in insisting on the 'extraordinary' process of renewing the consent. That she did so—and still does—there can be no question. We had no definite legal text on the matter till we were given Canon 1133.[1] But no legal text was needed :

[1] The chapters (2, 4) *de conj. servorum*, e.g., applied only to a single case.

the Church's action spoke for itself. The conditions implied in *renovato consensu* and *certiorata altera parte* had become so embedded in Roman dispensations that the double renewal of consent—the really 'extraordinary' method—had come to be regarded by theologians and canonists as the 'ordinary' process, and was so described in every manual and text-book.

But, if the renewal was not essential in the natural law, how did the Church *make* it essential? Simply by establishing a voiding law of her own. She refused to accept the previous consent—even when the natural law guaranteed its validity. Or, to put the matter differently, when an impediment voided a marriage, she introduced a new quasi-impediment, and rendered the marriage void until *both* were removed—the 'impediment' by time or dispensation, the quasi-impediment by renewal of consent. To prove the existence of this law or quasi-impediment we had, in pre-Code days, to rely on facts rather than on law-texts. The Code comes to the rescue: the law is the *ius ecclesiasticum* of Canon 1133 (§ 2), the *lex de renovando consensu* of Canon 1138 (§ 1, § 3). And there is no mystery about it. For reasons of public policy, the Church may introduce a voiding law when she deems it advisable; she may refuse to accept a valid consent except on the terms prescribed by herself—as she did when Trent first passed the law of clandestinity. To recur to our old illustration, the Church may, when she finds two magnets separated by a leaf, insert another leaf of her own, and, to ensure ultimate union, refuse to remove it till one or both bars have been re-magnetised.

Her action, in the present case, was thoroughly justifiable. She was only bringing herself into line with the natural impulse of good-living Christians. And both law and impulse were based on sound reasons, dimly perceived perhaps at first, but brought into full light by subsequent, careful, scientific scrutiny. For, 1°, when the impediment was one of the divine or natural law, there was always serious doubt as to whether a valid consent could have been given at all; 2°, even when the obstacle was merely ecclesiastical, there were reasons enough to disquiet the timorous and scrupulous; 3°, more serious still, there was always the possibility that, during the period between the first ceremony and the validation, the

valid consent first given had been revoked.[1] This last, we admit, could not easily happen. The principle was always admitted that 'though a marriage has been invalidly contracted by reason of an impediment, the consent given is presumed to persevere until there is clear proof that it has been revoked' (1093).[2] Among Catholics, who believe that the marriage bond is indissoluble, the presumption amounts almost to a certainty: their desire for freedom can hardly be more than an ineffective longing for the 'might have been.' Discords and quarrels in 'married' life, the grant of a civil divorce or judicial separation, even the application for an ecclesiastical declaration of nullity, are not enough to prove that the consent has ceased.[3] But, in spite of legal presumptions and all the theories ever devised, the internal consent *might* have ceased; and the Church had to guard against the danger by requiring the parties to give once more what—if it *were* missing—no human power could supply (1081).

How far these precautions are to extend is a matter for the Church to decide. No cast-iron rule is fixed by nature. If there were no precautions at all—if the whole thing were left to the natural law—the vast majority of 'healed' marriages would be valid without them. On the other hand, no matter *what* care is taken, a slight defect in the internal intention—uncontrollable really by any law—may render all precautions useless. So it is left to the Church to fix the standard that, to her mind, will secure the best general results. That standard will vary: different times, manners, and customs will suggest that it be raised or lowered. For a long time past the tendency has been in the latter direction. At the Vatican Council an effort was made to have the *certiorata altera parte* clause abolished, and to confine the renewal to the party aware of the impediment. Since 1885 the clause has generally been modified to meet cases in which the other partner can be informed only with grave risk of strife or separation[4]: availing of this concession, leading authorities have defended the policy of a 'single' consent in a crisis—even when

[1] The danger would be greater if the *virtual* continuance of the first consent were essential (cf. Lehmkuhl, 1056 (note)). But the theory seems unsound.

[2] See Gasparri, 1440.

[3] Cf. Lehmkuhl, 1060-1; Gasparri, 1440.

[4] See Lehmkuhl, 1053.

the strict letter of the law seemed to be in opposition.[1] And the Code has adopted the principle (1135, § 3).

Validation in the Code.—What we have said already exempts us from troubling the reader with many remarks on the canons individually. We will give them as they stand, and call attention to a few little points on which they seem to mark a departure from the policy sanctioned in the past. The first five deal with simple validation: the last four with the *sanatio in radice.*

Simple Validation.—The first (1133) tells us that :—

§ 1. To validate a marriage, void by reason of a diriment impediment, it is required that the impediment cease by dispensation or otherwise, and that consent be renewed by at least the partner who is aware of the impediment.

§ 2. By ecclesiastical law this renewal [of consent] is required for validity, even though both partners gave consent at first and never afterwards recalled it.

The second paragraph gives the reason why the first goes beyond the requirements of the natural law[2]: it is because the 'ecclesiastical' law so ordains.[3] If consent had *not* been given, or had been recalled, the natural law itself would join in the demand (1140, § 1). The concluding words of the first section indicate, in a general way, the Church's approval of recent developments: the particulars are reserved for Canon 1135.

In the next statement (1134) some may find matter for discussion. It used to be the old teaching that a married couple *might* any day give a new and independent consent, even when there was no doubt whatever about the validity of their marriage; though, it was admitted, the consent would hardly ever be independent in practice—it would, like the ordinary 'renewal of vows,' be merely a re-affirmation of the consent previously given and never recalled. *A fortiori*, it was held, there might be a real renewal when there *was* doubt about the marriage.[4] Does Canon 1134 change that teaching? It states that :—

The renewal of consent must be a new act of will in reference to a marriage that is proved to have been void from the beginning.

Is renewal then impossible if the marriage is *not* proved null and void—if it be valid or doubtful? That, we

[1] Lehmkuhl, 1053.
[2] Vide *supra*, pp. 292-5.
[3] Vide *supra*, pp. 301-2.
[4] Gasparri, 1397.

believe, is *not* the meaning. What the Canon conveys is that, *if* the marriage be proved invalid, a new, independent act is essential. When the marriage is certain the act is superfluous; when doubtful, it is not required in the external forum (1014), but, in the sphere of conscience, is very advisable.

In the Code, it will be noted, three classes of obstacles to valid marriage are carefully distinguished: 1°, 'diriment impediments' (1067-80), 2°, obstacles to consent (1081-93), embracing some that *used* to be termed 'impediments' (1082-4, 1087); 3°, failure to comply with the prescribed 'form' (1094-1103). The classification is continued in connexion with validation. The obstacle might have been one, or more, of three:—

1°. *Diriment Impediment.*—If so, Canon 1135 tells us how to proceed:

§ 1. If the impediment is public, the consent must be renewed by both partners in the form prescribed by law.

§ 2. If [the impediment] be occult and known to both partners, it suffices that consent by both be renewed privately and secretly.

§ 3. If [the impediment] be occult and unknown to one of the partners, it suffices that the one partner who is aware of the impediment renew consent privately and secretly, provided the other perseveres in the consent already given.

The first two sections introduce no change whatever. Even in pre-Code days, when an impediment was (or became) public, the previous ceremony—no matter how correct from the point of view of clandestinity—was rejected by the Church, and had to be replaced by another in due form.[1] Also, when the impediment (however occult) was known to both, a private *double* renewal was demanded.[2] There was no great inconvenience involved (since neither had to be told anything of which he or she was not already fully aware) and there *was* the danger that *either* might have retracted the consent: on the other hand, all *public* requirements had been already met by the previous Church ceremonial, so there was no need for a public repetition. All that is confirmed by these two sections (§ 1, § 2); and, though (in § 1) nothing but the 'prescribed form' is demanded, we take it that, when people generally know of the impediment, the marriage must be 'public' in the ordinary sense, or that the priest and witnesses who assist be free to let the public know that the marriage has been

[1] See Lehmkuhl, 1051. [2] Ibid. 1052.

duly validated.[1] Be that as it may, the third section introduces a change of very serious consequence, and will ease the conscience of many who had to rely in the past on the private authority of canonists and theologians. It was commonly admitted that when an occult impediment known to one affected him alone (say, those of 'age,' 'vow,' or 'difference of worship'), *his* consent would be enough.[2] But the teaching was equally strong, and was fully supported by the *certiorata altera parte* clause—that when the impediment affected both (say, those of 'consanguinity,' 'affinity,' 'propriety,' etc.), the partner unaware of it would have to be informed.[3] The lenient teaching—based *merely* on the theologians' deductions from the growing liberality of the Church—that the second partner might occasionally be left in his ignorance, has now been officially sanctioned for *all* cases. When the impediment is occult, and when we have to decide whether a *double* consent is essential, the test will be, not whether the impediment *affects* both partners, but whether, as a matter of fact both are aware of it. In occult cases, in a word, the *certiorata* clause is eliminated.[4]

2°. *Defective Consent.*—The rules are given in Canon 1136 :—

§ 1. A marriage void through defect of consent is validated, if the partner who omitted to give consent now supplies it, provided the consent given by the other perseveres.

§ 2. If the defect of consent was merely internal, it suffices that the partner who omitted to give consent now supply it internally.

§ 3. If the defect was also external, the consent must now be expressed externally as well—in the form prescribed by law, if the defect was public ; in private and secret fashion [but externally], if it was occult.

Consent is a matter of the natural law. The Church cannot lessen the requirements ; she *might* extend them[5]—but that is not the tendency of the Code. So, in this department, we might have expected there would be no change. And, as a matter of fact, there is not.[6]

The consent must be external as well as internal (1081, § 1). Whatever was wanting must be supplied. If the

[1] Gasparri, 1400. Compare and (contrast) Canons 1104-7.

[2] Lehmkuhl, ibid.

[3] Ibid.

[4] This really amounts to a 'partial' *sanatio in radice.*

[5] As she probably did (and does) in connexion with 'fear' (1087).

[6] The opinion that internal defect should be supplied externally was never worthy of much notice ; see Gasparri, 1417.

defect was public, the previous ceremony—even as a *public* ceremony—was essentially vitiated. So, as in the case of a public 'impediment' (1135, § 1), the 'legal form' (1094-1103) must be complied with again (1136, § 3).[1]

3°. *Defective 'Form.'*—Canon 1137 re-states the old-time regulation :—

A marriage void through defect of form must, to become valid, be contracted again in legal form.

On this we need only remark: 1°, the statements made above[2] on 'publicity' (in the popular sense) hold here also; 2°, if only one of the partners refuse, there is (as before) some chance that a *sanatio* may be granted for the other's sake (cf. 1139, § 1); 3°, if *both* refuse, there is no hope of a valid marriage—for the Church will not force her favours upon them[3]: if, however, their objection is merely to appearing before a *priest,* they may go to some one or other of the places contemplated in the closing portion of Canon 1098, 1°, and contract marriage there in the presence of two witnesses; 4°, there used to be an exception made in favour of a marriage couple who, having contracted an invalid clandestine marriage in one locality, went to another in which the *Tametsi* or *Ne Temere* did not bind, and, with full knowledge of the facts, gave a new, independent consent, in acts if not in words[4]: that exception applies no longer—the Code binds everywhere in the Latin Church (1-6); even the decree *Provida* has disappeared.[5]

'Sanatio in radice' in the Code.—Canon 1138 gives the definition and general principles :—

§ 1. 'Radical curing' of a marriage is the validation of the same, bearing with it, in addition to the cessation of the impediment by dispensation or otherwise, a dispensation from the law about renewing consent, and, by a legal fiction, a retrospective modification of the past —as regards canonical effects.

§ 2. The validation takes effect from the moment the favour is granted: the retrospective modification is understood as effected from the beginning of the marriage—unless express provision is made to the contrary.

§ 3. The dispensation from the law about renewing consent can be granted also when both partners, or one only, are unaware [of the impediment or dispensation].

[1] See Lehmkuhl, 1051.
[2] Pp. 305-6.
[3] Cf. Lehmkuhl, ibid.
[4] Cf. ibid.
[5] See Wouters, *De Forma Prom. et Celebr. Matr.* (5th edition, p. 53); *I. T. Quarterly,* April, 1919, p. 155.

The first two sections give in terse language what we tried to express in the preceding pages. The consent is not 'healed,' the marriage itself *is*—but not from the beginning (*ex tunc*), only *ex nunc*—'from the moment the favour is granted.' The legitimation ('canonical effects') does extend to the beginning: but that only means that the Church now undoes, so far as she is able, the results for which she was herself responsible—say, those affecting ordination. In regard to them—but to them only—she acts *as if* the marriage was always valid: if we may say so with reverence, she *pretends* that they never existed.

If a *sanatio* is given in the case stated above—in which one partner agrees, and the other refuses, to comply with the 'legal form'—it is granted to partners, *both* of whom are aware of the impediment and dispensation. The third section (1138, § 3) reminds us that the concession can take place also when the impediment or dispensation is unknown to one or both. In such cases we have an illustration, full or partial, of the principle that a grant is valid even without explicit acceptance (37).

The obstacles again are classified under three headings, though two are mentioned in the same clause:—

1°. *Diriment Impediments, and Defective 'Form.'*—The reasonable view on the whole situation is re-stated in Canon 1139—with the one little change to which we have referred already:

§ 1. Any marriage whatever, entered into with a mutual consent —naturally sufficient, but juridically ineffective on account of a diriment impediment of the ecclesiastical law or of a defect in the legal form—can be radically 'healed,' provided the assent perseveres.

§ 2. A marriage, however, contracted with an impediment of the natural or divine law—even though that impediment afterwards ceased —is not 'radically healed' by the Church, even from the moment at which the impediment *did* cease.

2°. *Defective Consent.*—Canon 1140 does little more than emphasize the absolute necessity of consent (as expressed already in Canons 1081 and 1136), and the consequent impossibilty of a *sanatio* when that consent is wanting. It applies the principle, however, to three different classes of cases:—

§ 1. If consent be wanting on the part of either partner, or of both, the marriage cannot be 'radically healed'—whether the consent was wanting from the first or, though given at first, was afterwards recalled.

§ 2. But, if the consent, though wanting at first, was afterwards given, a 'healing dispensation' (*sanatio*) can be granted from the moment at which the consent *was* given.

The conditions, therefore, are that the consent, 1°, continue till the moment of validation; 2°, extend backward without interruption to the beginning of the period over which the legitimation is going to operate.

In connexion with marriages void by reason of a divine impediment, we may ask ourselves, in the light of Canon 1140, § 2, why the Church refuses to 'heal' them, 'even from the moment at which the impediment ceased' (1139, § 2); why, for instance, in the Paris case above referred to,[1] the legitimation should not have been extended back to the date of the first husband's death. At that date the divine impediment (*ligamen*) had ceased, and, then at least, a matrimonial consent was possible: if it were given, legitimation would be possible (1140, § 2). The law of clandestinity was still, of course, a bar to the validity of the marriage: but no insuperable obstacle to a *sanatio* (1139 § 1). Why, then, should the Church refuse it? Apparently because, the first consent being probably invalid and the second presumably a mere continuation of the first, the consent actually in existence was *probably* insufficient. In the face of that probability the Church declines to act.

The final canon (1141) makes no change: 'A *sanatio in radice* can be granted only by the Apostolic See.' Which means that inferior authorities, even when empowered to deal with ordinary obstacles, are helpless in face of the 'voiding law' or 'quasi-impediment'[2] specially introduced by the Church. That was always the rule; though in some countries—not in ours[3]—the power was specially granted to the Bishops.

M. J. O'DONNELL.

[1] P. 299.

[2] Vide *supra*, p. 302.

[3] It will be remembered, though, that the decree of the 25th April last did grant Irish Bishops this faculty in connexion with minor impediments and on certain conditions (v. I. E. RECORD, June, 1918, p. 522). When the case involved an impediment of the major grade, the faculty seemed to be refused (ibid.), but would appear to be guaranteed by the decree of the 2nd August last, which summarized the provisions of its predecessor (v. I. E. RECORD, Nov., 1918, p. 435). The powers conferred by the April decree are nullified to a great extent by the conditions imposed; but, such as they are, they will remain in force for six months after the formal conclusion of peace (see *A.A.S.*, March 12, 1919, p. 120).

THE OFFICE

A CONFERENCE ON THE DAILY DUTY OF THE PRIEST AND THE RELIGIOUS

By Rev. JOHN KEARNEY, C.S.Sp.

If we shut our eyes to all earthly things and suffer our minds and hearts to rest in reverent thought on the second mystery of the Holy Rosary, that mystery wherein the Blessed Mother of God is presented to us as the living tabernacle of the Most High, we may be favoured by Divine Grace with no unworthy concept of her sublime dignity. At the time of the Visitation, she lived in a union of most sacred intimacy with God. Her Immaculate Heart was continually turned to Him Who dwelt within her, in adoration, praise, and thanksgiving. Her life in those days was one that should fill us with joy and consolation. With joy, because our Saviour received a worship so perfect, so full of love; with consolation, because it was given by one like ourselves, by a child of the stricken race of Adam. But, as the Gospel narrative records, a day came when the prayerful thoughts that glowed within her heart were to find their first expression, when they were to issue forth in fruits visible and external.

We are told how, after the mystery of the Incarnation had been accomplished, she went to visit her cousin, St. Elizabeth, in the hill country of Juda, and that entering into the house she saluted Elizabeth. 'And Elizabeth was filled with the Holy Ghost, and she cried out with a loud voice and said: Blessed art thou amongst women, and blessed is the fruit of thy womb. And whence is this to me that the mother of my Lord should come to me?' It was thus our Blessed Mother learned that her divine maternity was no longer God's secret. At once all her praise and thanksgiving, till that moment hidden deep in her bosom, welled up to her lips, and out of the abundance of her Immaculate Heart there flowed in solemn tide that

sublime vocal prayer, the *Magnificat.* She praises and glorifies God, Who had looked down on the humility of his handmaid, Who had made her blessed and had done great things for her; and then, recognizing that this was the crowning mercy, the last of a long and unbroken series, the fulfilment of the ancient message of hope delivered to the unhappy mother of our race, she extols God's goodness to the humble and the needy, and above all to His people of Israel whom His mercy had not forsaken.

Vocal Prayer.—In the *Magnificat,* we have the spirit of internal prayer leading to an external expression in vocal prayer. And as the *Magnificat* was the natural outpouring of the Immaculate Heart of Mary, so also, for us, vocal prayer should be the natural outflow and analogue of the prayer of our hearts.

We are human. We are composed of body and soul, and our composite nature is such that the secret movements of our soul seek some visible accompaniment. Hence, it is natural for us to reveal externally the inward surging of our being towards God, to manifest the prayer of our heart by the prayer of our lips. Moreover, on account of the intimate union between soul and body, and because of their mutual interaction, internal prayer is helped and intensified by devout vocal prayer. It is, furthermore, manifest that God wishes us to worship Him with body as well as with soul; He desires that both should unite to do Him homage, to praise and glorify Him; He desires that the prayer without should be associated with the prayer within. Vocal prayer, therefore, is in accordance with our nature; it is a stimulus to inward piety; it is prescribed by God Himself. Of this last we are assured, not only by reason, but by Revelation, for we know that our Divine Saviour inculcated its importance when He gave us the 'Our Father'; and, to join example to precept, He Himself prayed vocally in the Garden of Gethsemani. It is also to be noted that, in the Apocalypse, when St. John describes his vision of Heaven, he speaks frequently of the vocal prayers of the saints: 'And I heard as it were the voice of a great multitude, and as the voice of many waters, and as the voice of great thunders, saying: Alleluia for the Lord our God the Almighty hath reigned' (Apoc. xix. 6). And in another place he says he heard them 'singing the canticle of Moses the servant of God.'

The Divine Office is the vocal prayer of the Church of

God. It is her official vocal prayer, and hence of all vocal prayers it is the most excellent. Part of it is the Little Office of the Blessed Virgin Mary, a fact which those who recite this latter should bear carefully in mind. It is still printed in the Breviary, and was formerly binding on those who recited the Divine Office in choir.[1] St. Pius V removed the obligation in the case of those who made use of the then new Roman Breviary. The nuns, therefore, who recite the Little Office should consider that they take the place of the priests whom the Church has dispensed.

The Office is the Prayer of the Mystical Body of Christ.—To understand how pleasing is the prayer of the Church to the Divine Majesty, we must first realize how dear the Church is to God, and how intimate is the union between her and our Blessed Lord. This union and this love are brought before us in the Holy Scripture under a most striking and suggestive figure: the Church is the mystical body of which Christ is the head. St. Paul delights in this comparison, which contains so much of meaning in a few words, and he has developed the idea and its consequences in several of his epistles (1 Cor xii., Eph. iv., Coloss. ii.). Thus, he speaks of the union between the head and members: 'The Father has made Christ head over all the Church which is His body' (Eph. i.). And again: 'For as the body is one and hath many members; and all the members of the body, whereas they are many, yet are one body; so also is Christ . . . Now you are the body of Christ' (1 Cor. xii.). He tells us of the love that Christ has for His mystical body the Church: 'No man hateth his own flesh but nourisheth it and cherisheth it, as also Christ does the Church, because we are members of His body, of His flesh, of His bones' (Eph. v.). Hence, to touch the Church is to touch Christ; and so, when Saul was persecuting the Church, Christ said to him: 'Saul, Saul, why persecutest thou Me' (Acts ix.). The Apostle speaks in another place of the work of the ministry being the edification of the body of Christ, the building up of the body of Christ (Eph. iv.). And finally, he speaks of the head being the source of the graces given to the members of the mystical body (Eph. iv., Coloss. ii.), a similar idea to that of Our Lord when He spoke of the vine and branches. And the figure which

[1] At present the Trappists chant the Little Office every day as part of their Choir duty.

St. Paul was inspired to use is of frequent occurrence in the writings of the Fathers, particularly in those of St. Augustine. They felt, as we ourselves must feel, that in this image the relations of the Church to her Divine Founder are perfectly mirrored forth.

Thus illuminated by the teaching of the Holy Spirit, we are enabled to perceive the special excellence of the prayer of the Church. The mystical body prays in union with Christ her head. Christ prays with her. He prays by her voice. By her voice He continues the sublime prayers of His thirty-three years, a truth expressed by St. Augustine when he says: '*Orat pro nobis ut sacerdos, orat in nobis ut caput nostrum, oratur a nobis ut Deus noster. Agnoscamus ergo in illo voces nostras et voces ejus in nobis*—He prays for us as a priest, He prays in us as our head, He is prayed to by us as our God. Let us recognize therefore our own voice in Him, and His voice in ourselves.' When a priest baptizes, absolves, or consecrates, Christ uses his voice, Christ speaks in that voice, and hence the priest says, 'This is *My* Body.' In a somewhat similar way Christ prays in the words of the Divine Office. We can understand, therefore, why the Office is such a sublime vocal prayer.

The Office is the Prayer of the Bride of the Lamb.—The love of Christ for the Church and her union with Him are expressed in the Holy Scripture by another comparison—the Church is the Bride of the Lamb. The intimate union between bride and bridegroom and the affection that is consecrated in the sacrament of Matrimony are here put before us to teach us the true relation of Christ to His Church. The Holy Spirit selects the strong and tender love of the bridegroom, of which all His human children had seen examples, to reveal under a simple but marvellous comparison the love of Christ for the Church. Hear the words of St. Paul: 'Husbands, love your wives as Christ also loved the Church and delivered Himself up for it; that He might sanctify it, cleansing it by the laver of water in the word of life. That He might present it to Himself a glorious Church, not having spot or wrinkle or any such thing, but that it should be holy and without blemish' (Eph. v.). Note the words 'present it to Himself,' they indicate that St. Paul here speaks of the Church as the Bride of Christ.

With this beautiful figure of the Church before us it is

easy to appreciate the perfection of her prayer, the prayer of the Bride of Christ, the Divine Office, that sublime prayer which daily ascends to the throne, and is indeed unspeakably precious in the sight of the Most High. St. John, in the vision of the Apocalypse, speaks of the never-ending praise around the throne of God: 'They rested not day and night, saying Holy, Holy, Holy.' Like to that is the ceaseless praise of the Bride of Christ. Ceaseless, not merely because so many hours each day are marked out for portions of the Divine Office, but also strictly ceaseless, because as the noon and midnight travel round the world, with them travels the Divine Office as well.

The Office is said in union with the Blessed.—The doctrine of the Communion of Saints teaches us that the Church triumphant and the Church militant are one; one in many ways but one in special intimacy by reason of their united praise of God. To this the Church alludes in the Breviary hymn:—

Sed illa sedes Caelitum
Semper resultat laudibus,
Deumque Trinum et Unicum
Jugi canore praedicat:
Illi canentes jungimur
Almae Sionis aemuli.

That house on high, it ever rings,
With praises of the King of kings;
Forever there on harps divine,
They hymn the eternal One and Trine;
We here below the strain prolong,
And faintly echo Sion's song.

This union of praise was frequently made manifest to the saints. Thus we read, in the Second Nocturn of the Office of St. Felix of Valois, that one midnight, when he was alone in the chapel, he was joined by a company of the Blessed from heaven, with whom he sang the praises of God, and so accomplished his choir duty. The Divine Office is, therefore, the prayer of the Bride of the Lamb. It is offered up as a sweet incense in union with the Blessed in heaven, and in it Christ Himself, our head, praises God by our voice. In this glorious work we are called to take our part. The saints spoke of it as the *opus divinum*—'the divine work.' Seven times a day we join the heavenly choir which chants God's praises around His throne.

The Divine Office may be compared to a mighty chorus

and orchestra singing God's glory. In the orchestra the part of each player is made up of notes and rests, so that having played for a time the players must keep silence for several bars, and, after these bars of rest, again they join in the harmony. So also we lay aside the Office for a time and the divine work is carried on by the Church militant and the Church triumphant, and then in due course we once more unite our voices with the celestial music. Hence it is that, when saying the Office, we are never alone. Even when the priest recites the Breviary privately, he always says : '*Dominus vobiscum,* The Lord be with you.' Thus, as St. Peter Damian reminds us, he shows that he is engaged not in solitary but in common worship; that he is speaking in the presence, as it were, of the whole Church, and therefore gives utterance to the prayer that the Lord may be with all those who are united at that moment in the praise of God.

The Office was dear to the Saints.—If we keep in mind what has been said above about the excellence of the Divine Office, we can easily understand the great love and esteem of the saints for it. St. Ignatius was so devoted to the Office that, while reciting it, he was frequently moved to tears. A dispensation was obtained for him, without his knowledge, by those who feared for his eyesight, but he refused to avail of it, and he received from God the grace to moderate his tears without losing any devotion. St. Francis Xavier, in spite of his many labours, never used the permission he had to say a shorter form of the Office. We find a like devotion in St. Philip Neri, St. Charles Borromeo, and St. Francis de Sales. The last named placed the Roman Breviary next to the Holy Scripture. Nor is this reverence for the Office confined to the saints. There are many priests and religious who have the greatest esteem for it, and who take all care in its recital, and to whom, in consequence, it is a source of untold blessings. A medical man of considerable experience has recorded his observation, that priests during convalescence are usually anxious to resume the reading of the Breviary long before it would be prudent to permit them to do so. This desire is, in many cases, a manifestation of their esteem for the divine work. It is a remarkable fact in the history of the fall of the unhappy Lamennais, that he asked for a dispensation from his Office, and gave as a reason his desire to work harder for the Church. He was wanting

in esteem and love for the sublime work of the Divine Office. His heart was not right with God, and this was the first indication of it.

Difficulty of the Office.—It is not easy to say the Office well. All operations in which we have to lift up our soul to the supernatural world are difficult. To say it properly requires care and effort. If these be wanting, it is easy, alas! to get the habit of fulfilling the external duty only—'This people honoureth Me with their lips, but their heart is far from Me.'

To encourage ourselves to take all care in the recital of the Office, let us remember :—

(1) The Office is our duty. It is the duty of the Church as a visible society to praise God externally and visibly, and we are deputed by her for its fulfilment. Hence, the name 'officium,' which means duty. Even Holy Mass may be omitted by the priest, without sin, for a small reason, but it requires a grave reason to dispense him from the Office—it is his duty.

(2) Want of care in the recital of our Office may be the cause of many venial sins. On this danger we have the warning words: 'Quid est voce psallere, mente autem domum aut forum circuire, nisi homines fallere et Deum irridere—What is it to recite psalms while our mind wanders about the house or about the street, but to deceive men, and to mock God.'

(3) If we do not take due care in the Office we suffer a great spiritual loss. We have to devote a certain amount of time to this duty each day. The number of hours it takes each week is considerable. What a pity it is, if all that time is spent, throughout long years of our life, with very little profit to our soul. We should also remember that repeated carelessness, like any other fault, produces a habit which it is very difficult to correct.

A General View of the Excellence of the Office is a great help to its Proper Recital.—Experience tells us that there is no better means, no greater help to the perfect recital of the Office than to keep before us some broad view of its excellence, some view which will always be felt and will make details easy. Perhaps none more inspiring can be found than to regard the Office as the prayer of the Church, the prayer of the Bride of Christ. This idea we have just considered. To help us to a vivid realization of it, we would do well to cultivate devotion to the Church,

and to meditate on the two ideas of the Church, as being the Body of Christ and the Bride of Christ.[1]

Another beautiful view of the Divine Office is got by considering its excellence as a great public act of reparation for the sins of the tongue. If we have even a little love of God we cannot but be touched when we consider the immense number of sins in word which are committed each day. The sound of the voices of men is every moment rising up to the throne of God, and alas! so many are using the divine gift of speech to offend Him. Reparation is one of the great functions of those consecrated to God, and hence the priest and the religious should stand between God and sinners (Heb. v. 1-3). Since the Divine Office is vocal it is a very suitable form of reparation for the sins of the tongue. This grand idea of the Office, if well pondered on, will be enough to make its recital a comfort and a consolation.

A third inspiring view of the Divine Office comes from realizing that it is a great prayer of petition, a prayer of unbounded power to bring down God's grace. It is an all-powerful prayer, because it is the prayer of a multitude, a great multitude on earth united to a greater multitude in heaven, and united to our Blessed Lord Himself. A drop of water driven by the wind may strike us; it has little power. But let many drops be united to form one of the mighty waves of the sea, and their power is irresistible. So it is with the power of the Divine Office. And we should remember that this mighty united prayer can be directed by our intention—just as the fruit of Holy Mass is directed by the intention of the priest—and may be offered for those objects which we have most at heart, for our own spiritual needs, or for the spiritual needs of those under our care.

The Office should be said with Reverence.—Besides keeping before our minds some general view of the excellence of the Divine Office, it is also very helpful to remember certain practical details. The Church, in her prayer before the Office, bids us ask God the grace to recite it with reverence, attention, and devotion—*digne, attente, ac devote.* Let us see what practice we can adopt to help us in fulfilling these three conditions.

Digne—worthily, with reverence. This refers especially

[1] Mgr. Benson's book, *Christ in the Church,* would be very helpful.

to the external circumstances of its recital. To say the Office with reverence we should recollect ourselves a moment before we begin. This is of very great importance; it is almost a necessity. To concentrate our thoughts each time, even for a moment, on one of the general views of the Office, such as we have considered, is almost an infallible means of saying it well. To do this is to act like the archer who takes aim before he shoots his arrow. On the other hand, experience shows that it is difficult to say the Office well if we run through the *Aperi Domine* while looking up the pages in our book. When we say the Office out of choir let us see that our posture is reverent. It is a praiseworthy habit to say each day some part of the Office on our knees. We read in the Gospel how our Blessed Lord prayed on bended knees, *positis genibus orabat* (Luke xxii. 41). We read the same of St. Peter and St. Paul in the Acts of the Apostles (ix. 40, xx. 36). Let us take a reasonable length of time to acquit ourselves of the serious duty of the Office, and let us not defer until evening the portions prescribed for the morning. By care in these details we are really trying to say the Office with reverence.

The Office should be said with Attention.—We are bound to say the Office with attention—*attente.* This refers to the mind. We are bound, first of all, to what is called external attention, that is, we must not recite the Office by heart while we are engaged in some occupation which practically absorbs our mind. Unless this external attention be given, the substantial obligation of the Office is not fulfilled. We are also bound to internal attention. According to St. Thomas (II, II, 83) this internal attention may be one of three kinds :—

(1) We may pay attention to the words that we pronounce them well.

(2) We may pay attention to the sense of the words. It is a great spiritual loss to us if we do not do this, at least to a certain extent. The psalms of the Office are a perfect treasury of devotion. They are suitable for all times of life and for all circumstances of life. To help us to this kind of attention it would be very useful to make some study of the psalms and then to take them as the subject of our mental prayer, according to the second method of St. Ignatius. By this means even those who do not understand Latin will soon be able to recall the general character of each psalm as they recite it, and even to renew

the sentiments suggested by the more remarkable verses. It is also an excellent practice to say each day one psalm, rather slowly, taking the psalms in turn according to the order of the Office.

(3) No matter how much we study there will always remain many obscurities in the psalms, and hence we all must recite at least part of our Office with the third kind of attention—attention to God, or attention to one of the truths of our holy religion, just as the faithful recite the Rosary. Here again the advantage of a general view of the Office is manifest. The Church has been frequently criticized for obliging the nuns who do not know Latin to say the Office. A right understanding of this third kind of attention is an answer to the difficulty. But, indeed, it requires little reflection to see that in this the Church is acting according to the reasonable tendencies of our human nature. The following incident illustrates the point. A few years ago London was *en fête* to do honour to a foreign potentate who had come to visit the Sovereign. Among the festivities was a magnificent concert, which included choral-singing by a choir of one thousand voices. To those who were present it seemed, at first, strange to hear this choir singing in a foreign language, a language that was not understood by the vast majority of the singers. But, when it came to be known that the words sung were actually the composition of the distinguished stranger, everyone felt that a most delicate compliment had been paid to the guest of the nation. The application of this example to the Office is evident. The psalms have been composed by God Himself, Who is the Author of the Scripture, and they are recited in the language of His Church.

The Office should be said with Devotion.—The Church, as we have seen, bids us ask God for the grace we need to say the Office with devotion—*devote.* The word devotion, as here used, has two meanings. It means, in the first place, the promptitude of the will in the praise of God. This kind of devotion, which is the real essential devotion, can be more or less attained by everyone, with the help of God's grace. In the second place, devotion means the feeling of devotion, or as it is called, sensible devotion. This is not within our power; we cannot command our feelings. Although it is not essential, it is a great help, and should be the object of our prayers. God can give it to us, but, according to the order which is usual in the

distribution of His favours, it is given habitually only to those who persevere in taking all pains to say the Office well.

The following practices are recommended as a help towards the recital of the Office with devotion. We may form the habit of lifting our heart to God in a very definite manner each time we recite the *Gloria Patri*. Many sections of the Office consist of three psalms: we could recite them in honour of the Father, the Son, and the Holy Ghost. We might say the various hours of the Office in union with the sufferings of Our Lord, which took place at the corresponding hours of Holy Thursday and Good Friday. Thus we could divide the Office as follows:—

Matins.—The Agony in the Garden; the midnight trial.
Lauds.—The insults in the courts of Annas and Caiphas.
Prime.—The morning trials before Pilate and Herod.
Terce.—The Scourging and the Crowning with Thorns.
Sext.—The Way of the Cross.
None.—The Death of our Saviour.
Vespers and Compline.—Our Lady at the foot of the Cross, the Burial.[1]

Conclusion.—We are bound to the Office. The Office requires effort. It is a burden, the burden of the day—*onus diei*. It is a burden that will weigh us down or lift us up. The Office said without due care will weigh us down physically and spiritually. The Office said with reverence, attention, and devotion will lift us up to God. As the wings of a bird are a burden to it, and at the same time the means of lifting it above the earth, so the Divine Office should be to us the means of lifting us above this world, even to the throne of God. Let us fervently ask the Blessed Mother of Jesus that the Divine Office may be for us, like her own *Magnificat*, the outpouring of a heart that is entirely united to its God, and full of gratitude for all His blessings.

JOHN KEARNEY, C.S.SP.

[1] Cf. Lehmkuhl, *Th. Mor.*, ii. 636.

NOTES AND QUERIES

THEOLOGY

HOSPITAL PATIENTS. STUDENTS IN SEMINARIES

I

REV. DEAR SIR,—You state in the I. E. RECORD that 'a patient does not *as a rule* acquire a quasi-domicile in a hospital.' Am I right in saying that a patient *never* acquires a quasi-domicile in a hospital? If my memory is not at fault, I heard from the lips of my revered professor in Maynooth that a decree of the Sacred Congregation decided this point.

If six months' residence in a hospital is sufficient for a quasi-domicile, many patients acquire it, as any chaplain to an asylum or workhouse hospital will testify.

D.

II

REV. DEAR SIR,—A student died in a diocesan seminary recently, and was buried in his native parish. Had the clergy of the latter parish any claim to the funeral offerings? If not, it seems strange.

SACERDOS.

I

The general statement of the revered professor was correct. But general, as distinct from universal, statements admit of exceptions. Under the old law, patients seldom had a quasi-domicile, because they seldom had the required intention. But allowances must be made for peculiar tastes: a man *might* wish to remain for a long time in a hospital, or even to make it his home for life. The circumstances, too, might be such that he would foresee a protracted stay and resign himself to the inevitable. Then he would have a quasi-domicile, or in extreme cases even a domicile. Owing to the changes introduced by the Code, the case will be more frequent for the future (92, § 2).

So the statement quoted by 'D' stands in no need of an apology. The judges in one of the most recent Roman cases said the same: '*communiter* aegroti recepti in hospitali non . . . quasi-domicilium contrahunt.' [1]

[1] See *I. T. Quarterly*, April, 1915, p. 248. For further remarks on the subject, cf. ibid., July, 1917, pp. 240-2.

II

We take it for granted that the case occurred in the Northern Province, and that the student had a quasi-domicile in the Seminary parish. If so, we think the clergy of the native parish had no claim in law—on principles already stated,[1] 'Strange,' yes; but that would really seem to be the law.

If the general law is allowed to operate, we wonder what will the President of the Seminary say after reading Canons 1222 and 1368.

VALIDATION OF MARRIAGE

REV. DEAR SIR,—Will you please state your view on the following points :—

1°. Can. 1045, § 2. 'Matrimonii jam contracti.'—Is this term sufficiently extensive to cover attempted marriages (whether Catholic or mixed marriages) in a registry office or Protestant church ?

NOTE.—Presumably 'matrimonium contractum' means only such invalid marriage as has 'species, forma, figura matrimonii' (so Putzer, § 16). And, of course, it is possible to argue that, since the *Ne Temere* decree, a 'marriage' in a registry office or Protestant church (when at least *one* of the parties is directly subject to the decree) has not the 'species, forma, figura, matrimonii,' but is merely the preliminary to concubinage. Thus De Smet, § 360.

Wernz, however, § 29, n. 11 (quoted by De Smet, § 92), and Gasparri, I, § 46 (1904 edition) directly assert 'matrimonium a parte infideli vel haeretica cum parte baptizata sive catholica sive acatholica, etsi nullum ob defectum formae tridentinae, dicitur habere figuram vel formam matrimonii, si juxta mores regionum matrimonium legitimum reputatur.' And Marc (1917 edition) asserts : 'Si una pars in bona fide est quoad validitatem matrimonii, hujus consensus sanari potest, renovato alterius partis consensu. Hinc concluditur matrimonium civile posse in radice sanari dummodo vere matrimonialis consensus praestitus fuerit. Hoc tamen pro catholicis, qui probe noverunt per matrimonium civile solos civiles effectus ordinari, non est de facili admittendum. Quoad eos vero qui omnem religionem abjecerunt, quandoque primus consensus praestitus est matrimonialis, quandoque simpliciter fornicarius' (II. § 2086, 2°). And again : 'Matrimonium civile . . . cum tamen *matrimonii speciem* prae se ferat, potest sanari in radice' (II. § 2091).

2°. Can. 1045, § 2. 'Convalidatio matrimonii.'—Is the term 'convalidatio' sufficiently extensive to include a 'sanatio in radice' ? In favour of this extensive meaning it might be urged :—

1. 'Convalidatio' is a general term including both 'convalidatio simplex' and 'sanatio in radice.' Thus the Codex in Cap. XI, just before Can. 1133, 'De matrimonii convalidatione.'

2°. Surely Canon 1043 will provide for cases where, in the hour of death, a 'sanatio in radice' is the 'only chance of salvation.' Especially as Canon 1043 gives power to dispense even in the 'forma in matrimonii celebratione servanda.'

If it be true that the Bishop can give a 'sanatio in radice' by this canon, can he go further and, in case there is an impediment of mixed

[1] See I. E. RECORD, March, 1919, pp. 232-7.

religion, grant a 'sanatio in radice' when the non-Catholic obdurately refuses to give the necessary promises? Rome has recently declared that such marriages are to be validated by a 'sanatio' and not by dispensation; and Rome is certainly in favour of the practice of giving such 'sanationes' in grave cases.

J. M. C.

'J. M. C.' will try to excuse us for holding over his query for some months past. It raised a number of points that we thought it better to discuss in special articles: their treatment in our 'Notes' would only lead to endless repetition. If he consults the articles published since then, he will have our views on the matters that trouble him. We need only add:—

1°. That the 'species matrimonii,' if understood as involving the presence of priest and witnesses, is no longer insisted upon as a necessary condition for 'validation'—unless, of course, special faculties contain an express provision to the contrary. The stricter view was supported by prominent authorities in the past, especially by Pope Benedict XIV[1]; but, to borrow the words of Gasparri,[2] 'it must be said either that Benedict XIV understood by *species matrimonii* in the case merely a matrimonial consent expressed in a manner naturally sufficient, or that the Church, owing to the change in circumstances, has tempered the rigour of her discipline in the matter.'

2°. That, in our opinion, the 'convalidatio' of Canon 1045 (§ 2) does not include a full 'sanatio.' In the new regulations a partial 'sanatio' is occasionally provided for (1133-5),[3] but the full concession is still reserved to the Holy See (1141).[4]

'J. M. C.' exaggerates somewhat when he speaks of the 'only chance of salvation.' But, as consolation in the case he mentions, we may quote for him the following passage from a writer of no mean standing:—

> If the non-Catholic partner refuses to give the required guarantees, and if the Catholic partner, who is in danger of death, promises that in case of recovery he (or she) will make provision, to the best of his (or her) ability, for the Catholic education of all the children—in such a case it would seem that a dispensation can be granted; at least, let the marriage be proceeded with, on the principles of 'epieikeia.' The fact that the Church has often, even when the guarantees were not given, allowed the validation of a marriage invalidly contracted is all the greater reason for approving of the policy.[5]

SPONSORS BY PROXY

Rev. Dear Sir,—It is necessary that the proxies be named by those who are appointed to act as sponsors in Baptism but who cannot be personally present. Does that mean that each absent sponsor must name the *particular* substitute, or is it enough if one sponsor send word, v.g.,

[1] *De Syn.*, l. 13, d. 21, n. 7.
[2] *De Matr.*, n. 1445.
[3] Vide *supra*, p. 306 (note 4).
[4] See, however, p. 309 (note 3).
[5] Wouters, *De Forma Prom. et Cel. Matr.* (5th ed.), p. 39.

to the father of the child to get substitutes for him and the female sponsor. My opinion on the point is not accepted by my friends, and the matter is practical.

ANXIOUS.

We see no reason for saying that the sponsors must name the particular substitutes. If both—or one, with the other's authority—commission the father to make the selection, they have fulfilled, we think, all the essential requirements. For our reasons, 'Anxious' may consult an earlier reply of ours to a similar query.[1] The new regulations in the Code (1089) need cause no trouble: they apply only to matrimonial cases.

CONFESSORS AND EXTERN PENITENTS

I

REV. DEAR SIR,—I should be grateful for an answer to the following difficulties regarding episcopal cases:—

1°. Can a stranger who comes into a diocese, and commits a sin reserved there but not in his own diocese, be absolved from it by a simple confessor, because for *him* it is not reserved?

2°. Since he is a stranger, and not bound by the particular laws of his own diocese or of the diocese in which he is, can he not be absolved even if it *is* reserved in his own diocese?

3°. The new Codex states: 'Quaevis reservatio omni vi caret . . . extra territorium reservantis.' Since the Bishop is the person reserving, does it not follow that outside his own diocese a person can be absolved from a reserved sin, even though *per accidens* it may also be reserved in the diocese of confession?

4°. Is there now no such thing as indirect absolution of episcopal cases? Treating of the recent decree on episcopal reservations, the *Irish Theological Quarterly*, January, 1917 (p. 14), states: 'Bishops in the past sometimes applied the law governing Papal cases to their own . . . it *is* clear that there can be no question of this in future.' Penitents cannot be absolved indirectly and then obliged to go to the Superior. But what of the confessor? If the cases mentioned in the Codex do not occur, and it would not be a great inconvenience to wait, must the faculties first be obtained, and then absolution given directly? If the grave inconvenience is there, the confessor then has *ipso jure* the faculties for directly absolving. No *tertium quid*?

CONFESSARIUS.

II

REV. DEAR SIR,—There is a good deal of controversy here over a remark of yours in the I. E. RECORD about absolution from a case reserved in the diocese from which a penitent comes and in the diocese in which the penitent seeks absolution. I am afraid it will still take an expert to understand Canon Law. The word 'reservantis' in the canon seems to be confined to the Bishop of the penitent's diocese, whereas it can equally refer to the Bishop in whose diocese absolution is asked.

Suppose a person confesses a sin in diocese A, which is not reserved

[1] I. E. RECORD, April, 1914, Fifth Series, vol, iii. pp. 415-6.

except in diocese A, what right would the ordinary confessor in A have to absolve from that sin? If that be so, that is, if he has no such right, does the Canon Law give him the right to absolve when the sin is reserved also in the penitent's own diocese? That does not appear. When extraordinary rights are granted in Canon Law they are generally granted very explicitly, as in the case of the faculties of the Canon Penitentiary or of the priest on board ship.

D.D.

III

REV. DEAR SIR,—Practically speaking, the legislation on reservation has become a dead letter. . . . Would it not be well, in episcopal cases at least, to drop the complicated regulations that theologians would seem to have devised almost for their own amusement? The best modern writers are in favour of the change. . . .

CAIUS.

Judging by the letters that have reached us on this subject during the past six months,[1] there would seem to be a widespread impression that somehow or other, as a result of the Code, *peregrini* may be absolved by the local confessors from sins reserved in both dioceses. If the principle be admitted, it marks a very definite advance in the line of liberality and freedom.

For our own part, we must confess, we can find nothing in the Code to support this new charter of liberty. Rather the reverse. Canon 874 seems to imply that, instead of the mild teaching suggested by the Maynooth Synod of 1900,[2] we must adopt the comparatively rigorous principle of 1875[3]: that, in other words, whereas we have been for some years past commissioned to absolve from sins not reserved in *both* dioceses, we must restrict ourselves for the future to sins not reserved in the diocese in which the confession is heard.

That view may appear rather strange and strict. To justify it, we must see how matters stood before the Code was published.

For a long time past there had been considerable doubt as to the source from which jurisdiction over *peregrini* was derived. Some said it came from the extern Bishop, inasmuch as he was the only local authority that had jurisdiction over the penitent—the only one, consequently, that could give jurisdiction to others.[4] In that view—if it were once established for certain—the penitent could be absolved only from sins unreserved in the extern diocese. Others claimed that it came from the local Bishop—relying on the principle that, though the local Bishop was not the penitent's Superior in the full sense, he became so in a temporary fashion and for confessional purposes, in virtue of

[1] One correspondent kindly sends us a very interesting record of a debate on the subject. We would print every word of it, if we had space.

[2] N. 130, which omits the words given in:—

[3] N. 86: 'Casus reservatus in dioecesi confessarii non subtrahitur reservationi ea de causa quod non reservetur in dioecesi poenitentis.'

[4] The view, in theory, of Lehmkuhl, ii. 499, 521 sqq. (11th ed.); Noldin, iii. 378; Gury, n. 555; etc.

the penitent's enrolling himself, for the time being, among the local population.[1] If that were so, the absolution obviously would be restricted to sins unreserved in the place of confession. But a third class took a view differing from both. The practice of absolving *peregrini*, they said, was too general to be explained by concessions, expressed or implied, from any mere local authority or individual Bishop. The custom was world-wide, and the jurisdiction must come from the Pope.[2] But in any particular locality, they admitted, the jurisdiction so given would be restricted by local reservations[3]—just like the jurisdiction held from Rome by Regulars, but limited by restrictions imposed by the local Bishops.[4] This third view, it will be noted, differed from the second in theory, but in practice entailed the same results—the confessor would have to refuse absolution if the sin confessed were reserved by his own Bishop.

Which of the theories was correct? The reasons and authorities were so well matched that, from the objective point of view, none of them could be pronounced a certainty.[5] So, by an application of the principles of one or other of the 'moral systems,' the *practical* conclusion was reached that the sin might be absolved, provided that it were not reserved in *both* dioceses: in any other hypothesis, some one of the theories would guarantee liberty, and that particular theory might be adopted for the occasion.

Of course, there were men so convinced of their own particular theory that they refused to admit this liberal conclusion[6]: and Roman decisions went far to show that they were correct.[7] Whatever about that, practically all the theologians held that the conclusion marked the ultimate limit of Church concession. Not quite *all*, though. A very few fell back on a different principle altogether. They put local reservation on the same footing as local law, and harped on the maxim that no Bishop could bind anyone but his own subject. And, as a result, they proclaimed the discovery that the sin might be absolved though reserved in *both* places: the extern reservation fell through, because the penitent had left the territory; the local reservation, because the penitent was not subject to the local Bishop.[8] And for this conclusion they claimed the sanction of general custom.

The parallel is far from complete. Local law affects the subject directly, local reservation the faculties held by the confessor (893). When a penitent leaves a diocese he is, of course, freed from the reservation—

[1] So Aertneys, ii. 239, etc. On the theory of temporary subjection, see the authors quoted by Lehmkuhl, ii. 500.

[2] e.g., St. Alphonsus, vi. 588; Génicot, ii. n. 348; etc.

[3] Alph., 591; Marc, 1779; Sabetti-Barrett, 773 (9°, 10°), 781 (7°); Génicot, 328, 348: 'in sententia quam probabiliorem ducimus, nempe jurisdictionem haberi a Summo Pontifice, . . . liquet jurisdictionem confessarii iis limitibus circumscribi quos posuit Episcopus loci.'

[4] So the Constitution *Superna*: for the relevant words, v. Lehmkuhl, ii. 522 (note).

[5] For a good discussion of the problem, see the *I. T. Quarterly*, 1908, pp. 43-7.

[6] e.g., Marc, n. 1779.

[7] e.g., that of 21st Nov., 1873, ibid.

[8] So Noldin, iii. 378; Tanquerey, *Brev. Syn. Th. Mor.*, p. 412, n. 1098; (recently) Arregui, *Summ. Th. Mor.*, p. 393 (vide *infra*).

he is appealing no longer to the shackled confessors of his own locality—and may be absolved, *provided* he meet with a confessor who can deal with his case. But suppose the confessors he meets are just as much restricted as those he left behind: is he in any better position than he was before he left? Neither Bishop gives the jurisdiction; and, if it comes from Rome, it must first be filtered through the local reservations. 'The local Bishop cannot directly bind non-subjects.' Granted; but, 1°, he *can* restrict his confessors (893), and, therefore, *indirectly* the externs that appeal to him; 2°, the externs *become* his subjects for confessional purposes (874, 881). For these reasons, and for others on which we need not dwell, we are not surprised that a predecessor of ours in these pages rejected the view as devoid of solid probability :—

We believe [he said] that the opinion of Tanquerey and Noldin is not solidly probable. They base their view on universal custom, but certainly there is no such custom in this country, and it is very strange that, if such a universal custom exists, authors like Lehmkuhl and Génicot do not mention it. We draw the reasonable conclusion that no universal custom exists, and that as far as the Church at large is concerned the traditional view holds the ground.[1]

It continued to 'hold the ground' till the very eve of the publication of the Code. In support of that statement we appeal to the *Cum experientia*—the decree on episcopal reservations—dated the 13th of July, and published on the 1st September, 1916.[2] Its final concession in the matter of reservation runs as follows: 'Lastly, from sins reserved in any diocese, penitents may be absolved in another diocese *in which the sins are not reserved*, by any confessor, secular or regular, even though the penitents come there for the special purpose of securing absolution.'[3] There is no explicit mention of 'another' diocese in which the sins *are* reserved. But none is needed. The implication is all that we want. 'Quod legislator tacuit noluit.'

Now, all this establishes a strong presumption that the traditional teaching is the correct teaching still. The strong family likeness between the decree and the corresponding canons of the Code (895-900) suggests that the framers of the Code were largely responsible for the decree. And, unless in the light of convincing evidence, we are not justified in claiming that their views on a matter of principle went through a radical transformation in the course of a few months (6, 4°).

Is there any such 'convincing evidence' in the Code? We fail to see it :—

1°. The Code, if it does anything at all, subjects the *peregrini* to the local Bishop to a greater extent than ever before. We may cite the canons on local laws (14, § 1), on indulgences (927), on the *Ecclesiae vetitum* (1039, § 1), on dispensations from matrimonial impediments (1043), from fast and abstinence (1245, § 1), and from vows (1313, 1°).

[1] I. E. Record, November, 1913, Fifth Series, vol. ii. p. 518.

[2] For the text, see I. E. Record, October, 1916, Fifth Series, vol. viii. pp. 340-2.

[3] Ibid. 7 (*e*).

As regards sacramental absolution, it states definitely that the jurisdiction comes from the local Bishop (874, § 1): in other words, it rules out of court the view that accounted largely for the liberal practice of the past—the view, namely, that jurisdiction came from the (extern) Bishop of the *peregrinus*. On the strength of that canon (874), we think that local confessors are powerless when the sin is reserved in their diocese, though not in the diocese of the penitent: *a fortiori*, we need hardly add, when the sin is reserved in both. In a word, so far as we can see, the statute of the Maynooth Synod of 1875 has got to be restored, and the teaching of St. Alphonsus re-affirmed.[1]

2°. Other canons of the Code suggest the same. Take, for instance, No. 401 (§ 1)—on the powers of a Canon Penitentiary. Compared with ordinary confessors, he is on a pedestal all to himself. He is given certain powers that he cannot even delegate to others: one of them is the faculty 'absolvendi etiam a peccatis. . . . Episcopo reservatis, in dioecesi extraneos quoque.' Why announce this power over *peregrini* in such a special fashion, if *every* confessor can do the same? And, undoubtedly, every confessor *can*, if the view we express be incorrect.

Or turn back to Canon 349, § 1, 1°. There we are told that a Bishop may select for himself and others a special confessor in an extern diocese. This confessor is granted very extensive powers *ipso jure* (239, § 1, 2°); but, even so, we are given the additional assurance that his faculties extend to 'cases reserved to the local Ordinary.' Why, again, mention this at all, if *every* confessor can deal with these cases just as well as he?

3°. We may be told that, in virtue of Canon 881 (§ 1), it is not the local Bishop, but the law itself, that strengthens the hands of the local confessors in their dealing with *peregrini*: and that no account need, therefore, be taken of the restrictions he imposes. In reply to that we would state, 1°, that Canon 881, so far from contradicting Canon 874, is a necessary condition of its very existence—it *had* to be added in order to meet critics who would object to Canon 874 by inquiring, 'How can a Bishop grant jurisdiction over *peregrini* since he has no jurisdiction over them himself?'; 2°, Canon 881 operates either by making the local Bishop superior of the *peregrini* for the time being, or by conveying Roman jurisdiction through him to his confessors; in the first hypothesis, the Bishop presumably grants the same faculties to his confessors, whether the penitents be externs or not; in the second, the Roman delegation will, in accordance with the old-time principle, be restricted by local reservations.

4°. Canon 900, 3°, creates a little difficulty. It tells us that 'every reservation loses all its force outside the territory of the reserving (Superior), even though the penitent left [the territory] merely for the purpose of securing absolution.' It corresponds to the passage quoted

[1] VI. 587: 'Talis poenitens judicandus est quoad confessionem tamquam incola illius dioecesis'; VI. 591: 'Confessarius quem respicit reservatio non potest absolvere peregrinos nisi juxta limites jurisdictionis quam habet a suo Ordinario.'

above (p. 327) from the *Cum experientia*, but the words we italicized are omitted. If it be closely examined, though, it will be found (we think) to contain them implicitly. Leaving the 'territory of the reserving Superior' is, we believe, the same as leaving the 'territory in which the sin is reserved.' If the sin is reserved in both dioceses, the *peregrinus* has *not* left that territory : and so—just as under the *Cum experientia*—he has no claim to the freedom that the canon promises. If it is reserved in the home diocese, but not in the diocese of confession, he *has* left the territory and is guaranteed full freedom : the *Cum experientia* is re-affirmed, and the italicized addition would be purely tautological. Someone may ask us to keep closer to the actual words of the Code. If so, we will put it this way. If the sin is reserved in both places, the *peregrinus* has 'left the territory' of *one* reserving Superior, but he has walked right *into* the territory of another. In such circumstances, the canon knows nothing about him, and there is no use (we believe) in his appealing to it for help.

5°. Finally, *all* the points in favour of the opposite view may be combined in one comprehensive objection and hurled at us in the words of a recent writer [1]:—

Any approved confessor can absolve a *peregrinus* who, whether in his own or in another diocese, has committed a sin reserved even in both.

It is well to sketch briefly the principles from which this conclusion is derived :—

A *peregrinus* is not affected :

(*a*) by the reservation of his own Ordinary, since every reservation loses all its force outside the territory of the reserver (IC, 900, n. 3) ; nor

(*b*) by the reservation in force where he confesses the sin. This would seem to be established with solid probability in the following manner :—

1°. Authors, ancient and contemporary, hold that the subject of reservation is not a *peregrinus* ; because the Ordinary cannot reserve the sins of any except his own subjects, or because—as others prefer to put it—*peregrini* are not bound by the laws of the territory in which they happen to be staying (cf. authors cited by MAZZOTA, n. 2320, q. 1 ; LEHMKUHL, ii. 520 sqq. ; BALL, 739 ; GENICOT, ii. 345 ; PESCH, *De paenit.*, 441 ; MOSTAZA, *Sal Terrae*, 5 pg. 1022, iv.). These authorities, therefore, either think that the subject of reservation is the penitent, or—if we want to safeguard the doctrine that reservation affects the confessor *immediately*—that the object of reservation is merely the sins *of the reserver's subjects*, unless in a particular case the reserver provides for the opposite. And this is deduced clearly enough from the Code itself. For :—

2°. The object of reservation should be determined in accordance with the intention of Canon 897, in which its purpose is stated to be (*a*) the eradication of a deeply-rooted vice (i.e., *in the diocese in which the reservation is decreed*), (*b*) the restoration of shattered discipline (i.e.,

[1] Translated from the *Summ. Th. Mor.*, of Father Arregui, S.J. (p. 393 and note).

in that same diocese). Unless the contrary is expressed, the object of reservation, *per se* and properly speaking, is, therefore, merely the sins committed *there* and *by diocesans*: for a sin committed elsewhere is not a vice deeply-rooted *there*, nor one by which discipline *there* is undermined. Moreover, it is diocesan subjects that, *per se* and properly speaking, propagate vice and undermine discipline by their sins, or, through their amendment or punishment, contribute to root out the vice and restore discipline. These things may, of course, be predicated of *peregrini* in a secondary and incidental fashion; but, since reservation must be interpreted strictly, the latter must be held exempt—unless the contrary is clear.'

The statements in No. 1° have been met already: the half-abandoned claim that 'the subject of reservation is the penitent' might have been abandoned altogether in view of Canon 893, § 1. As for the assertions in No. 2°, we would remark that drastic local measures against a public scandal must sometimes be rigidly carried through, even though they press heavily on individuals much more spotless than the *peregrini* penitents. We may cite local interdict as an illustration: *it* certainly affects externs who had nothing whatever to do with provoking the affliction (2269, § 2). If, in the laws of man, as well as of nature, the innocent must sometimes suffer with the guilty, we need shed few tears over the alleged harsh treatment meted out to stained refugees from extern dioceses.

If the direct reply is considered insufficient, we will fall back on the indirect—and, in our opinion, *it* settles the question. Every point urged in favour of the liberal view—including, of course, the 'rooted vice' and 'shattered discipline' considerations borrowed from the *Cum experientia* itself—was well known to the Holy Office on the 13th of July, 1916. Yet, on the 13th of July, 1916, the Holy Office re-affirmed the traditional teaching. All these points combined, therefore, furnish no sufficient reason why *we* should abandon that teaching now.

We should like to add, though, in conclusion:—

1°. That our remarks apply only to the *law*; they have no bearing on what an individual Bishop may do. So far as we can see, there is nothing to prevent a Bishop from giving his confessors restricted jurisdiction over his own subjects and unrestricted jurisdiction over externs.[1] In such circumstances, a *peregrinus* could, of course, be absolved from a sin technically 'reserved in both dioceses.' But the result would be due, not to the general law—the only matter we discuss—but to the special liberality of the local Bishop.

2°. That a good number of excellent authorities hold the liberal view. If Fathers Tanquerey, Noldin, or Arregui did us the honour of writing these notes, they would follow a line very different from ours. We do not see that the reasons they allege prove anything in particular; but, in deference to these distinguished men and to others as well, we admit that their theory hovers on the borders of extrinsic probability. In view of Canon 209—much more liberal than any corresponding regulation

[1] Cf. a Bishop's declaration that ignorance excuses.

in the past—we are far from denying that an absolution given by a disciple of theirs would be valid. But, again, that arises, we believe, not from the jurisdiction actually held, but from the additional jurisdiction that the Church gives them in a crisis.

3°. That there is a growing movement—partially sanctioned by law—in favour of greater liberality in dealing with reserved cases. It may happen that, in course of time, the movement will result in a change of law—just as a similar movement started long ago by Sanchez,[1] has resulted in Canon 1045, § 1. If that comes to pass, it will be through a decree that frankly proclaims itself a new-comer, or through an 'extensive declaration' that goes beyond what the law at present justifies. In short, the liberal theologians may *change* the law: our contention is merely that they have not changed it *yet*.

We apologize to 'Confessarius,' 'D.D.,' and 'Caius,' for keeping them so long. But we should have to give our reasons sooner or later, and it is just as well to have them over and done with. Taking our correspondents' queries in order, we would say:—

I°, to 'Confessarius':—

1°. That we believe he cannot, unless (perhaps) his ignorance of the local regulation excuses him.

2°. That, again we believe, he cannot. Génicot, we note, holds the opposite, though he claims that the *peregrinus* could not be absolved if he had committed the sin in his own diocese.[2] Strange that a Bishop should be supposed to give faculties over a sin committed at his own door and in open defiance of the local regulation, but not over one committed a thousand miles away, where perhaps the local regulation was never heard of.

3°. That we think not. The penitent has *not* left the danger zone. He escaped Scylla, but got shipwrecked on Charybdis.

4°. That there is no 'tertium quid'—except to go to the Bishop or his delegate.

II°, to 'D.D.', that we are in full sympathy with what he implies. The confessor in A, we believe, is powerless, whether the sin is reserved in the extern diocese or not. We are not sure to what 'remark' of ours he refers. Presumably to some one or other in the January (1918) issue: but none of them, we think, had any direct bearing on the point he raises. We spoke of 'Superior,' but only in the sense suggested by the Code (874, 881).

III°, to 'Caius,' that he represents a school of thought far in advance of anything the law sanctions. He cannot surely have read Canons 895-900: they are not very 'complicated,' and anyhow they give the 'law'—not the comments of the theologians.

NOTE.—This last reply has grown to such an unexpected length that we must again hold over the queries sent by 'Philip' and 'Confessarius.' We are sorry. They will appear in our next issue.

M. J. O'DONNELL.

[1] *De Matr.*, B. ii. dis. xl.

[2] ii. 348.

CANON LAW

CHANGES IN THE BULL 'APOSTOLICAE SEDIS' AND IN THE INDEX LEGISLATION

REV. DEAR SIR,—Will you kindly state, in the pages of the I. E. RECORD, what changes, if any, have been made by the Code in

(*a*) the *Apostolicae Sedis,* as regards books and societies condemned by it ?

(*b*) the index legislation ?

SACERDOS.

(*a*) There were only two articles in the Bull *Apostolicae Sedis* which referred to books. The first forbade, under penalty of excommunication specially reserved to the Holy See, the reading, retention, printing, or defending of books by apostates and heretics propounding heresy, and also the books of any author which have been condemned by name by Apostolic Letters.[1]

The corresponding regulation of the Code is contained in Canon 2318, § 1. According to this section, those who publish books by apostates, heretics, and schismatics, propounding apostasy, heresy, or schism, incur *ipso facto* excommunication specially reserved to the Holy See. The same penalty is likewise incurred by those who defend these same books or others forbidden by name by Apostolic Letters, and also by those who knowingly, without the necessary permission, read or retain them.

There are some slight differences, therefore, between the old and new legislations :—

1°. The books of schismatics, as well as of apostates and heretics, when they propound not merely apostasy or heresy but even schism, are now included in the censure.

2°. In the *Apostolicae Sedis* the printing, but not the publication, of these books was punished. The Code, however, mentions the publication specifically. Although it says nothing about the printers, still, in accordance with the general principles on co-operation contained in Canons 2209 and 2231, they also incur this penalty.

3°. It will be noticed that the publication of books condemned by name by Apostolic Letters does not involve the punishment contained in this canon.

4°. Under the Code those who read and retain these books must act *knowingly* (*scienter*) to incur the penalty. Consequently, any diminution of imputability on the part of the intellect or the will exempts them altogether from the excommunication (c. 2229, § 2). In the Bull *Apostolicae Sedis* there was no such restriction.

In the second section of this same Canon 2318 there is another

[1] Sec. I, n. ii

censure referring to books. Authors and publishers who, without the necessary permission, cause to be printed books of Sacred Scripture or notes or commentaries on them incur *ipso facto* an unreserved excommunication. This corresponds exactly with the censure contained in section IV, n. v, of the *Apostolicae Sedis,* and afterwards incorporated in the Constitution *Officiorum et munerum.*[1]

The changes in regard to condemned societies are also very slight. According to the *Apostolicae Sedis,* excommunication simply reserved to the Holy See was incurred by members of Masonic and other similar societies that plot against the Church or against legitimate civil authority, by those who show favour to these societies, and by those who fail to denounce the secret leaders in them.[2]

The corresponding legislation in the Code is contained in Canon 2335. The societies banned are the same—Masonic and similar societies that plot against the Church and the legitimate civil authorities; and so also is the *ipso facto* punishment inflicted—excommunication simply reserved to the Holy See. Just as in the Bull *Apostolicae Sedis,* membership of these societies involves the penalty. There is no mention, however, in the Code of those who show favour to these societies; but, in accordance with the general principles on co-operation in Canons 2209 and 2231, the punishment is also incurred by those who so command, advise, or assist others to become members, that without their interference membership would not have resulted. Assistance of any other kind will be no longer visited with excommunication, though, of course, it will still continue sinful. So, too, in the Code, nothing is said in regard to the denunciation of secret leaders; and hence, failure in this respect will not in future involve the penalty decreed against membership. It is prescribed, however, that clerics and religious who become members of such societies should be denounced to the Holy Office; but no special penalty is threatened for failure to comply with this obligation.

(*b*) An extended comparison between the old and new discipline on the censorship and prohibition of books is impossible in the brief space at our disposal: anything approaching a complete discussion of the subject would require at least a couple of articles. We must, therefore, confine ourselves at present to a brief outline of the principal changes introduced.

The index legislation prior to the publication of the Code was contained almost entirely in the Constitution *Officiorum et munerum*; the Code deals with the subject in Canons 1384–1405. In both, the whole matter is divided into two heads: the censorship of books; their prohibition.

Censorship of Books.—Under both the old and new legislations certain writings before publication required the approbation of the Holy See, and certain others that of the Ordinary. There is practically no change

[1] Conc. Trid., Sess. IV, Decret., De editione et usu Sacrorum Librorum.
[2] Sec. II, n. iv.

in regard to the two classes. The permission of the Holy See is still required for the publication of: 1°, Vernacular versions of the Bible that have neither note or comment (c. 1391); 2°, Books that have been condemned by the Holy See (c. 1398, § 2); 3°, Works which have reference to causes of beatification and canonization of Servants of God, whilst the causes are still under discussion (c. 1387); 4°, Collections of decrees of the Roman Congregations (c. 1389); 5°, Authentic collections of prayers and pious works to which the Holy See has attached indulgences, and also lists and summaries of indulgences either previously collected but not approved, or now collected for the first time (c. 1388, § 2). This regulation on indulgences is much more definite than the old one.[1]

Neither has any change been made in regard to the publications which should be submitted for censorship to the Ordinary. A change, however, has been introduced regarding the Ordinary from whom approval must be sought. Previous to the publication of the *Officiorum et munerum*, the approval should be given by the Ordinary of the place in which the printing was done;[2] this Constitution, however, transferred the right to the Ordinary of the place of publication.[3] Now, permission may be sought either from the author's own local Ordinary, or from the Ordinary of the place of printing, or from the Ordinary of the place of publication (c. 1385, § 2).

According to the Constitution *Officiorum et munerum*, a member of the secular clergy was forbidden to publish books on profane subjects without previously consulting his Ordinary, and to undertake the direction of newspapers and periodicals without previously obtaining his consent.[4] The corresponding regulation in the Code is much more strict. For the publication of profane books seculars must obtain their Ordinary's permission: they require it also, not merely to undertake the direction of, but even to write in, newspapers and periodicals. In similar circumstances religious require the permission both of their own Superior and of the local Ordinary (c. 1386, § 1).

We notice a few slight changes in regard to the censor. Thus it is now prescribed that his opinion should be given in writing (c. 1393, § 4). That, indeed, was the usual form of procedure in the past, though, as far as we can see, it was not obligatory. The Code also forbids the censor's name to be made known to an author until a favourable opinion of his work has been given (c. 1393, § 5).

Prohibition of Books.—The regulations on the prohibition of books are less changed even than those which regard censorship.

The Code removes all doubts as to the precise force of the prohibition of a book. Canon 1398, § 1, states that it 'effects that a book without

[1] Cf. Const. *Off. et munerum*, reg. xvii, resp. S. C. Indicis, 7 August, 1897.

[2] Reg. X, Indicis Tridentine: 'In aliis vero locis ad episcopum civitatis vel dioecesis in qua impressio fiet ejus approbatio et examen pertineat.'

[3] Reg. XXXV: 'Approbatio librorum . . . pertinet ad Ordinarium loci in quo publici juris fiunt.'

[4] Reg. XLII.

the necessary permission cannot be published, read, retained, translated into another language, nor in any way communicated to others.' Hitherto some authors considered that it prevented only the defence, publication, retention, and reading of books.[1] Others, however, gave it practically the same implication as that now attributed to it by the Code. Thus Wernz writes: 'Since the word *prohibition* has been used simply by the legislator, it must evidently be understood in accordance with the old law, and therefore it refers to reading, retention, publication, defence, sale, and other similar actions by which the prohibited writing can come into the hands of others.' [2]

The powers of local Ordinaries and particular Councils are confirmed (c. 1395, § 1). The abbots of independent monasteries and the supreme Superiors of exempt clerical institutes, so far as their own subjects are concerned, are now on the same footing as local Ordinaries (c. 1395, § 3). Formerly, indeed, they might forbid their subjects to read certain books, but only through the vow of obedience, not in virtue of the power of jurisdiction.

In regard to the *ipso facto* prohibitions of the general law, the Constitution *Officiorum et munerum* forbade newspapers and periodicals which expressly attack religion and good morals. In the Code there is no mention of newspapers and periodicals: books of this description alone are interdicted (c. 1399, § 3). Under the term *book* (*liber*) periodicals also are included, if they are sufficiently large and if their general purport is an attack upon religion or good morals.[3] Otherwise, apart from changes in the form of expression, the *ipso facto* prohibitions are practically the same.

We notice that Cardinals, Bishops, and other Ordinaries, if they take the necessary precautions, are not bound by the ecclesiastical prohibition of books. Formerly, indeed, they could use in their own favour, any dispensing power which they possessed, but, so far as we know, they were *per se* bound by the Index legislation.

SOME QUESTIONS REGARDING NUNS AND SISTERS

REV. DEAR SIR,—(*a*) Canon 618, § 2, 2°. What is the meaning of 'in religionibus *laicalibus*'?—does the term include nuns and sisters? or does it refer only to religious communities of men who are not priests?

(*b*) In some religious Orders of women, such as the Presentation, Sisters remain three years in the novitiate—two years as 'white veils' and one year after profession. May they continue this practice, or does the new Code require a modification?

(*c*) Canon 565, § 3, states that, 'During the year of novitiate the novices must not be employed . . . in the external charges (*muniis*) of the Institute. . . .' What is the scope of the word *muniis*? Is the novice debarred from teaching a class in the convent school under the charge and supervision of the Superioress?

[1] Vermeersch, *De Prohibitione et Censura Librorum*, n. 47.
[2] *Jus Decret.*, tom. iii. n. 111, nota 53.
[3] Cf. Vermeersch, op cit., n. 34.

(*d*) Canon 574 deals with First Profession. On the completion of the novitiate, the novice, in an Order that has perpetual vows, makes a profession of simple vows for three years (*ad triennium valituram*). On the day of her profession is the formula to contain the words, '. . . for *three* years'? Or is it permissible to take these three years *singulatim*, and make profession for a year at a time? The point becomes of practical importance should the Sister leave, say, at the end of the first year. If the *triennium* of § 1 is meant to be an unbroken three, is the same to be said of the *triennium* mentioned in § 2?

MISE.

(*a*) The term includes Nuns and Sisters. According to the general definition in Canon 488, 4°, female communities are *religiones laicales*; and no indication is given that any special meaning is attached to the term in the section under consideration.

(*b*) The practice of spending two years in the novitiate before profession may be continued. The Code, indeed, prescribes a novitiate of one year, but as a *minimum* not a *maximum* period. This is evident from Canon 555, § 2, which states that 'if a longer time (than one year) is prescribed in the constitutions for the novitiate, it is not required for the validity of profession, unless in the same constitutions the contrary is expressly stated.'

It is another question, however, whether it is lawful for the newly-professed religious to continue in the novitiate for another year after their profession. The difficulty against a practice of this kind arises from Canon 564, § 1, in which it is stated that 'the novitiate shall be, as far as possible, separated from that part of the house inhabited by the professed religious, so that, without a special cause and the permission of the Superioress or the Directress, the novices may not have communication with the professed religious, nor these latter with the novices.' It would certainly be more in accordance with the letter and spirit of this regulation to remove the newly-professed religious immediately after their profession from the novitiate; but at the same time we should hesitate to assert that the practice in question is condemned absolutely by it. We think that the requirements of this canon are substantially fulfilled, if the separation between the novices and the general body of the professed is observed.

(*c*) From a comparison with the *Normae* and its commentators it is evident that the external charges forbidden in this canon are distinguished from charges, works, or exercises the direct purpose of which is the internal spiritual formation of the novices.[1] Hence, under the term *munia exteriora* are included all external works or exercises which have for their immediate object something other than internal spiritual formation and sanctification of the novices. Teaching is certainly a work of this kind: a novice is, therefore, debarred from teaching a class in a convent school, even under the charge and supervision of a Superioress.

As we have already hinted, the *Normae* also forbade novices to engage

[1] *Normae*, Art. 73. Cf. Battandier, *Guide Canonique*, n. 143; Piat, *Prael. Juris Reg.*, tom. i. q. 125; Vermeersch, *De Religiosis*, tom. ii. p. (148), n. 56.

in the external charges of their Institute. It was pointed out, however, that, if the novitiate extended over two years, the prohibition did not hold for the second year.[1] That the same thing will be also true in the new discipline is evident from Canon 565, § 3. 'During the year of novitiate,' it states, 'novices must not be employed . . . in the external charges of the Institute, etc.' Clearly the restriction applies only to the canonical year.

(*d*) It is quite plain from Canon 574 that the *formula* must contain the words 'for three years,' and that the simple temporary profession lasts for this period, unless the Constitutions already require annual professions, in which case the annual professions may be retained.

EFFECTS OF SIMPLE VOW OF POVERTY IN RELIGIOUS CONGREGATIONS

REV. DEAR SIR,—May a professed nun who has made only simple vows—e.g., a Sister of Charity or Mercy—renounce in favour of a party other than her Superioress or religious Superiors the right acquired after profession, which the laws of the country, such as those governing the intestacy of a deceased brother, give her to certain property?

INQUIRER.

She may not renounce these rights, either in favour of her Superiors or of anybody else. This is evident from Canon 583, 1°, which declares that 'those who have made profession of simple vows in any religious Congregation may not abdicate gratuitously the dominion over their property by a voluntary deed of conveyance (*per actum inter vivos*).' In accordance, however, with Canon 569 she must cede the administration of property acquired in this way to whomsoever she wishes, and, unless the Constitutions determine otherwise, dispose freely of its use and usufruct. The prohibition to abdicate gratuitously the property, *per actum inter vivos*, indicates that it may be freely disposed of by will.

RECENT DECISION REGARDING THE RIGHT OF DIOCESAN CONSULTORS TO APPOINT THE ADMINISTRATOR OF A DIOCESE DURING ITS VACANCY

In the last issue of the I. E. RECORD, in reply to a query, we expressed the opinion that, in dioceses in which there is no Chapter, the diocesan Consultors have now the right of appointing the Vicar-Capitular or Administrator of the diocese during its vacancy. A decision of the Codex Commission, published in the current number of the *Acta Apostolicae Sedis*, confirms this view.[2] It is well known, of course, that long previous to the publication of the Code, there were diocesan Consultors in the United States of America.[3] The election of a Vicar-Capitular or Administrator of the diocese during its vacancy was not, however, one

[1] *Normae*, Art. 74.
[2] *Acta Ap. Sedis*, March, 1919, p. 75.
[3] Vide Conc. Pl. Baltimorensis, III, Acta et Decreta, n. 17 et seq.

of their functions—it is unnecessary to detail the manner in which this appointment was to be made. In these circumstances the Apostolic Delegate for the United States asked for a solution of the following questions :—

'(1) Whether the particular dispositions of the Plenary Council of Baltimore in regard to nominating the Administrator of a diocese during its vacancy, still continue; or are they abrogated by the new Code?

'And, in so far as the answer to the first part is in the negative, (2) Whether the prescription of Canon 427 is to be observed?'

The Commission appointed to interpret the Code replied on the 24th November, 1918:

'To the 1st, in the negative to the first part; in the affirmative to the second.

'To the 2nd, in the affirmative, and *ad mentem*.'

The *mens* is this: 'In so far as special circumstances *at this precise moment* prevent the application of Canon 427 in that region, the Consistorial Congregation is to give opportune instructions, to be observed *for a time*, the right of the Bishops to nominate an Administrator for the diocese after their death being altogether taken away.'

Our most Holy Father approved and confirmed the resolution of the Codex Commission.

On the report, however, of the Cardinal Secretary of the Consistorial Congregation, and in view of the peculiar circumstances which prevail in the churches of the United States of America, His Holiness decreed that in dioceses in which there are not, at least, five or six diocesan Consultors—without prejudice to the prohibition of the Commission—the Archbishop or senior Bishop of the ecclesiastical province can, with the approval of the Apostolic Delegate, provide for the nomination of a diocesan Administrator during the vacancy of the see.

This state of things is to continue for three years, provided that in the meantime the Consultors have not been increased to the number indicated above.

Although this is a decision for a particular country, still it is clear from it that, *per se*, in a diocese in which there is no Cathedral Chapter, the election of a Vicar-Capitular or diocesan Administrator during the vacancy of the episcopal see is the function of the diocesan Consultors. In view of the peculiar circumstances prevailing in the United States special provision is made for dioceses in which there are not at least five diocesan Consultors, But, without a special act of the Holy See, it is by no means lawful to transfer this provision to dioceses in other countries in which similar conditions exist. Hence, even though the diocesan Consultors in any diocese in this country are less than five in number, they will still retain the right of appointing the Vicar-Capitular or diocesan Administrator during the vacancy of the see, unless some special regulation to the contrary is made by the Holy See.

J. KINANE.

LITURGY

BLESSING OF THE HOLY OILS—NUMBER OF PRIESTS REQUIRED

Rev. Dear Sir,—Father Augustine, O.S.B., in vol. ii. page 591, of his commentary on the new Code, states that notwithstanding the drastic decree of April 25, 1918, it is probable that the faculty of consecrating the Holy Oils, 'cum sacerdotibus quos potuerint habere' (Form. I, art. 12), remains with the American Bishops. Now, as the Irish Bishops had the faculty of consecrating 'cum quinque saltem sacerdotibus' (Form. VI, art. 28), in Father Augustine's view that faculty still survives. Your opinion would be at present very opportune.

Ignotus.

Regarding the number of ministers required for the blessing of the Holy Oils, the Pontifical lays down: 'Parant se etiam ministri Pontificis, et ultra illos duodecim Presbyteri, septem Diaconi, septem Subdiaconi, Acolythi, et alii necessarii, omnes vestibus albi coloris Ordini suo congruentibus.' Athough the presence of these ministers is not necessary for the validity of the blessing, the Church, for centuries past, has always insisted that they should be present, if at all possible. The twelve priests are described by the Pontifical as 'assistentes Pontifici, tamquam ejus testes, et ministerii sacri Chrismatis cooperatores,' and the deacons and subdeacons as 'ministri et inspectores.' Naturally enough, the blessing of the Holy Oils is regarded as one of the most solemn functions of the ecclesiastical year. 'Inter varia Officia,' says Catalani,[1] 'quae celebrari in Ecclesia quotannis solent, nullum profecto videtur solemniori ministrorum apparatu peragi, quam ipsum benedictionis oleorum et chrismatis feria v Coenae Domini celebrari solitum.'

According to the present discipline, the full ceremonial must be carried out, unless a dispensation has been obtained. Witness the following answer of the Congregation of Rites[2]:—

Q. An ex Decretis hactenus a Sacra Rituum Congregationi editis circa consecrationem Oleorum sanctorum intelligendum sit quod non solum ob penuriam 12 Presbyterorum sed etiam ob penuriam 7 Diaconorum et 7 Subdiaconorum requiratur dispensatio?

R. Affirmative; seu imploranda est dispensatio a Sancta Sede toties quoties occurrat defectus tum Presbyterorum tum Ministrorum in casu consecrationis Oleorum sanctorum.

To come now to our correspondent's query, we are informed and convinced that the Irish faculty has been abolished by the decree of April, 1918. Father Augustine's statement concerning the corresponding American formula is that 'the first part of the faculty, concerning the number of priests, probably remains.' It is a pity that no hint is given

[1] Pontificalis, Pars Tertia, Tit. iv. 3. [2] Decr. Auth. n. 3359.

of any reason for this opinion. Nor can we see any valid one, if, as we suppose, the American Formula Iª was on the same footing as the Irish Formula VIª. One cause assigned in the preamble to the Decree withdrawing former indults is this: 'supervacanea esse videntur.' If this were the only ground one might urge that, so far as the particular indult in question is concerned, it is by no means 'supervacaneum' now any more than it was in the past, since the Code gives no power to dispense in this matter. But the preamble goes further: 'His itaque de causis, *necnon ad discrimina in canonica disciplina tollenda majoremque unitatem in Ecclesia inducendam*, Ssmus. D. N. Benedictus Pp. XV . . . ea quae sequuntur statuit et sanxit.'

The revocation of faculties is made in these terms 'In universis . . . dioecesibus juri communi obnoxiis, facultates omnes pro foro externo Ordinariis concessae, quaeque in Formulis et Brevi . . . continentur, a die 18 maii hujus anni cessabunt, neque amplius in usu esse poterunt.' Certain exceptions are made by the decree; but the faculty to bless the Holy Oils with only a small number of priests is certainly not one of them. It may be necessary or desirable to have the faculty restored, generally or in particular dioceses. As far as it depended on the Formula VIª it has been completely abolished, if words retain their ordinary meaning.

A 'war measure' on this subject was introduced by the Congregation of Rites in the year 1916. It provides that 'Archiepiscopi et Episcopi intra fines nationum belligerantium, tum hoc anno, tum durante clericorum defectu proveniente ex hoc bello, consecrationem sanctorum Oleorum conficere valeant eo presbyterorum et sacrorum ministrorum numero, qui pro loci rerumque adjunctis reperiri poterit; dummodo tamen minor non sit ternario numero ex quolibet gradu, cum facultate deficientibus subdiaconis substituendi acolythos.' This decree is interesting as providing for a minimum of nine, who are to assist at the blessing of the Oils, and allowing acolytes, if necessary, to supply the place of subdeacons in this function. But we think that it has no practical bearing as far as this country is concerned. It was manifestly intended for countries where the deficiency arose because clerics were called up for military service: 'Quum . . . sacerdotes et sacri ministri . . . utpote militiae addicti et obstricti ita deficiant, ut pauci tantum sacrae caeremoniae interesse possint.' Hence, in Ireland, at any rate, the liturgical law, as laid down in the Pontifical and enforced by various decrees, must be observed, as far as it may be possible to do so. The only alternative is to obtain a special dispensation. It is scarcely necessary to point out that in this, as in other functions, priests may act as deacons and subdeacons.

MIDNIGHT MASS ON CHRISTMAS NIGHT

Rev. Dear Sir,—Would you kindly explain Canon 821 of the new Code? Though the meaning is pretty plain, doubts have arisen on the following points:—

(*a*) Section 3: Is any Papal indult required by convents to have

midnight Mass? Is the Ordinary's permission to be asked for, and received? Has the fact that a convent has been having Mass for years back anything to say to the question?

(*b*) May the priest who says midnight Mass say three Masses consecutively without a break, so that, beginning his first Mass just after midnight, his third Mass is ended about 1.30 a.m.? Or, having said his first Mass at midnight must he await the dawn before beginning his second? What is the meaning of the words 'tres *rituales* Missas'?

An answer in the I. E. RECORD will oblige.

CHAPLAIN.

(*a*) The third section of this canon is practically a repetition of the decree on the same subject issued by the Holy Office in the year 1907. Its meaning is plain enough. Midnight Mass may be celebrated in any religious or pious house in which the Blessed Sacrament is allowed to be kept habitually. Permission to keep the Blessed Sacrament in a convent oratory may be granted by the Ordinary.[1] Once this has been granted the right to have a midnight Mass is derived from the general law. No further permission, papal or episcopal, is required.

(*b*) The priest may say his three Masses without a break. The word 'rituales' refers to the sanction given by the liturgical laws for three Masses on this occasion.

CONFESSIONAL STOLE—SHOULD IT BE BLESSED?

REV. DEAR SIR,—Many, I think, will be grateful for information in your pages as to whether a stole for confession requires to be blessed, and, if so, by what form and by whom? It is strange that all the likely books seem to avoid giving information on the point. You will, I am sure, be able to refer to some positive decisions bearing on the matter. Thanking you beforehand.

EOGHAN.

As far as we are aware, there is no positive decision on the point. It is agreed, however, that the stole used by a priest in any ecclesiastical function should be blessed. Van der Stappen says:[2] 'Stolam quamcumque quae usuvenit sive pro Missa, sive pro quacumque ecclesiastica functione, sive sacerdotalis sit, sive diaconalis, benedictam esse debere omnes auctores docent.' Should a Bishop give the blessing, he may use the form *Benedictio sacerdotalium indumentorum in genere* or the *Benedictio specialis cujuslibet indumenti*, as found in the Pontifical. A priest is not allowed to use the latter form, although if he did use it the blessing is valid.[3] He must, therefore, follow the first of these formulae, which is given in the Missal and Ritual. The blessing is to be recited exactly as it is given, without any change of number.[4]

Those who are authorized to give this blessing are enumerated in the Code, to which we would refer our correspondent. The canon [5] is too lengthy to quote.

[1] Codex. Can. 1265, § 1, 2°. [2] Vol. iii. Q. 148, 1°.

[3] S.C.R. Decr. n. 3524, ad ii. Van der Stappen, loco. cit. Others, however, hold that the singular should be used. Cf. Appeltern, De Amicis.

[4] Ibid. [5] n. 1304.

MAY THE PAPAL BLESSING BE GIVEN FROM THE PULPIT AT THE END OF A MISSION OR RETREAT

Rev. Dear Sir,—The priest who conducts the exercises of a mission or retreat is empowered to give the Papal blessing at its conclusion. The Ritual presupposes that the versicles and prayer be said at the foot of the altar, and that the blessing be given with a crucifix from the predella on the Epistle side. It most frequently happens on such occasions that immediately before the Papal blessing the priest is in the pulpit and has to return to it immediately after. There is inconvenience, sometimes very considerable, owing to the position of the pulpit, in his passing to and fro from pulpit to altar, and it is calculated to excite *admiratio*. Might not the blessing, then, be always given from the pulpit at the conclusion of a mission or retreat?

Scotus.

We would point out to our correspondent that the formula given in the Ritual is intended to be used on certain solemn feasts—*statis diebus*—and that, therefore, the rubrics there prescribed are not to be taken as binding when the blessing is given at the close of a mission or retreat. 'Le rite prescrit aux religieux,' says Beringer,[1] 'par Benoît XIV (viz., that given in the Ritual) . . . ne se rapporte pas, il est vrai, à la bénédiction donnée après les missions, les retraites, etc., mais seulement à la bénédiction papale solennelle qui se donne á deux grandes fêtes de l'année; toutefois il est le plus convenable, même dans les cas mentionnés. . . . Ce rite peut donc servir de règle, surtout lorsque rien de spécial n'est prescrit pour cette bénédiction.' As a matter of fact, no mention is made of the crucifix in the Ritual; whereas, in the faculties to impart the blessing after missions and retreats, the crucifix is usually ordered to be used. We may conclude, then, that in such cases it is quite lawful to give the blessing from the pulpit, especially if there is any inconvenience in proceeding to the altar.

THE 'MEMORIALE RITUUM' IN CONVENTS

Just as we were about to send these notes to the printers we received a document which may be of interest to some of our readers. A query was sent from the diocese of Kildare regarding the subject of the heading given above. It was pointed out to the S. C. R. that the solemn ceremonies cannot be carried out 'in oratoriis Sororum Religiosarum' on account of want of ministers. 'Adest tamen,' the statement proceeded, 'in aliquot (paucis) oratoriis hujusmodi consuetudo immemorialis Officia haec juxta Memoriale Rituum celebrandi.' The query was: 'an liceat consuetudinem istam retinere?' The following is the reply:—

Et Sacra Rituum Congregatio, audito specialis Commissionis suffragio, praepositae questioni ita respondendum censuit. Ubi adest consuetudo immemorialis haec continuari potest. Pro Ecclesiis seu Oratoriis quae ejusmodi consuetudinem non habent, detur Rescriptum gratiae Rmo Dño Episcopo seu Ordinario Kildaren. et Leighlinen. juxta formulam typis impressam et praxim; servatis de cetero servandis. Contrariis non obstantibus quibuscunque. Die 31 Januarii 1919.

T. O'Doherty.

[1] Vol. i. p. 435 (Edit. 1905).

DOCUMENTS

QUESTIONS DISCUSSED REGARDING THE OBLIGATION OF THE 'MISSA PRO POPULO' IN CERTAIN CASES

(*July* 13, 1918)

[The decree was not published until February, 1919]

SACRA CONGREGATIO CONCILII

WRATISLAVIEN

MISSAE PRO POPULO

Die 13 *iulii* 1918

SPECIES FACTI.—Praestat ad factispeciem huius causae cognoscendam, ipsum subiicere tenorem libelli R̃mi Episcopi Wratislaviensis, quo, haud ita pridem, ad h. S. C. res delata est. Scribebat nimirum: 'Saepe sacerdotes illi dioecesis Wratislaviensis, qui vocantur *Curati* vel etiam *Localistae*, tam praedecessori meo quam mihi dubia de obligatione Missam pro populo applicandi exposuerunt, quae oriuntur ex indole officii eorum; et licet ipsis communicata sint responsa a S. Sede alias iam data, non omnino evanuerunt haec dubia, uti cognoscitur ex quaestionibus iterum iterumque nuper propositis. Accedit quod etiam instructiones in hac materia a variis Ordinariis datae et sententiae auctorum non omnino concordare videantur. Hinc, tam ad applicationem normarum vigentium clarius elucidandam, quam ad conscientiarum in re tanti momenti tranquillitatem, valde proderit, si S. Congregatio ad sequentes quaestiones respondere dignetur.

'Varia nimirum genera Curatorum exsistunt in hac dioecesi, quae in vasto suo districtu per quatuor provincias extenso complectitur regiones diversissimae conditionis, scilicet regiones omnino fere catholicas, regiones mixtae religionis et extensissimas regiones *diasporae* (seu dispersionis, i.e. ubi catholici veluti dispersi inter acatholicos vivunt). Certum quidem est, in omnibus regionibus ad applicandam Missam pro populo esse obligatos parochos parochiarum canonice erectarum. Certum quoque est, ab hac obligatione liberos esse curatos illos, qui, in ipsa sede parochiae, inserviunt curae animarum vigore officii vel beneficii sui curatialis, cui proprius districtus ex parochia totaliter separatus non est assignatus. Aliae vero exsistunt curatiae, de quarum obligatione dubia moventur. De talibus haec breviter exponam.

'I. In regionibus diasporae, ubi catholici dispersi sunt inter acatholicos multoties numerosiores, decursu temporis multae Curatiae sunt erectae, quae omnino similes sunt Curatiis in terris missionum. Non

sunt beneficia proprie dicta, sed *stationes* tantum erectae pro pastoratione catholicorum in circumiacente diasporae parte singulis Curatiis assignata; ipsi curati sunt *ad nutum amovibiles*, licet curam primariam exerceant vi decreti ipsis ab Ordinario dati. Quaeritur an sint ad applicandum pro populo obligati. Videtur negandum esse attentis responsis a S. Sede datis tam pro terris missionum (S. C. de Prop. Fide, 23 mart. 1863) quam etiam Episcopo Osnabrugensi uti Provicario apostolico illarum regionum, quae "Missiones Septentrionales" Germaniae nuncupantur.

'II. In aliis dioecesis meae partibus, ubi exsistunt parochiae proprie sic dictae, ob necessitatem melius providendi curae animarum, passim, pro parochianis a sede parochiali remotioribus, erectae sunt Curatiae pro certo determinato districtu, qui ex totali parochiae nexu *non est* pleno iure *separatus*. Curatus vel Localista, qui ad nutum Episcopi amovibilis est, exercet curam primariam vi decreti ab Ordinario ipsi dati. Estne obligatus ad applicandum pro populo? Negandum esse videtur. Nam, principali districtu parochiali permanente integro, parochus totius parochiae tenetur applicare pro toto grege suo, in quo inclusi etiam sunt parochiani ad districtum filialem pertinentes, quorum Curatus, licet districtui separato inserviat, curam primariam magis ex vi mandati Episcopi uti *cooperator parochi*, quam ex muneris genuina indole habet implendam.

'III. Tertium exsistit genus Curatorum, quod est simile generi sub numero II descripto, sed differt ab illo, quia districtus curatialis, quoad administrationem temporalium et iura temporalibus adnexa, est omnino separatus a districtu parochiali. Viget enim in Borussia lex civilis die 2 iunii 1875 lata de administrandis bonis temporalibus "Communitatum ecclesiasticarum," quae lex ab Episcopis cum praescientia S. Sedis est tolerata et recepta; iuxta hanc legem pars districtus parochialis separari potest ex nexu parochiae, ut fiat "communitas ecclesiastica" sui iuris, et ut incolae liberentur ab oneribus quoad temporalia et amittant iura quoad temporalia, quibus antea iuncti erant districtui parochiali. Talis separatio, tangens unice temporalia, non hunc habet effectum, ut nova parochia oriatur, quippe quum illa lex civilis nihil aliud ordinare vult quam administrationem bonorum temporalium et iura et onera temporalibus annexa. Si talis "communitas ecclesiastica curatialis" per Episcopi documentum ratificatione Gubernii munitum erigitur, Curatus auctorizatur ad gerendam curam primariam per Decretum Ordinarii, sed Curatia non erigitur in titulum beneficii; Curatus manet amovibilis ad nutum Episcopi. Tandem si decursu temporis statio curati, postquam sufficientem dotationem acquisiverit, potest erigi in beneficium parochiale, separatio totalis fit, ac etiam quoad spiritualia; tunc tandem curatus fit pastor gregis omnino proprius et inamovibilis. Ex hisce rerum adiunctis saepe oritur quaestio, utrum Curatus amovibilis districtus curatialis *quoad temporalia* omnino separati, quia vi decreti Ordinarii gerit curam primariam, licet quoad spiritualia districtus suus nondum sit definitive separatus a districtu parochiali, tamen obligatus sit ad applicandum pro populo sui districtus,

an parochus ecclesiae principalis applicans pro populo totius parochiae intentione sua complectatur etiam districtum curatialem, donec evehatur curatia in parochiam etiam quoad spiritualia omnino separatam.'

Animadversiones.—Una est SS. Congregationum Romanarum et Doctorum sententia, obligationis Missam pro populo applicandi causam sitam esse omnino in *pastorali officio* (cfr. S. C. C. in Caietan., 16 dec. 1807; Romana, 9 iul. 1881 et plurima ibi allegata), hinc passim illud usurpatur quemquam hac lege *non teneri ratione beneficii sed officii, non ratione bonorum seu redituum, sed muneris.* Quamobrem certum est hac lege obligari non solum parochos, sed etiam Vicarios etsi curam actualem tantum exercentes, vel etiam *amovibiles* ad nutum, aut ad breve tempus deputatos, quamvis regularis sit paroecia aut parochus, quamvis reditus nulli sint aut admodum tenues ut ad congruam non sufficiant (Bened. XIV, Const. *Cum semper oblatas,* § 4-5). Unum igitur requiritur et sufficit ad hanc obligationem imponendam, hoc est, quod quis sit *proprius pastor determinati gregis,* ita ut illi 'cura animarum commissa' stricto sensu, ad normam Conc. Trid., c. I, sess. XXIII, *De ref.*, dici valeat. Videlicet (ut recte exponitur in dissert. cl. Tarquini, pro causa in Congr. de Prop. Fide, 23 mart. 1863, synoptice relata in *Act. S. Sedis,* I, 390 ss.) secundum divinam Ecclesiae institutionem *officium pastoris* sua integritate seu plenitudine, residet in solis Episcopis: proindeque soli Episcopi iure divino *absoluto* tenentur ad sacrificium pro populis offerendum: unde ab ipsomet Apostolo (*Hebr.*, V, 1 et VIII, 3) *omnis pontifex,* scilicet omnis princeps sacerdotum, non omnis sacerdos nominatur. . . . Ceteris autem, qui curam animarum habent, praeter Episcopos, non habent velut proprium sibique inhaerens pastoris officium ex divino iure, sed illud exercent ex ecclesiastica delegatione et institutione, intra quosdam limites. Quamobrem quum de his, parochis ceterisque, dicitur incumbere illis onus *ex divino praecepto* applicandi Missam pro populo, intelligendum est de iure divino, non absoluto sed *hypothetico* (cfr. etiam Bened. XIV, Const. *Cum semper,* et Pii IX, *Amantissimi,* in quibus non dicitur absolute ex divino praecepto mandari, sed de divino praecepto *descendere*). Hypothesis autem est triplex, quod nempe: I. Ecclesia commiserit aliqua ratione aliis ab Episcopis animarum curam; II. Quod illis commiserit, non modo mere facultativo, sed quo obligatio induceretur; III. Quod commiserit hanc animarum curam sine ea limitatione, quae excludat obligationem Missam applicandi pro populo. Quae tres hypotheses quum verificentur dumtaxat ex ecclesiastico iure et ordinatione, in potestate est Ecclesiae quemadmodum illas moderari vel auferre, ita etiam super oneris seu officii consequenti applicatione dispensare, aut eam temperare, quod reapse, urgente rationabili causa facere non recusat. Hinc etiam constat obligationem Missae pro populo, pari quodam gressu procedere, cum ecclesiastici territorii in *distinctas* partes distributione, per quam definite hypotheses indicatae ad effectum deducuntur: quamobrem, quum Codex iuris canonici, nuper eam quoque indixerit divisionem, qua territorius vicariatus apostolici et praefecturae apostolicae in partes distribueretur, 'quasi-paroecias' appellandas

(can. 216, § 3), consequens fuit ad harum quoque *peculiares* rectores, seu quasi-parochos, obligationem Missae pro populo applicandae, uno contextu cum parochis (can. 466, § 1), extendere, quamquam, pro locorum rerumque adiunctis, valde temperatam. Notum siquidem est in disciplina canonica quae Codicem antecessit Missionarios omnes, quamquam animarum curam in certis aliquibus locis assumerent (dummodo non gererent vices legitimorum pastorum in parochiis canonice iam erectis), semper *simplices Verbi Dei praecones, nulloque modo parochos* habitos esse (S. C. Prop. Fid., 28 ian. 1778) ac propterea non magis Missae pro populo applicandae obligatos, quam sacerdotes qui ab Episcopis exorati ad aliquam paroeciam derelictam ex charitate accederent, ut ibi sacramenta administrent (ead. S. C., 23 mart. 1863, 18 aug. 1866; 8 nov. 1882).

Hisce praemissis, dubium non videtur quin assentiendum sit sententiae Episcopi, quoad curatos secundi et tertii generis in factispecie recensiti: agitur nimirum in utroque de cura animarum in *parte* territorii iam constitutae paroeciae gerenda ex praecepto Episcopi, ut utilius bono fidelium consulatur: quae tamen pars non est dismembrata, sed suum retinet nexum cum reliquo paroeciae territorio, ita ut populus hisce Curatis ab Ordinariis speciali ratione commissus non desinat pertinere ad parochum totius paroeciae: sacerdos itaque deputatus ab Ordinario, quamvis in sibi commisso territorio suppleat in omnibus parochi vicem, non desinit esse *vicarius cooperator* parochi, ad tramites can. 476, § 2, et ideo ad Missam pro populo applicandam non tenetur, iuxta § 6 eiusdem canonis (cfr. etiam c. 475, § 2), sed huiusmodi onus, prout ante constitutionem huiusce 'Curatiae,' ita post ipsam constitutam, parochum, cuius est totus populus, gravat. Unica differentia quae tertium ab altero genere discernit, videlicet independentia a parocho in bonorum administratione, rem non immutat, quia tangit tantummodo temporalia, unde, ut a limine vidimus, nihil conficitur ad Missam pro populo quod attinet; hac etiam posita independentia, non efficitur profecto ut *proprius* habeatur *pastor,* distinctus omnino a pastore huius paroeciae, utque Curatia illi *in titulum* conferatur (cfr. c. 451, § 1); quae omnia necessaria sunt ne *duabus* personis propter *unam* paroeciam onus huiuscemodi imponatur.

Difficultatem e contrario, nec modicam, praebet quod Episcopus sentit de primo genere Curatorum in factispecie posito. Agitur nimirum de his sacerdotibus qui curam animarum gerunt pro catholicis qui dispersi vivunt inter acatholicos, intra limites *stationis* sibi assignatae, quasi eodem modo quo Missionarii curam gerunt fidelium dispersorum inter infideles intra limites 'quasi-paroeciae' sibi concreditae. Ex responsis antea datis pro locis Missionum deducit Episcopus hos Curatos nullatenus teneri ad Missam pro populo applicandam; verumtamen, innovato hodie per Codicem iure, summum quod inde deduci posset, id foret, hosce Curatos non teneri ad Missam pro populo applicandam nisi in nonnullis solemnitatibus recensitis in can. 306 (cfr. can. 466, § 1). At enim, quod gravius est, *stationes* hae non videntur adaequandae quasi-paroeciis, sed esse potius verae et propriae paroeciae, claret id ex can.

216, § 3: stationes enim in casu, non sunt partes territorii alicuius praefecturae seu vicariatus apostolici, sed definite dioecesis Wratislaviensis, in qua iuxta cit. can. non capit nomen et conceptus quasi-paroeciarum: ergo non restat nisi quod eaedem partes, quamvis nomine donentur *stationum,* sint verae paroeciae, quatenus nimirum repraesentant 'partem distinctam territorii' cui assignata est 'sua peculiaris ecclesia, cum populo determinato, suusque peculiaris rector, tanquam proprius eiusdem pastor, pro animarum cura.' Non enim dicitur populum harum stationum, quamvis inter acatholicos dispersum, pertinere adhuc ad aliquam praeterea paroeciam finitimam, aut alium habere proprium pastorem praeter rectorem stationum, in quem alium iuxta iam disceptata refundi posset hoc onus. Neque obiici potest quod huiusmodi stationes in beneficium erectae non sint, aut quod constitutam non habeant dotem: omisso enim quod ex actis nihil tale habetur, id quoque non obstaret, quominus paroeciae essent dicendae, ad tramitem can. 1415, § 3. Quod si in can. 710 recoluntur loca 'ubi paroeciae aut quasi-paroeciae nondum sint constitutae,' non ideo datur intelligi huiusmodi locis accenseri debere *distinctas* 'stationes' iam erectas et constitutas; sed traduci id debet tantummodo ad can. 216, § 2, ubi divisio Vicariatus in quasi-paroecias cum ea limitatione iubetur: *ubi commode fieri possit.*

Si itaque 'stationes' de quibus in prima specie, veris et propriis paroeciis accenseri debent, nullum dubium superest quin eorum rectores seu curati obligatione applicandae Missae teneantur et quidem omnino ad normam can. 339: quod tamen non obest, quominus ab Ecclesiae materna benignitate, urgente rationabili causa, onus illud possit temperari, ut a limine praenotatum est: sed de hisce agendum in casibus particularibus, in quibus a singulis recurrendum erit; dum in praesenti de generali norma constituenda agitur.

RESOLUTIO.—In plenario conventu diei 13 iulii 1918 Emi Patres S. Congregationis Concilii, perpensis omnibus, rescribendum super propositas preces censuere: 'Curatos primi generis *teneri*: curatos alterius et tertii generis *non teneri.*'

Facta autem insequenti die SSmo Dno Nostro relatione per infrascriptum S. C. Secretarium, Sanctitas Sua datam resolutionem approbare et confirmare dignata est.

I. MORI, *Secretarius.*

CERTAIN RUBRICAL DOUBTS SOLVED BY THE CONGREGATION OF RITES

(*January* 10, 1919)

ROMANA

DUBIA

Sacrorum Rituum Congregationi sequentia dubia, pro opportuna solutione, proposita fuerunt; nimirum:

I. An occurrente Vigilia S. Thomae Ap. in Feria Quatuor Temporum, de qua fit Officium cum respondente Missa, legendum sit Evangelium Vigiliae in fine Missae?

II. Si in Festo de quo recitatur Officium cum Missa, etiam Feria et Vigilia vel duae Vigiliae simul occurrant, de quanam legi debeat Evangelium in fine Missae?

Et Sacra Rituum Congregatio, audito specialis Commissionis suffragio, re mature perpensa, respondendum censuit:

Ad I. *Affirmative* iuxta Rubricas et Decreta.

Ad II. De illa dicitur Evangelium in fine, de qua primo facta est Commemoratio. Quod si hoc Evangelium sit idem de Festo, tunc Evangelium in fine erit de altera quae secundo loco commemoratur, iuxta Decretum n. 3844 *Romana* 5 februarii ad IX.

Atque ita rescripsit et declaravit, die 10 ianuarii 1919.

✠ A. Card. Vico, Ep. Portuen. et S. Rufinae,
S. R. C. Praefectus.
Alexander Verde, *Secretarius.*

L. ✠ S.

THE WITHDRAWAL OF SPECIAL FACULTIES GRANTED TO PRIESTS DURING THE WAR

(*February* 22, 1919)

SACRA CONGREGATIO CONSISTORIALIS

DECRETUM

DE CESSATIONE QUARUMDAM FACULTATUM QUAE SACERDOTIBUS DURANTE BELLO CONCESSAE SUNT

Quum atrox bellum, quod plures annos Europam cruentabat, Dei miserentis gratia, finem tandem habuerit, oportet ut, cessante causa, facultates quoque extraordinariae circumscribantur quae sacerdotibus, militaribus copiis addictis, in suum ac militum bonum fuerunt tributae.

Ne autem, in re tam gravi, angustiis et ambiguitatibus pateat locus, SSmus D. N. Benedictus PP. XV censuit expedire ut pressius determinetur quaenam ex praedictis facultatibus cessasse dicendae sint.

Itaque, de mandato SSmi, declaratur natura sua finem habuisse facultates ut supra sacerdotibus factas, quae sequuntur:

(1) absolvendi in quibusdam casibus milites generali formula, seu communi absolutione sine praecedenti confessione;

(2) absolvendi ab omnibus censuris et casibus reservatis;

(3) Missam celebrandi in quocumque loco, etiam sub dio, remoto quidem irreverentiae periculo;

(4) bis in die, etiam una hora post meridiem, et in casibus extraordinariis vel non servato ieiunio Sacrum peragendi;

(5) Missas votivas loco propriae a rubricis praescriptae legendi;

(6) asservandi SSmum Sacramentum in bellicis navibus et in stativis castrorum valetudinariis;

(7) benedicendi unico crucis signo coronas, cruces, numismata cum applicatione indulgentiarum;

(8) sese eximendi a recitatione divini officii, ac pariter idem officium in alias pias preces commutandi.

Hisce demptis, reliqua quae attinent ad iurisdictionem Ordinariorum castrensium, usque dum eorum ministerium subsistat et servetur, sarta tectaque sunt.

Curae tamen ipsorum Ordinariorum Castrensium erit vigilare ut omnia quae pertinent ad sacrae liturgiae observantiam, praesertim in Missae celebratione, a sacerdotibus sibi adhuc subditis adamussim et ex integro serventur.

Officii pariter omnium Ordinariorum locorum erit causare ut sacerdotes in dioecesim e militia reversi ad pristinam perfectamque sacrorum rituum observantiam redeant.

Datum Romae, ex Secretaria S. Congregationis Consistorialis, die 22 februarii 1919.

✠ C. Card. De Lai, Ep. Sabinen., *Secretarius.*
✠ V. Sardi, Archiep. Caesarien., *Adsessor.*

L. ✠ S.

DOUBTS REGARDING THE NOMINATION OF ADMINISTRATORS OF VACANT SEES IN THE UNITED STATES

(*February* 22, 1919)

SACRA CONGREGATIO CONSISTORIALIS

DE NOMINANDIS ADMINISTRATORIBUS DIOECESANIS

Quum Delegatus Apostolicus in Foederatis Americae Statibus haec dubia definienda proposuisset, scilicet :

(1) utrum dispositiones particulares Concilii plenarii Baltimorensis, quoad ius nominandi administratorem dioecesis, sede vacante, adhuc vigeat ; an per novum Codicem abrogatae sint ;

Et quatenus negative ad primam partem :

(2) an servandum sit praescriptum canonis 427 ;

Eñi Patres Codici interpretando praepositi, die 24 novembris 1918 responderunt :

Ad Im, negative ad primam partem ; affirmative ad secundam.

Ad IIm, affirmative, et ad mentem.

Mens autem haec est : 'Quatenus speciales circumstantiae *hic* et *nunc* impediant quominus in illa regione applicetur canon 427, S. C. Consistorialis instructiones opportunas, *ad tempus* servandas, praebeat, dempto omnino Episcopis iure nominandi Administratorem dioecesis, mortis causa.'

SSñus autem Dominus Noster resolutiones Commissionis Codicis ratas habuit et confirmavit.

De relato tamen Cardinalis Secretarii S. C. Consistorialis, attentis peculiaribus adiunctis in quibus Ecclesiae Foederatorum Statuum Americae versantur, eadem Sanctitas Sua statuit et decrevit, ut in omnibus dioecesibus in quibus quinque saltem vel sex Consultores dioecesani non adsint—firma prohibitione a Commissione Codicis facta—Archiepiscopus aut Episcopus senior provinciae ecclesiasticae providere possit,

cum ratihabitione Delegati Apostolici, pro nominatione Administratoris dioecesani durante sedis vacatione.

Idque per triennium, dummodo interim coetus Consultorum non fuerit auctus ad numerum superius indicatum.

Datum Romae, ex Secretaria S. Congregationis Consistorialis, die 22 februarii 1919.

✠ C. Card. De Lai, Ep. Sabinen., *Secretarius.*
✠ V. Sardi, Archiep. Caesarien., *Adsessor.*

L. ✠ S.

A DECREE PROVIDING FOR VACANT OFFICES AND BENEFICES DURING THE WAR IS NOW RECALLED

(*February* 26, 1919)

SACRA CONGREGATIO CONCILII

DECRETUM

REVOCATUR DECRETUM DE PROVISIONE OFFICIORUM ET BENEFICIORUM DURANTE BELLO

Cum ob belli cessationem e clericis servitio militari adstrictis plerique iam dimissi proprias dioeceses et sedes repetierint et reliqui brevi dimittendi in eas sint redituri, congruum est ut, mutatis rerum adiunctis, decretum huius S. Congregationis Concilii de provisione officiorum et beneficiorum diei 14 novembris 1916 suam vim et robur exerere desinat. Illud itaque revocatur, prout per praesentes litteras de mandato SSmi decernitur et declaratur esse revocatum et non amplius vigere: proindeque Ordinarii redintegrantur in suas facultates eadem officia et beneficia conferendi, servatis tamen de iure servandis, et praesertim canonibus 147-182 et 1431-1447 *Codicis Iuris Canonici,* necnon prae oculis habita Instructione edita a S. Congregatione Consistoriali *De clericis e militia redeuntibus* diei 25 octobris 1918.

Datum Romae, ex Secretaria eiusdem S. Congregationis Concilii, die 26 februarii 1919.

F. Card. Cassetta, *Praefectus.*
I. Mori, *Secretarius.*

L. ✠ S.

REVIEWS AND NOTES

LUMEN VITAE. Par Adhémar d'Alés. Paris : Beauchesne.

THIS is a work of erudition inspired by a love of religion. Briefly considered, its plan is twofold : on the one hand, to trace the spiritual gropings towards the supernatural of man in the pagan world; on the other hand, to describe the attainment of his ideal in the Jewish and Christian world. 'Considéré dans son ensemble,' says Père d'Ales, 'le monde païen est romain à l'occident, il est grec à l'orient.' His treatment of the pagan period is by no means exhaustive, but it makes pleasant reading and gives the general reader an idea of the religious mode of thought in the Pagan East and West. He describes briefly the religious attitude of the chief writers of antiquity, and shows how the 'Pax Romana' prepared the ground for Christianity. Further, he points out how ultimately the rigid, practical religion of Rome came to be disturbed by contact with Oriental mysticism. 'Une certaine inquiétude des âmes est le trait commun de ces races diverses qui commencent à faire sentir aux Latins la contagion de leur mysticisme troublant. Impression profonde des phénomènes de la nature, préoccupation du mystère de la vie, éblonissement de la reflexion qui s'éveille, aspirations plus ou moins vagues vers un idéal supérieur, fait de lumière et de pureté ouvert aux perspectives d'outre-tombe, proposé aux individus : autant de nouveantés qui, d'orient, rayonnent sur l'Occident latin. Avec certaines différences, le même phénomène s'est montré successivement dans les domaines grec, egyptien, et iranien.' Père d'Alés finally traces the growth of the Messianic idea amongst the Jews, and describes the religious state of Israel at the coming of Our Lord and the realization of the ideal in Him.

M.

YOUR NEIGHBOUR AND YOU. By Rev. Edward F. Garesché, S.J. New York : Benziger Brothers. 1919.

FATHER GARESCHÉ has the happy knack of saying pithy things about ordinary things. The present work may be said to be a manual of instruction on how to show oneself a Catholic in the ordinary spheres of life. He begins with the fundamental thing, the conviction that our life on earth is a pilgrimage. Then he fixes for us practical sign-posts on the road. People tell him they cannot fast from food. 'Very well,' he replies, 'fast from uncharitableness.' Don't be the kind of friend who is so kind that he will let a man go to hell because advice would ruffle him. On the other hand, don't preach out of season. Here is a simple piece of character analysis worth quoting :—

In fine, look on this picture and on this. Our friend Dick has a fearfully keen nose for controversy. His type, I own, is somewhat rare

in these days. Give him but a little opening and he will argue away for hours, with the slightest encouragement, nay, in spite of the most evident distaste and disgust on the part of his unwilling victim. Dick means well, to be sure (his selfishness is half unconscious); he knows a great deal, his speech is fluent and sincere; he only lacks the heavenly gift of tact and opportuneness, but lacking this, his acrid fluency has made many a helpless fellow sore on religion and savage against pious talk for all after days. Tom, on the other hand, and his name is many, runs quite to the other extreme. He is the discreetest fellow in the world, and sheers off from questions of belief and principles like a timid hare at the hunter's halloo! He seldom breathes a word that can benefit anyone, his talk is all remote from religious issues, and most of his friends scarcely know whether he is a Catholic or a follower of Huxley, or of the German visionaries. He breaks a commandment. His light never shines at all! Harry, on the other hand—God bless him!—holds the difficult mean. When he speaks of religious matters he does it in as easy, interested a way as when he talks politics or business. His mind runs naturally on the theme, and his interest carries you with him. He knows and he thinks on what he knows, and remembers it readily and in opportune connections. There is neither false shame nor harsh self-assertiveness in his tone. You see earnest-faced men listening to his quiet explanations with a sort of steady wonder; and when he pauses you notice that they sink back and murmur: 'By Jove! that sounds sensible. I never could understand just what you Catholics thought on that point before.'

A fair specimen of the direct, familiar manner of the book.

M.

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THE NUMERICAL DISTINCTION OF SINS

BY REV. DAVID BARRY

THE fact that sins have different species is one of the most obvious reasons why they should be considered numerically distinct; in other words, why we should be bound to confess them, not only in virtue of the obligation of making known their different kinds, but also by reason of the obligation of telling their number.[1] For if a particular object has two species of malice, and these are apprehended by the intellect and embraced by the will, it is manifest that this involves a twofold act of each of the mental faculties and, consequently, a twofold sin in the case of the will. And the application of this principle involves no particular difficulty beyond that attaching to finding out when acts have specifically ditsinct malice.

When this is not the case, one principle laid down by the theologians to assist us in the enumeration of sins is, that they increase in proportion to the number of physical or mental acts that go to make them up. But if this principle is not to yield a far greater number than the theologians are willing to recognize, it is of the first importance to limit the sphere of its application considerably. And for this purpose sins are divided into three classes: (*a*) those that are purely internal; (*b*) those that are internal indeed, but are intended to be externalized or materialized; (*c*) sins that have attained their full external complement.

The first class comprises thoughts and desires deliberately entertained about some object, without any design or idea of committing the corresponding external action. The sinful pleasure or complacency in such cases comes from the fact that certain acts are represented in the memory or in the imagination, as the case may be. And though there might be a certain pleasure aroused in the sensitive faculties in the class of cases in question—as there

[1] Lehmkuhl, *Theologia Moralis*, i. n. 349 (11th edition).

will be if the thoughts are entertained for a considerable time, and especially if they are of a certain species—this pleasure is merely the effect of the internal act, and not the object of it or the cause of it. These sins, consequently, are looked on, when there is question of summing up their malice, as being purely internal. And while the same subject is pictured in the memory or imagination, reflected by the intellect, and embraced *without interruption* by the sinner's will—after he has adverted to its sinfulness—there is merely the one sin committed. Though, of course, this is becoming more heinous every moment. But if the sinful object disappears from the imagination and the intellect, and the impulse of the will is diverted to something else, the act is at an end. So if the mind deliberately occupies itself with the same subject again, this marks the beginning of a new sin.

Very many theologians, however, are careful to say that a very short interval is not sufficient to break the continuity of the act, and to entail on the sinner the duty of confessing that he has been guilty on two occasions. Thus Lehmkuhl says[1]: '*Brevis omnino* interruptio *non voluntaria* non obstat quominus actus peccaminosus numero idem produci censeatur.' And, according to Lugo: 'Quia non habuimus animum discedendi ab ea cogitatione, sed casu et naturali aliqua distractione, interrumpitur; censetur adhuc moraliter idem congressus (ut ita dicam) cum objecto.'[2]

St. Alphonsus, on the other hand, treating of these *peccata cordis quae interne omnino perficiuntur*, instances 'odia,' 'haereses,' 'delectationes morosae,' 'desideria turpia,' and says: 'ista statim ac multiplicantur, interrumpuntur; ita ut tot sint peccata, quot sunt actus voluntatis illis consentientis.'[3] And the reason he gives is that 'quoad tales actus non pendet unus ab alio et ideo nequeunt moraliter continuari.' However, he agrees with Lugo that if two internal acts proceed from the same onset of passion, a very short interval between them need not be taken into account, and they may be considered to constitute one mortal sin.[4]

I am not quite certain what is the real basis of the view

[1] Loc. cit.

[2] *De Poenitentia*, disp. xvi. sect. 14, n. 569.

[3] *Theologia Moralis*, lib. v. cap. i. n. 37; *Homo Apostolicus*, tract. iii. n. 58.

[4] *Theol. Moralis*, n. 37; *Homo. Apos.*, n. 58.

of those who are not disposed to attach any importance to a very short interruption of the internal acts, especially if it be involuntary. Perhaps it is that in the estimation of ordinary people, two acts having the same object are to be reckoned only as one, if the interval between them is very short. For we are told that in enumerating our sins we are not to look for scientific precision, but are to be guided by what those who are not psychologists would think a true estimate. Or it may be—though I consider this less likely—that the theologians in question believe that if the interruption be very short, it is only apparent, and that the intellect and will are all the time busied with the sinful idea or affection; and that their adhesion to it has, by the interposition of the other idea, become faint and unconscious or half-conscious, but has not ceased altogether.

I suppose the real truth of the matter in controversy is that the effect of the interruption depends on many circumstances: on the comparatively alluring qualities of the sinful image and of the intervening one, and on their mutual incompatibility. Thus, if cherishing an impure thought is interrupted by a heartfelt appeal—no matter how short—from the sinner to God or the Blessed Virgin or St. Joseph, for help, the sinful character of the act, if not the mental image on which it is based, ceases. And if this is harboured again, there can be no doubt that a distinct sin is committed. If, however, the interruption were caused by another sinful act, or by an indifferent one, it is quite possible that this may occasion a mere partial diversion of the mental faculties, and leave intact the continuity, though not the vividness, or volume—if I may say so—of the act. The words of Lugo, in this connexion,[1] are very apposite: 'Non posse eandem mensuram aut regulam tradi pro omnibus actibus malis: aliqui enim facilius interrumpuntur et brevius durant, v.g., blasphemia interior, et alii actus similes. . . . Alii vero longius durare solent, ut desiderium turpe, odium proximi et similes. Et in iis longius durant qui et majori et vehementiori passione aut concupiscentia procedunt.'

In conclusion, it is well to note what Lehmkuhl[2] says: 'Qui vero per totum diem internis illis peccatis inhaeret tamen aliquoties censetur peccatum numero auxisse, cum impossibile videatur ultra 2-3 horas idem numero peccatum

[1] Op. cit., n. 570. [2] Loc. cit.

protrahere'; and to follow his advice: 'In praxi vero sufficit indicasse spatium dierum vel hebdomadarum, si sic quasi continenter pravae cogitationes fovebantur.'

The second class into which sins are divided, in order to have the principle of different acts applied to their enumeration, are those that are entertained in the mind with a view to their external consummation. That is to say, the purpose or design is formed of committing an external sin, but for some reason or another it is not realized. This may be owing to the fact that the sinner gets the grace of repentance, or because he finds it impossible to carry his design into execution.

Now, all the mental acts that go to form a purpose of this kind constitute only one sin. Thus *electio*, *intentio*, *usus*, etc., are linked together by the deliberate focussing of them on the same external act; and in confession it is enough for a person to say that he meant to commit the sin in question, say, theft. Furthermore, even though the plan suffers interruption, its numerical identity is not necessarily destroyed by such a distraction or space of time as would sever the connexion between mere sins of thought, conceived without any reference to external acts. So that sleeping, eating, or giving attention to the ordinary business of the day would not entail confessing the sins as twofold. This, at least, is the opinion of Lugo, who says: 'Sicut ibi[1] diximus, illud non interrumpi per somnum, aut similes interruptiones communes et ordinarias; sic dicimus de voluntate efficaci interna, dum per talem concatenationem ordinatam ad opus operatur.'[2]

On the other hand, an opinion the direct opposite of this is considered probable by St. Alpnonsus—one, namely, to the effect that any sort of distraction, even if it be involuntary, is fatal to the unity of these acts. The Saint's own view is that the duration of the interruption is the vital matter in the case. Some, he says, consider that one day is enough to interfere with the continuity, while others require as much as a year. As for himself, he believes that an interval of two or three days is the very most that is compatible with the identity of the sinful purpose. 'Ego puto impetum unius actus difficulter posse protrahi (ordinarie loquendo) plus quam ad duos vel tres dies ad summum. Hinc qui perseverat in mala

[1] Where he speaks of external sins.
[2] Op. cit., N. 567.

voluntate ultra duos vel tres dies, explicare debet tempus, ut sic intelligatur moraliter numerus actuum internorum circa peccata externa.' [1] An example or two from Tanquerey in a contrary sense will help to make the matter concrete: 'Propositum legendi pravum librum qui prae manibus habetur, interrumpi censetur per intervallum plurium horarum aut saltem unius diei, dum propositum furandi aut vindictam sumendi per plures dies aut hebdomadas persistere potest.' [2]

If any steps have been taken to effectuate the sinful purpose all the theologians agree that the different internal acts acquire thereby what I may call a much greater consistency and vitality. As St. Alphonsus says: 'Actus voluntatis si ex prima voluntate procedant et moraliter permaneant in aliquo effectu, qui conducat ad consummandum peccatum externum, per qualecumque tempus duret prava voluntas, unum solum peccatum constituunt.' [3]

Of course, if a formal retractation or detestation of the evil purpose were elicited, there can be no question but that this would mark the term of the sinful act; and an unfortunate renewal of it would have to be confessed as a quite distinct sin. Furthermore, an implicit retractation of the sinful thought has the same effect. Thus, to do a striking service to one's enemy, or to meet him on terms of friendship, is incompatible with cherishing the design of doing him a grievous injury. And such a purpose subsequently existing in the mind is manifestly newly conceived and quite distinct from the ill-will that went before the act of kindness.

It is to be noted that what are called *desideria inefficacia* or velleities that are in a sense intermediate between mere sinful thoughts and the purpose of committing external sins, are supposed, for the purpose of determining their numerical distinction, to belong to the former and not to the latter. And so a much shorter interruption suffices to give rise to a new sin in their case, than in circumstances where the sinner definitely plans and makes up his mind to the external sin. So if a person says to himself, 'I would commit this sin if I could,' and at the same time he sees clearly that it is quite impossible, such a thought is more easily ousted from the mind, by the access of other ideas,

[1] *Theologia Moralis*, n. 39. [2] Ibid., i. n. 495. [3] Ibid., n. 40.

than a thought directed to the same object conceived as quite possible of attainment.

As for a sin that has been fully externalized in the sense *contemplated by the sinner*, it is supposed to embrace all acts that usually lead up to it, and are the natural complement of it. And when it is confessed they, without being specially mentioned, are supposed to be confessed as well; and the sorrow brought to bear on the principal sin extends to these subordinate ones. Thus, if a criminal determined to kill an enemy, and did kill him, the various internal acts of hate, that originated the sinful purpose and that accrued in the process of giving effect to it, are implicitly brought to the confessor's notice when the murder itself is confessed. As also are, generally speaking, the different external acts that were a means to the end in view, such as providing a weapon and selecting a safe place for the deed.

It is, of course, perfectly true that these several acts were distinct sins—and heinous ones, too—but when the crime in which they issued is told by the repentant sinner, his confessor understands that they or substantially similar acts preceded it. And the same is true of sins [1] that are the natural and inevitable consequence of some one that is confessed.

But if the acts that led up to or accrued from the principal sin were such as would not naturally be anticipated, or even though they were natural enough in the circumstances, but belonged to a different species from the main sin, they must be explicitly declared in confession. Thus, if a murderer made his victim drunk in order the more easily to effect his evil design, the confessor, unless he were expressly told it, could have no idea that this additional crime had been committed. Or if a thief bribed one charged with the custody of the object of the theft, this sin of scandal, though in the case very closely connected with that of theft, is plainly, for confessional purposes, quite distinct from it.

Similarly, if in the first instance a person merely meant to compass what were sinful means to an end, and afterwards committed the complete sin, he is bound to confess not only this but also the previous sinful acts. For these,

[1] In regard to certain sins, at least, this is merely probable. See *Homo Apostolicus*, n. 62.

having been sought as a direct end in themselves, were not subordinated to, and had no unity with, the ultimate grievous excess committed.

According to St. Alphonsus [1] it is the common opinion that if a person were unable to complete the sin as he intended, he is bound to tell the circumstance that he devised means to that end. And this not only if the means were bad in themselves, but in every case. Because the sin is no longer purely internal, but is externalized in the means, which, in turn, have become sinful owing to the bad intention of which they are the outcome.

Having now considered the numerical distinction of sins in so far as it arises from different acts, I come to say something about another principle discussed by the theologians, namely, that even one act if it has several sinful objects or terms gives rise to as many distinct sins. Examples of such will readily occur to everyone. Thus, a man may have two or three enemies who are invariably linked together in his mind, and he harbours a wish that some evil should befall them. Or it may be that his enmity drives him further, and he kills a valuable animal that is their joint property. In such cases is he guilty of only one sin, because he has committed only one internal or external act, as the case may be? Or does he commit several sins by reason of having the desire to injure, or of having actually injured, several?

Common sense would seem to suggest that a person who has, for instance, by dropping a bomb, killed a number of persons, should tell the number; and that he is not doing his duty by saying that he committed a sin of murder, or even that he murdered several. And as a fact, this is the view which is held by St. Alphonsus,[2] and which is the more common. The Saint adduces two reasons in its favour. The first is one drawn from analogy, and it is to the effect that as an act which has several objects that are specifically distinct, gives rise to several distinct sins which must be explained in confession, so, *a pari*, an act that has several objects that are numerically distinct begets not one sin, but several.

His second argument, which he considers stronger, is that it is plain from a consideration of certain sinful acts that they individually contain more than one element of malice.

[1] *Theologia Moralis*, n. 42.

[2] Ibid., n. 45.

And he gives the following example, taken from Lugo[1]: 'Si enim conjugatus copulam habet cum conjugata nemo negat (ut ipse Lugo, n. 258 fatetur) duplicem committere injustitiam, unam, quia violet jus suae uxoris, alteram quia cooperatur ut illa violet jus sui mariti. Ergo cum eodem unico actu bene possunt esse plura peccata, numero diversa contra eamdem virtutem.' Lugo, in analysing this case, says that the two elements of malice of which the parties are guilty are specifically distinct, because each of them violates the virtue of justice in ways that are substantially different—one is a direct violation of the right of the sinner's own partner, and the other an act of co-operation in an injustice of which the accomplice is primarily guilty. But this reason does not commend itself to St. Alphonsus, who replies that, 'eadem virtus justitiae eodem modo, non diverso, quo obligat eum ad servandam fidem suae uxori, obligat etiam ut non cooperatur, ne illa frangat fidem suo viro debitam.' And so he holds that each is guilty of two sins, not because the two objects of their individual acts are specifically distinct, but because they are numerically so.

However, there are great names in favour of the view that sins do not increase in proportion to the number of sinful objects in which an act terminates. Amongst these, besides Lugo (hesitatingly), are Suarez, Busenbaum, Laymann, etc. One reason in its behalf given by Lugo[2] is ingenious, whether it is sound or not. He argues that a person who injures, or determines to injure, a crowd or a community, without knowing how many persons it is composed of, can only be guilty of one sin—though of very aggravated malice—because any definite number of persons is not before his mind. Lugo's implication being that there is no reason why he should be considered guilty of ten sins more than of two or twenty. 'Non enim committit multitudinem aliquam peccatorem confusam et indeterminatam, quia omnis multitudo, quae datur a parte rei, est determinata et certa. Ergo fatendum est committi unicum peccatum cum ordine ad illam multitudinem hominum confusam, et non plura peccata distincta.'

The reason for denying that numerical distinction arises from several objects, advanced by Suarez, is that it is impossible to have several elements of malice numerically

[1] Op. cit., disp. xvi. n. 258.

[2] Op. cit., n. 131.

distinct in the same individual act, just as it is impossible to have several numerically distinct accidents inhering in the same subject.[1] St. Alphonsus replies that this reason is true only in the case of physical science, and has no applicability in moral questions when, in the judgment of people generally, a single act is equivalent to many. However, in practice, Suarez, to be consistent, as well as St. Alphonsus, should insist on the penitent's disclosing the individual elements in the sin of which he was guilty—the Saint, because they were parts of the same act; and Suarez, because they were necessarily the outcome of different acts.

The Saint illustrates, and at the same time establishes, his principle by applying it to a number of cases :—

I. If a person kills several by one act, he commits as many sins as there are victims.[2] Lehmkuhl modifies this solution somewhat.[3] He says : 'Qui plures uno ictu occidit, debet numerum explicare, si singulos, ut erant singulae personae, occidere volebat ; secus, si tantum ut in pluralitatem voluntatem et actionem dirigebat (ut v.g. qui totam aliquam exercitus cohortem interemit, navim cum vectoribus demersit, agmen curruum viae ferratae in profundum egit).' St. Alphonsus also holds that if in the same conversation a person lessens or takes away the good name of several, he is bound to explain distinctly the number defamed, even if they be members of the same family. But if, says Lehmkuhl,[4] 'communitati qua tali detrahit, satisfacit exprimendo communitatem laesam esse, etsi distinctum numerum membrorum scit.'

II. One who steals what is the joint property of two or more commits a corresponding number of sins. What would be Lehmkuhl's solution of the case may be gathered from the former passage, which I have quoted from him.

III. A person who, intending to steal £10 from the same owner, does so, not altogether, but in several sums, is considered by St. Alphonsus, in his *Moral Theology*,[5] to commit as many sins as there are separate thefts, provided a considerable interval intervened between these. But in the *Homo Apostolicus*[6] he allows that the opinion is probable which only obliges the thief to confess his guilt as one sin. However, of course, if the separate acts were

[1] Apud Sanctum Alphonsum, op. cit., n. 45.
[2] n. 46.
[3] Op. cit., n. 352 (3).
[4] n. 352 (2).
[5] n. 44.
[6] n. 63.

not unified by one intention, he would be obliged to mention the occasions on which he has taken grave matter.

IV. The Saint holds that a person who, by one act, makes up his mind to break the fast on several days, or who has one wicked desire that evil may befall several persons, is guilty of as many sins as there are objects in the acts in question.

V. He holds,[1] against many authors, but only as more probable, that a person who puts different affronts on his neighbour, or who takes away his character by advancing *different charges* against him, is guilty of as many sins as there are elements in the injury done. He bases this solution on the ground that it does not follow, because a person is guilty of one sin, or is disentitled to respect for some reason, that he is an all-round bad character. St. Alphonsus adds, however, that abuse arising from ordinary quarrels and disputes is seldom a mortal sin.

VI. He agrees[2] with Lugo that a person who is guilty of detraction before several, commits only one sin—though of an aggravated character[3]—because our right to our good name, whether in the estimation of one or of many, is indivisible.

VII. In answer to the question how many sins one commits who wishes that several sorts of evil—loss of character, poverty, death—should befall his enemy, St. Alphonsus[4] says that one opinion, which is held by Lugo and others, is to the effect that there is only one sin, 'specie et etiam numero, si mala optentur in eodem impetu,' because sins of ill-will, whatever form it takes, have not a different specific malice when the various kinds of misfortune are an object of desire to a person, precisely in so far as they import evil to his enemy, irrespective of what kind it is.

A second opinion, mentioned by the Saint—that of Suarez—is that if the evils desired are specifically diverse, and are individually present to the mind of the sinner, several sins are committed; because desires are specified by their objects. And St. Thomas, the Angelic Doctor, is

[1] n. 48.

[2] n. 49.

[3] As is well known, of course, opinion is very much divided as to the obligation of confessing any specially heinous circumstance of a sin, other than one giving rise to a specific distinction. The liberal view held by St. Alphonsus (*Theol. Moralis, de Poen.*, n. 468) is the more probable.

[4] n. 50.

held to favour this view where he says[1]: 'Si ille qui maledicit, velit malum occisionis alterius, desiderio non differt ab homicida.' A third opinion referred to by St. Alphonsus is that of Lacroix, but it does not differ substantially from that just mentioned.

The truth of the matter is, I suppose, that only one sin is committed, unless the act of appetition covers the peculiar and precise injury accruing from each of the visitations, as well as the common injury to the enemy they entail.

Of course, it is clear that if a person were wicked enough to wish seriously that some one were dead and damned, a vague and indefinite statement that he wished evil to his neighbour would not suffice in confession; for his sin has in it the special malice of a direct insult to God. The theologians are unanimous in holding that if the sinner has had a definite *purpose* of himself inflicting the different sorts of injury, or of getting them inflicted, he must specify what they were. 'Nulli dubium vero explicandas esse species malorum, si desiderium sit efficax.'[2]

The practical conclusion to be adopted in the generality of cases is well summed up by Lehmkuhl: 'Qui plura, et diversa infortunia optat inimico, illa explicare non debet quia omnia haec sub eodem conceptu mali optat; aliter si optasset diversa mala inimico *inferre.* Nam in ultimo casu objectum peccaminosi desiderii sunt aliae actiones peccaminosae, quae, si sunt aut numero aut specie distinctae, totam suam specificam et numericam malitiam transfundunt in illud unum pravum desiderium.[3]

DAVID BARRY.

[1] IIa, IIae, Qu. 76, art. 4 ad 2.
[2] St. Alphonsus, loc. cit.
[3] Op. cit., n. 352 (4).

SUBSIDIARY MATRIMONIAL QUESTIONS IN THE NEW CODE

By Rev. M. J. O'DONNELL, D.D.

In previous articles we tried to indicate in outline the effects of the new legislation on pre-existing law and practice in regard to engagements, banns, impedient and diriment impediments, and the validation of marriages invalidly contracted.[1] On the relations of the *Ne Temere* and the Code some remarks were made in another quarter.[2] There are a few subsidiary questions left: and it may be well to group them together, and see how far their solution is affected by the remaining canons of the Code.

Divorce.—The teaching on divorce has shared the history of most of our dogmas. It was questioned by many, and openly attacked and repudiated by some, before the date of final definition. In the early centuries, especially, individual Catholics of the foremost rank held views that would now be considered strange and heterodox, and in some localities practices were tolerated or approved that savoured strongly of the 'repudiation' policy of the Jewish dispensation. But these, after all, were only ripples on the surface, and had little or no effect on the onward sweep of Catholic development. They furnish no stronger argument against the teaching than do similar views and practices in regard, say, to the Incarnation or to the whole Penitential discipline. Whatever individuals might do or think, the Church championed the principle that no power but death could free the Christian from the bonds of a ratified and consummated marriage, and, when the time came, she enshrined it in a formal definition.[3] In her

[1] I. E. Record, Fifth Series, June, October, December, 1918; February, March, April, 1919.

[2] *I. T. Quarterly*, April, 1919, pp. 133-55.

[3] Trent, Sess. 24, cc. 5, 7.

struggle against the laxer tendencies she based her teaching essentially, of course, on the words of Christ: but she emphasized strongly, too, the evil results that, she asserted, would follow from the opposite policy—to all of which the recent developments in non-Catholic countries bear sad and eloquent testimony. For, as Pope Leo XIII put it,

how great are the evils of divorce it would be almost impossible to state. By reason of it, matrimonial agreements are made liable to change, mutual good-will is weakened, and dangerous inducements are offered to marital infidelity: injury is done to the up-bringing and education of children; opportunity is offered for the breaking of domestic ties, the seeds of discord are sown between families, and there is a lowering and lessening of the dignity of women—exposed as they are to the risk that, when they have served the desires of men, they will be cast aside and forsaken.[1]

But it was only to 'ratified and consummated' marriages that these principles applied, and still apply (1118), in all their strictness. It was they and they only, that, according to Christian doctrine and concept, typified fully the indissoluble bond between Christ and the Church, on which the Apostle relied in his inspired description of the sacred properties of marriage.[2] If even one of the conditions failed, the prerogative of absolute indissolubility went with it. When the marriage was pagan, though consummated, and when one of the partners was converted to the Christian faith, the bond was considered so frail that even the great apostle of Christian marriage made express provision for its dissolution,[3] and established a precedent that the Church has followed ever since (1120). And when the marriage, though Christian, was not consummated, the same principle was allowed to operate. Solemn religious 'profession' was unknown in St. Paul's time, but later on it came to mark the final stage in Christian self-denial and perfection: a spiritual death itself, it was allowed to produce on non-consummated marriages the same effect as natural death would on marriage of any kind; and the teaching, solemnly ratified by Trent,[4] finds its place in the new legislation (1119). For centuries past the Church has been allowing complete divorce when, in the case of merely ratified marriage, there are very strong reasons for not holding

[1] Const. *Arcanum.*
[2] See *Cath. Ency.*, article on Divorce.
[3] 1 Cor. vii. 15.
[4] Sess. 24, c. 6.

the partners to their bond[1]: and, though the canonists could allege no text of law till the new Code appeared[2] (1119), they had no trouble in arranging the facts in their proper setting. For the principle on which she acted was very old. It was realized so strongly ages ago that she had to restrain her experts from carrying it beyond all reasonable bounds. Some of the more daring, it may be remembered, saw in a non-consummated marriage nothing more than a special form of engagement: others viewed it so lightly that they claimed it was voided *ipso facto* by a subsequent consummated marriage.[3] These were aberrations, of course, and were soon repudiated by the Church; but they show very clearly that, from the point of view of permanence and indissolubility, the non-consummated marriage stood on a lower plane and had to be judged on principles peculiar to itself.

And, if anyone objects that this involves a rejection of Christ's teaching—'whom God has joined let man not separate'—we have only to repeat once more that the principle applied only to complete, Christian marriages, and that with unions of a less perfect character the Church was empowered to deal as occasion arose. Our best proof of that is found in the action of St. Paul. As against an unbeliever, who holds himself free to maintain that the Apostle misinterpreted the mind of Christ, the argument, we admit, is far from conclusive: it needs to be supplemented by others—on the divinity of Christ and on the nature and claims of the society He founded—that lie outside our present scope. But to anyone who admits even the fundamentals of the Christian faith it can hardly fail to carry conviction. St. Paul knew the teaching of Christ, and repeated it in words as strong as the Gospel text itself.[4] He can have had no intention of establishing a policy that would run counter to the wishes of Christ in this respect. He knew, moreover, that Christ had made no *special* provision for the converted infidel whose partner refused to continue matrimonial relations.[5] Yet, in spite of all that, he declared most expressly and definitely that the convert was free to enter on another married union.

[1] Especially since the time of Martin V and Eugene IV.

[2] Some even questioned the power; see Lehmkuhl. ii. 924.

[3] See I. E. Record, February, 1919, p. 125. Cf. Canon 1069.

[4] 1 Cor. vii. 10, 11: 'the Lord commandeth that the wife depart not from her husband . . . let not the husband put away his wife.'

[5] 'To the rest I speak, not the Lord' (1 Cor. vii. 12).

All of which proves, as fully and completely as can be desired, that Christ had left His Church a *general* power of dealing with cases of the kind, and that the Apostle was only applying this general power to the particular case that happened to arise.

Now, that particular action of St. Paul did not by any means exhaust the Church's power. As well say that the birth of one human being makes the birth of all others impossible. St. Paul applied the power to a particular class of cases: the Church can apply it to others. What he did in the way of 'binding and loosing,' his superior, the Pope of his day, could do also; and what the Pope of his day could do, the Pope of *our* day can do as well. There our 'fundamental' Christian will part company with us: to induce him to advance further, we should have to convince him of the authority and infallibility of the Church and of its supreme ruler. If we succeeded in that, he would admit what every Catholic admits as a matter of course—that it is for the Church to define the limits of her power, and the conditions under which that power is going to be exercised. As a matter of fact, she has done so. She has limited the power to three fairly well defined classes of marriages, not consummated after ratification. Possibly she could have extended it further; possibly she may extend it further at some future date, if circumstances so demand. But, for the present at least, that is the law. The marriages just mentioned may be dissolved, 1°, by solemn religious profession, 2°, by Papal dispensation, 3°, in virtue of the Pauline privilege (1119-20).

We may leave the first two aside: apart from the definite assertion of a power exercised for centuries past, the Code has effected no change in their regard (1119). But with the third it has dealt more fully (1120-7). And, seeing that the case may become a practical one any day in connexion with converted Jews or unbaptized Protestants, we may follow the example.

Conservative commentators have been anxious to show that all the cases in which the Church has granted freedom to converted infidels have been essentially the same as the one decided by St. Paul. Their task is quite unnecessary. The other two cases—religious profession and Papal dispensation—certainly lie outside the ambit of the Pauline privilege: and, if the Church can extend her activities in those directions, there surely cannot be any difficulty in

her extending the Pauline case itself. And the attempt, moreover, is hopeless. The bond has often been broken when the pagan partner merely induced the Christian to sin or refused to embrace the Christian faith—when, in other words, there was no 'departure' at all of the kind mentioned by St. Paul.

There are three decrees mentioned specially in the Code (1125). They illustrate our present point as well. So, on the double score, we may be allowed to quote them more fully than would otherwise be necessary.

The first is the *Altitudo* of Paul III, dated the 1st June, 1537. It applied at the time to the West Indies only, but, like the other two, it extended now 'to other countries in similar circumstances' (1125). It read :—

> As regards the marriage [of the natives of those parts] we decree that the custom to be followed is this :—Those who, before their conversion, had several wives, in accordance with the habits of the place, and who do not remember which of these they selected first, are, after conversion to the faith, to select whichever one of them they prefer, and contract marriage with her in words relating to the present, as the custom is; those, however, who *do* remember which they selected first, are to keep *her* and dismiss the others.

The new extension is obviously of no practical consequence in this country. But the decree, as it stands, shows clearly that the Church had extended the Pauline case. For it might easily happen that the first, and only, wife would not be selected; and in that case she would be freed from the bond, no matter how willing to continue married life. The suggestion that the convert had, through lack of intention, never been really married at all, need not detain us very long. It is based on no solid foundation; and, anyhow, a *probable* impediment of the divine law would be enough to deter the Church from interfering, unless she was conscious that she could go beyond the Pauline concession and remove even *it*.

The second is the *Romani Pontificis* of Pius V, dated the 2nd August, 1571. Intended for the same countries as before, it marked a further departure from the Pauline standard. For it disregarded the claims of the 'first' wife completely, and substituted those of the woman who consented to receive baptism at the same time as the husband :—

> The Indians, we are informed, while they remain in their infidelity, are allowed to have several wives, and they dismiss them for the very

slightest causes. Hence the custom has grown up of allowing them, when they become Christians, to remain with the wife that receives baptism at the same time as her husband. And, since it often happens that she is not the first wife, priests and bishops are troubled with very serious scruples and are inclined to regard the union as not a real marriage at all. Now it would mean very serious hardships if these men were separated from the wives with whom they have been baptized, and, moreover, it would be extremely difficult to discover the whereabouts of the first wife. Therefore, in our anxiety to provide in a paternal way for the position of the said Indians and to free bishops and priests from scruples of the kind, we, of our own initiative and with certain knowledge and in the fulness of Apostolic power, declare by these present letters that the Indians already baptized, or to be baptized in the future, in the circumstances indicated may retain as their legitimate wife the woman baptized, or to be baptized, at the same time as themselves, and that the marriage so contracted is valid and legitimate.

Gregory XIII, in his *Populis* (25th January, 1585), may be said to have completed the development. In certain circumstances he dispensed with mutual communications altogether, and allowed a second marriage, even when *both* partners had embraced the Christian faith but had not lived together since their conversion :—

It often happens [he stated] that many pagans, men especially, from Angola, Ethiopia, Brazil, and other Indian districts, after contracting marriage in Gentile fashion, are captured by their enemies and carried off from their homes and families to very remote regions. As a consequence, neither they nor the captives who remain at home are in a position, when converted, to ask their pagan partners, living at such a remote distance, whether they are prepared to cohabit, without blaspheming the Creator. Sometimes not even a message can be sent to these hostile and savage provinces; sometimes there is nothing whatever known as to the present whereabouts of the captives, or, again, the very length of the journey creates serious difficulty. Therefore—in view of the fact that these pagan nuptials, while valid of course, are not regarded as *so* ratified that they cannot be dissolved under the pressure of necessity—we, in paternal pity for the weakness of these people, grant full authority [to the Ordinaries, parish priests, and members of the Jesuit Order] to dispense all the recently converted Christian inhabitants of those districts, male and female, who had contracted marriage before their conversion, so that each of them (even though the previous partner is still alive, and has never been asked for his consent or returned an answer to the query) may contract marriage with any member of the faithful, even of another rite, and solemnize it in the presence of the Church, and lawfully continue in it, when consummated afterwards, as long as he lives—provided it be established, [at least] in a summary and extra-judicial fashion, that the aforesaid absent partner cannot be warned in the prescribed legal manner, or that he has not indicated his intention within the period specified in the communication. And, even though it afterwards transpires that the former pagan partners were prevented, without fault on their part, from declaring their intention and had been converted to the faith at the

time the second marriage was contracted, we decree that these same [second] marriages should never be rescinded, that they are valid and unshakable, and that the children born of them are legitimate.

The state of affairs described does not prevail in these countries, and Canon 1125, therefore, confers no powers beyond these held already. But the new approval of the decree is of practical importance, notwithstanding. The concession of Gregory XIII exhibits the Pauline privilege at its best. At the time of the second marriage both partners are Christians: no matter how widely the 'departure of the pagan,' spoken of by St. Paul, is interpreted, it can have no meaning here, seeing that there is no longer any pagan in the case. The marriage is 'consummated' and 'ratified' also. The only thing that distinguishes it from the full Christian marriage is that the consummation has not taken place *since* the ratification—that, in technical language, it might be described as 'consummated and ratified' rather than 'ratified and consummated.' Yet, even so, its dissolution is possible. And the principle may be of use to priests, if they meet, for instance, a converted husband and wife, who never received baptism till they received it in the Catholic Church, and who cannot be induced now to continue in the married life they began before conversion. It is quite likely that Rome has power to deal with the case, and that, in view of the 'favour' enjoyed by the privilege itself (1127), the power will be exercised in favour of the converts.

The canons (1120-7), for the most part, merely reaffirm the previous legislation. The favour is described as before (1120, § 1), and is refused to those who contract a marriage in virtue of a dispensation from the impediment of 'difference of worship' (§ 2).[1] The necessity for the 'demands' (*interpellationes*) is emphasized again (1121), and the rule is continued that, generally speaking, they should be made on the authority of the Ordinary, in at least a summary and extrajudicial fashion, and that the non-baptized partner should be allowed a period for deliberation, if he asks for it, before the decision is given against him (1122, § 1).[2] If the 'demands' are dispensed with by authority of the Holy See, or if a negative reply, express or tacit, is returned, the convert is free to contract a second union, provided he did not, after baptism, give

[1] Cf. *Coll. S.S.*, n. 950.
[2] Cf. Feije, n. 487; Benedict XIV, *De Syn.*, xiii. 21, n. 4, etc.

the other sufficient cause for departure (1123).[1] The favour holds good even after years of post-baptismal married life (1124).[2] And, as in the past, the first marriage is dissolved only when the second is actually contracted (1126).

But there are some sections that mark an advance, not perhaps in practical policy, but certainly in explicit statement.

First, we have the provision that the 'demands' are valid when made privately by the individual himself, and that, so made, they are lawful as well whenever the more formal process cannot be easily adopted (1122, § 2). That was the opinion of good commentators in the past, but there was no explicit legal sanction.[3] And a warning, borrowed this time from previous law,[4] is added: when the demand is private, it should be made in such a way that proof, by witnesses or otherwise, will be available later on for the external forum.

Then there is the question of the person *with* whom the second marriage may be contracted. Must he or she be a Catholic? The pre-Code law left matters more or less in doubt; and we are far from saying that even the new law deprives a keen disputant of every reason for debate.

It would seem at first sight clear enough. When the preliminary regulations have been complied with, 'the baptized partner has a right to contract marriage with a Catholic' (1123). The plain, common-sense meaning of this statement seems to be that the previous union is no longer a bar to marriage with a Catholic, but *is* to any other union; in other words, that, so far as the previous marriage is concerned, the convert may validly and lawfully marry a Catholic, but not a Protestant or infidel. But it is open to anyone to say that the question is merely one of lawfulness, and that—since a Catholic is not *justified* in marrying a Protestant without dispensation (1060)—Canon 1123 is correct, even though the convert's marriage with a Protestant be held to be valid. The statement, then, would mean that 'the baptized partner is justified in marrying a Catholic without a dispensation, or a Protestant or infidel when a dispensation has been secured from the

[1] Cf. H.O., 19th and 26th April, 1899, etc.
[2] Cf. *Coll. S.S.*, n. 924.
[3] Gasparri, n. 1337.
[4] Gloss on ch. 7, *De divort.*, *qui relinquitur.*

impediment of "mixed religion" or "difference of worship," respectively.'[1]

In answer to which we are inclined to say:

1°, that the special emphasis laid on these two impediments seems unwarranted. If *they* must be introduced in order to bring out the full meaning of Canon 1123, why must not others as well? And, if others *are* introduced, the general statement, as paraphrased above, becomes absolutely false. For, even between a convert and a Catholic there may be an impediment—say, of vow or consanguinity; and in that case the convert would *not* be justified in contracting a marriage with such a Catholic. The meaning, therefore, of the statement would seem to be that already stated, viz., that, whether other obstacles exist or not, the diriment effect of the previous impediment (*ligamen*) ceases, *provided* the second marriage be contracted with a Catholic.

2°, that the Code says nothing to deprive of its probability the view generally held in the past—that the favour is attached to baptism and may be availed of by a pagan convert to Protestantism. If that view be correct, the restriction of the *ius habet* of Canon 1123 to mere 'lawfulness' would lead to a patent absurdity. For a marriage between the convert in question and a *Catholic* would be quite unlawful (1060), whereas there is nothing whatever to prevent a marriage between him and a pagan (1070, § 1).

Necessity for the 'Demands.'—In dealing with a query some years ago we discussed the question whether the 'demands' were required for the 'validity' of the marriage, and found that the balance of theological opinion was strongly in favour of an affirmative reply.[2] The Code suggests the same—though, just like previous decisions, it avoids the definite statement:

1°. Canon 1121, § 1, tells us that 'before the converted and baptized partner contracts a new marriage validly, he ought to [make the prescribed demands].' The mention of validity is suggestive, but not decisive. Any one of us might advise a friend that 'before drawing up a valid will, he ought to think of the claims of his relatives,' without implying that the will would be invalid if the suggestion were disregarded.

[1] So, apparently, Arregui, *Summ. Th. Mor.*, n. 822: 'non autem cum acatholica vel infideli nisi accedat dispensatio impedimenti mixtae religionis vel disparitatis cultus.'

[2] I. E. Record, December, 1916, Fifth Series, vol. viii. pp. 496-303.

2°. The private demands are 'valid, and lawful as well, if the prescribed form cannot be observed' (1122, § 2). The 'validity' of demands would seem to have no meaning except in reference to the subsequent effects. The implication is that the *marriage* is valid when the demands have been made, but not otherwise. And a comparison between the canon and the corresponding statement in Cardinal Gasparri's book—on which it seems to be based—strengthens the conclusion: 'we think,' he said, 'that an extrajudicial and private warning, given by the convert himself, is sufficient for contracting a valid marriage—and for a lawful marriage, too, if the judicial form cannot be observed.'[1]

3°. Canon 1123, already discussed, points in the same direction. When the demands have been made, the convert has a right to contract another marriage: and the 'right,' we think, has reference to validity. When the conditions have not been complied with, a subsequent valid marriage would, in that hypothesis, be impossible.

Separation.—After stating the natural law—that married people are bound to live together unless some reasonable cause excuses from the obligation (1128)—the Code draws a clear line of distinction between the one crime, adultery namely, that gives the innocent partner a right to a *perpetual* separation (1129) and the other delinquencies—involving danger to soul or body—that entail the right only so long as they continue (1131). In regard to the whole matter, we may summarize briefly the main points of difference between the old legislation and the new:

1°. Under the old régime, heresy or apostasy was put on the same level as adultery, and gave the innocent partner the same claim to a permanent exemption from marriage obligations.[2] This, it must be admitted, was scarcely in harmony with the Scriptural principle; nor with the natural law either—for, after all, adultery was the one offence essentially opposed to the special obligations of the married state, and deserved to be marked out for special reprobation. The Code has restored it to its evil eminence. And, among the 'temporary' causes, it enumerates 'formal adherence to a non-Catholic sect' (1131, § 1)—no mention even of indifferentism, general loss of faith, or membership of condemned societies.

[1] n. 1337. [2] Cf., e.g., Lehmkuhl, ii. 389, etc.

2°. It used to be claimed that the right to separation, arising from adultery, ceased in certain circumstances, especially when the separation had taken place without the sanction of public authority.[1] There, too, the Code marks its special detestation of the sin. 'Whether the separation took place as a result of a judicial sentence or on mere private authority, the innocent partner is never bound by any obligation to admit the other to the relations of married life' (1130).

3°. 'Presumed tacit condonation' (1129, § 2) is new. It holds when, within six months, the guilty partner has not been repudiated or denounced.

4°. The liberal developments in regard to separation by private authority are sanctioned. In former times, a pronouncement by an ecclesiastical Superior was regarded as more or less essential in all cases. Recently the situation had become milder, and might be summed up somewhat like this: there was no necessity for public sanction when the separation was public and the cause public also, when the separation was private and the cause private also, *a fortiori* when the separation was private and the cause public; when, however, the cause was private and the separation public, an authoritative decision was required.[2] The Code, if anything, is even more liberal. When there is question of adultery, it makes no mention (1129) of the Ordinary's intervention, though it obviously presumes (1130) that such intervention will occasionally have taken place. In the case of the other crimes, a decision from the local Ordinary—not necessarily given in judicial form—is prescribed as a normal requirement, but may be dispensed with when the facts are certain and there is danger in delay (1131, § 1).

5°. It used to be required pretty generally that the custody of the children should be given to the Catholic partner, whether innocent or not.[3] This, of course, was intended to protect their faith: it would generally be safer in the hands of even a frail Catholic than of a Protestant, however strict and moral. Provided their Catholic education is safeguarded, the obligation will not be strictly binding on the Ordinary for the future (1132).

Marriage of Conscience.—The canons (1104-7) repeat

[1] Cf., e.g., Lehmkuhl, ii. 936. [2] Ibid., n. 939. [3] Ibid., n. 940.

substantially the prescriptions of Benedict XIV.[1] There is nothing said about the qualities of the priest who is to assist at such a marriage; but the purpose intended by the Pope is amply provided for in the strict regulation that ceremonies of the kind are not to be allowed except for a 'most grave and urgent cause,' and that no one but the Bishop—not even the Vicar-General, unless he has got a special mandate—is empowered to authorize them (1104). There are other little changes—the notification of birth and baptism, for instance, is to be sent to the Bishop within *thirty* days (1106)—but their effect on previous practice will be scarcely noticeable.

Legitimation.—Here, again, the changes are very trifling. Suarez' opinion that legitimacy should be determined principally by the state of things at the moment of conception,[2] though rather reasonable in itself, is set aside, and the common view (motived largely, we suspect, by the inducement it holds out to married life) is re-asserted—'children conceived *or born* of a valid marriage are legitimate' (1114) and 'putative' marriage shares in the privilege.

Previous law and common opinion are confirmed on other points as well: 1°, the principle just quoted fails when the use of marriage was prohibited at the time of conception owing to solemn religious profession or the reception of Holy Orders (1114); 2°, children born *in* marriage are taken as born *of* it, unless the contrary is clear (1115, § 1), and a period of 6–10 months is substituted for 7–10 as a test in special cases (1115, § 2); 3°, children legitimated by subsequent marriage are put on the same level as those who were legitimate from the first 'unless express provision is made for the opposite' (1117) —Canons 232, 320, 331 supplying the commentary on the final phrase. The methods of legitimation are:

1°. Subsequent marriage, even putative, which operates when there was no diriment impediment between the parties either at the time of conception, or of birth, or at any intervening period (1116).

2°. When such an impediment *did* exist:

(*a*) a dispensation from that impediment, granted in virtue of ordinary power or general indult, except the children are adulterine or 'sacrilegious' (1051);

[1] Const. *Satis vobis*, 17th November, 1741.
[2] *De Cens.*, d. 50, s. 1, n. 3.

(*b*) a special Papal rescript, when the dispensation also is given by special rescript, or when the children do belong to either of the two classes mentioned (1051).

3°. Religious profession, as before (984, 1°).

Two little canons—one in favour of the validity and lawfulness of second and subsequent marriages (1142), the other on the subject of the nuptial blessing (1143)—complete the legislation.

M. J. O'DONNELL.

THE NEW CODE OF CANON LAW

PARISH PRIESTS

By Rev. J. KINANE, D.C.L.

I

In England, the United States, and countries similarly situated, in which there was a hierarchy canonically established, but in which there were no parishes in the strict sense of the term, the legislation on parishes and parish priests was perhaps the portion of the Code which, in the beginning, attracted most attention. According to Canon **216** each diocese should be divided into distinct territorial parts or parishes, each with its own special church, people, and pastor. Did it follow from this regulation that in the countries to which we have just referred there should be in future strict canonical parishes? If so, did this canon, of itself, convert the existing divisions into parishes, or was the interference of ecclesiastical authority necessary? What of the obligation of the Mass *pro populo*? Such were some of the questions in which the English and American clergy were most keenly interested, when the Code first made its appearance.

In Ireland, though the new legislation in this department did not present us with such pressing problems as those which agitated our neighbours, yet, it is hardly necessary to say, it was very closely scanned. The verdict, even of those most keenly interested—the parish priests themselves—is, on the whole, favourable, though we have heard some dissatisfaction expressed at the increased powers conferred on the Ordinaries, especially in regard to administrative removal.

Definition.—The Code defines a parish priest to be 'a priest or moral person upon whom is conferred the title of a parish with the care of souls to be exercised under the authority of the local Ordinary' (c. 451, § 1). Hence, when a parish is united fully to a moral person, such, for example, as a chapter or monastery, it is the moral person

that is the parish priest, not the vicar, who must be appointed to actually exercise the care of souls. The latter, indeed, as we shall see in a moment, is on the same footing as a parish priest so far as rights and obligations are concerned, but, strictly speaking, has no right to this title. Hitherto canonists regarded the vicar as the real parish priest, and the moral person as one only in an improper sense of the term—of course there was no legislation on the point.[1]

Two classes of priests, although not included in this definition, have all the rights and obligations of parish priests, and in law come under this name; so that when any legal enactment is made regarding parish priests, they also are affected by it:—

1°. Quasi-parish priests who govern quasi-parishes. Quasi-parishes, according to Canon 216, § 3, are the divisions of vicariates and prefectures. Parishes, on the other hand, are the divisions of dioceses.

2°. Parochial vicars who have received full parochial power (c. 451, § 2). Amongst these are certainly included the vicars who exercise the actual care of souls in parishes united to moral persons. So also are these *vicarii oeconomi* to whose care is committed a parish during its vacancy. The vicars who take the place of absent parish priests or of parish priests incapable, through age or some other infirmity mental or bodily, of themselves discharging their duties also come within this category, except in the regard to the Mass *pro populo*, which devolves on the parish priest himself. In this country the ordinary curates do not receive full parochial power, and, consequently, they can in no sense be regarded as parish priests. On the other hand, administrators are endowed with complete authority to govern the parishes over which they are placed, and so have all the rights and obligations of parish priests. In this connexion it may be well to recall the reply given by the Congregation of the Council to the Bishop of Dromore in 1863, which declared that an administrator, if not already in existence, should be appointed in the mensal parish of Newry, that the Mass for the people of the parish should be celebrated by him, but that, in

[1] Bouix, *De Parocho*, p. 187: 'Cura habitualis non sufficit ut quis sit verus parochus' (p. 230); 'vicarius perpetuus, quando parochus principalis habitualem dumtaxat curam habet, est verus et proprie dictus parochus'; Wernz, *Jus Decret.*, tom. ii. n. 821, etc.

apportioning him his revenues, account should be taken of this obligation.[1]

Union of Parish with Moral Person.—The erection and suppression, the union, dismembration, and division of parishes, and their attachment to benefices or other ecclesiastical institutions, are dealt with in connexion with benefices. In this special section the Code treats merely in an incidental way of the union of parishes with moral persons. Canon 452, § 1, states that 'without an indult of the Apostolic See a parish cannot be united fully (*pleno jure*) to a moral person, in such a way, namely, that the moral person is the parish priest in accordance with Canon 1423, § 2.' The latter canon amplifies the regulation just quoted. It declares that local Ordinaries 'cannot unite a parish with a chapter or episcopal *mensa*, with monasteries, churches of religious, or any other moral person, or with dignities or benefices of a cathedral or collegiate church; but with a cathedral or collegiate church, which is situated in the territory of the parish, they can so unite it that the revenues of the parish go to the church itself; a sufficient portion, however, is to be left for the parish priest or vicar.'

The union *pleno jure*, mentioned in Canon 452, § 1, implies a union in regard both to temporal and spiritual rights; it is distinguished from a union *non pleno jure*, which attaches merely the temporalities of the parish to the moral person. In accordance with the canons just quoted, a union *pleno jure* is never within the competence of local Ordinaries; but a union *non pleno jure*, that is to say, in regard to temporalities, is, but only in the circumstances mentioned in the final portion of Canon 1423, § 2.

When a parish is united to a moral person, the latter can retain only the habitual care of souls. For the actual care a vicar with full parochial power must be appointed, to whom a reasonable portion of the revenues must be assigned (c. 452, § 2).

In Ireland the only parishes united in this way, as far

[1] '8°. An Episcopus Drumorensis qui parochi officium exercet, dum Missam pro suis dioecesanis applicat, suae satisfaciat obligationi, quae sibi uti parocho inhaeret ?

'Ad 8um: Juxta exposita negative et ad mentem. Mens est quod si episcopus nullum habet in civitate Newry vicarium, qui eam parochiam administret, teneatur eum ibi constituere, ac per eum ipsum debeat etiam satisfacere obligationi Missae pro populo, animadverso tamen quod ad normam Const. Benedicti XIV *Cum semper oblatas*, in prefinienda congrua ad illiusmodi onus habeat respectum.'

as we know, are the episcopal mensal parishes. From what has been said it is clear that such union can take place only by indult of the Holy See. From Canon 452, § 2, and from the reply to the Bishop of Dromore, to which we have already referred, it follows also that Bishops are bound to appoint vicars or administrators with full parochial power to exercise the actual care of souls in these parishes.

These regulations of the Code in regard to union involve very little change. In the 24th Session, c. 13, *de ref.*, the Fathers of the Council of Trent forbade Bishops to unite parishes to monasteries, chapters, benefices, or similar institutions; and in the 7th Session, c. 7, *de ref.*, they commanded them, where such unions existed, to provide for the actual care of souls by the appointment of vicars. The concession to Ordinaries in the final portion of Canon 1423, § 2, in virtue of which they can unite a parish, so far as temporalities are concerned, with a cathedral or collegiate church situated in its territory, is a modification of the older and stricter legislation.

Qualifications for a Parish Priest.—The qualifications necessary in order that a person may be appointed a parish priest are enumerated in Canon 453. 'In order that a person may be appointed a parish priest he must be in the sacred order of priesthood' (§ 1). 'He must besides be endowed with a good moral character, with learning, with zeal for souls, with prudence, and with the other virtues and qualities which are required by general and particular law for governing the vacant parish in a praiseworthy manner' (§ 2). The only change of any importance is the regulation in regard to priesthood. Hitherto for the valid acquisition of a parish it was sufficient to have actually received first tonsure. It was obligatory, however, to receive priesthood within a year from the date of the appointment. In this country, and, we believe, in most other countries too, no modification of the actual discipline will be involved. The reception of a parish by one who is not yet a priest is almost unknown in modern times.

There is no mention of the old law requiring that a candidate for a parish should have begun his twenty-fifth year. It is, however, practically included in the regulation regarding the reception of priesthood, for which twenty-five is the canonical age. At the same time if, through dispensation, one has been ordained priest before he has begun his twenty-fifth year, he can immediately

obtain a parish without any further dispensation in age; so that the correspondence between the old and new discipline on this point is not absolute.

Removable and Irremovable Parish Priests.—The Council of Trent in the 24th Session, c. 13, *de ref.*, ordered Bishops, in those cities and places where parishes had no defined boundaries or no special pastors, to divide the people into fixed, definite parishes, and to assign to each a perpetual and special parish priest, or to provide for them in some more useful way, as the circumstances of individual places might demand.[1] From this Tridentine law canonists, while admitting that, normally, parish priests should be perpetual and irremovable, held that sometimes they might be removable at will, and that in special circumstances dioceses need not be divided up into strict canonical parishes at all. Hence, as a matter of fact, prior to the publication of the Code, you had in France and Belgium, for example, where parishes were canonically erected, a certain number of the parish priests, known as *desservants*, who were removable at the will of the Bishop; whilst in Great Britain and the United States you had no canonically erected parishes at all, and, consequently, no parish priests in the strict sense of the term.

As we have already pointed out, the Code, in Canon 216, prescribes absolutely the division of dioceses into strictly canonical parishes, to each of which its own special parish priest is to be assigned. According to Canon 454, parish priests may be either removable or irremovable. 'Those who are appointed to administer a parish as the proper rectors of the same, should have fixity of tenure in it; this, however, does not prevent their removal from it in accordance with the prescriptions of law' (§ 1). 'But not all parish priests have the same fixity; those who have the greater fixity are usually called irremovable; those who have the lesser, removable' (§ 2). The implication of these regulations will be fully understood, only when we come to deal specially with the removal of parish priests. Suffice it at present to say that this removal may be either

[1] 'In iis quoque civitatibus ac locis, ubi parochiales ecclesiae certos non habet fines, nec earum rectores proprium populum, quem regant, sed promiscue petentibus sacramenta administrant, mandat sancta synodus episcopis . . . ut distincto populo in certas propriasque parochias unicuique suum perpetuum peculiaremque parochum assignent . . . aut alio utiliori modo, prout loci qualitas exegerit, provideant. Idemque in iis civitatibus ac locis, ubi nullae sunt parochiales, quam primum fieri curent.'

judicial or administrative; that as regards judicial removal both classes are upon the same footing; that for administrative removal a more complicated process is prescribed in the case of irremovable than in that of removable parish priests.

Under the old discipline, too, when a judicial process was employed, there was no difference between the two classes. Prior to the publication of the decree *Maxima Cura,* in 1910, removable parish priests could be deprived of their parishes for a just and reasonable cause without any formality whatsoever; whereas for the administrative removal of irremovable parish priests the existence of certain special causes and the observance of some formalities were necessary. It must be confessed, however, that up to 1910 the position of the latter in regard to administrative removal was not at all too clearly defined. The *Maxima Cura,* however, prescribed the same procedure for all parish priests in the strict sense of the term, whether they were removable or irremovable.[1] In countries like Great Britain and the United States, in which canonical parishes had not yet been erected, this decree applied only to irremovable rectors, so that removable rectors could still be administratively removed for any just cause and without formality.[2]

The third section of Canon 454 contains the rules to be observed in the establishment of removable and irremovable parishes:—

> Irremovable parishes [it states] cannot be made removable without the consent of the Holy See; removable can be declared irremovable by the Bishop, but not by the Vicar-Capitular, after having taken the advice of his Chapter; new parishes which are erected should be irremovable, unless the Bishop, in his prudence, with a view to the peculiar circumstances of places and persons, and after having consulted his Chapter, decrees that it is more expedient to have them removable.

In this country these regulations are not of much practical importance. Before the Code made its appearance strict canonical parishes were in existence in Ireland, and they were all irremovable. We do not believe that Bishops will be desirous of changing any of them into removable parishes, as the practical differences between the two, even in regard to removal itself, are not very great. Should they be so, however, they must obtain the permission of

[1] Cf. Decr. *Maxima Cura,* Canon 30.
[2] Resolutio S. C. Consistorialis, 28 Jan., 1915.

the Holy See to effect their purpose. Of course it may happen, too, that some parishes will require to be divided up, and new ones erected; in this case the regulation just quoted must be observed.

In countries in which a hierarchy was established, but in which there were no canonically erected parishes, this section taken in conjunction with Canon 216, as we have already remarked, caused considerable excitement after the publication of the Code. In our opinion these canons did not convert *ipso facto* the existing divisions of territory in these countries into parishes: to effect this a special act on the part of the Bishops concerned was required. Nor was it necessary in the new erections to adopt the boundaries of the old divisions, or to change all the removable missions into removable parishes, and all the irremovable missions into irremovable parishes; in fact, if the spirit of the new legislation were followed, most of the new foundations would be irremovable.

The final two sections of this canon contain still further regulations on the question of fixity of tenure:—

Quasi-parishes are all removable (§ 4).

Parish priests belonging to a religious institute are always, by reason of their person, removable at the will of the local Ordinary, after a notification to their Superior, and of their Superior after a notification to the Ordinary, for a just cause, and without its being necessary for one of them to obtain the consent of the other; neither is one bound to manifest, much less to prove, the cause of his decision to the other, but the right of recourse with devolutive effect to the Holy See remains.

Religious parish priests may, therefore, be removed, either by their own Superior or by the local Ordinary, for a just cause, without any formality; and, consequently, the special regulations in regard to the administrative removal of parish priests do not apply to them.

The Right of appointing Parish Priests.—In regard to the right of appointing parish priests the new legislation agrees almost entirely with the old. With the exception of parishes reserved to the Holy See—these reservations are dealt with in connexion with benefices—the nomination and institution of pastors is the function of the local Ordinary, every contrary custom being reprobated. The rights of patronage, when legitimately acquired, are, however, still recognized (c. 455, § 1). Whenever, then, a parish is subject to patronage or election, the Ordinary, of course, cannot freely collate it, he can merely accept the presentation or confirm the election and grant real institution or possession.

Under the title of *Local Ordinary* Vicars-Capitular and Vicars-General are included, unless in any particular case an express exception is made (c. 198). There is such an exception in this connexion. The only powers in this matter possessed by a Vicar-Capitular are: 1°, to confirm elections and accept presentations to vacant parishes, and to grant canonical institution to those who have been elected or presented (c. 455, § 2, 2°); 2°, to confer parishes of free collation, if the see has been vacant for at least a year (c. 455, § 2, 3°). This latter power is an innovation: hitherto, no matter how long the see was vacant, parishes could not be conferred by the Vicar-Capitular without special permission from the Holy See. A Vicar-General's faculties are even more limited still: without a special mandate he has no power in this matter at all. Whilst, therefore, a Vicar-Capitular's jurisdiction, as we have seen, has been somewhat extended, a Vicar-General's, on the other hand, has been restricted. Formerly, the latter could confirm elections and accept presentations to vacant parishes, and grant canonical institution to those elected or presented, he could also confer parishes on those who, as the result of a strict concursus, were judged most worthy of them. In the extraordinary circumstances mentioned in Canon 429, § 1, in which the Bishop is himself prevented from administering the diocese through captivity, imprisonment, exile, or some other impediment, a Vicar-General has all the powers of a Vicar-Capitular (c. 455, § 3).

In the case of parishes entrusted to religious, the Superior, who is competent in accordance with the constitutions, must present a priest of his own Institute to the local Ordinary; the latter grants canonical institution (c. 456). Their own local Ordinary, after taking the advice of his council, appoints quasi-parish priests (c. 458).

Time for conferring Parish.—According to Canon 458 the local Ordinary is to make provision for a vacant parish within six months from the time that he becomes aware of the vacancy, unless, in view of the peculiar circumstances of place and person, he deems it more prudent to defer doing so for a further period. This is a slight modification of Canon 155, which prescribes the collation of ecclesiastical offices within six months from the time that notice of their vacancy has been received; and also of 1432, § 3, which states that, if benefices are not conferred within this time, their collation devolves upon the Holy See.

In the old discipline the general regulation regarding the time for conferring offices and benefices was the same as at present, but there was no special modification of it for parishes. Hitherto also the collation of benefices, for which no provision was made within the prescribed time, as a general rule devolved, in the first instance, not upon the Holy See, but upon the immediate Superior.

Form to be observed in conferring Parishes.—The general law prior to the publication of the Code was that parishes should be conferred by *concursus* or examination. The discipline of the concursus had its origin in the Council of Trent,[1] but was afterwards considerably modified by Pius V,[2] Clement XI,[3] and especially by Benedict XIV in the Constitution *Cum illud.*[4] Custom, however, had abrogated these laws in very many countries; and in many others, instead of the special examination for each vacant parish prescribed by the decree of Trent and its subsequent modifications, periodic general examinations were alone necessary.[5] The Tridentine law itself afforded a certain amount of foundation for the latter procedure : it expressly gave power to Provincial Synods to make any remissions or additions in the form of examination which they might deem necessary.[6]

The discipline of the concursus is no longer universal, even theoretically. It is true, indeed, that the Code prescribes its continuance in places in which it has hitherto been in vogue. Thus, Canon 459, § 4, states that 'in places in which the provision of parishes is by concursus, whether special, in accordance with the Constitution *Cum illud* of Benedict XIV, 14 December, 1742, or general, this form is to be retained until the Holy See decrees otherwise.' The position, however, of those countries in which the concursus was abrogated by custom is now officially recognized, and a special form of procedure analogous to the concursus is prescribed for them. This new method, to be followed in the appointment of parish priests, is detailed in the first three sections of Canon 459. The Ordinary is bound, under grave obligation, to appoint to the vacant

[1] Sess. XXIV, c. 18, *de Ref.*
[2] Const. *In conferendis,* (16 Maii, 1567).
[3] Const. *Reverendissime domine,* 10 January, 1721.
[4] 14 December, 1742.
[5] Cf. Bouix, op. cit., p. 354 et seq. ; Wernz, op. cit., n. 827.
[6] 'Licebit etiam synodo provinciali, si qua in supradictis circa examinationis formam addenda remittendave esse censurit, providere.'

parish the person whom he deems most fitted to govern it, without any acceptation of persons (§ 1).

In this judgment, account must be taken, not only of learning, but of all the other qualifications which are required for the proper government of the vacant parish (§ 2).

Consequently, the local Ordinary:

1°. Should consult documents in the diocesan archives which concern the cleric to be appointed, if there be any such, and should also, if he deems it opportune, make inquiries regarding him, even secretly and outside the diocese;

2°. Should take into consideration the results of the examinations which, in accordance with Canon 130, clerics are obliged to undergo during their first three years after ordination;

3°. Should submit the cleric of whose appointment there is question to an examination before himself and the synodal examiners. He may, however, dispense from this examination, with the consent of the examiners, in the case of clerics about whose theological knowledge there is no doubt (§ 3). As it is not stated when precisely the examination is to be held, the regulation will be sufficiently fulfilled either by a special examination before each individual appointment, or by periodic general examinations, such as those which take place in countries where the discipline of the general concursus prevails.

In Ireland, previous to 1900, Bishops were, indeed, bound to appoint to parishes the persons best fitted to govern them, but they were not obliged to follow any special form: the Tridentine and subsequent legislation regarding the special concursus had been abolished by custom. In that year the general concursus was introduced by the Synod of Maynooth[1]; and, in accordance with Canon 459, § 4, already referred to, it must still be continued until the Holy See decrees otherwise. The clergy are already so familiar with its details that it is quite unnecessary to discuss them here. In England appointments to missions were made without any concursus, either special or general. Under the new discipline, therefore, parishes must be conferred in accordance with the form described in the first three sections of Canon 459.

Unity of the Parish Priest and Parish.—No parish priest is to have more than one parish (c. 460, § 1). Parishes are

[1] Vide *Acta et Decreta*, nn. 272-278.

incompatible offices, that is to say, the obligations which they involve, for example, that of residence, cannot be fulfilled at the same time by one and the same person. There is one exception to this general rule : to parishes united *aeque principaliter* one parish priest may be appointed. In a union of this kind the united parishes remain distinct, so far as rights, privileges, and temporalities are concerned : the bond between them is merely the extrinsic one of a common pastor. Parishes under the old discipline, too, were incompatible offices, but, when united, they could be cumulated in the same individual, just as at present.

Just as one parish priest can have only one parish, so in one and the same parish there can be only one parish priest with the actual care of souls, every contrary custom and privilege being reprobated (c. 462, § 2). This prohibition, clearly, is no obstacle to the retention of the habitual care by one parish priest and of the actual care by another ; in fact, as we have already seen, when a parish is fully united to a moral body, such a condition of things necessarily comes into existence. The prohibition, however, does not of itself prevent a moral body from retaining not merely the habitual, but also the actual care of souls ; this is effected rather by Canon 471, § 1.

Prior to the Council of Trent, moral bodies, such as chapters, to which parishes were united, very frequently exercised the care of souls in their collegiate capacity without appointing any vicars to represent them[1]; and, even after Trent, that could still be permitted by Bishops in special circumstances, though normally vicars should be appointed.[2] Whilst the teaching on this point was unanimous there was, however, a considerable division of opinion in pre-Code days as to whether the general law permitted the appointment of two or more parish priests of the ordinary kind to one and the same parish ; as far as we could see, there was not sufficient data to decide the point.

Rights of Parish Priests.—Canon 462 enumerates a number of functions which are reserved to parish priests.

1°. The right of conferring solemn baptism is reserved to parish priests. We notice that, according to Canon 738, § 2, even a *peregrinus* is to be solemnly baptized in his own parish by his own parish priest, if this can be done easily and without delay. Hitherto there was some difference of opinion upon this point. Not a few maintained

[1] Cf. Bouix, op. cit., p. 196. [2] Conc. Trid., Sess. VII, c. 7.

that a *peregrinus* was to be baptized by the parish priest of the place in which he was; the view, however, which personally we thought certain, was in full agreement with the new discipline.[1]

2°. Parish priests have also the exclusive right of carrying the Blessed Sacrament publicly to the sick in their own parish. This privilege is of little importance in this country, as this function is nearly always carried out privately. It may be well to remark here that, prior to the publication of the Code, to carry the Blessed Sacrament privately to the sick special faculties were necessary—our Bishops had them from the Formula Sexta. Now, whenever there is a just and reasonable cause, the general law itself gives the necessary permission (c. 847).

3°. The administration of the Blessed Eucharist, in the form of Viaticum, whether the function is gone through publicly or privately, and of Extreme Unction, is also reserved to parish priests. The reservations to which the general principle is subject have been already dealt with with in the I. E. Record, so that there is no need for us to again discuss them.[2]

Formerly parish priests had some further privileges in connexion with the Blessed Eucharist. Until the publication of the Code the faithful were obliged to receive the Paschal Communion in their own parish and from their own pastor, or his delegate. In the new discipline they are merely advised to communicate in their own parish; but should they fulfil the obligation in an outside parish, they are obliged to inform their own pastor of the fact (c. 859, §3).

The admission of children to first Communion was formerly one of a parish priest's privileges. The decree *Quam singulari*, published in 1910, abolished this right, and vested it in the parents and confessor. The Code, however, has, to some extent, restored it. Whilst it is stated, as in the *Quam singulari*, that the judgment as to the dispositions of children rests with the confessor and with the parents, it is further added that 'it is the duty of the parish priest to exercise vigilance—even by examination, if, in his prudence, he thinks it advisable—lest children approach Communion before attaining the use of reason or without sufficient disposition, and also

[1] Cf. I. E. Record, November, 1915, Fifth Series, vol. vi. pp. 529 sqq.

[2] Vide I. E. Record, February, 1918, pp. 104 sqq.; April, 1918, pp. 286 sqq.

to take care that those who have attained the use of reason and are sufficiently disposed approach as soon as possible' (c. 854, § 5). From this regulation it seems to us that, whenever the parish priest intervenes, his judgment is final; though, as his office is one of general vigilance, his interference is not necessary in all cases.

4°. A parish priest's privileges regarding the publication of promotions to sacred orders, publication of the banns, assistance at marriage and the nuptial benediction, have been already dealt with, so that discussion of them here is unnecessary.

5°. The right of performing the exequial rites of his deceased subjects is also reserved to the parish priest, in accordance with Canon 1216. This canon states that the church to which a dead body is to be transferred for the funeral ceremonies is ordinarily that of the deceased's parish, unless he has legitimately chosen another church; if he has more than one parish, the church to be chosen is that of the parish in which he died. This, however, is not the place for a full discussion of this question.

6°. The blessing of houses in accordance with the liturgy, on Holy Saturday or any other day sanctioned by local custom, is another of a parish priest's exclusive rights.

7°. Similarly, to the parish priest are reserved the right to bless the baptismal font on Holy Saturday, to lead the public procession outside the church, and to impart the solemn blessings there, unless there is question of a capitular church, and the chapter itself performs these functions.

The first section of Canon 463 declares that a parish priest has a right to those offerings assigned to him by approved custom or by legitimate taxation in accordance with Canon 1507. This latter canon states that the taxes to be paid for the various acts of voluntary jurisdiction, and on the occasion of the administration of the sacraments and sacramentals, are to be fixed for an entire province by a Provincial Council or an assembly of the Bishops of a province; but that the fixation has no force until it is approved by the Holy See. Although this regulation in regard to the fixation of taxes will involve considerable change for us here in Ireland, yet it is by no means new: the Congregation of the Council in 1896 issued a decree upon this subject, the terms of which resemble very closely those of Canon 1507.[1] We suppose it was because Ireland

[1] Cf. Ojetti, *Synopsis*, vol. iii. n. 3918.

was at that time subject to the Propaganda that the decree was never adopted in this country.

The offerings which have the sanction of custom differ in different parts of Ireland. For example, in some places they consist almost entirely of periodic collections, whilst in others funeral offerings hold the principal place. In regard to these latter the new legislation will, we think, involve no change. According to Canon 1234, in the index of funeral taxes to be drawn up by the Ordinary, due account is to be taken of legitimate local customs and of all personal and local circumstances.

A parish priest who exacts more than is sanctioned by custom or legitimate taxation is bound to restitution (c. 463, § 2). His title to these offerings is based upon his right to support. Now, custom or law determines how far this right extends; and, consequently, if he exceeds the prescribed limit in his demands he is without a title. When, however, offerings in excess of those fixed by law or custom are voluntarily given, there is no prohibition against accepting them.

Even though the parochial office is exercised by another, the offerings go to the parish priest, unless they exceed the fixed tax and it is certain that the donor wishes the excess to be disposed of differently (c. 463, § 3). Of course, local legislation may restrict the donor's capacity in this respect; as a matter of fact, the last Provincial Synod of Armagh, in its 28th Statute, has done so.[1] It must be remembered whoever discharges the parochial office has a right to recompense from the parish priest, and in the case of curates the recompense frequently takes the form of a division of the offerings. Finally, the parish priests are warned of their obligation to minister gratuitously to those who are incapable of paying the fixed taxes (c. 463, § 4). There is a particular and very practical application of this regulation in Canon 1235, § 2, where it is stated that the funeral service and burial of the poor should be gratuitous and becoming, with the prescribed exequial rites in accordance with the liturgical laws and the diocesan statutes.

As we have already exceeded the limits assigned us, we must reserve the concluding portion of this subject for another article.

J. KINANE.

[1] 'Nunquam liceat sacerdoti aliquam partem oblati quod occasione Baptismi, Matrimonii, aut funeris fideles solvunt suum facere, eo sub praetextu quod ratione doni personalis datur.'

THE MORALITY OF THE HUNGER-STRIKE

A FURTHER REJOINDER

By Very Rev. JOHN CANON WATERS

Readers of the I. E. Record are, I have little doubt, heartily tired of this controversy, and they will, therefore, be glad to hear that the present article is likely to be the last contribution to it. Dr. Cleary 'has done with' me, and with the best wish in the world to go on, I cannot do so without him. In truth, I do not regret the end, and I am only sorry that my opponent should seem to have taken his leave of me with more fervour than affection. I would have allowed him the last word had he confined himself to his now well-known points and to recommending his views on a form of hunger-strike which I regard as almost mythical; but I think it necessary to answer him when he wishes his readers to believe that, with one solitary exception, 'I have not merely failed to meet but I have failed even to touch any of his fundamental contentions.' This is as nearly the exact contrary of the truth as could be conveyed in a single sentence. 'I do not seem,' he adds, 'to have realized their nature, for he finds it hard to believe that I would have deliberately shirked an answer to them.' Seeing that he has elsewhere accused me of 'seeking to shirk,' of 'mangling,' and 'side-tracking' his arguments, and of resorting to 'disgusting expedients,' I do not take very seriously the scruples he expresses here. He does not specify my solitary success, nor does he assign any criterion for judging whether a given contention of his is fundamental or not. As to apprehending the nature and drift of what he has written, I can assure him that unless there is some hidden or mystic meaning in his words I quite understand them. I will now proceed to examine the ground

of his complaints and charges against me, as well as his arguments—such as survive—in the fresh light cast on them by his last article.

I must beg to remind my readers that my rôle in this whole controversy is to defend an article I wrote for the August number of the I. E. Record. This article had one only thesis—that the familiar form of hunger-strike was suicide, no better no worse. The thesis I supported by arguments, and I will consider the case against these in its place. But a great part of Dr. Cleary's polemic was directed at a certain harmless proposition that I assumed as a foundation. I assumed that suicide was wrong, and was always a mortal sin, but I carefully limited and defined suicide as the direct or intentional killing of oneself on private authority. This assumption I did not suspect would be questioned by any readers of the I. E. Record; but, nevertheless, I quoted the teaching in the most authoritative text that theology affords, and I gave also one of St. Thomas's proofs. To my surprise my critic's first article was as much an attack on St. Thomas's doctrine of the wickedness of suicide as on mine concerning the hunger-strike. I have never gone beyond St. Thomas on this first point, and have scarcely used words but his. Readers should bear in mind that there is nothing of mine in it, and that Dr. Cleary is in reality engaged in refuting St. Thomas Aquinas.

Two points have been attacked in both his articles: (*a*) the validity of the proof that suicide is immoral, (*b*) the *natural or intrinsic* immorality of suicide. But Dr. Cleary never disputed the simple truth of the fundamental proposition, and the simple truth of it is all that I assumed and all that is necessary to my case against the hunger-strike. Let my opponent, then, prove the sinfulness of suicide in his own way; let it be granted even that the sinfulness of suicide is not natural or intrinsic, but as plainly positive as is that of schism: as long as he does not dispute the truth that suicide is always a mortal sin he concedes all that I have ever asked for, or want, to make my case. Nor does he himself make any use of his contention to justify his views of hunger-striking, so that I am somewhat at a loss as to why he takes such pains to prove what he does not utilize in the sequel. It has been suggested to me that he would regard suicide as justifiable and even of obligation in certain circumstances, as a means

of benefiting a big national issue, but until he plainly states that he really holds so extravagant an opinion I will not believe it.

Two difficulties on the value of St. Thomas's proof have been dissipated. A new one the critic now presents, and this is the first bit of work for me that his March article affords. Readers will pardon me for not quoting the difficulty textually, but all who wish to see it will find it at the end of page 221. St. Thomas, in the peccant proof, writes: 'For anyone to kill himself is against a *natural inclination* . . . and therefore the killing of oneself is always a mortal sin, as being against *natural law.*' St. Thomas here supposes that natural inclination and natural law are equivalent, and it is against this equivalence or identification that objection is now made. The exact relation is that natural inclination is the basis of natural law, or, as one might put it, since law is in the reason, natural inclination is the cypher in which the law is written. The equivalence has never been questioned, nor does the author of the objection state what he proposes in place of natural inclination as a basis of natural law. The objection rests on the obvious mistake of supposing that the inclination of one organ or part is the inclination of nature as a whole. Now, no one inclination, however natural, is necessarily the whole of natural inclination, even in any one department. The most skilled physician could not draw up a perfect dietary for a man from the examination of his teeth alone. Even the animal nature of man—for to this we will confine ourselves—has many and various inclinations concerning human offspring, of which Dr. Cleary takes no account. These certainly include desires to preserve, to feed, to protect, and educate one's children—which desires are natural and are common to both parents. Similar inclinations are found in animals. Evidently, then, there is a very serious omission in his list of natural inclinations. Observation of the nearest pair of rooks would have shown it. In these, natural inclination and instinct compel the male bird to stand by the female as long as his services are of use to her in the rearing of their young, and he remains with her for months after the last egg has been laid. Dr. Cleary, in the October article, mistook a corruption for a real law of nature, but this time he has a genuine text, and his only fault is that he takes the first page for the whole chapter.

I now turn to the Samson difficulty. It is as follows:—

> How could St. Thomas hold that it is *always* wrong to kill oneself, if he thought it right for Samson to do so? Perhaps, like so many others, he thought in 'water-tight compartments.' . . . One thing is plain: if self-killing is wrong on the grounds advanced by Canon Waters—viz., because of opposition to natural inclination—then God could no more command Samson to kill himself than He could to blaspheme, for the natural law does not admit of dispensations.

I did not, it appears, pay all the respect to this difficulty that it was thought by its author to deserve. As it impugned a doctrine which, however true, I had never asserted, I did not feel called on to examine it very minutely, so I simply asked the critic for a list of those theologians who accepted his view of suicide, venturing, at the same time, to predict that the list would be a short one. He has made no list. I also showed, by a parallel, that the argument by which he sought to prove that theologians were on his side was inconclusive. This has made him suspect that if questioned they might fail him, and so he instructs his readers beforehand that perhaps even the greatest of them thinks in 'water-tight compartments.'

Well, for my part, I will not try to 'side-track' Samson this time. The whole argument rests on two statements: (*a*) God gave permission to Samson to commit suicide or, at least, to kill himself directly; (*b*) natural law does not admit of dispensation. From these two it is inferred that suicide is not wrong by natural law. My friend is very dogmatic here, but he is certainly wrong in saying that natural law admits of no dispensations, and he is very probably wrong in assuming that Samson killed himself directly. St. Augustine and St. Thomas do not say whether the killing of himself by Samson was direct or indirect. This is an important detail, which I am afraid my critic has overlooked. In my August article I analysed the case of Samson, and found that his act was indirect killing; and in this conclusion I had not only the support of reason, as I considered, but also very sound theological authority. What is advanced against this, and in support of the supposition that Samson's act was direct killing? Nothing whatever. Until it is proved, however, that Samson's act was a direct killing of himself there is no difficulty at all. Even were I to grant the other proposition, there is no difficulty in the Samson case till it is proved that the

act was direct killing. I have no intention, however, of granting the other proposition.

'Natural law does not admit of dispensations.' This is not true. St. Thomas distinguishes between primary precepts of natural law and secondary precepts which are derived from the others as conclusions. St. Thomas allows of the possibility of dispensation in the secondary precepts, and it is on the ground of such dispensation that he justifies the polygamy of the Jewish Patriarchs. This is rather a large exception to Dr. Cleary's universal. St. Thomas reckons among the primary precepts of natural law the commandments of the Decalogue, and he maintains that not even God can dispense in these; and as we might suppose suicide to be forbidden by the fifth precept, it would appear that St. Thomas thought no dispensation could be granted for suicide. But appearances are fallacious, and what St. Thomas and theologians give with one hand they take away with the other. God cannot dispense in the primary precepts of natural law, nor in the precepts of the Decalogue; but God, they say, can change the matter of some of the precepts of natural law so that the law does not apply to the matter, and thus an act becomes lawful which, but for this change of matter, would be forbidden by natural law. God will not dispense in the law against stealing—stealing is forbidden by natural law and remains so—but God can transfer the property of another's goods to me, and so in taking them I do not steal; I simply take my own.

> When the children of Israel, by God's command, took the spoils of the Egyptians, that was not theft, because they took what was due to them by the sentence of God. In like manner, when Abraham consented to slay his son, he did not consent to murder, because it was due for that son to be slain by the command of God, Who is Lord of life and death; for He it is Who inflicts the punishment of death on all men, just and unjust, for the sin of their first parents; and if a man by divine authority shall be the executor of this sentence, he shall be no murderer, no more than God is. And in like manner also Osee, taking to himself a wife of fornications, or an adulterous woman, committed neither adultery nor fornication, because he took her to himself by the command of God, Who is the Author of the institution of marriage.[1]

Natural law, then, admits either of divine dispensation or of a change in the matter of the law which is tantamount to a dispensation. God cannot change the essential matter

[1] *Sum. Theol.*, Ia, IIae, Q. c. art. viii.

of the first three commandments, for this would be to alter the relations of creature to Creator, and these are unchangeable. God could, therefore, in no wise permit blasphemy or irreligion or idolatry. These do not stand on the same level as stealing and murder, though Dr. Cleary thinks so. The direct killing of himself might be forbidden by the precept of the Decalogue, or by any other natural law, and nevertheless God could have given Samson permission to kill himself directly; and if Samson, by divine authority, were to execute sentence of death on himself, he would be no murderer, no more than God is. The Samson difficulty now has resolved itself into this: Samson did not directly kill himself at all; but even if he did, God could have given him permission to do so, notwithstanding the fact that suicide is forbidden by natural law. This is the end of the Samson difficulty, and I hope Samson has fought his last fight.

At last I come to the hunger-strike. My thesis was: *the hunger-strike is suicide.* I undertook to prove this by three arguments: (1) the hunger-strike involves self-starvation, and self-starvation is essentially suicide; (2) the hunger-strike is a measure or policy in which death or the danger of death is chosen and ordained as a means to benefit a certain cause, and it is, by reason of such an intention, suicide or suicidal. The third argument I omit. I think that if one wishes to overthrow my conclusion he will have to meet my arguments. How does my antagonist meet them? I wrote in comment on his first article: 'Dr. Cleary does not dispute the cogency of my arguments, nor does he dissent from my conclusions,' etc. 'When I read,' he writes in March, 'the above statement of the contents of my article, I gasped in wonderment.' The above statement is not a statement of the 'contents of his article.' It is, and is expressly said by me, to be a statement of all that was relevant in his article or likely to impair notably the value of my conclusions. I was only too well aware that the contents of his article overflowed these limits. I pointed out that there were in the article a great many more objections, and I devoted six or seven pages to answering them. I must now repeat what I said then. *He has never attempted to meet either of my arguments, and he has never denied that the hunger-strike is suicide.*

I now propose to examine the case for the two alternatives which have been proposed in Dr. Cleary's articles:

(*a*) the strike in which danger of death as distinct from death itself is chosen as a means to some end; (*b*) the strike in which neither death nor the danger of death is ordained as a means to any end, but in which abstinence from food is chosen merely because eating implies dishonour or breach of principle. I have already dealt with the merits of both these forms of strike—but I will review, in order, the new positions assigned them in his second article.

(*a*) I showed, in January, that this, the non-fatal form of strike, was, as a practical measure, simply negligible. Dr. Cleary, who had previously thought it of serious importance, now outpaces me in depreciation, and calls it 'mock-heroics.' He has not, however, yet abandoned it on the moral side. In October he quoted Lehmkuhl for a principle which would undoubtedly support its lawfulness. I showed that Lehmkuhl was misunderstood, and that he taught no such principle; that he taught in express terms the very contrary; and, in a word, that Lehmkuhl was a supporter of mine and not of my opponent. There is no getting out of this. There are some dialectics to show that Lehmkuhl was not dealing then with what he says he was dealing with. I think Dr. Cleary unjust to his former patron, because I think that Lehmkuhl, in requiring more justification for the act of throwing oneself, than for allowing oneself to be thrown, into certain death, is quite sound. It is amusing to notice (pages 225, 226)—

> Lehmkuhl himself was not very clear on the matter, perhaps. No; Lehmkuhl's common sense was often, for him, a better *locus theologicus* than his undigested theological principles and his 'loads of learned lumber.' . . . Lehmkuhl was not clear on the matter, and, as somebody has said, solved his cases largely by the 'rule of thumb' method.

Besides the authority of Lehmkuhl Dr. Cleary has an argument in favour of the morality of the limited hunger-strike. He writes: 'I took it, moreover, that one might even directly run the risk of death for a cause of importance for I could not see how any probabilist or equiprobabilist or compensationist could logically deny it.'

Yes, my critic takes this principle for granted, but no one grants it, no one even thinks it probable. The opposite principle—*that we may not directly run the risk of that which we may not directly do*—is looked on as certain by every theologian who mentions it. The reason why one may not directly wish danger of death where we may not kill ourselves, is because the object of such an act is bad.

It is not because the chances of death are greater than the importance of the cause would justify if danger were only indirect; it is because the chances are in themselves the very object and motive of the act. 'The case should not be excluded from the scope of the probabilist. There is question of an act whose morality is doubtful, for when there is merely danger of death, there is a fair probability that the act is not suicide: when the chances of surviving are equal to those of perishing, even the equiprobabilist might pluck up courage to apply his system.' It is a mistake to assume that the morality of the act is doubtful—the morality of the act is not in the least doubtful, and I know of no theologian who thinks it is. The argument that is expressed in the last sentence just quoted is quite good when the chances are incidental, but quite inapplicable to an act of which the sole object is the chance or probability itself. This finishes the whole plea for the minor strike. There is neither authority nor sound argument to support it.

There is just one small matter that I will touch on before coming to the strike, which is my opponent's last refuge. 'I do not exactly know what Canon Waters means by a "risk of death, provided death is guarded against"—the expression is not mine.' Dr. Cleary is fond of calling attention to certain expressions of mine in which he supposes himself to have discovered some inaccuracy or imperfection of form. Petty criticism of that kind is not in my line, but to show there is no want of material, I may point out the following. In quoting this phrase as mine, he makes no fewer than three mistakes. On the same page, he says I had three theses to maintain. I had only one thesis and three arguments. Again, on the same page, he speaks of my proofs regarding the intrinsic malice of suicide. There was one proof, and it was not mine. On the opposite page, he says, quite incorrectly, that I expected attack at a certain point. Again he uses a mere *lapsus calami* about the month in which his article was published to discredit my historical accuracy. Such straws will men grasp at. There is one rather serious error. I read (page 219): 'He had undertaken to prove that a hunger-strike is essentially immoral and criminal when it is attended by serious danger to life.' This is a complete misrepresentation of my purpose. I undertook to prove that the hunger-strike (not any hunger-

strike) was suicide (not 'essentially immoral and criminal') when death was intended (not when 'it is attended by danger of death'). No wonder that a man with such an idea of my purpose should be so often off the track.

(*b*) We have at last come to the only fundamental contention that remains, the second alternative form of hunger-strike to which I alluded above. On pages 225 and 226 Dr. Cleary expounds his hunger-strike. He calls it a 'lengthy argument which I completely overlook,' and he adds a couple of pages of 'argument' in his last article. He says, among other things (page 226): 'Having failed to discover that I contended, in the lengthy quotation just cited, that the death resulting from hunger-strike might, in certain circumstances, be indirect or incidental, Canon Waters subsequently discovers the line of thought for himself.'

He does not see the contradiction between saying I completely overlooked his lengthy argument and that I subsequently discovered the same line of thought for myself. As a matter of fact, I discovered this line of thought for myself some years ago, and I cannot apologize for that. I could not have overlooked his 'argument,' as anyone can see, if he turns to the original, that the passage is not an argument at all. It is an elaborate hypothesis, without fact or argument. He pictures, in fancy, enormous goods gained and imaginary evils avoided by a hunger-strike. The evils are the sacrifice of some big principle—the chief good material benefit to a big national issue. It is impossible to answer such a hypothesis: anyone can make any hypothesis he likes, provided it will hang together. The abstinence which he calls a strike is refusal to take food whenever disgrace, apostasy, or the sacrifice of principle is involved in the act of eating. As long as the terms of this are kept, one may say at least that the abstainers do not make the exploiting of their own death or danger of death a part of their programme. As far as their personal intentions and wishes are concerned, everything, except the avoidance of disgrace, is incidental. The intention of nature, however, has still to be reckoned with.

In my last article I discussed the morality of such a hunger-strike. I will repeat my conclusions lower down—but a very important question has first to be settled about the reality of this strike, that is, whether it has been in operation anywhere for the last twenty years, on such

a scale as would constitute it, whether right or wrong morally, a real rival of the strike that I studied in my August article. Dr. Cleary makes no attempt whatever to show the thing has been ever in practice, and he contributes nothing positive to the discussion of the morality of it more than a magnification, in fancy, of the benefits that might conceivably attach to it. He expects me to make his case for him as well as to answer it, like the king who demanded that his seers should not only interpret but discover his dreams for him. First, then, I will take the question of its reality or existence. I have no *a priori* objection to admit that abstinence of this kind has been practised. Daniel and his companions at the court of Babylon would not take the king's meat lest they should be contaminated. And others may have been in a similar plight. This abstinence of Daniel, which, but for the tact of an official, might have become serious, would have been a very good example of the strike Dr. Cleary describes.

Apart, however, from religious prohibitions, I find it hard to construct a case which would have enough plausibility even for a romance. Such a strike is essentially negative—its aim is the avoidance of disgrace or recreancy. Once it loses this negative character it relapses into either of the forms of hunger-strike which we have already considered. Let us now turn to my adversary's presentation of his hunger-strike. Remember that he is a skilled advocate engaged in framing a case in the abstract and likely to exclude every element that would mar the harmony and consistency of his hypothesis. We shall see that he cannot even do this :—

> Prisoners who have been unjustly condemned are entitled to protest against their own condemnation—they are entitled to maintain that they are innocent of crime and that they should not be treated as criminals; refusal to take prison food might then be a refusal to acknowledge the right of the prison authorities to confine them to such food; it might involve a direct protest against an unjust condemnation, and, where the alleged crime is of a political nature, a vindication of some big national claim.

Of course, one may admit all this. What I would point out is that there is not a single word in the passage about the avoidance of dishonour, of treason to a national cause involved in eating. Why not start a hunger-strike in vindication of some big national claim ? he seems to ask. This

is precisely what I said the hunger-strike was started for —the vindication of some big national claim, to benefit materially some big national issue. Murder will out. No talk here of the mere avoidance of dishonour—oh, no, the purpose of this hunger-strike is to help on the national cause. The real hunger-strike that has agitated the country is in Dr. Cleary's mind and it naturally finds expression, even when he professes to be painting a different picture.

Not, indeed, that he forgets the other side either. I will therefore overlook this indiscreet self-revelation, and take the case as he intends to put it before me. Let us, then, suppose that certain prisoners have been unjustly condemned for their religion, like Oliver Plunkett, or for their politics, like Silvio Pellico. If these prisoners consent to eat the prison food, though only in default of anything better, and only as a means of sustaining life, they betray their cause, sacrifice their principles, admit their guilt and the right of their gaolers to hold them as criminals. This supposition is the principle that lies at the basis of this form of strike, for it is essentially a strike against disgrace, and it is not even intelligible unless we suppose that the act from which we shrink implies disgrace and disloyalty. Now, is this principle true? No one could think for one instant that it was in the smallest degree credible. If true, it would convict of apostasy all the martyrs and confessors of the Church, and of treason all the patriots that have dragged out weary years in prisons for their country—all except those who have been ascertained to have gone on hunger-strike.

But we must probe this hypothesis a little further. If the theory is true at all it must apply to the voluntary discharge of all the natural offices of life as well as to eating. Sleeping in a prison bed should be very particularly contaminating, and drinking in prison a very heinous disgrace. But the honourableness of sleeping under criminal blankets and drinking from prison springs seems not to be questioned. If so, it is the same with eating. A man who lies in a prison bed while on hunger-strike is a contradiction, if we accept Dr. Cleary's theory, and if I find that besides refusing food he will refuse only one kind of drink—milk, namely—I have his measure. The man's aim is to avoid not disgrace or contamination, but whatever will nourish him and keep him well and strong. I need not say that if eating is disgraceful it does not become less so by mere

change of place and time, but everyone knows these have a great effect on the practice of the hunger-strike. The principle can allow of no respect of persons, of no dispensations—the man who abstains from prison food is a good patriot, the man who does not has betrayed vital principles. Such would be Dr. Cleary's test; very simple, indeed, but no one accepts it.

This theory will not fit the facts. It is shattered by the most elementary knowledge of what is going on over the country. I am not sure whether this form of strike has ever been in operation since the time of Daniel, but I am quite sure it has not been in operation in this country or England in any public way during, say, the last twenty years. The strike has quite a different motive—it is a means of bringing the enemy to terms, and the power of the hunger-strike to do this is the danger of death it involves. Dr. Cleary asks why I think the hunger-strikers intend their own death as a means to wringing concessions from the Government. The answer is obvious. No other conclusion is possible on the facts. He had better try to reply to the second argument in my August article as well as to the plainest of facts about the strike, and he will find an answer. I take it that this strike against disgrace has no substance or reality as an active operation and that although it may be a hunger-strike, it has no claims to be *the* hunger-strike. The hunger-strike is an attempt, by means of self-starvation, to bring the Government to terms, and that is the way everyone regards it.

It is hardly worth while discussing the morality of a hunger-strike that has so little substance in reality. The conclusion I came to in a previous article was that since self-starvation is suicide, and suicide is always wrong, this hunger-strike, like every other, is unlawful when it involves self-starvation—but in so far as it involves a moderate and prudent abstinence no one could condemn it.

'According to the Canon, whilst the danger which results from temporary abstinence is indirect, that which results from continued abstinence becomes direct.' The danger is not direct necessarily in either case; I said, self-starvation (and not mere danger) is suicide, and direct in the intention of nature; and if Dr. Cleary questions this he can address himself to the first argument in my August article. To the question directed to me in the name 'of all the theologians' I answer, I never considered whether a

man's honour might not be saved by suicide as well as by abstinence; that is a question I avoided, and my critic may choose whichever view pleases him. Death, however, is not incidental to the intention of nature, as I have proved.

I omit particular consideration of the Carthusian and other cases. There is nothing new in my opponent's observations on them. I stand to all my solutions of these problems. As a rule they are limitations on the hunger-strike, and the only effect of their being overthrown would be to strengthen the case against the hunger-strike.

I may now be permitted to sum up my views of the issues of this long controversy. It has never been denied that any hunger-strike involving self-starvation as a means to an end is suicide. There is now no dispute as to the futility of the lesser form of strike. I asserted that it was, moreover, morally wrong. This was questioned, both on authority and with argument. I have answered the argument, and I have shown that the authority is all on my side. The negative strike (viz., to escape contamination), is suicide, if carried the length of self-starvation. This strike has, however, not been in operation and it has no claim to be *the hunger-strike.*

JOHN WATERS.

NOTES AND QUERIES

THEOLOGY

DUTIES OF VOTERS—CORRUPTION AND BRIBERY

I

Rev. Dear Sir,—I am no supporter of bribery, but I often wonder whether the denunciations of it are not sometimes slightly exaggerated. They often take this form: 'The man who accepts a bribe is selling something that he does not own.' Is the statement correct? Is voting power *merely* a trust? Is a man bound in justice to vote at all? If not, is he guilty of injustice if he refuses to act except he is compensated for his trouble? What is the position of Councillors—County, Urban, and District? I grant that the vote given may be unjust itself, and that the person giving it may be held accountable for consequences and may be punished in the civil courts. But my contention is that there *may* be a title to the money received, and that the man who gets it may sometimes be entitled to keep it. If that is true, even occasionally, the statement quoted would seem to be untrue.

Confessarius.

II

Rev. Dear Sir,—A Local Government elector, who is a Liberal, is given a money consideration to vote at a district council election for a Conservative candidate who is quite as capable of transacting the affairs of the District Council as his opponent. The elector votes for the Conservative candidate, as agreed upon. What, from a moral point of view, is to be said (1st) of the action of the voter, and (2nd) of the person who caused the voter to vote in the way mentioned?

I presume the answer to this question would also apply to a Conservative voter voting under similar circumstances for a Liberal candidate, and *vice versa.*

Perplexus.

The queries cover a great variety of cases. It will save repetition, if we arrange our principles in order.

Voting may be one of the duties attached to an office or position accepted on the ordinary contract or quasi-contract terms. If so, the individual appointed is obliged to discharge it in the same way as any other function of his office. Failure to comply will entail the same results as other breaches of commutative justice: if excuses are alleged, they must be judged by the same principles as govern other contracts, and they must be allowed to operate only on similar conditions. If a

man, therefore, is given a salaried position—is appointed, for instance, a Member of Parliament or a Resident Magistrate—he is obliged to attend and give his vote, except in circumstances that would excuse (say) a lawyer from working up his case or a doctor from visiting his patients. When there is question of *supporting* an unjust measure the conditions would be stricter still. Action of that kind would be allowed only when abstention would involve loss of position in life, or when the proposed measure was a necessary portion of some wider scheme of undoubted utility, or, finally, when there was nothing left but a choice between an evil measure and another still worse.[1]

But the power of voting may also be conferred more or less as a privilege and without any idea—on the part of either conferrer or recipient—of strict obligations in commutative justice. That is the case certainly with the ordinary voters in Parliamentary or Local Government elections. As regards District or other Councillors, Poor Law Guardians, magistrates of the ordinary type, etc., the matter is not so clear. Some claim that, since there is no salary, these men are in the same position as ordinary voters. We must say we never saw much in the argument. If there is no salary in the ordinary sense, there is compensation of another kind. And, nowadays, there is always a contract, implied at least.

But let us suppose that a voter does belong to the second class—that he is merely 'privileged' to vote. If he refuses to exercise the power he has got, what are we to say of his conduct ? First of all, that he is guilty of no breach of strict, commutative justice. To assure ourselves of that, we have only to recall the well-known principle that a man is never bound in strict justice to do anything *positive*, unless either, 1°, there be a *law* imposing the obligation, or, 2°, the individual in question has inflicted an *injury* which he is bound to repair, or, 3°, has made a *contract*, express or implied, by the terms of which he is bound to stand. In the case given there is question of something positive, and none of the exceptions hold: the law imposes no obligation in justice—in fact, generally no obligation of any kind—and the voter, normally, has neither injured anyone nor bound himself by strict contract. So long as he remains inactive, he keeps within the limits of strict justice: he will violate it only when he makes a positive use of his power and, in the process, injures some other individual.

But strict justice is not the only virtue in the calendar. There is legal justice as well—also honour, fidelity, gratitude, and a host of others, till we come to charity that crowns them all. Keeping to the lower level of mere legal justice, we must admit at once that it imposes on every man an obligation to contribute, as far as he reasonably can, to the general welfare of the community to which he belongs. Else citizenship has no meaning : and all talk of the *duties* of citizenship is the merest moonshine.

When, therefore, the vote of an individual, or, still more, the votes

[1] Cf. Noldin, *Th. Mor.*, ii. nn. 313-5.

of a group, are necessary or useful for some purpose of public utility, there can be no doubt whatever that the holders are obliged to use their power—even though that power be regarded merely as a 'privilege.' What that obligation exactly is, whether grave or light, will depend on the importance of the issue at stake and on the extent to which the votes are likely to influence the ultimate result. The decision on these points must be left to upright, intelligent men, closely in touch with the facts. But the obligation will certainly hold when the votes, though not sufficient to turn the scale, swell the minority sufficiently to inspire the majority with a salutary dread of making undue use of their technical, and perhaps temporary, advantage. And, in the case of any particular individual, it will vary with the effect his action is likely to have on his fellow-voters; in a rough way it will increase in proportion to the extent of his influence.

But the obligation is less, and yields more easily to excusing causes, than the obligation of a man bound *ex officio*. It must be put on the same level as the obligation resulting from positive laws of the ordinary kind: and *that*, according to the well-recognized principle, ceases when it entails serious *special* inconvenience—unless that inconvenience be itself inflicted in contempt of some worthy cause or high ideal. There is a certain amount of unpleasantness normally connected with voting—some loss of time, some slight expenditure of money perhaps, the ignorant and sneering criticism of disreputable opponents, etc. If things like these be allowed to excuse, the obligation itself becomes a mockery. But if there be something serious and abnormal—loss of very valuable time, very considerable expense, bitter persecution of an unusual type, the voter who abstains, while he forfeits claims to heroism, cannot fairly be regarded as failing in his duty.

Except for the questions of bribery, these principles will cover the queries of 'Confessarius' and 'Perplexus.' There is no obligation on the Councillors if the matter is one of mere routine, or if they know that their votes will have absolutely no effect. But, outside these cases, there *will* be. Whether it be grave or light depends on the circumstances: whether in strict justice or not, on the correct solution of the problem already mentioned. As for 'Perplexus' ' voter, he has violated no principle of legal justice, seeing that the two candidates were equally well-qualified. But he is a man that neither organization has much reason to be proud of, and that certainly has no reason to be proud of himself. He cares little for honour, fidelity, or high ideals of any kind. Probably he is one of the wretched humbugs that talk loudly about principle, but would like to remain neutral in a crisis—hoping to retain the favour of all parties and to enrol themselves comfortably later on in the ranks of whatever section ultimately triumphs. His place is with Dante's 'caitiff band of angels' that sided neither with God nor with Lucifer.[1] And the poet's comment is the best: 'let us not talk about them, but look and pass on.'

[1] *Inferno*, canto iii.

On the bribery question, the distinctions already made are useful. Our conclusions will vary according as the voter is bound in strict justice or not. We may imagine various cases :—

I. 1°. He is bound in justice to vote in a particular way and *insists* on a bribe before doing so. Manifestly a breach of commutative justice. The vote itself of course is correct, and there is no obligation as regards its consequences. But, for giving that vote he is already paid a salary, real or equivalent : and, by insisting on a bribe, he is charging two prices for one and the same service. To the second price he has got no claim whatever, and he is bound in strict justice to refund every farthing.

2°. He is bound to vote in a particular way, is offered a free gift for doing so, and accepts. Theoretically, no breach of commutative justice. The vote given is correct : and free gifts may, generally speaking, be offered and accepted for any legitimate purpose. We may recall, in that connexion, the principles generally held in regard to rewarding children for fulfilling their religious duties. If we want a real 'justice' case, we have it in the common practice of offering gratuities to officials, of various kinds, for services already provided for by contract. Or, to make the matter more definite, take the following. James owes a debt of £10, and shows no enthusiasm about discharging it. John discovers the fact and offers him a pound if he pays the bill. James accepts. Net result : The creditor is delighted ; James is pleased to find that paying the bill is not quite so troublesome as he had anticipated ; and John has the comfortable feeling that rewards the man who does something to redress the world's grievances.

But, as regards the voter, all that is largely theory. In practice, the man who begins by accepting bribes will end by insisting on getting them. At the very least, there will soon be a general impression to that effect; and, once that stage is reached, the voluntary gifts have in fact developed into obligatory taxes, and the principles of the first case must be rigidly applied. Nor will the evil stop there. If he accepts them for doing right, he will soon accept them for doing wrong. And, even though he avoids the worst pit-falls, his example is very infectious : once it begins to spread, there is hardly anything more calculated to poison the springs of honest dealing and rot the whole moral fibre of a nation. The practice, mean and contemptible and dangerous at its best, leads at its worst to a gross abuse of public trust and to the lowest forms of flagrant injustice. It should be denounced by everyone interested in the morality of public life. And both Church and State are fully within their rights in adopting, as they have done, the most stringent measures to root it out in every shape and form.[1]

[1] Some of the ecclesiastical penalties may be found stated in Canons 729, 2371, 2392 of the Code. They include the loss of office, benefice or dignity secured by simony. In some localities there are penalties—reservations for instance—for even non-ecclesiastical offences. The civil penalties are prescribed in 47 and 48 Vic. c. 70 (election offences generally) and 52 and 53 Vic. c. 69 (Public Bodies Corrupt Practices Act, 1889); they affect both parties to the transaction, and include fine, imprisonment and occasionally loss of office.

3°. He accepts a bribe for doing what he is bound in justice *not* to do. This is the worst case of the three. Jointly with all who support him he becomes liable for all the (even dimly) foreseen consequences of his guilty vote.[1] Many of these he can never repair; if, for instance, he helps to appoint an incompetent man to attend to the health and lives of the community, he has a hand in every death that might have been avoided. Is he allowed to keep the bribe? We must reluctantly admit that his obligation to give it up cannot be established. He has, after all, done something of temporal advantage to the briber—something, moreover, to which he was in no way obliged—and for that mis-called service he may insist on the stipulated price. If, in face of the reprobation of all honest men, he finds consolation in his tainted money, he only proves that he has sunk to a depth where moral principles have almost ceased to have any intelligible meaning.

II. 1°. He is not obliged in justice to vote, and he accepts, or insists on, a bribe for voting right. The same principles as in No. 2 above. He has not received two prices for the same service, but the practice is one to be reprobated and denounced. 'Perplexus'' voter will probably take his stand in this category—but he may easily slip into the next.

2°. He is not obliged in justice to vote, and he accepts a bribe for voting wrong. The principles of No. 3 above. He is obliged in justice to repair the evil results, in so far as he can, but is probably allowed to retain the blood-money.[2]

The plain, blunt, honest man will probably think it strange that the 'just' voter (I. 1°) is obliged to restore the bribe, while his more disreputable colleague (I. 3°—II. 2°) is allowed to retain it. It seems like putting a premium on infamy. But it must be noted that the former is bound to consequences much more unpleasant than mere restitution of ill-gotten gains, and that the limited generosity in the second case is only the result of the commonly received principles on 'immoral contracts.' Even the very murderer has a probable claim to the money paid him for his crime. There are women in the community that sacrifice body and soul for a temporal reward: when their case came before a Roman tribunal, the answer was that no strict obligation to pecuniary restitution could be imposed.[3] The voters of 'Confessarius' and 'Perplexus' are bad enough; but they are not quite so bad as the first

[1] For the possible exceptions, see the Moral Theology Manuals.

[2] The moral text-books, unfortunately, do not discuss these matters very fully. They allude to it, though, when they deal with the obligations of judges, etc., and the principles can be easily extended further. The reader may consult Lehmkuhl for instance (*Th. Mor.*, i. 968-9). He distinguishes between gifts extorted and gifts freely offered, and remarks that the latter involve no violation of commutative justice. As for the others, he inquires whether they are given for an unjust sentence—in which case they may be retained, once the sentence is given: 'potest pretium acceptum pro aestimatione periculosae et probrosae actionis retinere'; or for a just one—in which case they must be returned. But he makes full allowance for the further prescriptions of positive law.

[3] Penitentiary decision, 23rd April, 1822.

class named, and probably better than the second. They may remember, too,—if the fact gives them any consolation—that they have a Scriptural prototype, whose example we cannot recommend, but whose sense of decency conveys a lesson. Judas betrayed his Master, and got thirty pieces for doing it. But there was a spark of honour even in Judas: he paid the money back, and hanged himself.

TWILIGHT SLEEP

I

REV. DEAR SIR,—Will you kindly say what attitude a priest should take if consulted about the lawfulness of Twilight Sleep?

PHILIP.

II

REV. DEAR SIR,—The subject of Twilight Sleep is being more and more discussed. Would you please give us some details of the new method, and say whether they have any bearing on moral problems.

X. Y.

The 'details of the new method' lie outside our sphere. On its history we need only say that it was first discovered in Germany, fell into disrepute there after a time, was adopted with enthusiasm by some American exponents, and is employed now by many practitioners in Ireland and Great Britain. On special points, the experts differ. Some pin their faith to scopolamine, others to hyoscine, others to neither. Some enjoin quiet and darkness; others dispense with both. In the earlier days loss of memory was regarded as the essential characteristic: the later practitioners say that it often fails, and some reject the test completely. But, taking the data as they stand, we may, in a general way, describe the new method as one that lessens pain and memory, without robbing the patient of consciousness, involves increased attention and extra expense, and is attended with some ill results (varying inversely with the care and skill expended) to mother or child, or both.

All this certainly *has* a bearing on moral problems, but it can hardly be said to have raised a new one. Some people seem to think otherwise: they are never so happy as when detecting microscopic difficulties. They recall the statement in Genesis [1] that 'in sorrow shalt thou bring forth children,' and they wonder whether the new method does not involve opposition to a divine decree. If it does, so do the other methods that tend to produce the same results, and that these men fully sanction. If the objectors read a few lines further, they will discover the parallel statement that 'in the sweat of thy face shalt thou eat bread,' [2] but we question whether it will cause them acute anxiety when they sit down to dinner without exhibiting marked signs of previous exertion. And the same interpretation applies to both. Probably there is no precept conveyed in either. Even though there be, it is too vague to cause much

[1] iii. 16. [2] iii. 19.

trouble. In spite of all that the human mind has devised—and of all, we are pessimistic enough to prophesy, that it ever *will* devise—a fair amount of toil and suffering will remain the lot of the race. Anyhow, if the suffering ever does cease, something better than 'Twilight Sleep' will have to be invented.

Leaving aside these fanciful objections we find that the others present no new difficulty. The use of the senses and of the mental faculties is impeded for the time being: so is it, and more effectively too, in other operations that no one now thinks of condemning. There are incidental ill results, some of them possibly permanent, but even that does not brand the method as essentially evil. The problem is really the old weather-beaten one of the 'act with two effects.' There is no question of 'doing evil that good may come': the point at issue is merely whether the good effects bear such a proportion to the bad that, in spite of the second, the act may be allowed for the sake of the first.

On that, our court of appeal is the medical faculty. The authorities, unfortunately, are not quite unanimous, but they give us points enough for some broad, general conclusions. It would be impossible to sum up the evidence here; we offer, instead, some extracts from contributions on the subject, to the *Practitioner* of some two years ago, by eight leading experts.[1] They represent various view-points, and may be taken as furnishing a fair indication of the medical attitude at present.

1°. The first [2] tells us that 'to ensure complete success, a darkened room, a quiet house, and the personal influence of a good nurse are necessary adjuncts.' The patient 'seldom retains any memory of labour and its sufferings.' 'In some cases, the amnesia is complete and entire; in others it is imperfect, and in some, a total failure.' Except in one case he had 'never found any excitement or noisy restlessness as described by some.' When due care is taken, 'the pain is always lessened and materially modified.' One of the main objections is 'the necessity of the presence of the physician during the whole time.' Post-partum hæmorrhage is not increased, when the proper method is adopted: 'the patient sleeps off the effects in the course of three or four hours'; 'there is no trace whatever of any exhaustion or shock'; 'the children are often born . . . . in a sort of sleepy condition . . . but, with a little usual manipulation, the ordinary respiration is rapidly established'; 'not one of the children has ever been a source of real anxiety.'

All of which amounts to an almost unqualified vote in favour of the practice—when the circumstances render it practicable.

2°. The next [3] begins with a warning. The claims made by Sunday newspapers that 'labour may be rendered painless without adding new risks to either mother or child' will 'certainly not be made by any observant obstetrician who has employed [the drugs] in his practice.' The drugs, however, are not 'valueless or, when properly used, dangerous.'

[1] January, 1917, pp. 1-24.
[2] Sir H. Croom, pp. 1-4.
[3] Dr. H. Williamson, pp. 4-8.

'What we aim at is loss of memory (amnesia)'; the patient will still have pains, 'but the memory of those pains will not be implanted in the cells of her brain, and after the labour is over she will be unaware of what she has gone through.' He then gives various particulars, of interest only to medical men, and sums up his conclusions:—

My experience leads me to believe:—

(1) That scopolamine and morphine injections in the majority of cases diminish the pain of labour.

(2) That in about one-third of the cases amnesia is complete.

(3) That in a small proportion of the cases active delirium is produced by the drug.

(4) That labour is prolonged.

(5) That the loss of blood in the third stage is increased, but that severe bleeding is not common.

(6) That no other ill effects are produced in the mother.

(7) That the danger to the child is undoubtedly increased.

(8) That the dangers are lessened by constant and careful supervision.

(9) That the treatment should not be undertaken unless the patient's surroundings are favourable, unless the obstetrician is prepared to remain with his patient from the first injection until labour is completed, and unless skilled help is readily available, should operative interference become necessary.

Which supports the previous vote, but with strong emphasis on the essential conditions.

3°. The third[1] reports that the children 'do not seem to have suffered,' that some of the patients were 'most violent' but none of them 'remembered the birth of the child,' that his experience was not sufficient to enable him 'to form any definite opinion on the subject of Twilight Sleep,' but that he was sure the treatment should only be adopted when there was 'a very competent nurse in constant attention,' and a medical attendant 'within easy call.'

4°. The report of the fourth[2] is slightly less favourable. 'The patients seldom have any recollection of what they have been through' and the effects on mother and child are generally slight. But 'caution is required in premature labours, or when feebleness of the child is suspected,' and '[the morphia-hyoscine narcosis] will be a luxury only for those willing to pay for it.' Still, in special cases, 'it is a valuable addition to our methods of managing difficult and prolonged labour.'

5°. The fifth[3] gives records of a method peculiar to Clapham Hospital: is 'not much impressed with the advantages of hyoscine-morphine treatment,' says 'it is not suitable for general use,' but admits that 'in some cases it is of the greatest value.'

6°. The sixth[4] deplores 'the little interest that has been aroused in the profession' by the new treatment, gives a favourable report of results

[1] Dr. C. Berkeley, pp. 8-9.
[2] From Dr. Fairbairn, pp. 9-13.
[3] Dr. A McCall, pp. 13-19.
[4] Dr. P. L. Giuseppi, pp. 19-21.

attained, suggests methods of reducing the ill effects to a mimimum, and supports the warning against its general use 'in country practice.'

7°. The seventh [1] states that 'in the majority of cases the amount of suffering is decidedly decreased,' but that 'the patients require a nurse constantly with them.'

8°. The last [2] ends on a note of enthusiasm. He believes that 'the fear, worry, and pain of parturition can be eliminated, and that this can be done with safety to the mother and child.' He gives particulars of his own treatment, and claims that it is 'safe and simple'; that 'it can be used in humble as well as in wealthy homes,' 'in normal as well as in abnormal cases'; that 'it does not produce oligopnoea or any untoward effects on the child'; and that 'if English doctors will only give [his] method a trial in their next ten cases, [he is sure] they will always use it.'

The divergences of view may be accounted for largely by the presence, or absence, of special facilities. The statements, as a whole, when viewed in the light of accepted principles, would seem to warrant us in saying:—

1°. That there is nothing intrinsically evil in the method.

2°. That, without fair skill and special attention, the ill effects may easily outweigh the good in any given case—and so render the operation unlawful.

3°. That, *with* fair skill and special attention, the contrary is generally the case.

4°. That, therefore, in practice there need be no scruple or anxiety when the method is adopted by a competent and conscientious doctor. A man who would insist on the treatment in *every* case would, as things stand at present, certainly be acting very wrongly. But men of that description are not admitted to the medical profession.

These are views that we think fully justified. But it is only fair to admit that similar statements have been vigorously attacked in the past—and that, too, by medical men specially qualified to form an opinion. Writing in the American *Ecclesiastical Review*, a clerical correspondent had expressed himself in these terms [3]:—

There is no doubt that much is to be said in favour of Twilight Sleep, no matter from what point of view we may consider it. Not only is it not subject to abuse in the sense that it may not be used for unlawful and unworthy purposes, as unfortunately is the case with so many scientific discoveries in medicine and surgery; but also it will be of substantial and permanent good in removing from the expectant mother the dread of an ordeal of long and severe suffering such as child-birth is apt to be in most cases. For I am of opinion that a careful scrutiny into the reasons or rather excuses given by women who are normal and healthy to palliate what we euphemistically know as race suicide will reveal the fact that this very dread lies back of them all, or at least of a very large percentage of them.

[1] Dr. J. P. Hedley, p. 21.
[2] Dr. M. W. Kapp, pp. 21-24.
[3] Fr. Donovan, O.F.M., June, 1915, pp. 690-1.

He was taken severely to task by an eminent medical critic, whose contributions to the science of Pastoral Medicine entitle him to a respectful hearing.[1] The practice of Drs. Krönig and Gauss were denounced in whole-hearted fashion; some gruesome records were quoted, and reference made to others that 'may not be printed in full except in a medical journal.' Alluding to the previous extract the critic stated that 'in my opinion very little can be said in favour of the twilight-sleep method, no matter from what point of view, except the commercial, we may consider it. . . . It is unscientific, and undoubtedly immoral.' And he concluded:—

The twilight sleep method, when it is not foolish and unscientific, is as moral, and 'has as much to be said in its favour' as has shooting with a revolver at a target on a baby's head. It is one of the latest criminal fads. Fortunately, it will die out before long, just because it is foolish, yet in the May number of the *American Journal of Obstetrics*, Beach of Brooklyn had a study of a thousand cases here in the United States. There is even a 'Painless Labour League' gesticulating from the platforms, which boycotts physicians who, through respect for their scientific and moral consciences, refuse to go through the *Dämmerschlaf* hocus-pocus. . . .

The method can not be perfected unless someone invents a harmless narcotic, which is a contradiction in itself. If enough of the present narcotic we have is given, we risk the life of the woman, as I said, and we gravely risk the life of the child; if we do not give enough to get the desired effect of twilight-sleep, why, in the name of common sense, meddle with it at all, unless we are frank quacks?

We are strongly impressed though, by the latest statement we know on the subject—that given in the fourth edition of the well-known work by Drs. Tweedy and Wrench.[2] Dr. Tweedy tells us [3] that he began to use the drug in 1904, but discontinued it 'because of the unfavourable reports of its action published in different foreign clinics.' He began again in 1908, and requested two assistants, Drs. Freeland and Solomons, to record their experiences. In a paper read in 1911, they formulated several conclusions from which we select one bearing on our present point: 'no ill effects to mother or child need be expected to follow the rational administration of scopolamine.' They found it undesirable to keep patients in a darkened room, and were quite satisfied even though the amnesia were not complete. Much, they stated, had been said about the danger to the foetus: 'from our cases we consider that this has been exaggerated.' For himself, Dr. Tweedy states: 'if the first stage is prolonged, or very painful or ineffective, it becomes a positive advantage to give scopolamine and morphia'; 'the nurse should know where to find the doctor, if necessary; at all events he should make it his business to return to see his patient within an hour and a half.'

[1] Dr. O'Malley, ibid. July, 1915, pp. 92-6.
[2] *Pract. Obst.*, London, 1919.
[3] Ibid. p. 56.

The only statement we can find in the manuals is that in the Sabetti-Barrett *Compendium.*[1] It reads :—

Nec illicitus videtur somnus artificialis quo injectionibus medicinalibus inducto mulier pariens non persentiscit dolores partus. Durante isto statu, ita fertur, non orbatur usu sensuum; postea tamen dicitur non recordari eorum quae tunc acciderunt et somnus vocatur *crepuscularis.* Porro affirmamus si mulier in isto statu rite protegatur, si medicus cordatus sit, si cura adhibeatur ut neque mulieri neque foetui quidpiam nocivum occurrat, rem agi licitam. Aliud autem esset dicendum si istae conditiones non verificarentur.

The *quidpiam nocivum* seems too strict: undesirable results of a minor kind would certainly not render the method unlawful. The formula as a whole has the advantage, or disadvantage, of claiming the support of *all* parties; they would differ only in the emphasis laid on the 'si.' Most of those we have quoted would leave it as it stands: Dr. O'Malley would print it in large capitals; if we put it in italics, we shall probably be very near the truth.

M. J. O'Donnell.

CANON LAW

CONFESSION OF NUNS—THE CONDITION 'FOR THE PEACE OF HER CONSCIENCE'

Rev. Dear Sir,—I am grateful for your reply in the current number of the I. E. Record to my communication respecting the effect of the clause 'for the peace of her conscience' on the confession of a nun or sister, made to an ordinarily approved priest in a public church, public or semi-public oratory. In that reply, whilst rejecting my main contention, you make, I gladly acknowledge, a very considerable advance on your original position, by admitting the validity of the confession in circumstances when there is a doubt as to the fulfilment of the condition 'for the peace of her conscience'; and as you tacitly accept my statement that this doubt would frequently exist, the margin of difference between us is not so great as it might seem after all.

There is, however, in principle, an essential difference between us, and if this only involved the invalidity of one single confession, it is serious, and the doubt must, if possible, be cleared up. Nor is the matter only serious, it is very practical, too; for to my personal knowledge many religious Sisters avail of this privilege of confessing to an ordinary confessor in a public church without troubling themselves much as to whether the peace of their conscience is involved or not.

Having carefully considered your answer, and with an earnest desire to find light for the solution of my difficulties, I must candidly confess that I am not convinced, but am rather confirmed in my doubt. With great respect I must say that I am unable to regard that reply as anything more than a repetition of your original position and a re-affirmation of the statement that the clause must be regarded as invalidating, without producing any really solid arguments in support.

[1] N. 150, note 3°.

Let me quote the pertinent words of the canon as given in the Code: Si . . . aliqua religiosa . . . ad suae conscientiae tranquillitatem Confessarium adeat ab ordinario loci pro mulieribus approbatum Confessio in qualibet Ecclesia vel oratorio etiam semipublico peracta valida et licita est.'

The question at issue is: must the words *ad suae conscientiae tranquillitatem* be so interpreted as to imply an invalidating condition. Is any other reasonable interpretation possible? It will not do to say that they *may* bear the strict interpretation. That interpretation must be conclusively proved; for we are reminded by Canon 11 that invalidating clauses are not to be assumed. They must be either expressed or else shown to be equivalently implied. The burden of proof rests on him who would maintain the rigorous interpretation. If it can be shown that his proofs are inconclusive, a solid doubt remains, and my contention that the confession would not be invalid, even though the condition were unfulfilled, is amply justified.

Now, what are the arguments that have been adduced? I can only discover two statements in your reply that contain any attempt at a proof. First, you write: 'The statement that when these three conditions are fulfilled the resulting confession is valid and lawful, clearly implies that if any one of them is omitted the confession is both unlawful and invalid.'

Whose statement is this? It is not a statement found in the Code, as anyone comparing it with the canon quoted, can see. It is that canon manipulated in such a way as to make it seem to countenance the rigorous view.

The consequence which is sought to be drawn from the first member of the sentence would only be legitimate when each of the three conditions is laid down as invalidating. But this is the point for which proof is sought. You offer none. You only assert it.

The second attempt at proof is contained in the words: 'That the omission of any of these conditions involves the invalidity of the confession becomes more apparent, when we remember that, as a general rule, special jurisdiction is necessary to lawfully and validly hear the confession of nuns and sisters (c. 876). When, therefore, this canon, departing from the general rule, states that, under certain conditions, the confession may be made to a confessor with ordinary approval it is evident that the defect of any one of the conditions imposed involves the invalidity of the confession.'

What does this amount to? Simply the statement that the canon uses the words *ad suae conscientiae tranquillitatem* as an invalidating condition. But again no proof is offered. The rigorous requirement of the verification of these words as a *conditio sine qua non* is taken for granted. No proof whatever is offered that they must be accepted in this sense and no other.

What exactly is the force and effect of the words *ad suae conscientiae tranquillitatem*? In my previous communication I maintained that we were not obliged to regard them as anything more than a mere directive condition. And I adduced the subjective and indeterminate character of the matter as pointing to the improbability that the Church would regard them as an invalidating condition, adding that such an interpretation would inevitably breed endless doubts and scruples.

You retort by reminding me that the validity of acts is often

dependent on subjective considerations. Two instances are given. First the case of confession, which 'by divine law itself is invalid without certain subjective conditions on the part of the penitent.' One brought up in the school of Scotus would hardly be satisfied with this statement of doctrine, nor would he consider the example as a case in point. He would prefer to say that the confession was valid but informal. But, waiving this, it surely is no answer to my statement 'that the *Church* would be likely to attach a condition of invalidity to a matter necessarily subjective and vague, to say that the *divine law* does so in *one particular instance.*

The second instance is taken from the seventh clause of the *Ne Temere* decree, where, as is alleged, according to all authorities, the words *ad conscientiae consulendum* are of an invalidating character. But surely this is not a parallel case. The clause in the *Ne Temere* decree is not one which is left for decision to the subjective state of the person to be married, but it refers to cases, not *subjective* but *objective*, which canonists attempt to define and specify, such as the case of concubinage and the case of the civilly married, etc. There is no parity between such well defined *objective* cases and that of a nun or sister who thinks her conscience is seriously disturbed by every imaginary doubt and scruple. In the one instance the cases are *clear cut* and *objectively* marked off, in the other the decision turns on matters that are *interior* and *subjective,* and therefore oftentimes necessarily uncertain.

But even though it were to be admitted that such a clause may have an invalidating effect, even in a case that is subjective, it has still got to be proved that it must have this and no other meaning in the case in point.

It would be much more to the point if an example of the use of the clause were produced from places more germane to the matter under consideration. It just happens that we have substantially the identical phrase used by the Code on this very matter of faculties for nuns, and it will be most useful to compare it with the canon we are discussing. In Canon 520, just the second previous to the one under dispute, and dealing with the same subject, occurs a phrase of precisely the same meaning and import as the phrase *ad suae conscientiae tranquillitatem.* It runs as follows: 'Si qua religiosa ad animi sui quietem, et ad majorem in via Dei progressum aliquem specialem Confessarium postulet eum facile concedat Ordinarius.'

Whatever be the force or effect of the phrase *ad suae conscientiae tranquillitatem* in Canon 522, the phrase *ad animi sui quietem* must have the same effect in Canon 520. If it be maintained that the clause is invalidating in Canon 522, it must also be maintained that the similar clause is invalidating in Canon 520; and it must, further, be maintained that each of the conditions expressed in the latter canon, viz., *ad animi sui quietem* and *ad majorem in via Dei progressum* is invalidating.

One who maintains the position you adopt regarding Canon 522 must consistently hold that each of these conditions is invalidating—they do not necessarily mean the same thing.

Now, let me suppose that a nun asks for a special confessor *ad animi sui quietem,* but she has no real reason but a mere imaginary one, and the Ordinary grants faculties to the special confessor asked for. Will you hold that the faculties are void, and the confession invalid? Further, let me suppose that she is really disquieted in mind by, let us say, some

serious perplexity, or doubt, or sin, but she has no intention of availing of the special confessor's skill to promote her progress in perfection. To be consistent you should say again that the faculties were void and the confession invalid. Surely no sensible man would admit this.

The question, then, remains: what is the real force and significance of the disputed words? I strongly maintain that it is not proved that they constitute an invalidating condition. Indeed, it may be well doubted if they imply any condition at all. The words are not couched in a way to express a condition. Taken as they stand they only imply an end or purpose to be attained. I venture to think that the ordinary plain man would read nothing more into them than a mere amplifying, or, if you will, redundant phrase, meaning nothing more than to express the end or purpose which ordinarily would be intended. Nine out of ten men would thus construe them. The Canon Law was meant for the plain man as well as for the expert, and, as in many other cases, the former may be right whilst the latter is wrong. Not only then the subject-matter but the form in which the words are expressed seem altogether to exclude the strict interpretation.

Comparison with another example will serve to still further elucidate the meaning of the disputed phrase. I refer to the well-known words of the Council of Trent granting facilities to all priests for absolution from all sins and censures at the hour of death. The Council says: 'Verumtamen pie admodum *ne in hae ipsa occasione aliquis pereat* . . . omnes sacerdotes quoslibet penitentes a quibusvis peccatis et censuris absolvere possunt.'

The words I have italicised, viz., *ne in hae ipsa occasione aliquis pereat* seem much more likely to contain an invalidating condition than the the words *ad suae conscientiae tranquillitatem.* Compared with them the words *ad suae conscientiae tranquillitatem* seem very weak and harmless. Should they not be verified one might indeed be tempted to say that the faculties would not hold. I can well imagine you writing grandly about these words of the Council: 'The law on the point at issue is so clearly stated that there is no need to have recourse to extrinsic considerations to determine its meaning.' Yet it was always maintained as a very probable opinion, that the faculties would hold even in circumstances in which a condition was not verified, viz.,when an unapproved priest absolved a dying man in the presence of an approved confessor. This interpretation is borne out by the new Code, and the probability of the opinion is now changed into absolute certainty.

The conclusion arising from these considerations is that in interpreting clauses which seem to restrict liberty, especially when there is a question of a privilege not prejudicial to the rights of others, we must be on our guard against being deceived by the forms and phrasing of words. But we must look behind and beneath them, bring to their interpretation the dictates of common sense, and above all, not forget that the Church is an indulgent mother, and that the last thing she would countenance would be the laying down of conditions which would make for doubt and perplexity and not for peace and tranquillity of conscience. *Favores sunt ampliandi* is the well-known principle that governs the interpretation of privileges like those under discussion. The principle, I fear, has been unwittingly ignored in the solution of the case.

INQUIRER.

We accept fully 'Inquirer's' statement of the question at issue between us, and we still maintain, notwithstanding his criticisms of our position, that the words *ad suae conscientiae tranquillitatem*, in Canon 522, imply an invalidating condition. We do not hope, however, to convert him to our point of view. Unfortunately, we can do little more than repeat and amplify somewhat the arguments which we have already adduced; and these 'Inquirer' has brushed aside so cavalierly that, were he alone concerned, we should deem a further justification of our position a useless task. As, however, many others are interested in the question, the publication of this letter and our reply to it may not be altogether devoid of utility.

Our correspondent quotes the pertinent words of the canon as given in the Code, so that we need not repeat them. The canon clearly imposes three conditions, in order that the privilege which it confers may be utilized. The religious must make her confession: 1°, for the peace of her conscience; 2°, to a confessor approved by the local Ordinary to hear the confessions of women; 3°, in a church or oratory, even a semi-public oratory. Even 'Inquirer' admits this much, at least if we are to judge him from the following sentence: 'The consequence which is sought to be drawn from the first member of the sentence would only be legitimate, when each of the three conditions is laid down as invalidating.' Now, the canon states that, when these conditions are fulfilled, the resulting confession is valid and lawful; and from this statement we concluded that, if any one of the conditions were omitted, the confession would be both invalid and unlawful. In justification of this conclusion we can only appeal to the ordinary use of language. If it is stated that a certain act is invalid, when a number of conditions are fulfilled, it is clearly implied that the defect of any of these conditions involves the invalidity of the act. Thus, in Canon 1095, § 1, to take a well-known example, it is declared that a parish priest or local Ordinary can validly assist at marriage if three conditions are fulfilled, and it is universally admitted that the defect of any of the conditions would render the assistance invalid, even though there is no express statement in the Code to that effect. This point seems so evident to us that we should not think of labouring it, were it not for our correspondent's attitude.

It is not clear what precisely is 'Inquirer's' position in regard to the conditions in the canon under consideration. Does he hold that the confession would be invalid if it were made to a confessor not approved to hear the confessions of women, or if it were made in a private house? If so, why does he make a distinction between the different conditions? What is his criterion? The canon itself puts the three upon the same footing. Perhaps his explanation is to be found in the following sentences: 'Indeed, it may well be doubted if they imply a condition at all. The words are not couched in a way to express a condition. Taken as they stand they only imply an end or purpose to be attained. I venture to think that the ordinary plain man would read nothing more into them than a mere amplifying, or, if you will, redundant phrase, meaning nothing more than to express the purpose which ordinarily would be intended. Nine out of ten men would thus construe them.'

The words *ad suae conscientiae tranquillitatem* express a condition quite as clearly as the words used in connexion with the other conditions imposed in this canon. They imply not merely an end or purpose to be attained, but also a purpose which the religious must have in view when making her confession, in order that that confession may be valid and lawful. To show that the form of the words is quite suited to express a condition, we may refer to an example which we cited for another purpose in our previous reply—the phrase *ad consulendum conscientiae* in the *Ne Temere.* All admit that this clause expresses a condition, and an invalidating one too; and yet its form corresponds exactly with the form of the clause under consideration. The words, clearly, are couched in a form to express a condition; and our correspondent would not think of denying it, but for the difficulties which the condition involves.

Neither can it be admitted that the phrase is redundant. Not the slightest proof is forthcoming for this contention, and the extreme care with which the Code has been drafted and the conciseness with which it has been worded afford the strongest presumption against it. Besides, if the phrase is redundant, if it does nothing more than express the purpose that would be ordinarily present in making confession, how explain its absence in Canons 521 and 523, where it would express this purpose equally well? Surely we are not to suppose that those who drafted the Code omitted and inserted the phrase arbitrarily! Another point militating against this explanation is that it practically reduces the whole legislation about ordinary and extraordinary confessors to a farce. If the phrase is redundant, then nuns and sisters would be quite free, without any special reason whatever, to make their confession to any priest approved for the confessions of women, even in their own oratory.

In confirmation of our position we appealed to Canon 876, § 1, in which it is stated that 'priests . . . need special jurisdiction to validly and licitly hear the confessions of any religious women whatever and their novices, without prejudice to the prescriptions of Canon 239, § 1, n. 1, 522, and 523.' Canon 522, therefore, makes an exception to the general rule: it lays down certain conditions under which a valid and lawful confession can be made to a confessor who has not this special jurisdiction. Hence, it follows that, if any of the prescribed conditions is unfulfilled, the exception does not obtain, and the general rule must be applied. Consequently, if any of the prescribed conditions is unfulfilled, confession made to a priest without this special jurisdiction is both unlawful and invalid.

In his previous letter 'Inquirer' laid great stress upon the unlikelihood of the Church attaching an invalidating condition to a matter that is subjective; and in our reply we pointed out that it was not unusual to make the validity of acts depend upon subjective considerations, and in support of this statement we adduced a couple of examples. Let us examine his criticisms of these examples. The first was that of confession, which we asserted was invalid by the divine law itself, without certain subjective conditions on the part of the penitent. To this, 'Inquirer' retorts thus: 'One brought up in the school of Scotus would

hardly be satisfied with this statement of doctrine, nor would he consider the example as a case in point. He would prefer to say that the confession was valid, but informal.' Our correspondent can scarcely have been brought up in the school of Scotus. If he were, he would be aware that, according to the Scotists, the acts of the penitent are, not indeed the matter of the sacrament of Penance, but a condition *sine qua non* for its validity. 'But waiving this,' he continues, 'it surely is no answer to my statement "that the Church would not be likely to attach a condition of invalidity to a matter necessarily subjective and vague," to say that the *divine law* does so *in one particular case*.' This is a misstatement of our position. Our answer was that it was not unusual to have the validity of acts made dependent upon subjective considerations. The examples given were selected merely on account of their appropriateness to the question under discussion. As a matter of fact the number of examples which might be cited is almost indefinite. Nearly all the Sacraments are dependent for their validity upon subjective conditions on the part both of the minister and the subject. How vague and difficult to determine these may be in individual cases, it is scarcely necessary to point out. For example, anyone who reads the *Acta Apostolicae Sedis* is aware that the most difficult matrimonial cases tried before the Roman Tribunals are those in which the intention of the contracting parties is the question at issue. Again, for the acquisition of one kind of domicile and quasi-domicile intention is necessary; and we personally know quite well how difficult it is to decide, in particular cases, whether this condition is fulfilled or not. Further citation is unnecessary.

In regard to our second example, 'Inquirer' considers that the phrase *ad consulendum conscientiae* implies an objective not a subjective condition, because canonists attempt to define the cases in which it would be verified. The reason is a most ineffectual one. Canonists will certainly attempt to determine the circumstances in which the condition *ad suae conscientiae tranquillitatem* would be verified, and yet that will not make it objective. No, the words *ad consulendum conscientiae* clearly refer to something subjective: they have practically the same meaning as the phrase under discussion. On this point it is scarcely necessary to quote authority; Vermeersch's testimony, however, is so clear that we cannot refrain from giving his words: '*Conscientiae consulit*, non is tantum qui ejus praeceptis paret, sed etiam qui ejus suasionibus obtemperat. Quare, praeter strictam obligationem, aliud etiam serium conscientiae motivum sufficere nobis videtur ut facultate praesentis dispositionis frui possis.'[1]

'Inquirer' himself next proceeds to adduce some examples, and from analogy with them seeks to obtain some support for his position. The first example is taken from Canon 520, in which there is a phrase of similar import to *ad suae conscientiae tranquillitatem*, and which yet involves no invalidating condition. Now, in the first place, the clause in Canon 520 qualifies merely the asking for the special confessor, and in this connexion there can be no question of validity or invalidity.

[1] Comm. in Decr. *Ne Temere*, n. 72.

Again, in Canon 520 it is not stated that the confession is valid and lawful, if the religious asks for the confessor *ad animi sui quietem* ; whereas there is a statement of this nature in Canon 522. It is absurd to speak of the phrases *ad conscientiae suae tranquillitatem* or *ad animi sui quietem*, when taken by themselves apart from their context, as expressing an invalidating condition or, in fact, any condition whatever: it is the context determines whether they impose a condition, and if so, what is its nature ; and in these two canons the context is quite different.

There is even less parity between his second example and the case under consideration. We always held that unapproved priests could absolve in danger of death, even though approved priests were present. We do not know, indeed, that we ever had occasion to publish this opinion, but we certainly gave expression to it in class. In fact, we could see very little probability in the other opinion. The clause *ne in hac ipsa occasione aliquis pereat* clearly does not express a condition at all: it is simply the reason for the concession contained in the subsequent portion of the sentence, and it is a recognized axiom of Canon Law that *ratio legis non est lex.*

We feel quite grateful to our correspondent for his parting advice to us to be on our guard against being deceived by the form and phrasing of words, and to rely more upon the dictates of common sense. We can only promise him that we shall do our best. At the same time, we may be permitted to remind him that, when the words of a law, taken in their ordinary signification, give a plain definite meaning, to depart from this meaning on account of some slight inconveniences, real or fancied, is not common sense, but common nonsense.

SUSPENSION 'EX INFORMATA CONSCIENTIA'—THE CRIMES FOR WHICH IT CAN BE INFLICTED

Dear Rev. Sir,—I have recently had a discussion with priests of my acquaintance as to the crimes on account of which suspension *ex informata conscientia* can now be imposed. Would you kindly state in the I. E. Record in how far, if at all, the Bishop's power in this respect has been increased by the Code.

Sacerdos.

Under the old legislation the cause on account of which suspension *ex informata conscientia* could be inflicted was a most fruitful source of controversy. In accordance with its original institution by the Council of Trent [1] it seemed much more likely that Bishops could impose it, not only for occult, but also for public crimes: certainly this was the natural implication of the words *ex quacumque causa etiam ob occultum crimen.* Whatever may have been the original intention of the Fathers of Trent, it was certain, however, in modern times that this punishment could be utilized only for the suppression of occult crimes. Even as far back as the time of Benedict XIV this seems to have been the discipline: it is

[1] Sess. XIV. c. 1, *de Ref.*

certainly implied in the Constitution *Ad Militantis*[1] of this Pontiff. It was not, however, until more recent times that all doubts were removed: certain decisions and decrees published by the Roman Curia during the last century made this point absolutely certain.[2] But even still there was considerable controversy as to the precise meaning to be attached to the term occult. Whilst many held that it should be given its ordinary signification,[3] not a few writers maintained that it should be so extended as to embrace also crimes which were publicly known, but which it was impossible or inexpedient to prove in a judicial process. This latter was the opinion of such distinguished canonists as Wernz,[4] Pierantonelli,[5] Péries,[6] Cavagnis,[7] and Santi.[8]

The Code, we think, precludes all further controversy. According to Canon 2191, suspension *ex informata conscientia* can now be inflicted, not only for an occult crime, but also for a public one in the following circumstances:

1°. If trustworthy witnesses reveal, indeed, the crime to the Ordinary, but cannot be induced to give testimony in a judicial process, and no other judicial proofs are available.

2°. If the accused cleric, by threats or any other means, prevents a judicial process from being begun or continued;

3°. If the opposition of the civil laws or the danger of scandal renders it impossible or inadvisable to hold a judicial process.

Canon 2191 further declares that in no circumstances can this punishment be inflicted for a crime which is notorious.

We see, therefore, that the Code has practically adopted the view of Wernz and his fellow-canonists; but this is not at all a proof that, under the old discipline, the other was not the correct opinion. The Code, however, is much more correct in its terminology; it rightly designates as public, crimes which are known to a considerable number, but which it is impossible or inadvisable to prove in a judicial process.

J. KINANE.

[1] 'Item a denegatione sacrorum ordinum vel ascensus ad alios majores; prout etiam adversus suspensionem ab ordinibus jam susceptis, ob crimen occultum, sive ex informata conscientia.'

[2] Cf. S. C. Concilium, in causa S. Agathae Gothorum, 1853; Decr. *Sacra Haec*, S C. EE. et RR. 1880; Instr. S. C. de Prop. Fide, 1884.

[3] Cf. *I. T. Quarterly*, Oct., 1915, p. 447.

[4] *Jus Decret.*, tom. v. lib. ii. p. 111: 'Occultum crimen hoc loco non intelligitur sensu strictissimo, sed illud crimen, quod in foro externo aut per legitimas probationes judiciales omnino probari non potest, licet ex probationibus extrajudicialibus certo de illo constet, aut quamvis legitimis probationibus judicialibus per se demonstrari potest, id tamen ob magnum fidelium scandalum, vel majus clerici delinquentis vel episcopi punientis, vel Ecclesiae detrimentum moraliter fieri nequit.'

[5] *Praxis Fori Eccl.*, p. 246.

[6] *La Procedure Canonique*, p. 156.

[7] *Inst. Juris Pub.*, vol. ii. p. 275.

[8] *Prael. Juris Can.*, vol. v. p. 6.

LITURGY

'VARIA DUBIA'

REV. DEAR SIR,—I shall feel very grateful if you answer the following questions in the I. E. RECORD at your earliest convenience;—

1. May four candles be lighted at *all* the Masses which are publicly celebrated in a church on Sundays? May four candles be lighted at each public Mass on feasts of the first class, when they are not holydays of obligation?

2. Is it true that during the October devotions the Litany of the Blessed Virgin may be recited in English, but that at any other time during the year it must be said in Latin when recited during the Benediction service?

3. Is it forbidden to place cushions on the altar steps whereon the ministers may kneel during the Benediction service?

4. If, on a special festival, during the Rosary and sermon, candles are lighted on a side altar dedicated to the saint whose feast is being celebrated, and presupposing that this side altar is within view of the high altar, must these candles be extinguished before the Benediction service commences?

5. When the monstrance is left on the *mensa* for exposition during the Benediction service, is it necessary to take away the crucifix?

6. When, in a seminary, for instance, Communion is brought to a sick room, and when a server who precedes the priest carries a lighted candle from the chapel to the room, must this candle contain 65 per cent. beeswax?

Thanking you in anticipation.

CURIOSITAS.

1. (*a*) Yes—since the Masses are not private Masses in the strict sense. (*b*) Four candles may be lighted in this case also. The principle which applies is thus expressed by Appeltern[1]: 'Praefata tamen prohibitio de . . . 4 candelis intelligitur ratione *dignitatis personae*; etenim ratione *solemnitatis*, aut *Missae* quae habetur pro Parochiali, Conventuali, Communitatis, etc., licet sine cantu, tolerari possunt . . . plus quam duo cerei.'

2. The Litany of the Blessed Virgin must not be *sung* in the vernacular at any time of the year during the Benediction service. We may quote the following answer of the Congregation of Rites[2]:—

In aliis duabus paroeciis consuetudo etiam immemorialis viget, qua in Communione administranda extra Missam verba *Domine, non sum dignus* recitantur lingua vulgari; et coram SSmo Sacramento exposito eadem vulgari lingua canuntur Litaniae Lauretanae; quaeritur, an, attenta vigente consuetudine, utrumque liceat?

R. Negative, et serventur Rubricae et Decreta.

[1] *Sac. Liturg. Promptuarium,* vol. i. n. 41.
[2] Apud *Ephem. Liturg.* 1904, pp. 455-6.

This answer, although not included in the most recent collection, is in accordance with a former one,[1] which allows singing in the vernacular in presence of the Blessed Sacrament exposed, 'dummodo non agatur de hymnis *Te Deum* et aliis quibuscumque liturgicis precibus, quae nonnisi latina lingua decantari debent.' But, as far as we can see, the prohibition does not extend to the *recitation* of the Litany when the Rosary has been said in presence of the Blessed Sacrament exposed.

3. We are not aware of any law forbidding the practice.

4. The candles need not be extinguished.[2] But liturgical propriety would seem to demand that the side altar, in the circumstances, should not be so brilliantly lighted as to distract the attention of the Congregation from the function at the high altar.

5. This question was discussed in a rather recent issue of the I. E. Record.[3] Briefly, we are of opinion that the crucifix need not be removed.

6. No.

STOLE AND SURPLICE FOR COMMUNION OF A SICK PRIEST. SERVERS AT A PRIVATE MASS

Rev. Dear Sir,—Would you kindly solve the following doubts in the next issue of the I. E. Record :—

When a priest is, through illness, confined to bed and wishes to receive Holy Communion (*a*) what is the colour of the stole he should wear ; (*b*) is it becoming for him to wear a surplice in such a case ?

Would you also state if it is correct to have two servers for a priest's private Mass.

Anxius.

1. 'Notant quidam auctores quod si infirmus sit clericus, si fieri potest, induatur superpelliceo, si sit Diaconus, aut Sacerdos, induatur superpelliceo et stola albi coloris.'[4] When the priest is confined to bed we think the use of the surplice may well be dispensed with. There is little or no inconvenience in wearing the stole.

2. When the Mass is a strictly private one, the priest, no matter what his dignity may be, is allowed only one server. Two may be employed in the circumstances mentioned in the following answer of the Congregation of Rites[5] :—

Q. Num tolerandum sit, ut mos non geratur Decretis Sacrae Congregationis duos ministros in Missa lecta prohibentibus, eo sub praetextu quod hi ministri non introducantur ratione dignitatis celebrantis, sed ratione celebritatis aut frequentioris assistentiae : ex. gr. si Missa sit Parochialis aut Communitatis ? *R.* Servanda esse quidem Decreta quoad Missas stricte privatis, sed quoad Missas Parochiales vel similes diebus solemnioribus, et quoad Missas quae celebrantur loco solemnis atque cantatae, occasione realis et usitatae solemnitatis, tolerari posse duos

[1] Decr. Auth. n. 3537, ad III.

[2] See I. E. Record, October, 1910, p. 404.

[3] Ibid. January, 1918, pp. 66-7.

[4] Van der Stappen, vol. iv. q. 206.

[5] Decr. Auth. n. 3059, ad VII.

ministros Missae inservientes, servatis ordinationibus Sacrae Congregationis in una Tuden. diei 7 Septembris 1816 ad dubia V et VI.

The answers referred to state that the server is not to open the Missal for the beginning of Mass, or, if in Holy Orders, prepare the chalice or wipe it after the ablutions.

TWO MASSES IN THE SAME CHURCH ON THE SAME DAY

REV. DEAR SIR,—I should be very much pleased if you would discuss in your valuable I. E. RECORD the rubrical questions enclosed. In spite of all that has been written on this matter, it is a fact that there is a very great diversity of practice in carrying out the rubrics in this case.

1. At the *first* Mass should the priest say 'Quod ore' and the 'Corpus tuum' before he washes his fingers in the little water vase; or should he say the last prayer during the action?

2. Should he cover the chalice with the purificator, paten, pall and veil, and leave it on the corporal?

3. Should he, especially if there is to be an interval before the second Mass, consume, before he leaves the altar, the drops of the Precious Blood that may have collected at the bottom of the chalice? If so, should this be done after the last Gospel, or after the three 'Hail Marys.' etc., have been said?

4. At the end of the *second* Mass should he consume the ablution in the little water vase *before* or *with* the first ablution?

5. If he use wine for the purification of the ciborium, shall he also use water?

6. In case he has to purify two or three large ciboria, after he has poured the wine used in their purification into the chalice, should he take this first, and then pour more wine into the chalice for the first ablution; or may he omit the first, and proceed at once to the second ablution?

7. Should he purify the ciborium and the little water vase *before* or *after* the purification of the chalice?

DUBIUS.

1. According to Van der Stappen [1] the priest should first say the 'Quod ore sumpsimus,' and then, while washing and drying his fingers, the prayer 'Corpus tuum.'

2. 'Purificatorium plicatum calici superimponet, patenam et pallam; atque velo omnibus coopertis, bursam suo loco, et corporale sub calice extensum relinquens, missam more solito prosequetur.' [2]

The chalice, covered with the purificator, paten and pall, may also be placed in the tabernacle; or, covered with the veil also, on a corporal on the credence table.[3]

3. This is generally recommended. It may be done after the last Gospel.

[1] Vol. iii. q. 336, 2. De Amicis would have him purify his fingers before saying the *Quod ore*.
[2] De Amicis, *Caerem. Paroch.*, vol. i. p.313.
[3] Ibid. p. 314.

4. He may consume it with the second ablution, or throw it into the sacrarium.[1] Our correspondent must not suppose that there are strict rules for every detail.

5. No; water is not necessary.

6. Nothing is strictly defined in this matter. If sufficient wine has been used for the purification of the ciboria it may serve as the first ablution; or the priest may take additional wine into the chalice.

7. The ciborium is purified before the purification of the chalice. The contents of the water vase may be taken, as already stated, with the second ablution, or aftewards thrown into the sacrarium.

T. O'DOHERTY.

[1] Van der Stappen, loc. cit.; S.C.R., Decr. Auth., n. 3764, ad XV.

DOCUMENTS

IMPORTANT DECREE PRESCRIBING THE RULES TO BE OBSERVED IN THE CASE OF PRIESTS EMIGRATING TO CERTAIN COUNTRIES

(*December* 30, 1918)

SACRA CONGREGATIO CONSISTORIALIS

DECRETUM

DE CLERICIS IN CERTAS QUASDAM REGIONES DEMIGRANTIBUS

Magni semper negotii fuit clericorum receptio ex dissitis vel transmarinis locis provenientium: talibus in adiunctis deceptiones et fraudes facile occurrunt, easque detegere in tanta locorum distantia ac sermonum diversitate diutini laboris est ac difficile. Unde Alexander III in consultatione ad Episcopum Cenomanensem, *statuta Patrum veterum* [1] renovans, de clericis in remotis regionibus ordinatis, itemque de transmarinis statuit 'ut ad minus quinque Episcoporum super ordinatione sua testimonio muniantur.' Quae lex, relata in Decretalibus, tit. 22, lib. I, ius commune per plura saecula constituit.

Nostra autem aetate, itineribus trans Oceanum communioribus et frequentioribus factis, novae leges pro clericorum ex Europa ad ea loca migrantium latae sunt, et ultima vice per decretum *Ethnographica studia*, quibus plura iuxta temporis adiuncta fuerunt disposita; quae ubi accurate observata fuere, valde in animarum bonum profuisse exploratum est.

Attamen, interea temporis, experientia docuit aliquid in hac re ulterius addi oportere aliaque temperari, ut salutarium priorum decretorum finis plenius ac facilius attingi queat.

Accessit publicatio Codicis canonici iuris, cui, quantum fas erat, coordinari oportebat peculiaris haec lex de clericis trans Oceanum migrantibus.

Habita idcirco ratione votorum plurium Americae Antistitum, perpensisque quae a Nuntiis et Apostolicis Delegatis relata fuerunt, Emi S. huius Congregationis Patres, postquam de mandato SSmi D. N. Benedicti XV omnia diligenti examini subiecere, haec statuenda censuerunt.

CAPUT I.

Integra lege Sacrarum Congregationum de Propaganda Fide et pro negotiis Orientalis Ritus circa sacerdotum huius ritus migrationem, quoad alios haec in posterum observanda erunt:

[1] Concilliorum scilicet Carthaginensis I, Chalcedonensis et Antiocheni, nec non et S. Augustini (cfr. *Decr. Gratiani*, dist. I, cap. V).

1. Pro sacerdotibus ad longum vel indefinitum tempus aut in perpetuum ex Europa vel ex Mediterranei oris ad Americam vel ad insulas Philippinas migraturis, fas esto Episcopis, non vero Vicariis Generalibus aut Capitularibus, litteras discessoriales concedere, hisce tamen servatis conditionibus :

(*a*) ut agatur de sacerdotibus cleri saecularis ex canonico titulo sibi propriis ;

(*b*) ut hi post ordinationem suam saltem per aliquot annos dioecesi deservierint ;

(*c*) et intra hoc tempus, sicut antea in Seminario, intemeratae vitae certum argumentum praestiterint, et sufficienti scientia sint instructi, adeo ut solidam spem praebeant aedificandi verbo et exemplo populos ad quos transire postulant, et sacerdotalem dignitatem numquam a se maculatum iri, prout iterato praecedentibus decretis Apostolica Sedes praescripsit ;

(*d*) dummodo ad migrandum iustam habeant causam, e.g. desiderium se addicendi spirituali adsistentiae suorum concivium vel aliorum illic commorantium, necessitatem valetudinis curandae, vel aliud simile motivum, coherenter ad ea quae canon 116 Codicis in casu excardinationis requirit ;

(*e*) sub lege, *quae sub gravi ab utroque Ordinario servanda erit*, ut Episcopus dimittens, antequam licentiam ac discessoriales litteras concedat, directe pertractet cum episcopo *ad quem*, illumque de sacerdotis aetate, vita, moribus, studiis et migrandi motivis doceat, ab eoque requirat, an dispositus sit ad illum acceptandum et ad aliquod ecclesiasticum ministerium eidem tribuendum, quod in simplici missae celebratione consistere non debet, quoties migrans sacerdos aetate iuvenili et integris viribus polleat ; neque licentiam et discessoriales litteras sacerdoti antea concedat quam responsionem ad utrumque affirmativam assecutus sit ;

(*f*) Episcopus autem *ad quem* exhibitum sacerdotem non acceptet, nisi necessitas aut utilitas Ecclesiae id exigat vel suadeat, aut alia iusta et rationabilis causa intercedat.

2. Discessoriales litterae non communi sed specifica forma conficiendae erunt, hoc est, exprimere debebunt consensum sive temporaneum, sive perpetuum vel ad beneplacitum Episcopi dimittentis, acceptationem Episcopi *ad quem*, et notas sacerdotis individuas, aetatis scilicet, originis, aliasque, quibus persona describatur, adeo ut nemo circa eius *identitatem* decipi possit : aliter autem confectae litterae nihil valeant et nullae habeantur.

3. Firma manet praescriptio in decreto *Ethnografica studia* statuta, qua Italiae Ordinarii relevantur ab onere dimissoriales litteras, de quibus in superiori articulo sermo est, conficiendi ; sed peractis iis quae sub n. 1 statuta sunt, rem deferent ad Sacram hanc Congregationem, quae licentiam scripto dabit cum utroque Ordinario communicandam.

4. Idem statuitur pro Episcopis Hispaniae et Lusitaniae, hac una differentia, quod onus licentiam concedendi attribuitur et reservatur Apostolicae Sedis apud eas nationes Legato.

5. Qui hisce litteris vel licentia carent, ad sacri ministerii exercitium admitti nequibunt: qui vero iis pollent, admittentur etiam in locis transitus, nisi peculiaris aliqua extraordinaria ratio obsistat, si ibidem infirmitatis aut alia iusta causa commorari parumper coacti fuerint.

6. Hisce servatis normis aliisque quae in tit. I, lib. II Codicis statutae sunt, sacerdotes ex Europae dioecesibus dimissi, in Americae et insularum Philippinarum dioecesibus, utroque Ordinario consentiente, incardinari etiam poterunt.

7. Sacerdotes ex Europae dioecesibus dimissi ex una in aliam Americae et insularum Philippinarum dioecesim transire poterunt, Episcopo *a quo* discedere desiderant et Episcopo *ad quem* pergere optant consentientibus, servatis in substantialibus normis sub nn. I et II positis, et docto quamprimum Ordinario sacerdotis proprio, vel, si agatur de sacerdotibus Italis, Hispanis et Lusitanis, S. Sedis officio a quo prima demigrandi licentia promanavit. Obligatio autem docendi Ordinarium sacerdotis proprium vel S. Sedis officium spectabit ad Episcopum qui sacerdotem in sua nova demigratione recipit.

8. Curae et sollicitudini Ordinariorum Americae et insularum Philippinarum enixe commendatur ut provideant quo emigrati sacerdotes in domibus privatis vel in diversoriis, sive publicis hospitiis, non commorentur, sed in aedibus ecclesiasticis ad rem instructis vel instruendis, aut penes aliquem parochum vel religiosos viros. Quod si absque legitima causa parere recusent, eos post factam monitionem peremptoriam a missae celebratione interdicant.

9. Religiosi, dum in sua religione perseverant, trans Oceanum ad alias suae religionis domus mitti a suis superioribus valebunt, hac una lege servata, super cuius observantia superiorum conscientia graviter oneratur, ut agatur de religiosis qui sint intemeratae vitae, bonae explorataeque vocationis et studiis ecclesiasticis bene instructi; adeo ut retineri tuto possit, in bonum animarum et aedificationem fidelium eorum missionem esse cessuram.

10. Religiosi exclaustrati, pro tempore quo extra conventum morantur, et religiosi saecularizati eadem tenentur lege ac clerici saeculares.

CAPUT II.

11. Clerici saeculares, qui ex Europa vel ex Mediterranei oris in Americam vel in insulas Philippinas ad breve tempus, *semestre* non excedens, pergere cupiunt, acceptatione non indigent Ordinarii illius loci, vel illorum locorum ad quae proficiscuntur, prout pro diuturna vel stabili commoratione requiritur.

12. Sed debent:

(*a*) iustam honestamve causam itineris suscipiendi habere, eamque Ordinario suo patefacere, ut discessorias litteras ab eo impetrare valeant;

(*b*) muniri discessorialibus litteris Ordinarii sui, non in forma communi, sed in forma specifica, cohaerenter ad ea quae superiori num. 2 praescripta sunt, causa temporanei itineris et spatio temporis in indulto indicatis;

(*c*) reportare S. Sedis beneplacitum, quod dandum erit vel ab hac

S. Congregatione, vel ab Apostolicae Sedis Legatis, in locis ubi hi adsint; nisi urgens aliqua causa discessum absque mora exigat: quo in casu in litteris discessorialibus id erit exprimendum;

(*d*) in quolibet casu instrui sufficienti pecuniae summa nedum pro itinere decenter suscipiendo, sed etiam pro regressu: ad quem finem Ordinarius cavere debet, ut summa ad revertendum necessaria deponatur penes aliquam nummulariam mensam, aut alio modo tuta sit, ne ulla reversioni obstet pecuniae difficultas.

13. Religiosi exclaustrati, durante exclaustrationis tempore, et religiosi saecularizati hac ipsa lege tenentur.

14. Expirato spatio temporanei indulti, si quis ex infirmitate aut alia iusta vel necessaria causa redire non valeat, Ordinarius loci licentiam prorogare poterit, docto tamen statim Ordinario sacerdotis proprio et S. Sedis officio, a quo beneplacitum discessus datum fuit.

Caput III.

15. Leges de sacerdotibus migrantibus latae eos quoque attingant sacerdotes, qui, aut in itinere transmarino aut in exteris commorationis locis, Europa minime excepta, agricolis aliisque operariis demigrantibus suum praestant ministerium, sive curam hanc sponte sua suscipiant, sive ad hoc assumantur officium ab aliquo ex iis *Operibus*, quae in migrantium commodum providenter hac nostra aetate instituta sunt.

16. Sacerdotes qui his legibus non servatis temere arroganterque demigraverint, suspensi a divinis ipso facto maneant: qui nihilominus sacris (quod Deus avertat) operari audeant, in irregularitatem incidant; a quibus poenis absolvi non possint nisi a Sacra hac Congregatione.

SSmus autem D. N. Benedictus PP. XV resolutiones Emorum Patrum ratas habuit et confirmavit, easque publici iuris fieri iussit et ab omnibus ad quos spectat ad unguem ex conscientia servari, ceteris praescriptionibus quae in decreto *Ethnografica studia* continentur cessantibus, et contrariis quibuslibet minime obstantibus.

Datum Romae ex S. C. Consistoriali, die 30 decembris, 1918.

✠ C. Card. De Lai, Ep. Sabinen, *Secretarius.*
✠ V. Sardi, Archiep. Caesarien., *Adsessor.*

L. ✠ S.

BENEDICTIONS AND SACRAMENTALS IN WHICH CATECHUMENS MAY PARTICIPATE ACCORDING TO THE NEW CODE OF CANON LAW

(*March* 8, 1919)

VICARIATUS APOSTOLICI GABONEN.

DE BENEDICTIONIBUS ET SACRAMENTALIBUS PRO CATECHUMENIS

Rmus Dnus Ludovicus Martrou, e Congregatione Spiritus Sancti, episcopus titul. Corycen. et vicarius apostolicus Gabonen., a S. Rituum Congregatione reverenter expostulavit:

'An benedictiones imprimis impertiendae catholicis quae, iuxta can. 1149 Codicis Iuris Canonici, dari quoque possunt catechumenis, intelligi debeant etiam de sacramentalibus publicis ac proinde admitti possint catechumeni ad impositionem cinerum, traditionem candelarum et palmarum? '

Et Sacra eadem Congregatio, audito specialis Commissionis suffragio, omnibus perpensis, respondendum censuit: *Affirmitive.*

Atque ita rescripsit ac declaravit, die 8 martii 1919.

✠ A. Card. Vico, Ep. Portuen. et S. Rufinae,
S. R. C. Praefectus.
Alexander Verde, *Secretarius.*

L. ✠ S.

DECREE INTRODUCING THE CAUSE OF BEATIFICATION OR DECLARATION OF MARTYRDOM OF MANY SERVANTS OF GOD FROM THE PROVINCES OF COREA AND COCHIN-CHINA

(*November* 13, 1918)

SACRA CONGREGATIO RITUUM

COREANA ET COCINCINEN.

DECRETUM INTRODUCTIONIS CAUSAE BEATIFICATIONIS SEU DECLARATIONIS MARTYRII SERVORUM DEI SIMEONIS BERNEUX, EPISCOPI CAPSENSIS ET VICARII APOSTOLICI COREAE, PAULI CHAU EORUMQUE SOCIORUM IN ODIUM FIDEI, UTI FERTUR, AB IDOLOLATRIS INTERFECTORUM.

Societas Missionum ad Exteros, cuius domus princeps exstat in civitate Parisiensi, die 27 maii anno Iubilaei 1900, quadraginta novem Venerabiles Dei Servos, martyres suos beatorum caelitum albo adscriptos congruisque cultus honoribus decoratos a Summo Pont. Leone XIII, cum sacris caeremoniis in Patriarchali Basilica Vaticana solemniter peractis, grato et iucundo pietatis affectu vidit et concelebravit. Aucta deinde a Pio Papa X anno 1909 nova corona triginta trium Beatorum Martyrum, aliis et similibus triumphis Ipsa se adornare atque augere disposuit per alios quadraginta novem heroës de quorum Causa beatificationis et declarationis martyrii ineunda, praesenti tempore, non obstante rerum publicarum perturbatione, actum est. Ex hisce Dei Servis, qui in odium Fidei, uti fertur, mortem obierunt, viginti novem passi sunt anno 1866-1867, in regione Coreana, ceteri viginti anno 1860-1861 et 1862 in regione Cocincinensi. Prioris agminis novem et praecipui sunt e natione gallica et e Societate Missionum ad Exteros, nempe duo Episcopi et Vicarii Apostolici Coreae, et septem sacerdotes missionarii, reliqui fideles laici Coreani. Ex altero agmine adnumerantur quatuor sacerdotes, duo acolythi, duae moniales, undecim viri et una mulier. De praecipuis pauca referre iuvat.—Simeon Berneux, ortus in loco *Château-du-Loir*, Cenomanensis dioecesis, studiis in seminario dioecesano absolutis et ad sacerdotium evectus, paulo post seminarium Missionum ad Exteros ingresuss, circa annum 1840 ad Tunquinum mittitur.

Vix illuc pervenit, de christiana religione propaganda accusatus, comprehenditur et plura tormenta patitur, signis cruciatus in corpore impressis. Capite damnatus, auxiliante Deo, a navi gallica liberatur et in Manciuriam transit, ubi per duodecim annos sacrum ministerium peragit cum apostolico zelo, salutifera illarum gentium conversione et christianorum obedientia legitimis pastoribus coronato. Illius regionis Vicarius Apostolicus Verrolles sibi elegerat Berneux in coadiutorem et rite consecraverat episcopum, sed, instante Vicario Apostolico Coreae et auctoritate Sanctae Sedis, Dei Famulus, assumpto episcopali titulo Capsensi, Vicarii Apostolici Coreae coadiutor fuit renuntiatus; donec demortuo titulari Ipse successit. Misericors, benignus, catechista, confessarius et, pro suo munere Episcopi et Vicarii Apostolici, christianitatis visitator, nulli unquam perpecit industriae ac labori, cunctisque e clero et populo sibi concreditis, uti bonus Pastor, prodesse sategit. Ineunte anno 1866, die 23 februarii, dum a visitatione ad christianos redierat, a satellitibus in domo captus et ad praetorium adductus, tres dies mansit in carcere, compedibus vinctus et canga onustus. Deinde, coram utroque Praetore dextero et sinistro atque Regis Administro interrogatus, strenue respondit se in Coream venisse ut servaret animas et Christi religionem diffunderet. Hac de causa Ipse eiusque Socii ad supplicium damnati sunt, hisce verbis a Tribuno prolatis: 'Vos omnes audite: Religio, quam vos propagatis in Corea, severe prohibita est. Vos autem hoc nescientes in alieno Regno propagatis vestram perversam doctrinam, quapropter Rex Coreanus iubet vos necari; scite hoc et moriemini.' Tum in Episcopum eiusque Socios irruunt satellites et, cum clamoribus circumagentes gladios, singulis Dei Famulis caput obtruncant. Per tres dies Praesulis eiusque Sociorum corpora permanent publice exposita. Mox a paganis collecta et prope locum supplicii sepulta, dein a christianis, auctoritatis ecclesiasticae interventu, in alium locum benedictum religiose translata sunt.—Alter Dei Famulus Antonius Daveluy, Ambiani in Gallia natus et in Parisiensi Seminario Sancti Sulpitii, theologicis studiis expletis, sacerdotio insignitus, in suam dioecesim rediit, ubi parochiali munere, Vicarii titulo, functus est, Christifidelibus apprime carus et beneficus. Anno circiter 1846 in Coream se contulit, ibique missionarius primum et deinceps Episcopus Aconensis et Vicarii Apostolici Coreae coadiutor per vicennium, singulari pietate et ardenti studio, ministerium suum gessit; illasque gentes ad humanitatem et ad christianam religionem assiduis laboribus redegit. Anno 1886, persecutio contra catholicam religionem eiusque missionarios et christianos in civitate Seoul exorta, alia quoque eiusdem regionis loca furenter invasit. Mense martio Episcopum Daveluy eiusque Socios aggrediuntur satellites in vico *Kentori*, eosque triduo detentos in carcere, mox ad civitatem Regis sedem perducunt. De christiana religione interrogatus a tribunali, Episcopus elata voce et animo invicto loquitur, atque Evangelicam fidem ac legem tuetur ac vindicat. Quare, varia et saeva tormenta passus et capite damnatus, ter gladio percussus, in Fidei catholicae confessione occumbit feria VI in Parasceve, qua die in eadem Fide et passione Socii, pro nomine Iesu Crucifixi,

interfecti sunt. Episcopi et Sociorum corpora, triduo in publicum exposita, a christianis acquisita, reverenter ac devote sepulta sunt.—Tertius heros, cuius nomen in titulo Causae honoratur, exstitit Paulus Chau, e parentibus christianis, natus in loco *Go-Thi*, Cocincinae Orientalis. Studiis in patria incoeptis et alibi absolutis, ab Episcopo Cuenot munera catechumenos instituendi et seminarii alumnos edocendi accepit. Ab eodem Episcopo ad sacerdotium promotus, Seminario vici *Lang-Song* regendo per quatuor circiter annos praepositus fuit. Comprehensus, in carcerem civitatis *Binh-Dinh* coniectus est, canga adstrictus. Quum in adoratione Ssmi Eucharistiae Sacramenti in eodem carcere asservati devotus oraret, mori pro Christo iam paratus, ex sententia Mandarini, praesertim quia sacerdos, capite plexus est; eiusque Socii, in eadem professione catholica fortes, pariter necati sunt. Pauli Chau et Sociorum corpora, a christianis prope ipsum caedis locum sepulta, postea semel iterumque translata, furente bello, misere fuerunt per incendium absumpta; exceptis exuviis ipsius Pauli Chau, uti asseritur ad Collegium in Insula *Pinang* perductis, ubi Servus Dei virtutis et sanctitatis fama pollebat.—Itaque de fama martyrii praedictorum quadraginta novem Servorum Dei, qui in regionibus Coreana et Cocincinensi, in odium Fidei, uti fertur, interempti fuerunt, Inquisitiones Informativae a Vicariis Apostolicis utriusque regionis, auctoritate Ordinaria, adornatae sunt et Romam ad Sacrorum Rituum Congregationem transmissae. Quum vero, servato ordinis iure, omnia in promptu sint, nihilque obstet, quominus procedi possit ad ulteriora, instante Rmo P. Eugenio Garnier, Societatis Parisiensis Missionum ad Exteros postulatore generali, attentisque epistolis postulatoriis quorundam Emorum S. R. E. Cardinalium, plurium Archiepiscoporum, Episcoporum et Vicariorum Apostolicorum Missionum necnon Praepositorum Generalium Ordinum et Congregationum religiosarum aliorumque virorum ecclesiastica vel civili dignitate praestantium, Emus et Rmus Dnus Cardinalis Ianuarius Granito Pignatelli di Belmonte, Episcopus Albanensis et huius Causae Ponens seu Relator, in Ordinariis sacrorum Rituum Congregationis Comitiis subsignata die ad Vaticanas aedes coadunatis, sequens dubium discutiendum proposuit: *An signanda sit Commissio Introductionis Causae in casu et ad effectum de quo agitur?* Et Emi ac Rmi Patres sacris tuendis ritibus praepositi, post relationem ipsius Emi Ponentis, audito voce et scripto R. P. D. Angelo Mariani, Fidei promotore generali, omnibus maturo examine discussis ac perpensis, rescribendum censuerunt: *Signandam esse, si Sanctissimo placuerit, Commissionem de sex et quadraginta Servis Dei,* quorum viginti sex in Corea, annis 1866 et 1867, capite plexi; nempe: Simeon Berneux, Episcopus Capsensis, et Antonius Daveluy, Episcopus Aconensis, ambo Vicarii Apostolici Coreae; Iustus Ranfer de Bretenières, e dioecesi Divionensi, sacerdos et missionarius apostolicus Coreae; Ludovicus Beaulieu, e dioecesi Burdigalensi, sacerdos et missionarius apostolicus Coreae; P. Henricus Dorie, e dioecesi Lucionensi, sacerdos et missionarius apostolicus Coreae; Carolus Pourthié, e dioecesi Albiensi, sacerdos et missionarius apostolicus Coreae; Michaël Petitnicolas, e dioecesi Sancti

Deodati, sacerdos et missionarius apostolicus Coreae; Petrus Aumaitre, e dioecesi Engolismensi, sacerdos et missionarius apostolicus Coreae; Martinus Huin, e dioecesi Lingonensi, sacerdos et missionarius apostolicus Coreae (isti omnes sunt membra Societatis Missionum ad Exteros);—Petrus Ryou Tjyeng-Ryoul, Ioannes Baptista Nam (Tjyong-Sam), Petrus Tchoi Tchi-Tchyang, Ioannes Baptista Tjyen Seung-yen, Marcus Tyeng, catechista, Alexius Ou Syei-hpil, Lucas Hoang Tjai-ken, Ioseph Tjyang Nak-syo, catechista, Thomas Son Tja-Syen, Petrus Tjyo Hoa-sye, Petrus Ni Myeng-sie, Bartholomaeus Tjyeng Moun-ho, Petrus Son Syen tji, catechista, Iosephus Han, Petrus Tjyeng Ouen-tji, Iosephus Tjyo et Ioannes Ni (hi omnes ex Corea); viginti alii e Cocincina Orientali, qui annis 1860, 1861, et 1862 in ipsa Cocincina Orientali morte cruenta mulctati sunt, nempe: Paulus Chau, sacerdos, Iosephus Stephanus Chung, sacerdos, Dominicus Canh, sacerdos, Ioseph Thu, sacerdos, Iacobus Tuyen et Petrus Quon, clerici ordines minores adepti, Ioseph Trinh, catechista, Ioachim Bao, Ioseph Huu, Hua, Nam, Tan, Siao, Ioachim Qua, Ioseph Nghiem, Thaddaeus Qui, Petrus Me, Agnes Soan, monialis, Anna Tri, monialis, et Magdalena Luu.—Quoad reliquos tres Famulos Dei e Coreana regione, nempe: Petrum Ni Syeng Tchyen, Philippum Ni Syeng Ouk et Augustinum Song Syeng-po *dilata* et coadiuventur probationes. Die 12 novembris 1918.

Facta postmodum de his Sanctissimo Domino nostro Benedicto Papae XV per infrascriptum Sacrae Rituum Congregationi Praefectum relatione, Sanctitas Sua rescriptum eiusdem Sacrae Congregationis ratum habens, propria manu signare dignata est Commissionem introductionis Causae quadraginta sex praefatorum Servorum Dei, die 13, eisdem mense et anno.

✠ A CARD. VICO, Ep. Portuen. et S. Rufinae,
S. R. C. Praefectus.
ALEXANDER VERDE, *Secretarius.*

L. ✠ S.

DECREE REGULATING THE MASS TO BE SAID WHEN THE DEVOTION OF THE 'FORTY HOURS' TAKES PLACE ON ALL SOULS' DAY

(*February* 26, 1919)

URBIS ET ORBIS

DE MISSA VOTIVA SOLEMNI SS.MI SACRAMENTI, VEL DE PACE, OMITTENDA IN ORATIONE XL HORARUM, DIE COMMEMORATIONIS OMNIUM FIDELIUM DEFUNCTORUM

Ex Constitutione Apostolica *Incruentum Altaris Sacrificium* Ssm̃i Dñi nostri Benedicti Papae XV diei 10 augusti 1915 permittitur Expositio Ssm̃i Sacramenti pro Oratione XL Horarum etiam die Commemorationis omnium fidelium defunctorum. Atamen Missae de Requie cum vestibus sacerdotalibus coloris violacei non sunt celebrandae ad Altare Expositionis.

Per eandem Constitutionem et subsequentem S. R. C. declarationem seu Decretum *Urbis et Orbis*, diei 28 februarii 1917, Commemoratio omnium fidelium defunctorum Festis solemnioribus primariis ritus duplicis primae classis aequiparatur.

Hisce praemissis, quaeritur: Licebitne adhuc celebrare unicam Missam solemnem de Ssmo Sacramento, vel de Pace, de qua sermo est in Instructione Clementina et in Decreto generali S. R. C., n. 3864, diei 9 iulii 1895, ad 4, pro Oratione XL Horarum, quando dies expositionis vel repositionis, aut medius incidit in diem Commemorationis omnium fidelium defunctorum?

Sacra Rituum Congregatio, audito specialis Commissionis suffragio praepositae quaestioni, omnibus sedulo perpensis, respondendum censuit: *Negative*, et ad mentem.

Mens autem est: 'In Ecclesiis ubi die Commemorationis omnium fidelium defunctorum fiat Oratio XL Horarum cum Ssmo Sacramento solemniter exposito, huiusmodi expositio sequatur, repositio vero cum processione praecedat Missam cantatam de die Commemorationis omnium fidelium defunctorum.' Et Sacra eadem Congregatio, approbante Ssmo Domino nostro Benedicto Papa XV, ita rescripsit, declaravit et servari mandavit. Die 26 februarii 1919.

✠ A. CARD. VICO, Ep. Portuen. et S. Rufinae,
S. R. C. Praefectus.

ALEXANDER VERDE, *Secretarius.*

L. ✠ S.

REVIEWS AND NOTES

Commentarium Textus Codicis Juris Canonici. Liber II, De Personis. Accedit Appendix De Relativis Poenis ex Libro V. Auctore Fr. Alberto Blat, O.P., Lect. S. Theol. ac Juris Can. Doct. et Codicis Professore in Pontificio Collegio Internationali 'Angelico.' Romae: Libreria Del Collegio 'Angelico,' et Libreria Editrice Religiosa, F. Ferrari.

As one might naturally expect, Canon Law has received a great fillip from the publication of the new Code. There are evidences of this in many departments. Clerical magazines are inundated with articles on this subject; in clerical conferences it is now the all-important topic; even clerical social life has not altogether escaped its influence. But, perhaps, nothing marks the change in this respect between the present and the pre-Code era so much as the number of books on Canon Law that have been published since the Code first made its appearance. During the preceding decade publication in this department had almost come to a standstill: the consciousness that the whole discipline of the Church was soon to be changed was quite sufficient to damp the ardour of even the most enthusiastic. With the completion of the work of codification, however, the energy, which was so long pent up, at last burst its bonds, and is now almost daily manifesting itself in varied activities. We must confess, though, that, so far as we have seen it, most of the work yet achieved is of an ephemeral character. The desire to cater for the more pressing needs of the general body of the clergy and the anxiety to be early in the field are detrimental to the production of anything of lasting value.

The present volume is the most elaborate commentary which we have yet seen. Although it deals only with the second book of the Code, which comprises only about six hundred canons, it extends to more than seven hundred closely-written octavo pages. From our first casual glance at it, therefore, we were led to expect not merely a commentary of the text, but also a brief historical sketch of the origin and development of each institution, and a rather exhaustive comparison between the new and old discipline. In this, however, we were disappointed. It is true, indeed, that it contains some very useful references to recent decrees, which explain or prefigure many of the changes in the new legislation; but, in so far as it adds to the Code at all, it does so mainly by way of commentary or explanation of the text.

The book, judged as a mere commentary, will certainly be found very useful, not only by the tyro, for whom, the author states, that it

is principally intended, but also by those who have already had a legal training. On most of the canons which present difficulties of interpretation the author gives his views ; not, indeed, that in every case he solves all difficulties that arise—that would frequently be impossible —but usually he adds something to what is supplied us by the Code itself. When so much has been said, the functions of a reviewer of a volume of this kind would seem to have ceased. When a book consists merely of an explanation of six hundred canons it seems rather hopeless to attempt details. At the same time we cannot refrain from touching upon the treatment of a few canons upon which we ourselves were specially desirous of obtaining information; and, perhaps, thus a better idea will be obtained of the work than could be given by any general statement. When a Bishop ordains a subject for the service of another diocese, we have been very much puzzled how to reconcile Canon 111, § 2, with Canon 969, § 2. Commenting on Canon 111, § 2, our author, without making any mention of the difficulties arising from 969, § 2, states that the person thus ordained is incardinated in the diocese for the service of which he is intended. To determine how the residence necessary for the new kind of domicile and quasi-domicile is interrupted he has recourse to the analogy with the year's novitiate necessary for religious. Perhaps this may be as good a solution of this very difficult point as any other. Really, as far as we can see, there is nothing very definite to go upon. Certainty will scarcely be attained until a definite decision of the Holy See has been given. We were anxious for information on what is, for this country, a rather speculative point—the powers of the Congregation for Oriental Rites to dispense from the impediments normally reserved to the Holy Office : this volume did not afford us any. We were more fortunate in regard to the interpretation of the term *inhabilitatem* in Canon 429 ; we considered that it embraced insanity, and our author confirms this conclusion.

We have now said enough to give a general idea of the contents and value of this work. We do not, indeed, regard it as an ideal work—the rapidity with which it has been produced precluded the possibility of its being such ; at the same time its utility as a commentary on the text cannot be gainsaid. We sincerely congratulate the author on having achieved so much in such a short period, and wish his work the success which it deserves.

J. Kinane.

Pius X. By F. A. Forbes. London : Washbourne.

So much of war and worry has filled the past four years that the name of Pius X seems a distant memory. Yet the work that he did for the Church within the eleven years of his pontificate is a marvellous record. In the first five chapters of the book under review we have the story of the Pope's life and labours beautifully told, from the time he was a little boy stealing cherries till he ascended the papal throne in 1903. The author devotes the next five chapters to an explanation, and occasionally to a defence, of the late Pope's religious policy. In

the eleventh chapter several instances are given of the Pope's charity for the afflicted. In this chapter are found the details of the remarkable case of a Sacred Heart nun in Dublin who was cured in a wonderful way owing, it is piously believed, to the prayers of the Pope. The final chapter is devoted to the last illness and death of the saintly pontiff. The author has given us a very interesting life of Pius X, and we can promise those who read it that they will be instructed, edified, and entertained. Might not the statesman who grows eloquent on the theory of equality and the rights of man quote the rise of this poor village postmaster's son to the Papal throne, and point to the Catholic Church as the kingdom wherein theory and practice are combined?

D.

Devotion to the Sacred Heart. By Rev. Joseph J. C. Petrovits, J.C.B., S.T D. London: Herder.

This work was submitted to the Catholic University of America for the Doctorate. It is not therefore a devotional book in the popular sense, but a scientific thesis on the theology, history, and philosophy of devotion to the Sacred Heart. The questions treated of, such as the material and formal object, and the primary and secondary object of the devotion, are of interest chiefly to priests and to those of the educated laity who have a technical knowledge of theology. Many who know accurately the theological basis of the devotion will turn at once to the chapters on the Twelfth Promise about the 'Nine Fridays.' Having first given a summary of the arguments for and against the authenticity of the Great Promise, the author proceeds to discuss the contents of the letter in which the Twelfth Promise is alleged to have been revealed. A particularly interesting chapter deals with the interpretation of the Promise, assuming that it is authentic. In the final chapters the author explains the meaning of the formal approbation given to the writings of the Blessed Margaret Mary, and states his own conclusions on the questions previously discussed. Cardinal Gibbons, in a brief preface, hopes 'that these printed pages will promote the ideal purpose for which they were written'—a hope to which we venture humbly to subscribe.

D.

Your Soul's Salvation and Your Interests Eternal. By Father Garesché. New York: Benziger Brothers.

Father Garesché has admirably described these two volumes. They are, as he says, conferences of an informal, direct, and chatty kind between the writer and the reader, and are intended to be kept at one's elbow and to fill in a leisure or a quiet hour. These little talks on all sorts of spiritual topics are simple, practical, and attractively written. The titles of many of the chapters not only betray the *domicilium originis* of the conferences, but arouse a laudable curiosity as to what the chapter is about, for example, 'Especially Yours,' 'Everybody Does,' 'Just Going To.'

D.

MATER CHRISTI. By Mother St. Paul. London : Longmans, Green & Co.

MOTHER ST. PAUL'S name is well known, especially to religious, by her two previous meditation books. In this new work are contained thirty-one meditations on the Blessed Virgin, beginning with a Meditation on her Immaculate Conception, and giving a separate meditation for each event in her life. The meditations, as Father Rickaby tells us in his short Preface, 'are composed on the Ignatian plan of visualising what Our Lord did, said, and suffered.' For those accustomed to only a half-hour's meditation, the three points will be found too long—any one point will supply enough materials for fruitful consideration for the half-hour.

D.

THE CROWN OF SORROW. By Rev. Alban Goodier, S.J. London: R. & T. Washbourne.

THIS is a book of meditations on the Passion of Our Lord, prefaced by the story of the Passion in the words of the four Evangelists. Each of the fifty-two meditations is introduced by a quotation from the story of the Passion, and each is concluded by three short sentences as a 'Summary' of the three points of the meditation. Meditation books are very much a matter of personal taste. But we are sure that many will find this little book of Father Goodier's excellent as a help to meditation, and original in its practical application of the events of the Passion to their life and conduct.

D.

AN EIGHT DAYS' RETREAT. By H. Hurter, S.J. London : B. Herder.

THE object of Father Hurter is to provide a help for those who make an eight days' retreat alone. Father Hurter follows the plan of the *Spiritual Exercises* of St. Ignatius, and merely professes to develop the points of these meditations. Three meditations are assigned to each day, and after the second meditation are given a few pages of 'Spiritual Reading,' followed by a 'Consideration.' We cannot prophesy how valuable these meditations will be to those who use them for a retreat: Father Hurter himself recognizes that they will not be equally useful to all. Those who are called on to conduct a retreat according to the plan of St. Ignatius should find the book a useful companion. The name of the distinguished author is a sufficient guarantee of the solidity of the work.

D.

BOOKS, ETC., RECEIVED

America: A Catholic Review (April).
The Ecclesiastical Review (April). U.S.A.
The Rosary Magazine (April). Somerset, Ohio.
The Catholic World (April). New York.
The Austral Light (March). Melbourne.
The Ave Maria (March). Notre Dame, Indiana.
The Irish Monthly (April). Dublin: M. H. Gill & Son, Ltd.
The Catholic Bulletin (April). Dublin: M. H. Gill & Son, Ltd.
The Month (April). London: Longmans.
Études (April). Paris: 12 Rue Oudinot (VIIe).
Revue Pratique d'Apologetique (April). Paris: Beauchesne.
Revue du Clergé Français (April). Paris: Letouzey et Ané.
The Fortnightly Review. (April). St. Louis, Mo.
The Lamp (April). Garrison, N.Y.
Revue des Jeunes (April). Paris: 3 Rue de Luynes.
The Homiletic Monthly (April). London: Burns & Oates.
Various Discourses, by the Rev. T. J. Campbell, S.J. London: Herder.
From the Cenacle to the Tomb, by the Rev. M. S. Smith. New York: Herder.
Our Refuge, by Rev. A. Sprigler. London: Herder.
Handbook of Canon Law, by D. J. Lanslots, O.S.B. London: Herder.
Some Notes on Modernism, by Rev. L. D. Strappini, S.J. London: Washbourne.
Religio Religiosi, by Cardinal Gasquet. London: Washbourne.
The Catholic Student's 'Aids' to the Study of the Bible, by Hugh Pope. Vol. II. London: Washbourne.

GENESIS AND EVOLUTION

BY REV. T. J. AGIUS, S.J.

As the heading of this essay sounds a little ambitious, it may be as well to state at once its proper scope. Taking the ascertained facts of science and those theories which are held to be probably true at the present day, it will be our purpose to examine the relations of these scientific conclusions with the cosmic narratives in Genesis, as well as with the doctrine of the Church. Hence, no attempt will be made to offer detailed criticism of the scientific speculations current to-day, but merely to outline the general features of the doctrine of Evolution, so as to be able to fix the Catholic point of view all the more accurately. The term 'evolution' has acquired a great number of meanings which it will be more convenient to keep quite distinct the one from the other. We find the most general and most widely held meaning to be that of Descent or Development. By this theory nearly all naturalists to-day understand that if all the individual plants and animals which exist, and have ever existed on the globe, were to be viewed together, it would be impossible to arrange them in groups or species at all, since they would be found to form one continuous series of gradations. In other words, naturalists consider the present varieties of animals and of plants to be the transformed derivations from some original type or types of living organism; and the present species are even now being imperceptibly changed into other, quite different, forms.

This theory, which is held by almost all naturalists of note, rests on three main lines of argument, derived from observed facts of natural history :—

(1) *Comparative Anatomy* goes to show that animals exhibit several distinct types of structure, which, in fact, mark off the main divisions of the animal kingdom. Within any one of these main divisions may be found almost endless structural diversities, all of them obviously different modifications of the same fundamental plan. Thus, for

example, the foreleg of a lizard, the wing of a bird and of a bat, the burrowing shovel of a mole, the flipper of a whale, the foreleg of a horse and the human arm and hand can be readily shown, despite their apparent disparity, to belong to the same plan, so modified as to serve different uses—running, flying, burrowing, swimming, and grasping.

The argument is strengthened by the observation of so-called rudimentary organs and degenerative processes. Amongst the former are to be classed those structures which subserve no function whatever, and whose only meaning in this connection is that they are vestiges of former organs whose function had ceased to be of advantage to the species. Thus, in the whale tribe, while fore-limbs have been converted into swimming paddles, the hind-limbs appear outwardly to have vanished completely. Internal examination, however, shows traces of hip, thigh, and shin-bone in the Greenland right whale; of the hip-bone and of a minute rudiment of the thigh-bone in the Fin whale; while in the toothed whales only an almost unrecognizable remnant of the hip-bone is left, and in one of the dolphins even this vestige has disappeared.

Of degenerative processes a striking instance is that of the parasite Saeculina, the body of which in the adult form is reduced to a mere bag, with root-like fibres through which nourishment is absorbed from its host. However, when its development is observed, it is found that from the egg a free-swimming larva is hatched, possessing jointed appendages, nervous, muscular and digestive systems, just as complicated as that of a barnacle, the adult form being a degenerative process due to parasitic conditions. It would be impossible to account for this development, it is argued, on any other hypothesis than that of evolutionary adaptation.

(2) *Historical Geography*, taken in its widest sense of space and time, proves that fossil remains of animals are not evenly distributed among the one or two hundred thousand feet or so of deposits, but that invertebrate animals are the first to be observed among the most ancient strata, to be followed in due order by fishes, amphibious animals, reptiles, birds, mammals, and finally man, in the most recent of deposits. This order, it should be noticed, corresponds with the degree of complexity of the classes described; and the impression made on the investigator is that of a constant though not always uniform advance

and progress from the most ancient times. The following table may be taken to outline roughly our present knowledge of the facts :—

Palaeozoic	Mesozoic	Cainozoic
Vegetation—gigantic cryptogams	Vegetation — chiefly conifers	Vegetation—modern
Animals—fishes (ganoids and sharks)	Fishes—mostly ganoids, cycads and sharks	Fishes—bony appear in late Mesozoic and onwards
No birds	Age of Reptiles—20 orders	Reptiles — only 5 orders
No mammals	Birds—few and primitive	Birds—modern
Invertebrates profuse	Mammals—very tiny	Mammals—well developed

However, many of these fully-developed types appear suddenly and unheralded in the geological strata, so that a gradual change from less perfect to better developed forms is not proved. But naturalists appeal to factors of immigration and to the incompleteness of the data as yet observed. This contention receives support from the present distribution of living organisms, inasmuch as they are found to be closely connected with the distribution of fossils and the geological record of the strata. Take, for instance, the existing mammals of South America : two groups can be readily made out, one of exclusively indigenous animals (e.g., the monkeys and marmosets), and a second one containing animals which are closely related to those which now live, as they formerly lived, in North America. The geology of the Isthmus shows that South America was formerly cut off from the northern continent, and in the strata which represent this state of isolation, not a single fossil has been found that was ancestral to the second group of mammals; while ancestral remains of the latter are to be found in the strata succeeding the union of the two continents. Migration and ancestral development, it is maintained, are clearly demonstrated.

Analogous evidence is obtained from the fauna of islands. The continental islands, which can be shown geologically to have formed part of the continent (e.g., Great Britain, Madagascar, Borneo, Sumatra, and Java), share in its fossils and present forms, and this in proportion as the separation took place in more or less recent epochs. The Oceanic Islands, on the other hand, although fully capable of sustaining life, have only been populated by chance

migration, such as drift-wood and wind-storms may carry with them. Thus spiders, flies, bugs, beetles, butterflies, and lizards abounded in Krakatoa shortly after the great eruption of 1883, which buried all life under a deep layer of volcanic debris; but no land mammals (except bats, which are often carried immense distances by strong gales) are to be found in those parts which have not been artificially introduced by man.

(3) *Embryology*, difficult as it is in its interpretation and liable to abuse, still affords additional evidence which is claimed by naturalists for the theory of descent. It reveals the fact that all forms begin as unicellular organisms, and pass through stages which are hardly distinguishable one from another in the various types. The number of stages also, in individual development, is proportional to the complexity of the adult form. Thus, not only such widely divergent animals as fishes, amphibians, reptiles, birds, and mammals exhibit the same plan of development, before reaching their adult form, but also this development seems to show stages corresponding to its grade in the scale of complexity. For example, the embryo of a mammal has gill-pouches, skeletal supports, arteries, and veins and heart, like a fish; at a later stage its structure is that of the lung-fishes.

Further, embryology helps to connect the various orders, which are not shown to be related by the evidence already outlined, e.g., the segmented worms and the shell-fish possess closely similar types of larvae; the lancelet and tunicates are shown to be linked with vertebrates as well as invertebrates.

Such is the bare outline of the copious evidence which scientists consider to be explained by the theory of descent. If, they argue, the existing animals and plants had been created as they are now, all these facts would be mere puzzles. If, however, the existing types are transformations of more primitive organism, then it is possible to connect all these converging lines of argument into an intelligent whole.

It is essential to note that this theory does not in any way exclude creation; indeed Cuvier and Agassiz, who upheld special creation and immutability of species, were forced to admit a systematic creative plan to explain the palaeontological data then known.

Secondly, it should be kept in mind that what scientists

propose here is a theory, held, it is true, to be most probable, but as yet unproved—some say unprovable—and, from the very nature of the case capable of modification or even rejection, should future evidence and research demand it. Indeed, it is significant that an eminent professor in zoology—however isolated he may be—could say, 'The more deeply I pursued the alleged evidence for it (this theory), and sought to gain through special investigations some essential proof of the genetic relationships of animals, the more clearly I recognized that the theory is a seductive romance, which deceptively pretends to give results and explanations, rather than a doctrine built upon positive foundations.'[1] In fact, no indubitable cases of species formation, i.e., of transformation from one species to the other, have been observed.

Even if the few cases put forward by evolutionists could be proved to be absolute new productions of species, they are too few, even if multiplied a hundredfold, to be advanced as an 'objective' proof of the real descent by transformation of the millions of species known to science. The theory of descent does connect in a rational manner all the facts of nature which naturalists have grouped together under the titles of 'homology,' 'palaeontological succession,' 'ontogeny,' and 'geographical distribution,' outlined above, but it does not explain all, nor, in fact, the most important parts of the facts known, e.g., the sudden appearance of the Cambrian fauna, the origin of the fishes in Silurian strata, the existence of highly specialized types from earliest times, the lack of imperfect ancestral systems to the rich forms of post-Silurian flora, the fact that 'the fundamental structures of types' persist throughout, though these may differ considerably one from another. 'Never before has it become so notorious as in the last decade how little there is in this theory that is universally accepted, as appears when the most obvious questions are asked regarding the course of development and its efficient causes.'[2]

Hence, many naturalists would postulate a common origin of all living organisms, not from one ancestral type, but from several, so as to account more readily for the numerous missing links in the evolutionary descent. This

[1] Albert Fleischmann, Prof. at Erlangen, in his *Die Descendenztheorie,* p. iii. Leipzig, 1901.

[2] Steinmann, *Die Abstammungslehre,* pp. 1, 2. Leipzig, 1908.

would leave a possibility open, namely, that what naturalists call 'species' are not true species in the strict sense of the term, but the modified varieties of species as yet unrecognized. As a matter of fact, naturalists admit that the term 'species' as used in natural history is a very vague and elastic concept, dependent more on the subjective whims of the classifying zoologist than on a uniform objective standard of essential properties.

While all naturalists accept and are agreed as to the significance of the theory of descent, there is at the present time a heated controversy with regard to the causes which produce the evolutionary transformations and the reasons why the progressive graduations met with in fossils do not present those irregularities which should be expected from chance productions, but progress instead in one direction only, and appear to be teleological in character.

Darwin had formulated, modestly enough, the principle of natural selection or 'the survival of the fittest' as Spencer put it, without however, stating anything about 'the origin of fitness.' Before his epoch-making enunciation, Lamarck (1744-1829) had stated that an orderly and progressive evolution was due to transmission of acquired characters; while Buffon (1707-1788) and Erasmus Darwin (1731-1802) had recognized other influences at work in the modification of existing types, such as adaptation to environment, the use and disuse of organs. De Vries brought to light again the discovery of Mendel, that variation occurred along definite lines, not by any ever-present fluctuating variations in the struggle for existence, but by spontaneous and sudden changes, on which the other factors would act as selective guides, or like a sieve, determining which varieties were to live and which to die.

The discussion has been obscured by the further issues as to the nature and the origin of life: whether life is a mere physico-chemical process; whether evolution is the result of causo-mechanical agency between the sensitive organism and its surroundings, or whether it is not rather the outcome of inherent forces which are only stimulated to action by environmental influences, and are not caused by them.

That there is absolutely no scientific evidence for spontaneous generation cannot be called into question at the present day; indeed, the researches of Pasteur and his

collaborators and the whole science of pathology and preventive medicine go to confirm this, its fundamental axiom, *omne vivum e vivo.* Even if spontaneous generation were a proved fact, the question of the origin of life would still remain an open one from the scientific point of view, until the disputed sufficiency of physico-chemical processes to explain all the phenomena of life were settled. It should be noted that these two principles do not pertain solely to biology, but fall within the sphere of psychological science, especially as biology ignores completely all differences in psychic activities in the zoo-phytic groupings.

The debate remains open, for though the experimental evidence seems to be in favour of the indivisibility and distinctness of unit species-characteristics, still the causo-mechanical theory of selectionists is not considered to have been proved untenable.

From a zoological point of view, man is an animal, and it is natural that zoologists should seek to find man's place in the zoological scale, and to inquire how far he can be made to fit in with existing evolutionary theories. As far as his anatomical structure is concerned, the human organism is obviously related to the higher apes. So much so that the structural differences between the higher apes and their lower types are greater than the structural differences between themselves and man. Some zoologists have, therefore, maintained that man is but an ape—the highest ape known. But zoology ignores completely psychic factors which do not come within its scope, and therefore zoology is incompetent to judge of the significance of such factors. Even if the body of man had been exactly similar to that of an ape, the psychic factors would be sufficient to show that similarity of bodily form does not necessarily argue to identity of whole individuality—much more so when the bodily differences themselves, slight as they are from a zoological point of view, are those demanded by the all-important subservience to the psychic factors.

Assuming that anatomically man is related to the higher apes, the next point to decide is (*A*) whether there is any evidence of evolution in the human organism, and (*B*) whether this evolution has proceeded from ape-like ancestors or otherwise.

(*A*) The arguments adduced for the evolution of mankind are the same as those shown above for the theory of

descent. If man is an animal, and animals have developed one from another, it is reasonable to suppose that man also has followed the general law of Nature. Moreover, man exhibits rudimentary organs, such as the coccyx (and the appendix ?); his embryological development falls within the scope of the phylogenetic argument outlined above, and the different races of men show structural differences which are related to their mental development, especially in their cranial capacity, and the anatomical structure of the skull.

(*B*) Still the chief evidence is to be sought for in geological history; for an ascertained evolution in times past would certainly overcome the weaknesses in the other lines of argument. As was to be expected, the debate among scientific men has been keenest on this point; in fact, several remains were discovered and the conclusions arrived at by the specialists who examined them are not altogether concordant. Undoubted human remains were found in Gibraltar (Lerves Quarry—1848—fragmentary skull); at Neanderthal (Düsseldorf, Germany—1856—skull-cap and skeletal fragments); at Spy (near Dinant, Belgium—1887—two skulls and skeletons); at Lipka (Moravia—1882—jaw of a child); at Krapina (Croatia, Austria-Hungary—1899—portions of many skeletons of adults and children); and in several parts of France, especially that of a nearly entire skeleton discovered in 1908 by the Abbé Bouyssonie at La Chapelle-aux-Saints, Corrèze. Though the statements made are conflicting, it appears that all these remains are evidence of a race of men (*Homo neanderthalensis, H. primigenius, H. mousteriensis*, etc.—but none the less, the self-same *Homo sapiens* of to-day) which flourished in mid-Pleistocene times. More recent races, assigned to Upper Palaeolithic times, have also been described such as the Grimaldi, a race of negroids, championed by Verneau; the Cro-Magnons, extending over Wales, France, Italy, Spain, and Austria; the Brünn races in Moravia and Hungary, to which perhaps the Gibraltar man may have belonged, etc. In all cases the skeletons and associated implements and (by no means contemptible) objects of art found exhibit man, as known to-day—somewhat different in structural type, it is true, but immeasurably above the rest of his fellow-creatures by his intellectual capacities. Neanderthaloid type of skulls may be seen, even to-day, in every city of Europe; and famous men

have been likened to these supposed primitive types, e.g., St. Martin, Bishop of Tours, fourth century; the warrior Bruce, and others.

A heated controversy has raged with regard to three discoveries made by Dr. Dubois, at Trinil, in Java, in 1891; by Dr. Schoetensack, at Mauer, near Heidelberg, in 1908; and that by Mr. Dawson, at Piltdown, near Fletching, in Sussex.

> Dr. Eugène Dubois, who had left Holland for Java *with the avowed intention of finding the 'missing link,'* discovered in September, 1891, a molar tooth (m_3 right side), the wisdom tooth of *Pithecanthropus erectus*; a month later, between *three* or *four feet* away from the tooth, the cranial vault of the skull-cap was found lying in the same bed, and on the same horizon. Work was then suspended on account of the rainy season, but was resumed in May of the following year, and in August the thigh-bone of the left leg was found lying *fifty feet* away from the spot where the first tooth was obtained, but still on the same horizon, and finally, in October, another molar tooth[1] (m_2 left side) lying *ten feet* away from the skull-cap.[2]

As for their significance, German specialists assert that they are Simian, English experts describe them as human, while French anthropologists regard them as standing mid-way between man and apes. As a matter of fact, besides the impossibility of proving that the femur and skull-cap belong to the same individual, there is the further assumption that the individual was a healthy representative of his race and not merely one of those unfortunate microcephalic idiots or syphilitics who are to be met with in every one of the well-populated asylums of Europe of to-day.

The Heidelberg find consists of a massive lower jaw, with broad ascending arms and a receding chin which places it mid-way between that of an anthropoid ape and *Homo sapiens*. However, the dentition is completely human and, in some respects, less Simian than that which may sometimes be observed in existing primitive races. A further point, which called forth a great discussion at the time, is the absence of a spine on the inner aspect of the chin, which was said to be exclusively Simian, and to denote inability of speech, but has now been proved to be absent amongst modern African and other races, who are known to speak European languages beside their own. From this jaw, the whole man has been reconstructed by imaginative artists, even though the scientific evidence

[1] According to Dr. W. B Pearsall, this is a wisdom tooth, and worn away after the manner of wisdom teeth of baboons and other apes.

[2] Sollas, *Ancient Hunters*, ed. 2, p. 33. (The italics are ours.)

is so utterly deficient. Before any far-reaching conclusions can be arrived at, it will have to be shown that receding chins do not exist at the present day, and that the Heidelberg jaw was a normal jaw, typical of an extinct race of man-like apes or ape-like men.

The Piltdown skull, found by Mr. Dawson, together with part of the lower jaw, was the occasion of much speculation until the jaw was shown to belong to an adult chimpanzee, by the discovery of a canine tooth by Father Teilhard. Thus the strange creature which was supposed to have a human skull and an ape's jaw turns out to be just one more specimen of *Homo* as we know him to-day, and who, moreover, may have used that monkey's jaw as a tool, just as present-day aborigines do.

Thus, one may conclude that

> the order of succession in time of fossil remains of the Mammalia, and especially of apes and man, suggests that man, in the strictest sense *Homo sapiens,* is a creature of Pleistocene time; as we look backwards into the past we lose sight of him before the close of that age, and encounter in his place forms specifically and even generically distinct; that other species of the human family *might* have already come into existence in the Pliocene epoch seems possible, but scarcely in the Miocene, and still less in the Oligocene epoch.[1]

That is to say, that as far as *ascertained scientific facts* are concerned, the earliest known men are structurally alike to the present-day races of men, and show themselves endowed with those faculties which make *Homo sapiens* the primate on earth. Mere brain capacity and large skulls do not in the least prove a greater share of intellectual powers—as a glance at the numerous large-headed imbeciles and idiots inside, and outside of, lunatic asylums will show. Moreover, concurrently with the earliest discoveries of human remains, marvellous works of art have been found which, it may safely be said, few of our professors of anthropology could rival. Even primitive flint instruments show ingenuity in handicraft: *Homo sapiens* is already using his wits with effect.

In attempting to determine the Catholic exegete's attitude towards these facts and theories, the wise principles of Leo XIII must be kept well in mind:—

> [The expositor of Holy Scripture] must not consider . . . that it is forbidden, when just cause exists, to push inquiry and exposition beyond

[1] Sollas, *Ancient Hunters,* ed. 2, p. 85.

what the Fathers have done, provided he carefully observes the rule so wisely laid down by St. Augustine—not to depart from the literal and obvious sense, except only where reason makes it untenable or necessity requires; a rule to which it is the more necessary to adhere strictly in these times, when the thirst for novelty and the unrestrained freedom of thought makes the danger of error most real and proximate.[1]

From this it seems to follow that apart from dogmatic definitions, which are irrevocable because they have been recognized to be truths revealed by God, the Church is not unwilling to accept scientific discoveries, so long as these discoveries are ascertained facts, and not mere transitory speculations. It is reasonable, in the latter case, to expect the Church to cling to the letter of the Scriptural texts until morally certain grounds can be adduced to show that the literal interpretation must be abandoned. Still, even then, the exegete may inquire how far he is committed to the literal interpretation of the text, and what figurative meanings would be possible 'on the analogy of faith'; that is to say, having in view the definitive and ordinary teaching of the Church.

From what has been said above on the theory of descent it should be evident that, apart from the question of man's descent, the Book of Genesis is in no way incompatible with such a theory. In a previous article[2] it was shown that the first chapter of Genesis must be taken to be a quasi-poetical presentation of the main facts of Creation rather than a chronological scientific description of events. It has even been asserted that St. Augustine and the Schoolmen accepted evolutionism. It would seem, however, that what St. Augustine and the Schoolmen had in view was not evolution of species, but rather the inclusion of all individuals, past, present, and to come, in the creative act, *seminaliter* and *potentialiter*, so as to interpret better the words of Genesis: *and on the seventh day God rested.* However this may be, it has been shown in the article referred to that no certain conclusion can be drawn from the Book of Genesis either with regard to the number of species created or with reference to the period which separated the creation of plant and animal life from

[1] Encycl. 'Providentissimus Deus,' 18th Nov., 1893. It is very instructive in this connexion to follow the discussions about the Piltdown and Neanderthal remains; and to compare such books on Evolution as Haeckel's *Riddle of the Universe* with Scott, *The Theory of Evolution.*

[2] I. E. Record, March, 1917, Fifth Series, vol. ix. 'The Days of Genesis,' by Rev. L. O'Hea, S.J.

that of man. Creation by God is the central lesson of the whole narrative.

To the theory of descent, then, apart from the question of man, there appears to be no insuperable theological difficulty; theologically the worst that can be said against it is perhaps this, that it appears to create a prejudice in favour of the bodily evolution of man himself. But the fact that a hypothesis does not conflict with revelation is, of course, no sign that it is true; it still has to stand the test of facts known by unaided reason. Enough has perhaps been said above to show these facts are not such as to exclude reasonable doubt, if the theory be considered in its extreme form. As for man, there is no truly scientific proof that he was evolved from lower animals. The first man that science shows to us is *Homo sapiens,* even as we know him to-day, whatever may be the minor differences in bodily structure and however varied may be the objects of their mental and spiritual activities.

When we endeavour to go further still, we must be careful to distinguish the source of our knowledge. That the human soul is created directly by God is a demonstrated conclusion of sane philosophy, and from a theological standpoint it appears to be heretical to deny it, mainly because of the consistent teaching of the whole Church upon the point, though there is much in Genesis and elsewhere in Holy Writ to favour it. Science teaches it also, since psychology is a true science; science in a narrower sense abstracts from it. But it is evident that most of our knowledge touching the first man comes to us from revelation alone, and in the main from the Book of Genesis and St. Paul, with the comment of tradition. That the human race actually springs from a single pair, for example, is clearer from St. Paul than from Moses, and is an article of faith, because taught as an essential part of the doctrine of original sin. This is one of the doctrines which the Biblical Commission (June, 1910) bids us hold fast; the other three which more immediately concern us—though the enumeration is not intended to be exhaustive—are the creation of all things by God at the beginning of time; the special creation of man; the formation of the first woman from the first man. As regards the first heading, 'all things' is not intended, of course, to cover souls created later. It might perhaps be going too far to say that it is of faith that Adam's body

was produced by immediate creation; nevertheless, this is the more obvious sense of Genesis, and the Biblical Commission has only reinforced the general opinion of Fathers and theologians. And the same is true of the story of the formation of Eve's body, as narrated in the Book of Genesis; we can hardly say that it is of faith, yet it has Scripture and tradition and authority behind it. True, it may sound like folklore, but may not such folklore proceedings, if we may reverently call them such, have been more intelligible to primitive man; and may not God have deliberately acted folklore for this reason? Such, at all events, is the story that God has told us; and His Church bids us take it as fact.

Larger questions of supernatural import we leave alone; that Fall which preceded all human evolution, such as it was to be, and also that developing of 'the full stature of Christ' which runs parallel to simply natural progress, whether again merely external or to some extent—if Education Bills be not wholly futile—intellectual. The end of man is union with Christ in His Mystical Body, and to that end all men and all things, past, present, and future, are ordained by God. And thus Christ is fulfilled in His members: they are built up to their full measure, ever increasing in number in this world, and still more in the next; they are built up in fuller unity, the absorbing and incorporating power of the organism increasing to meet the need; they are built up in more perfect knowledge, as the Church penetrates ever more deeply into the mind of her Divine Spouse. For evolution truly divine we must turn before all to the Epistle to the Ephesians.

THOMAS J. AGIUS.

'SACRED PLACES' AND 'SACRED TIMES' IN THE CODE

By Rev. M. J. O'DONNELL, D.D.

THE first section of the third book deals with the Sacraments (731-1153), the remaining five with 'Sacred Times and Places,' 'Divine Worship,' the 'Teaching Authority of the Church,' 'Benefices,' and the 'Church's Temporal Possessions,' respectively (1154-1551). From all points of view the first is more important, and more difficult, too, than the other five combined. Judged even by the number of canons, it is more extensive; but that is the least of its distinctions. It annuls or modifies old regulations to a greater extent than any similar section of the Code; more than any of the others, it affects the validity, as distinct from the liceity, of acts; and it covers the whole sacramental system—by far the most important element in all missionary life. For these and other reasons we were compelled, in our previous contributions, to keep the pre-Code legislation constantly in view. Many acts in the sacramental department—the marriage contract is an obvious example—have permanent effects on which a priest may, any day, be asked for a decision: when the case arises, he must remember that the Code is not retrospective, that an act valid now might easily have been invalid two years ago and *vice-versa*, and that his ultimate decision must depend on the law in force at the time the occurrence took place. Even when the validity is *not* affected, he must guard against another tendency. He has, perhaps for a score of years or more, been applying the old principles so frequently and so consistently that they have grown into his life. He reads the Code and recognizes, in a theoretical fashion, that new principles have come to take their place. But unless he has summoned up his old friends, one by one, and condemned them individually, the danger is that, when a practical case occurs, he will

forget the Code and revert to the habits of a life-time—like the man who 'beheld his own countenance in a glass,' and 'went his way, and presently forgot what manner of man he was.'

With the other sections of the third book it is different. For the most part, though not exclusively, the canons affect liceity merely; a priest, therefore, who knows them well is not likely to make serious mistakes, even though his knowledge of previous laws is neither extensive nor accurate. They deal, moreover, with matters that, on the whole, occur less frequently and are not so liable to generate an inconvenient habit. Finally, though practical and important in their own degree, they cannot claim to affect the life of the priest or layman in anything approaching the measure of the sacraments. We may be pardoned, therefore, for reviewing them in whole sections at a time, and for paying little attention to previous laws, except when the considerations mentioned in the last paragraph apply, as they sometimes do, by way of exception.

Sacramentals.—The few canons on the subject (1144-53) belong to the sacramental section, but may be allowed here for the sake of convenience. The definition given (1144), though it differs somewhat from its predecessors, involves no real change; but the rather indefinite teaching of the past is strengthened by the added statement (1145) that it is the exclusive prerogative of the Holy See to establish new Sacramentals, or to abolish, change, or give an authentic interpretation of those already in existence. The legitimate minister, as before, is a cleric who has got the power and to whom its exercise has not been prohibited by competent authority (1146). Though 'consecration' does not depend essentially on Orders, it cannot, apart from law or Apostolic Indult, be given by anyone except a Bishop—on much the same principle as we had occasion to notice before, when dealing with Confirmation and the blessing of the oils for Extreme Unction[1] (1147, § 1). Deacons and minor clerics must confine themselves to the limits of their express commission (§ 4). But—a welcome explanation of pre-Code statements—even when blessings are reserved to Bishops[2] or to the Holy See, any priest

[1] Cf. I. E. RECORD, March, 1918, Fifth Series, vol. xi. p. 209.

[2] They may be found in the Pontifical. The non-reserved blessings are given in the Ritual and Missal.

may validly confer them, unless Rome has made distinct provision to the contrary (§ 3). This does not mean, however, that his action would be lawful (§ 3), or that the blessing, validly conferred, would involve the Indulgences for which special provision is made in other sections of the Code (239, § 1, 5°, 349, § 1, 1°). To have them valid, moreover, the formula prescribed by the Church must be rigidly adhered to (1148, § 2). In that connexion the time-honoured distinction between the two classes of blessings is mentioned—the 'constitutive' that make the object (a church or cemetery, for instance) a sacred 'thing,' and the 'invocatory' (the blessing of a house, for example) that petition the Almighty for His favours but leave the object precisely as it was. For both, the prescribed formula is essential: but the natural conclusion is drawn that, whereas the object in the first case is to be treated with reverence and employed only for sacred purposes, there is no such special obligation arising in the second (1150).

Exorcisms are discussed in a special section. Some of them occur in other functions, e.g., in Baptism, and fall to the lot of the officiating minister (1153); as for the others, we have a confirmation (1151) of the peculiar development that has restricted to specially qualified priests a branch of Church activity once entrusted unreservedly to minor clerics. But there is a compensating liberality as regards the classes *for* whom the ceremony may be performed: they include, in fact, the whole human race—'not only the faithful and catechumens, but also non-Catholics or excommunicates' (1152). At first sight, by the way, one may think that this particular canon throws some light on the debated question as to whether excommunicates are 'Catholics' or not. But wrongly. To a strict classicist the *vel* of the canon may seem to identify the non-Catholics and excommunicates. But, of course, that cannot be the meaning; for, though some claim that all excommunicates are non-Catholics, no one thinks of saying that all non-Catholics are excommunicates. Nor can anything be inferred from the apparently sharp contrast between the 'faithful,' on the one hand, and the 'excommunicates,' on the other; for the 'catechumens,' who are allowed to stand side by side with the first class are, strictly speaking, a section of the 'non-Catholics'[1] mentioned as allies of the second.

[1] Ch. c. 1149.

Be that as it may, the principle of liberality is allowed to extend even further. *All* blessings, though intended primarily for Catholics, 'may be given to catechumens also, and, in fact, provided there be no Church prohibition, to non-Catholics as well—to procure them the light of faith or, with it, bodily health' (1149). The concession would have astonished the old-time rigorists. It will relieve the conscience of scrupulous priests if they are asked, as they sometimes are, for blessings, Ritual[1] or other, by heretics or pagans. We have got far from the days when Pope Martin V's distinction between the *vitandi* and the *tolerati* marked a revolution in Catholic policy. For the concession just mentioned does not stand alone. The Code that grants it has sanctioned the presence of Catholics at heretical marriages, funerals, and similar functions in specified circumstances (1258, § 2), has allowed the application of Mass for every human being alive (2262, § 2, 2°), and has diminished the number of the *vitandi* till the class has almost disappeared (2258, § 2).

Sacred Places.—When a place is marked off for divine worship, or for burial purposes, and is blessed or consecrated in the manner prescribed by the liturgy, it becomes 'sacred' in the canonical sense (1154). The 'consecration' is generally reserved to the local Ordinary; but, as we might expect from Canon 1147, even he is unable to act when he has not received episcopal Orders—his power in the case being confined to commissioning a Bishop of his own rite to act in his place (1155). The power to 'bless' is dispensed more liberally. In normal cases it is held by the local Ordinary, in special cases by the 'higher' Superior of an exempt clerical Order (488, 8°), and may be entrusted by either to an ordinary priest (1156). A few minor rules recall regulations we have met already—on Baptism and Confirmation, for example.[2] A record, twofold in this case, must be kept of the function: when there is no record, the evidence of one trustworthy witness will establish the fact, provided nobody's interests are thereby prejudiced: the ceremony, once performed, is not to be repeated, but should be allowed when the case is doubtful (1158-9).

When the rites have been duly performed, immunity

[1] In some parts of the country these are termed 'offices.' There is a special declaration (8th March, 1919) that the Canon covers *public* Sacramentals, e.g., the giving of palms, candles, ashes (on Ash Wednesday), etc. *A.A.S.*, xi. 144.

[2] Cf. cc 777-9, 798-800.

from civil authority is one of the consequences (1160). In a general way, this means that the sacred place may not be employed for illicit or profane purposes, and the prohibition is pretty extensive—witness the decree of Pope Pius X against the introduction of cinematograph exhibitions into churches for any purpose whatever.[1] In a special way it involves the 'right of sanctuary.' But not quite to the same extent as before. The right itself is based on the natural instinct of religious men, was recognized in pagan times as attaching to the shrines and temples of the gods, was claimed by Christian churches from the earliest days and acknowledged even by the Roman Emperors.[2] But with modifications as time went on. At one period we find the number of refugees restricted,[3] at another the number of places extended,[4] at a third restrictions imposed even on the churches[5] to meet the abuses that the claim tended to encourage. In some localities custom had so far prevailed against the ancient practice that many questioned whether the law, or the censure attached to it in the Constitution of 1869,[6] was still in force; and the reply of the Holy Office,[7] that the regulation must still be observed 'substantially,' was probably too vague to check the scepticism of the querists. If they lived to see the Code, they got the answer that most of them probably expected. The censure is nowhere mentioned in the new legislation, and must, therefore, be regarded as a thing of the past (6, 5°). And of the right itself, all that remains is conveyed in Canon 1179: 'a church enjoys the right of sanctuary, and those who come to it for refuge are not to be torn from it, except in case of necessity, without the assent of the Ordinary, or at least of the rector of the church.'

Churches.—In the definition given (1161) it is stated that a church is intended 'chiefly for the purpose of serving all the faithful for the public exercise of divine worship.' This does not at all imply that the church may be utilized occasionally for secular purposes (1160, 1178). The

[1] Dec. 10th, 1912, *Acta A. Sedis*, iv. 724.

[2] Seglia, *Inst. Jur. Priv.*, 132.

[3] Cf. Bened. XIV, *Ex quo divino*, 8th June, 1725.

[4] Cf. Wernz, *Jus. Decret.*, iii. 448.

[5] e.g. by Popes Pius VII and Gregory XVI.

[6] The fifth excommunication 'simply' reserved to the Pope in the *Apostolicae Sedis*.

[7] Dec. 22nd, 1880.

emphasis is laid on the terms 'all' and 'public'; and the intention is to mark off the characteristics that distinguish a church from an oratory, public, semi-public, or private (1188).

First, we have a few regulations that must be taken account of before the building of a church is undertaken. The express and written consent of the local Ordinary is an absolute essential; and, in this case, the Vicar-General is disqualified, unless he has got a special mandate. The consent will not be granted unless there is a fair probability that from some source or other a sum of money will be available, sufficient to erect the building and cover subsequent expenses (1162). The protests of neighbouring rectors are taken into account, but are not necessarily decisive: the objector lays his complaint and is allowed two months, more or less, to establish his case; in the meantime, the work may be allowed to continue at the builder's risk, but, as a rule, should be suspended till the point at issue is decided (1676). When Religious Orders are concerned, permission to erect a new house in the diocese or city will not be enough: before erecting a church or public oratory, they must secure the approval of the local Ordinary for the particular locality selected (1162, § 4). Finally, the Ordinary is to see that the plans of the building are in conformity with Christian art[1]; and no windows or doors, opening into lay people's dwellings, are to be tolerated (1164).

The church, when built, is not to be employed for divine service until it has been blessed or consecrated. If it be a cathedral church it must be consecrated; if parochial, collegiate, or conventual, consecrated, if possible; if a church of any other kind, blessed at least. But there are exceptions. A wooden or metal church cannot be consecrated, though it may be blessed; and neither blessing nor consecration is allowed, when the probabilities are that the building will be turned to secular uses later on (1165). Previous rules are repeated substantially in regard to the consecration ceremony, the observance of anniversary days, the 'title' of the church, and the blessing or consecration of bells—it being added expressly that the use of the latter is subject to ecclesiastical authority exclusively, and that they may be employed for profane purposes only when the donor, with

[1] Cf. Maynooth Statutes (1900), 327-8.

the Ordinary's consent, has imposed a condition to that effect, or when custom, necessity, or the Ordinary's permission demand or allow the proceeding (1166-9). When the church has been duly blessed or consecrated, sacred functions of every kind may be performed—in so far as they are compatible with vested or parochial rights. The Ordinary may fix the hours for the various services; but, in the case of exempt Religious churches, this is to be understood only in the sense that he may insist on the exclusion of such services as interfere with the giving of catechetical instruction or the preaching of the Gospel in parochial churches (1171, 609).

As before, a church loses its blessing or consecration (*exsecratio*) only when the greater portion of the walls has fallen, or when, having become so unfit for sacred functions that its repair is out of the question, it has been, in accordance with the power conferred in Canon 1187, turned to appropriate secular uses by the local Ordinary (1170). But the rules governing 'violation' (*violatio, pollutio*) are slightly modified. Instead of the 'effusio seminis humani' of the old law, we now read 'unholy or sordid uses to which the church has been subjected' (1172, § 3)—partially more strict, since it extends the classes of acts that may lead to the result: partially more liberal, since it implies that the acts must have been performed repeatedly. Instead of the 'vitandus' of previous legislation we now find 'one excommunicated by sentence' (§ 4), but a comparison of Canons 1873, 1876, and 2258 of the Code with the corresponding regulations of the past will show that the difference is merely verbal. In the remaining canons on the matter the liberal tendency is obvious. All sacred rites are, as before, forbidden, until the church is duly 'reconciled' (1173). But the violation of a church does not involve that of a cemetery [1] (1172, § 2): exhumation is not to be insisted upon when it entails serious inconvenience [2]—an exception that, in modern circumstances, will tend to become the rule (1175): *any* priest may, with the rector's presumed consent, reconcile a church that has been merely blessed (1176, § 1)[3]: a consecrated church may be reconciled by the delegate of the

[1] Contrast *Cap. un., de cons. ecc. in* VI°.

[2] Contrast *Sacr.*, 12, *de sepult.*

[3] Delegation by the Bishop used to be required, outside the case of necessity (Ritual, S.C.R., 8th July, 1904, etc.).

Bishop or (in certain cases) of the Religious Superior (1156, 1176, § 2);[1] and, in case of grave and urgent necessity, when the Ordinary cannot be approached, the rector of the church may act in all cases and inform the Ordinary afterwards (1176, § 3).[2] Even in regard to the water employed, there is a new concession: for the blessing by the Bishop, required by the Ritual when there is question of reconciling a consecrated church, gives place in the Code to a blessing by the officiating priest (1177).

As regards the administration of property intended for the repair and upkeep of the church and for the exercise of public worship, the mutual relations of Canons 1182-6 and 1519-28 must be kept in view (1182). In the second of the two sections we are told that the local Ordinary, in addition to appointing a diocesan Council of Administration (1520), is to select suitable men to manage the property of any church for which law or the terms of foundation have not provided an administrator already (1521). The duties of these men, both before (1522) and after (1523-5) assuming administration, are carefully specified, also their dependence on the local Ordinary (1526), and the consequences of their failure to comply with the prescribed rules or with the natural obligations of their office (1527-8). But, for the special property mentioned above, we find that the first section *has* provided an administrator, viz., as a rule, the Bishop and Chapter in the case of a cathedral church, the Chapter in the case of a collegiate, and the rector in ordinary cases (1182). It would seem, therefore, that the circumstances contemplated in Canon 1521 do not exist, and that there is no strict obligation to appoint any committee whatever—and this, perhaps, explains the hypothetical form of Canon 1183. But the committee *may* be appointed: *if* appointed, it is known as the 'Council of the Fabric' of the church (1183), and its rights and duties are specified (1184-6).

The institution is a common feature of parochial life on the Continent—also, we understand, in portions of the New World affected by Continental practices—but has been introduced only in a very tentative form into this country as yet. *If* it be ever widely established in our parishes,

[1] A *priest* used to require an apostolic privilege (Ritual). Exempt Religious were granted it by Leo X (3rd Febr., 1514).

[2] For the hesitating recommendations in pre-Code days, see, e.g., Lehmkuhl, ii. 306; D'Annibale, *Summ.*, iii. 15, etc.

priests will be interested in consulting the extent and limits of the Committee's powers—as indicated in Canons 1184-5. They will also notice that it is given a prominent position in Canon 1186, which—without prejudice to particular customs and agreements, or to the prescriptions of the civil law—arranges that the expenses of repair are to fall primarily on the property of the Committee, next on the patron, then on those who have a revenue from the church, and finally, in a mild form, on the people of the diocese or parish. When, as mostly with us, the patron and Committee have no existence, the second and third classes become liable for the whole amount. The order and method indicated in the canon represent perhaps pretty accurately, in fact if not in theory, the system actually followed. In so far as there may be a slight discrepancy, the opening clause will effect a reconciliation.

But, whether the Committees be established or not, there is one little canon that does affect us: 'entrance to a church for (the purpose of assisting at) sacred rites is to be entirely gratuitous, and every custom to the contrary is reprobated' (1181). This also is thoroughly in harmony with Continental practice; though, as those who have lived on the Continent will testify, there appears to be no rooted objection to collecting money with all pomp and circumstance, once the congregation has been admitted. How the two practices differ essentially it is hard to see: the moral compulsion, the difficulty of refusing without letting others know, the consequent temptation to remain away, and the association of money-changers with sacred worship, are quite as considerable in the second case as in the first. Whatever about that, the purpose of the law is obviously to make it as easy as possible for the faithful to attend church services, and to prevent scandal and abuses. On the first point, we have our own statutes[1] forbidding, 1° the exclusion of any one on the score of his being unable or unwilling to contribute money for sacred purposes (112), and, 2°, the holding of collections for secular purposes in the neighbourhood of the church and in such a manner as to cause the congregation inconvenience or annoyance (115). So far as the second purpose is concerned, we think it will be generally admitted that the custom, as followed in this country, gave little or no scandal to any-

[1] Maynooth Statutes (1900), pp. 68, 69.

one, and that the abuses were so rare and trifling as to be almost negligible. But, when all that is said, the obligation still remains : 'laws, passed as a safeguard against a general danger, hold, even though in a particular case the danger is non-existent' (21).

It is more or less useless to look for guidance to the customs and statutes of other countries : the circumstances vary so much that comparisons are likely to be misleading. Perhaps, though, a reference to the United States would not be out of place. The circumstances there are not very different from our own, and we have a record of the impression produced by the local custom on the mind of the Apostolic Delegate[1] —and of its results in actual legislation.

The Councils of Baltimore had passed some statutes on the subject.[2] Notwithstanding that, the customs continued, at least in some localities. They are outlined and condemned in a circular letter sent by Mgr. Falconio to the Bishops on the 29th September, 1911. We quote the more important passages :—

On different occasions [it stated] complaints have been made by various persons to this Delegation of the custom existing in some places as to the demand made at the doors of the church for money contributions to be given by those who are entering for the purpose of assisting at Mass or at other religious services.

It was also said that in some localities tickets for entrance to the church for the same purposes were previously sold, and especially on the occasion of Christmas, Easter, etc., and were then demanded at the door of the church. . . .

It has long been known to all how strongly the Holy See has reprobated all practices of this kind, their explicit condemnation having been made by Pius IX in the year 1862. Not less explicit are the provisions of the Second and the Third Plenary Councils of Baltimore concerning this matter. . . . To these should be added the fact that the S. C. of the Propaganda addressed to all the Bishops of the United States a letter, dated 15 August, 1869, which contained the following : 'Praxim pecunias exigendi ad fores ecclesiarum ut fideles ingredi possint, et divinis mysteriis adesse . . . penitus aboleri atque eliminari cupiens, S. Congregatio A. Tuam nunc in Domino adhortari non desinit, ut omnem curam conferas, si forte in aliquibus istius diocesis locis consuetudinem hujusmodi invaluisse noveris, *ne ulli omnino collectores*, quando christifideles ecclesiam ingrediuntur, quo divinis mysteriis adstare vel verbum Dei audire possint, ad earumdem exclesiarum fores ponantur.'

I wish also to add that so recently as the 22nd of May, 1908, His Eminence the Cardinal-Prefect of the Propaganda, having received complaints concerning this matter, directed me to take measures to prevent the repetition of abuses of this kind. . . .

I well know that in some churches money is collected at the door,

[1] Mgr. D. Falconio.

[2] II. 397 ; III. 288.

not for mere entrance, but as a payment for a seat in the church. Even this practice cannot be tolerated. . . . In order, however, that the proper revenues from the pews be not lost, your Lordships can devise some other method involving no objectionable features.

That illustrates the spirit in which a discussion of our practices would probably be conducted in a Roman court or tribunal. But it is important to note, 1°, that the American regulations go somewhat beyond the limits of Canon 1181; 2°, that a law made for one country is not binding in another, even though the circumstances are perfectly similar; 3°, that, whatever about advice and suggestion and exhortation, the only *law* binding in this country is the canon itself and the statutes of Maynooth already cited.

Now, remembering that the practice does not involve with us the scandal and abuses that it is apparently liable to entail in other countries, remembering also that the new law interferes with customs hitherto tolerated or approved by those in the best position to measure their effects, we are justified, we think, in giving the canon a strict and rigorous interpretation, i.e., in not extending it to any practice or policy that the words of the text do not *necessarily* cover. And, on that principle, we should say:

1°. That a collection inside the church is still allowable. Between it and a collection at the door there seems to be very little difference, we must confess. Still, the practice is well-known and apparently tolerated in other countries; and it certainly is not opposed to the words of the canon. And to restrictive enactments, as to penalties, we may apply the principle, always held and now re-stated: 'Extension from one person or case to another is not allowable, even though the reason in the second be equally strong or more so' (2219, § 3).

2°. That the policy of leaving one door free, or of charging a fee for *special* seats, is allowable also. The letter of Mgr. Falconio condemned it, we admit. But it was to the American Bishops, not to ours, that the letter was sent: and it is with Canon 1181, not with the letter, that we have to deal. The provision made by the Code itself in regard to reserved seats (1263) indicates pretty clearly that the right of entry into the church is not the same as the right of entry into every section of it.

3°. That there is nothing objectionable in having arrangements made for free contributions, provided there

be no collector present. This will hardly be questioned by anyone, but is perhaps not very practical.

4°. When collectors *are* present and a contribution is expected from all indiscriminately, the case is more difficult. Still, provided there be no moral compulsion of any kind, it is difficult to see that admission is, strictly speaking, anything else but gratuitous. The American letter forbade the practice, but the remarks already made are applicable.

5°. But, if there *be* moral compulsion—and this will depend largely on the character and methods of the collectors, and, perhaps largely, too, on whether the priest is present or not—the statute is violated.

6°. *A fortiori*, the practice, if it really exists anywhere, of refusing admission on the occasion of charity sermons, missions, etc., to anyone except subscribers is absolutely indefensible.

Oratories and Altars.—The old-time rules and prohibitions in regard to public (1191), semi-public (1192-3), and private (1194-6) oratories are given in practically the same form as before. We need only note that the oratories of Cardinals and Bishops enjoy the same privileges as if they were semi-public (1189), and that the Ordinary may 'habitually' allow one or more Masses in cemetery oratories, but *only* one, and that 'per modum actus,' in private or domestic oratories of other types (1194-5). The different views on the meaning of the phrase 'per modum actus' we have seen already.[1]

The statements regarding altars are practically unchanged, and are too well-known to bear repetition. The reader will remark, however, 1°, that in the case specified in Canon 1200, § 1, a priest may now be commissioned by the Bishop to re-consecrate with the shorter form—the change recalling the principle of Canon 1176, § 2; 2°, that the exceptional case described in Canon 1200, § 2, 2° is an innovation.

Cemeteries and Ecclesiastical Burial.—The principles here are well-known also. The cemeteries are to be blessed in 'solemn' or 'simple' form; and are to be the ordinary burying-places for all the faithful—internment in a church being allowed only in the case of exalted personages in Church or State (1205).

The rules governing the 'violation' and 'reconciliation'

[1] I. E. RECORD, February, 1918, Fifth Series, vol. xi. pp. 110, 111.

of churches apply here as well (1207). Each parish, as a rule, must have its own cemetery: so may exempt Religious; so, too, corporations or private families with the Ordinary's permission (1208). Within the cemetery there should be a special place for clerics, for children (if possible), and there may be for others with the written sanction of the Ordinary or Superior (1209). For those who are refused ecclesiastical burial a special place should be provided (1212). No unbecoming epitaphs or decorations should be allowed; no exhumation permitted without the Ordinary's consent; and no burial allowed until sufficient time has elapsed to make it morally certain that death has occurred (1211-4). On the blessing of cemeteries subject to civil control the legislation of a long period is crystallized in a short regulation. They are to be blessed if the majority of the funerals are Catholic, or at least a space should be set apart for Catholics alone and blessed; if even that cannot be secured, the cemetery itself is left without a blessing, and each grave is blessed separately, as occasion arises (1206, § 2, § 3).[1]

There are elaborate rules given to determine which particular church is to carry out the burial rites in a particular case. It would be impossible to reproduce them here in detail. Nor is it necessary. Conflicting claims may be advanced for various reasons, but the main controversies centre round the question of emoluments. Now, in the only portion of this country in which the offerings are likely to be very considerable, the fundamental principle of the Code and of previous general law—that the church of the parish where the obsequies take place has a right to the major portion of the offerings—is set aside. The place of funeral rites is a matter of indifference: the determining factors are the place of death and of domicile or quasi-domicile of the deceased.[2] And particular laws and customs on this matter are treated with so much respect in the Code itself[3] and in special decisions on the subject[4] that in this country the general principle loses most of its importance.

In the portions of the country, though, not affected by the statute just referred to—and even in the Northern province when stole-fees are not in question—the regulations

[1] Cf. Propaganda Rules issued 16th April, 1862.
[2] Armagh Statutes, n. 27, p. 22, 'ubicunque celebretur funus.'
[3] Cf. cc. 1230, § 7, 1236, etc.
[4] See, e.g. *I. T. Quarterly*, Oct., 1918, pp. 374-8.

may occasionally be of service or interest. They reproduce the old legislation substantially—in most cases the very words of particular decrees. The church of burial is that of the parish to which the deceased belonged—unless he selected another—and, in case he had two parishes, that of the parish in which he died (1216).[1] When death occurs in an extern locality, the home parish retains its rights, if the journey can be made conveniently on foot, or if the surviving friends of the deceased are willing to bear the expenses (1218).[2] There are special provisions for Cardinals, Bishops, Prelates with separate territory, Religious and Seminarians (1219-22).[3] Everyone, except children under the age of puberty and professed members of Religious communities, may select his own burial church (1223-4), provided the choice falls on one of those qualified[4] (1225); a proxy may act before or after the death takes place (1226)[5]; and there is a special provision against the exercise of undue influence (1227). The claims of the 'family burial-place' are reasserted as before, and special rules given for difficult cases (1229). When others, Religious especially, are closely associated with the ceremony, the rights of the parish priest are carefully specified (1230-3).[6] The funeral taxes are to be fixed by the local Ordinary, with the advice of the Chapter and others (1234)[7]: surplus charges are strictly prohibited; and, as the old law charitably provided, no fee whatever is to be exacted when the poor are concerned (1235).[8] The 'quarta funeraria' of previous legislation gives place to the much better-named 'portio paroecialis.' The amount is determined by diocesan taxation; is to be paid (as before) to the parish priest of the deceased, in so far as local law allows; and —a compromise between extremes—must be deducted from the proceeds of a service held within a month, if that be the 'first solemn function' (1236-7).[9] A record of the

[1] As decided long ago in c. 2, *de Sep.*, iii. 12, in VI°.

[2] Cf. Bened. XIV, *Inst. CV.*, n. 45.

[3] The rule about Seminarians is new.

[4] Some of the authorities used to say *any* 'religious' place; cf. Reiff., *in tit.* 28, B. iii.

[5] Not so in the old law; cf. Pirhing, *in tit.* 28, B. iii, n. 29; *Monit. Eccl.*, v. xiii. p. 424.

[6] Cf. decisions of 16th Dec., 1661; 10th Dec., 1703; 20th Nov., 1885 etc.

[7] Cf. Roman Ritual, *tit.* 6, c. 1, n. 6.

[8] Ibid.

[9] For previous views, see D'Annibale, iii. 177. The recent decrees seemed to favour the deduction in *all* cases; e.g., 13th May, 1904; 15th July, 1905; 23rd Febr., 1907, etc.

event and of the main particulars must be taken by the priest who presided at the obsequies (1238).

On the question of refusing ecclesiastical burial we have said something already.[1] Compared with previous laws, the Code is generous. The classes specifically mentioned are few; and, even as regards them, the qualifying clause 'unless they gave some sign of repentance before death' (1240) will lead in practice to a considerable mitigation of the rigorous discipline prevailing in the past.[2]

Sacred Times.—On 'Feast-days' (1247-49) and 'Days of Fast and Abstinence' (1250-4) we had occasion to make some remarks when dealing with the sections of the Code that came into force as soon as it was published.[3] We need only add that the statement excluding non-cemetery private oratories from the list of places in which the obligation of assisting at Mass may be discharged (1249) need not affect our Irish custom if the Bishops so decide (5), and that the powers of local Ordinaries and of parish priests in connexion with dispensations from fast and abstinence are considerably extended by Canon 1245:

§ 1. Not only local Ordinaries but also parish priests may, in individual cases and for a reasonable cause, dispense, from the general law governing the observance of Feast-days and of fast and abstinence or both, individuals or separate families subject to them, even though they live outside their territory, as well as *peregrini* living *in* it.

§ 2. When there is a great gathering of the people or when the public health requires it, Ordinaries may dispense the whole diocese or locality from fast or abstinence or both combined.

And in exempt clerical Religious Orders the Superiors are granted the same faculties as parish priests, but only in regard to their own subjects (novices included) or to those who, as servants, pupils, guests, or invalids, live night and day in the institution concerned (§3).

M. J. O'Donnell.

[1] I. E. Record, January, 1919, pp. 60-2.

[2] Especially as regards those engaging in duels. Contrast with Code Trent, sess. 25, ch. 19, *de Ref.*; Bened. XIV, *Detestab.* (1752): Roman Ritual, *de Exseq.*, etc.

[3] I. E. Record, November, 1917, Fifth Series, vol. x. pp. 355-63; December, 1917, pp. 497-8; January, 1918, vol. xi. p. 50; May, 1918, p. 416.

THE NEW CODE OF CANON LAW

PARISH PRIESTS

By Rev. J. KINANE, D.C.L.

II

OBLIGATIONS OF PARISH PRIESTS

Care of Souls.—The Code begins its treatment of a parish priest's obligations by enunciating the general principle that he is bound by his office to exercise the pastoral charge over all his parishioners, unless they are legitimately exempted from his control (c. 464, § 1). The duties which it subsequently imposes are either parts of this general one or means towards its effective fulfilment. As the words *ex officio* indicate, and as theologians and canonists teach universally, this obligation arises from a quasi-contract, and consequently binds in strict justice. Its violation, therefore, will involve the onus of making restitution, in so far as this is possible. According to Canon 94, a parish priest's parishioners include not only those who have a parochial domicile or quasi-domicile, but also *vagi* and those who have merely a diocesan domicile or quasi-domicile, if they are actually residing in the parish. Exemption from a pastor's care may arise either from the express prescription of law itself or from a particular act of the Bishop (c. 464, § 2). In virtue of Canon 1368, seminaries are completely exempt from parochial jurisdiction, the office of pastor being discharged by the rectors or their delegates. Clerical religious institutes and institutes of nuns are also at least partially withdrawn from a parish priest's care. Thus Canon 514, § 1, § 2, states that in the former the superiors, in the latter the confessors, have the right and obligation of administering the Viaticum and Extreme Unction to the sick. In other lay institutes, whether of men or women, these functions pertain to the parish priest, unless the Bishop has appointed a chaplain to take his place. For this as well as for all other exemptions

due to a particular act of the Bishop, a just and reasonable cause is required.

Residence.—It is a much disputed point whether the obligation of residence in respect of parish priests and other pastors of souls arises not merely from the ecclesiastical but also from the divine law.[1] The Council of Trent declared that those who had the care of souls were bound by a divine precept to know their flock, to offer sacrifice for them, to instruct them, and administer the Sacraments to them; and that this could not be accomplished by those who do not watch over their flocks and assist them, but desert them after the manner of mercenaries.[2] From this statement many writers deduce the conclusion that personal residence is a necessary means for the proper exercise of the pastoral care, and that consequently there is an obligation to observe it from the divine law. Others contend that the words of the Council of Trent, *qui gregi suo non invigilant neque assistunt, sed mercenariorum more deserunt,* do not necessarily imply personal residence; that a pastor can watch over his flock and assist them, even though he does not reside amongst them.

Whatever about a divine precept, there can be no doubt about the existence of an ecclesiastical one, even from the earliest times.[3] The discipline actually in existence prior to the publication of the Code dated from the Council of Trent.[4] Although the Tridentine decrees on this subject dealt primarily with Bishops, yet they were expressly applied, with some slight modifications, to parish priests and others having benefices to which the care of souls was attached.[5] The new legislation on the residence of parish priests is contained in Canon 465, and, as we shall see, is in substantial agreement with the pre-Code regulations. According to its first section, 'a parish priest is bound to reside in the parochial house near his own church; the local Ordinary, however, can, for a just cause, permit him to reside elsewhere, provided the house is not so distant from the church as to interfere with the

[1] Cf. Benedictus XIV, *De Synodo,* lib. vii, c. 1; Bouix, *De Parocho,* p. 540.

[2] Sess. 23, c. 1, *de Ref.*: '. . . quae omnia nequaquam ab iis praestari et impleri possunt qui gregi suo non invigilant neque assistunt, sed mercenariorum more deserunt.'

[3] Cf. Benedictus XIV, l.c.; Thomassinus, *De vet. et nov. Eccl. Discip.,* Pt. II, l. 3, c. 30-35.

[4] Sess. 6, c. 2, *de Ref.*; Sess. 23, c. 1, *de Ref.*

[5] Sess. 23, c. 1, *de Ref.*

discharge of the parochial functions.' The Council of Trent, indeed, did not expressly legislate upon this point, but subsequent decisions of the Congregation of the Council on the subject are in full harmony with the new regulations.[1] The Canon states that the local Ordinary may, for a just cause, permit the parish priest to reside elsewhere (*alibi*), provided the discharge of parochial functions is not interfered with; and, hence, the permission may extend even to residence outside the parish. This conclusion receives confirmation from the fact that, under the old discipline, the Congregation of the Council frequently declared that a Bishop could permit a parish priest to reside in a neighbouring parish if no parochial house could be procured in his own.[2] Canonists, in conformity with certain decisions of the Holy See, taught that a parish priest who, without the necessary permission, resided not in the parochial house, but in some other place in the parish, violated, indeed, the law of residence, but was not deprived of his revenues, provided he discharged fully his parochial functions.[3] As the canons of the Code, when they agree with old laws, must be interpreted in the same way, the same thing will still be true.

A parish priest is permitted to be absent from his parish for, at most, two months, whether continuous or interrupted, within the year, unless a grave cause, in the judgment of the Ordinary, requires a longer absence or permits only a shorter one (c. 465, § 2). This legislation is in full harmony with the Tridentine legislation. There are one or two points, however, in connexion with it which call for some remark. When the two months contemplated are not continuous, it becomes a question of much importance to determine what periods of absence have to be taken into consideration in the computation. As far as we know, this point has never been officially decided, nor do the canonists throw very much light upon the subject. Common sense itself seems to demand that absences of a few hours in the day are not to be computed. Personally, we think that absence should extend to a complete day before it need be taken into consideration. The Congregation of the Council, in 1594, declared that, in computing

[1] Cf. Bouix, op. cit., p. 560 seqq.; Fagnanus, *Comm. in Decret.*, in c. Extirpandae, tit. de Prebendis, lib. iii.
[2] S.C. Conc., 16 Jan., 1607, 15 Sept., 1607. Cf. Bouix et Fagnanus, l.c.
[3] Cf. auctores cit., l.c.

the three months vacation allowed to canons, absences, unless they amount to a complete day, are not to be counted; and the analogy between the two cases is rather close.[1] At the same time, it must be remembered that a parish priest who is habitually absent from his parish during the day, even though he resides there during the night, or *vice versa*, does not satisfy the law of residence; a special decision to that effect has been given by the Congregation of the Council.[2]

The grave causes on account of which the Bishop could permit absence for a longer period than two months were enumerated by the Council of Trent under four heads: christian charity, urgent necessity, obedience to superiors, and necessity or utility of the Church or State.[3] Authors usually gave some particular examples under each of these categories, but most of them are impractical at the present day, at least for this country. Ill health, defence of parochial rights, v.g., in a lawsuit, attendance at provincial or national councils, are amongst the causes that may still be verified. The usual cause for shortening this period of two months is the impossibility of providing sufficiently for the needs of the parish during the absence of its pastor.

The days which a parish priest spends on retreat, in accordance with Canon 126, are not computed in the two months' vacation; this, however, holds only for one retreat in the year (c. 465, § 3). This prescription is new. The old legislation did not oblige clerics to make a retreat, and, consequently, did not contemplate a contingency of this kind.

Whether the time of vacation is continuous or interrupted, when the absence is to last for more than a week, the parish priest, in addition to a legitimate cause, should have the written permission of the Ordinary, and should leave in his place a substitute approved by the same Ordinary; but if the parish priest is a religious, he needs besides the consent of his Superior, and the substitute should be approved both by the Ordinary and the Superior (c. 465, § 4). In accordance with the old interpretations, recreation or any similar reason will suffice for the legitimate cause prescribed in this section. The Council of Trent also required the Ordinary's permission for the two

[1] Cf. Bouix, *De Capitulo*, p. 329.
[2] 10 Maii, 1687. Cf. Bouix, *de Parocho*, p. 536.
[3] Sess. 23, c. 1, *de Ref.*

months' vacation; but when the two months were not continuous, the decree did not specify the precise period for which the permission was necessary. The Congregation of the Council afterwards settled the matter in the terms which have now been adopted by the Code.[1] Canonists, however, taught that local legislation might prescribe the Ordinary's permission, even for a shorter absence.[2] As a matter of fact, the law of the last Synod of Maynooth on this point is rather strict, and as it is not in opposition to Canon 465, § 4, it will still continue. In Statute 280, the Fathers of the Synod prescribe that 'no parish priest should be absent for three continuous days to be counted from the hour of departure, unless he gives notice beforehand to the Bishop. But if he wishes to protract the absence to five days to be counted in the same way, he should obtain the written permission of the Bishop; nor is it ever lawful for him to be absent on a Sunday or holiday without similar permission, or on any occasion without leaving a priest approved by the Ordinary as a substitute to discharge the duties of pastor in the meantime.' To satisfy the words *ab Ordinario probatum* of the statute general approval to minister in the diocese, even though not given specially on the occasion of the substitution, will suffice; whereas the phrase *ab eodem Ordinario approbandum*, in Canon 465, § 4, implies the need of special approval whenever permission for absence is given. As custom is the best interpreter of law, the words *ulla occasione* of the Maynooth law must not be taken to include absences for a few hours, when there is no danger of any pastoral obligation being neglected. Thus, it is quite a common thing for both the parish priest and curate to attend a Requiem Office in another parish without leaving any substitute whatever.

According to the fifth section of this canon, 'if a parish priest, for a sudden and grave cause, is compelled to leave and to be absent for more than a week, he should give notice to the Ordinary by letter, as quickly as possible, indicating to him the cause of his departure and the priest who is acting as substitute, and should obey his commands.' This is in full conformity with the old interpretations of

[1] 7 Oct., 1604: 'Ne posse abesse non petita, vel non obtenta licentia, etiam relicto vicario idoneo ab ipso Ordinario approbato.'

[2] Cf. Bouix, op. cit., p. 555; Ferraris, *Bibliotheca*, verbum 'Parochus'; Lehmkuhl, *Th. Mor.*, ed. x. vol. ii. n. 644.

the Tridentine law.[1] It is further stated that, 'even for the time of a shorter absence, the parish priest should provide for the needs of the faithful, especially if peculiar conditions require it' (c. 465, § 6). Whenever there is a curate in the parish, there will, generally speaking, be no need to make any special provision for these shorter absences.

The punishments decreed against violations of this obligation are contained in Canon 2381. A parish priest who is unlawfully absent from his parish :

1°. Is deprived *ipso facto* of all the fruits of his benefice corresponding to the time of his absence, and should hand them over to the Ordinary ; the latter is then to give them to the parish, to some other pious place, or to the poor ;

2°. Should be deprived of his parish in accordance with Canons 2168-2175.

On account of the seemingly contradictory dispositions in Session 6 and Session 23, it was not quite clear in how far the Council of Trent deprived non-residing parish priests of their revenues. In accordance with the generally accepted interpretation all the revenues corresponding to the period of absence were affected just as at present.[2]

Before passing away from this subject we should like to touch upon one or two points not directly dealt with in the Code. Theologians and canonists universally maintain that residence which is merely material does not adequately fulfil this obligation : they require that it should be also laborious, in other words, that the parish priest should himself discharge a substantial part of the pastoral duties, and not leave all or nearly all of them to substitutes. Here are the words of St. Alphonsus : 'Hinc communiter dicunt dd. . . . quod parochus non reputatur residere, si per se ipsum non exerceat principaliora munera, nempe administrationem verbi divini, sacramentorum, etc.' [3]

The obligation of residence, like most others arising from the ecclesiastical law, is grave of its nature, but admits parvity of matter. The question of determining when violations of it are grave, and when only venial, presents the usual difficulties. There can be no doubt that any absence on the part of a parish priest, no matter how short, which involves the danger of serious spiritual loss to his

[1] Cf. Declaratio S. C. Conc., 7 Oct., 1604.
[2] Cf. Wernz, *Jus. Decret.*, tom. ii, n. 482.
[3] *Th. Mor.*, lib. iv, n. 127.

flock or any member thereof, for example, the danger that a parishioner will die without the Last Sacraments, is objectively a grave sin.[1] Apart from a circumstance of this kind, theologians and canonists, as a general rule, regarded continuous absence for a week or more as of itself constituting grave matter.[2] The terms of the new regulations afford strong confirmation for this view. The fact that for a week's continuous absence the Code requires written permission from the Ordinary and his approval for the substitute shows that it regards absence of this duration as a matter of considerable importance. It was always taught, however, that local legislation could require, even under penalty of grave sin, episcopal permission for continuous absence of shorter duration, the implication being that local conditions modified the matter of the law.[3] The existence, then, of a local law of this kind is an indication that, in the territory affected by it, a shorter period than a week is regarded as grave matter. Hence, in this country, it would seem that a parish priest who is unlawfully absent for a continuous period of five days, or for a Sunday or holiday, violates gravely the law of residence. We do not think, however, that the fact that notice must be given to the Bishop for absence of three continuous days is sufficient evidence that this period should be regarded as constituting grave matter in this country. When the absence in not continuous it is clear that a much longer period would be required to constitute grave matter.

Mass pro populo.—Some rather important changes in regard to the Mass *pro populo* have resulted from the publication of the new Code. Thus, quasi-parish priests are now bound by this obligation on certain of the more important feasts mentioned in Canon 306. Again, in many countries, where a hierarchy existed, such as Great Britain and the United States, canonical parishes will now, for the first time, be erected; and, consequently, in these countries, the full obligation of the Mass *pro populo* as binding on strict parish priests will now, for the first time, arise.

The details of this obligation as it affects parish priests are very largely the same as under the old discipline. It binds on Sundays and holidays, even those that are suppressed (c. 339, § 1). On the feast of the Nativity, or if

[1] Cf. St. Alph., l.c., n. 123; Barbosa, *De Officio Parochi*, p. 77.
[2] Cf. St. Alph., l.c.; Morino, *Th. Mor.*, vol. ii, n. 103; Lehmkuhl, l.c.
[3] Cf. Auctores cit.

any feast falls on a Sunday, it is sufficient to apply one Mass (c. 339, § 2). When a feast is transferred, if not only the Office and Mass, but also the obligations of hearing Mass and abstaining from servile works are transferred, the Mass *pro populo* is to be applied on the *dies ad quem*, otherwise on the *dies a quo* (c. 339, § 3).[1] If a parish priest governs two or more united parishes, or if, in addition to his own, he has the administration of another or other parishes, he is bound on these days to apply only the one Mass (c. 466, § 2). This is a modification of the old discipline in accordance with which a parish priest who governed two parishes united, *aeque principaliter* or *subjective*, or two parishes that were not united at all, was bound to two Masses. The local Ordinary can for a just cause permit a parish priest to apply the Mass *pro populo* on some day other than that on which he is obliged by law (c. 466, § 3). Hitherto the Ordinary could permit this transference of the obligation only in one particular case, viz., when a parish priest who was very poor received a large stipend for the application of a Mass on a Sunday or holiday.[2] Now he can do so not only in this case, but also whenever any reasonable cause for the transference exists, as, for example, when an exsequial or nuptial Mass occurs on a suppressed feast.

The obligation of the Mass *pro populo* is personal: the parish priest is bound to apply the Mass himself. If, however, he is prevented from personally fulfilling the obligation on the prescribed days, he is bound to get it discharged by another, unless, of course, the Ordinary, for a just cause, has permitted its transference to some other day (c. 339, § 4).

In addition to its temporal and personal aspects just dealt with, this obligation has also a local qualification. A parish priest is bound to celebrate the Mass *pro populo* in the parochial church, unless special circumstances render it necessary or advisable to have it celebrated elsewhere (c. 466, § 4). As no distinction is here made between suppressed and other feasts, there can be no doubt that this regulation applies to both. Of course, circumstances will much more easily render a change of venue permissible on suppressed feasts than on other occasions, seeing that

[1] Cf. Const. *Amantissimi Redemptoris*, Pii IX, 3 Maii, 1858.

[2] Const. *Cum semper oblatas*, Bened. XIV; cf. Gasparri, *De S. Euch.*, vol. i. n. 521.

on these days the faithful are not obliged to assist at Mass. The Irish Bishops have faculties to dispense parish priests on suppressed feasts from celebrating the Mass *pro populo* in the parochial church, and even from applying it at all.[1] The former portion of these faculties is now of little value: in nearly all cases in which a dispensation can be granted, parish priests themselves, in virtue of Canon 466, § 4, will be justified in celebrating elsewhere. The latter portion is still important, and, as these faculties are not part of the Formula VI, it may still be availed of. A parish priest who is legitimately absent from his parish can himself apply the Mass in the place in which he is, or he can have it applied by the priest who takes his place in the parish (c. 466, § 5).

Theologians and canonists are agreed that the temporal, personal, and local aspects of this obligation do not bind gravely on each individual occasion: for grave sin frequent violations are required. The substantial part of the obligation, that is to say, the application of the Mass itself, binds under pain of mortal sin, even in the case of one individual Mass: it binds, too, in justice, so that omissions must always be supplied, unless a condonation is obtained from the Holy See; and, for this reason also, the obligation cannot be fulfilled by the application of a second Mass on the part of a parish priest who has the privilege of binating.

Celebration of Divine Offices, Administration of Sacraments, fraternal correction, etc.—Canon 467, § 1, states that 'a parish priest should celebrate the divine Offices, administer the Sacraments to the faithful, whenever they ask for them legitimately, know his flock, prudently correct the erring, embrace with fraternal charity the poor and the wretched, and take the greatest care in the Catholic education of children.' A parish priest's precise duties in regard to the celebration of the divine Offices depend very largely upon particular circumstances of time and place. In regard to the administration of the Sacraments, it must be remembered that this obligation arises from quasi-contract, and, consequently, binds in justice. When, therefore, his subjects are in grave spiritual need, a parish priest is bound to administer to them the sacraments of Baptism, Penance, and Extreme Unction, even at the risk of his

[1] See *Appendix to Maynooth Statutes*, p. 11.

own life, e.g., from contagious disease. Priests not engaged in the care of souls are bound to run risks of this kind only when those needing their ministrations are in extreme spiritual necessity. The obligation of correcting the erring binds in justice too, and, consequently, it urges on a parish priest, even under serious inconvenience. In this it differs from the duty of paternal correction on the part of a private individual. A pastor's duty towards the poor amongst his flock is subject matter for the pastoral theologian rather than the canonist. It may not be amiss, however, to point out that his obligation of relieving their spiritual needs binds in justice, whereas that of succouring them in their temporal necessities arises merely from charity. In the title on 'Preaching' the Code deals fully with the catechetical instruction of children. We need not, therefore, discuss the matter here.

The second section of Canon 467 is a complement of the first: it declares that 'the faithful are to be warned to frequently approach their own parochial churches, and there take part in the divine Offices and hear the word of God.' No strict obligation is here imposed on the faithful: there is question merely of an admonition.

Care of the Sick.—Canon 468 touches upon one of the most important of a parish priest's duties, viz., the assistance which he should render to the sick, especially when they are in proximate danger of death, by administering the Sacraments to them and commending their souls to God (§ 1). The Roman Ritual develops this obligation more fully. In the chapter 'On the Administration of Extreme Unction,' it declares that the parish 'priest should warn even the domestics and servants of the sick person to immediately call in the parish priest himself, if the disease becomes serious or the pangs of death are imminent, in order that he may assist the dying person and commend his soul to God; but if death is imminent, the priest should commend the soul to God in accordance with rubrics, before he departs.' And in the following chapter, 'On the Manner of Assisting the Dying,' it further states that 'when the disease becomes serious the parish priest will more frequently visit the sick person and will not cease to diligently assist him on the way to salvation; and will give warning that, when the danger becomes urgent, he should be called in, in order that he may be with the dying person in time.' The following statute of

the last Synod of Maynooth is also very explicit on this subject :—

A parish priest should always have before his mind that the care of the sick is amongst the principal of his duties. If they are in danger of death, he should immediately fortify them with the Sacraments of the Church, and provide for their frequent visitation even by lay people. When asked he should not refuse to visit the sick frequently, and even when not asked he should, either personally or through another priest, visit them frequently, or at least once a week, administer the Sacred Viaticum to them frequently, and, where it is possible, assist them when dying.[1]

From all these laws it is quite clear that a parish priest does not satisfy his obligation of assisting the sick by merely administering the Sacraments to them; he must also, either personally or through another priest, visit them frequently during their illness and, if possible, be with them when dying to commend their souls to God. Of course, like all other obligations, local and personal circumstances may, to some extent, modify this one also.

A parish priest, or any other priest, who assists the sick has now by law the right and obligation of granting the Papal blessing with a plenary indulgence in the moment of death (c. 468, § 2). Hitherto, a priest acquired this right only through delegation of the Holy See or sub-delegation of the Bishop.

Vigilance.—A parish priest should watch carefully lest anything against faith or morals is taught in his parish, especially in public or private schools, and he should foster or institute works of charity, faith, and piety (c. 469). The Maynooth Synod, in statutes 304-316, supplements very considerably the present canon in regard to the vigilance which a parish priest should exercise over the national schools in his parish. As these statutes are already well known to our readers we need not detail them.

Parish Books.—A parish priest is obliged to keep the following parish books or registers: one for those who are baptized, another for those who receive Confirmation, a third for those who contract marriage, a fourth in which deaths are recorded, and finally one in which the pastor is to keep as accurate an account as possible of the spiritual condition of each individual member of his flock. These books are to be written and kept in the manner approved by the Church or prescribed by the Ordinary (c. 470, § 1).

[1] n. 289.

So far, there is no change in the old discipline, as the Council of Trent[1] and the Roman Ritual[2] had already commanded the keeping of these registers. Some modifications, however, have been introduced in regard to the entries to be made in the baptismal register. After the publication of the *Ne Temere* it became necessary, when the baptized person entered the married state, to make a note of the fact opposite the name in the book of Baptisms. This has been confirmed; and, in addition, it is further ordered that similar entries should be made when the baptized person receives Confirmation, or is ordained subdeacon, or makes solemn profession (c. 470, § 2). Fairly large marginal spaces should, therefore, be left in the baptismal register, as in many cases two of these entries will ultimately have to be made. Another innovation has also been made in this connexion: it prescribed that an authentic copy of the parish books, with the exception of that containing the account of the spiritual condition of the parish, should be transmitted at the end of each year to the episcopal Curia (c. 470, § 3).

A parish priest should use a parish seal and have archives in which the parish registers, together with Bishops' letters and other necessary or useful documents, are to be kept; all these are to be submitted for inspection to the Ordinary, or his delegate, on the occasion of his visitation or at any other opportune time; and great precautions should be taken to prevent them from coming into the hands of outsiders (c. 470, § 4). The very nature itself of the parochial registers require that they should be kept in some secure place to prevent them from being destroyed or tampered with. Previously, however, general law did not formally prescribe the setting up of archives for their safe keeping. As the records and documents to be preserved are not very numerous, nothing very elaborate will be required. A safe, strong box, or well-fastened drawer will usually suffice.

ADMINISTRATIVE REMOVAL

Although the administrative removal of parish priests is dealt with under 'Ecclesiastical Processes,' in Canons 2147-2167, a word or two in regard to it will not be out of place in this connexion.

Prior to the publication of the decree *Maxima Cura,* in

[1] Sess. 22, c. 1 and 2. [2] Last title.

1910, removable parish priests could be administratively deprived of their parishes for any just cause and without formality; in fact, they could be validly deprived even without a cause. The dismissal of irremovable parish priests also could be administratively effected for certain causes and with the observance of certain formalities; neither the causes nor the formalities, however, were clearly defined in law or very well understood.[1] The complaint that the *Maxima Cura* interfered with the stability hitherto enjoyed by irremovable parish priests was, therefore, without foundation: the decree did little more than specify the causes and define the formalities for a species of removal already sanctioned by law.

In the *Maxima Cura* itself it was stated that its provisions applied to removable as well as to irremovable parish priests.[2] Doubts, however, were raised as to their application in countries like England, and the United States, in which parishes had not been as yet canonically erected. The Consistorial Congregation, in the year subsequent to the publication of the decree, answered a query on this point in the affirmative.[3] This reply made it certain that at least irremovable rectors in these countries were subject to the new legislation; but doubts still continued as to the condition of removable rectors. It was only in 1915 that it was officially decided that these latter did not come within the provisions of the *Maxima Cura*, and that they could still be removed for any just cause and without formality.[4]

The Code contains two distinct processes: one for removable and the other for irremovable parish priests. The main difference between the two is this: when the proceedings before the Ordinary and two synodal examiners are concluded and the decree of removal issued, an irremovable parish priest may have recourse for a revision of the process to the Ordinary and two parish priest consultors, whereas a removable parish priest may not; the only legal remedy of the latter is recourse to the Holy See. As the procedure before the Ordinary and synodal examiners is nearly the same in both cases, it will suffice to compare the process for irremovable parish

[1] Cf. Gennari, *Sulla privazione del benef. Eccl.*, p. 215 et seqq.
[2] Canon 30.
[3] 13 Martii, 1911.
[4] 28 Junii, 1915. Cf. *I. T. Quarterly*, Oct., 1915, pp. 493 et seqq.

priests with the *Maxima Cura*. Space, however, will permit us to note only the outstanding changes.

In regard to the causes for removal, the eighth and ninth of the *Maxima Cura* disappear in the new legislation; otherwise there is no change. The eighth cause in the *Maxima Cura* is the neglect of parochial obligations. Now the Code has special processes to deal with non-residing parish priests,[1] with *concubinarii*,[2] and with parish priests who neglect certain other obligations[3]; and thus arises the discrepancy in this point with the pre-existing discipline. The ninth cause is disobedience to the commands of the Ordinary in matters of importance; and as such commands are hardly ever issued except in connexion with a pastor's duties, the absence of this cause in the Code is quite intelligible from what has just been said.

The relations between the Ordinary and the two synodal examiners or two parish priest consultors, whom he is bound to associate with him in the process, are considerably modified. Under the *Maxima Cura* the examiners and consultors for certain acts had a deliberative vote, and for certain others merely a consultative one: in the new legislation their vote is never deliberative. In certain matters, too, in which they formerly had a vote, they are now not consulted at all, e.g., in regard to examination of witnesses and the provision to be made for a parish priest who had been administratively removed.

A change has been made in regard to the sources from which the maintenance of dismissed parish priests may be drawn. Hitherto, according to general law, it was quite unlawful to impose a pension upon a parish. In Canon 1429, § 2, however, it is provided that pensions may be imposed on parishes in favour of the parish priests or vicars of the same on their retirement or dismissal: the pensions should not exceed a third of the total revenue. There was some claim, indeed, that a custom of this nature existed in Ireland prior to the publication of the Code, but we do not know if it were well founded.

Apart from these points, the agreement between the old and new discipline is very close. There are more details, indeed, in the *Maxima Cura*, but nearly all of them are compatible with the new procedure.

[1] Canons 2168-2175. [2] Canons 2176-2181. [3] Canons 2182-2185.

PARISH A BENEFICE

Before bringing this article to a conclusion we desire, finally, to draw attention to the fact that the Code has settled the much disputed question as to whether parishes in this and similarly situated countries are benefices. The doubts centred round the question of temporalities, many contending that the offerings of the faithful were not sufficient to constitute the required endowment. Canon 1410 expressly declares that either the certain and voluntary offerings of the faithful, or stole fees, within the limits of diocesan taxation or legitimate custom, may constitute the endowment of a benefice. The most practical conclusion from this is that parish priests will now be certainly bound to expend their superfluous revenues on the poor or on pious purposes.[1] It must be remembered, however, that stipends for manual Masses do not form part of a benefice's revenue, and consequently are not subject to the obligation just mentioned.

J. KINANE.

[1] Canon 1473.

WHY THE OLD IRISH PARLIAMENT FAILED

By MICHAEL MacDONAGH

The old Irish Parliament had all the recognized forms of constitutional government, according to the British pattern. It consisted of two Houses, hereditary and elective, having the three historic estates of the realm—Lords, spiritual and temporal, and Commons, with the King, represented by a Viceroy, at its head. Its proceedings were regulated by the established parliamentary procedure of Westminster. But that freedom of thought and independence of action on the part of its members, which are as the breath of life to a representative institution, were missing. In the performance of the proper work of a Parliament —the allaying of discontents by means of ameliorative laws and the redress of grievances, as well as the raising by taxation of the revenue necessary for the government and administration of the country—it was narrowly restricted, even for the eighteenth century, and, as we shall see, restricted in a way different from other legislative assemblies of the time, and entirely peculiar to itself. Yet it had splendid qualities, which were inherently its own. The genius of its uninterrupted succession of illustrious members would alone have made it a great Parliament and raised it to a level with the highest, had free scope been allowed for the turning of these gifts to the practical purposes of statesmanship. Its failure as a National Assembly was due entirely to the fact that it was but the mere register of a will outside itself and unamenable to its control. In short, it was held in complete subordination by the British Government.

The Irish Parliament was managed by the Lord Lieutenant and his Chief Secretary mainly in the interest of England, or according to Westminster ideas of what was good for Ireland. No Bill could be passed by the Irish Parliament without the sanction of the British Government,

and that sanction had to be obtained before even the Bill was submitted to the decision of the Irish Parliament. There was nothing in Ireland like the Cabinet system which came into being in England in the eighteenth century. The Irish Parliament never had a Ministry of its own choice that was solely responsible to it and dependent for their continuance in office on the support of a majority in the House of Commons. It was never possible for the Irish Parliament to turn out a Ministry and put another in power. Ministries in Ireland changed only with changes of administration in England, and were Whig or Tory, not according as the House of Commons in College Green was Whig or Tory, but according as the House of Commons at Westminster was Whig or Tory. In these circumstances a hostile vote by the Irish House of Commons, or by the Irish House of Lords, on any proposal of the Ministry, was seldom given, and in its effect, even when the matter was of high national importance, caused no more than a slight and temporary inconvenience to the Ministry. On the other hand, the unanimous support of the whole Parliamentary body would not have retained a Ministry in office if the Ministry was out of favour with the British Government. But that was not all. The British Parliament claimed to have the right to extend any of its laws to Ireland, even against the opposition of the Irish Parliament. Thus the British Parliament, by means of commercial regulations, adopted early in the eighteenth century, at once crippled and ultimately destroyed the flourishing Irish trade in woollens for the benefit of the British manufacturers.

These limitations to the freedom of action of the Irish Parliament were imposed almost at the very dawn of constitutional government in Ireland. They had their origin in Poynings' Law, which was passed in 1494, the ninth year of Henry VII. At that period the Anglo-Irish Lords of the Pale—or the counties close to Dublin where English laws and customs more or less held sway—were constantly at war with each other for the upper hand. Henry resolved to make an effort to bring them more directly under English rule. He appointed as Viceroy of Ireland his second son, Henry Duke of York. This youth, owing to the death of his elder brother, succeeded, in time, to the throne as Henry VIII, who began the work of making England Protestant, and was the first English sovereign

to assume the title of King of Ireland. But young Henry never came to Ireland as Viceroy. His authority was vested in Sir John Poynings, who was sent over as Lord Deputy. Poynings summoned a Parliament, which met at Drogheda on December 1, 1494. It was representative only of the Pale, but it was, perhaps, the most momentous that ever sat in Ireland. By directions of the Lord Deputy it passed an Act depriving the Irish Parliament thenceforth of the power of originating legislation. Before an Irish Parliament could be summoned to meet, the Bills to be laid before it had to be certified by the Lord Deputy and Irish Council to the King and Council at Westminster, and returned to Dublin approved under the Great Seal of England.

Why was it that the Irish Parliament thus complaisantly made so large a surrender of its powers? Poynings' Law was recommended to the Anglo-Irish of the Pale, and such of the native Irish outside the Pale as were subject to the laws and liable to the taxes agreed to in Dublin, on the ground that it afforded the protection of the King and Council of England against the arbitrary and unscrupulous use of the then practically nominated Parliament by any tyrannical Lord Deputy or Lord of the Pale who grasped at supremacy. But, in later years, and in entirely different circumstances, the statute of 1494 condemned the Irish Parliament to a singularly circumscribed field of duties and work. It was like a narrow ring-fence, within which the national aspirations of Ireland beat their luminous wings in vain, until, in 1782, Henry Grattan, supported by the swords of the Volunteers, enlarged the bounds of Irish freedom by making the Parliament legislatively independent.

Even after 1782, the Irish Parliament, during the last eighteen and notable years of its existence, was still controlled from Westminster. It was free to bring in Bills and pass them without the let or hindrance of the British Government. That was a great stride towards complete constitutional freedom. It opened up for the Irish Parliament the prospect of a larger and freer life. Had the Legislature not been suppressed so soon afterwards by the Union this extension of its authority would have been but the prelude to further developments, such as the reform of the franchise and Catholic Emancipation. As things were, however, Ireland continued to be governed by English methods and according to English ideas, through the

medium of an Irish Parliament which, having no Ministry responsible to native opinion, was still controlled in its corporate action by the English Government at Westminster, and its members still individually amenable to English influences operating from Dublin Castle.

The subserviency of the Irish House of Commons to Westminster was continuous, being unaffected even by party changes in the English Government and the Irish Administration. It was maintained in a large measure by a system of rewards and punishments—the giving or taking away of places and pensions at the pleasure of the British Government, acting on the advice of the Lord Lieutenant. This state of things was not peculiar to the Irish Parliament. Corruption prevailed also in the English Parliament. But in the Irish Parliament it was especially rife for a reason unknown in the English Parliament. Political action, by party methods and upon party lines, was practically undeveloped in College Green. The words 'Liberal' and 'Conservative,' or their more ancient equivalents 'Whig' and 'Tory,' represent something more than mere party names. They stand for opposing ideas in human nature, and in any legislative assembly where they are in operation, the oneness of the cause predominates, as a rule, over all selfish personal interests. Only to a very slight degree were these purifying forces at work in the Irish House of Commons. There were, in the main, two separate and distinct sets of members, the Ministers and their supporters, who did things or refrained from doing things; and the dissatisfied and the discontented, who criticized them for their zeal or for their inaction. The debating chamber was shaped like an 'O.' Members were distributed to the right and left of the Speaker's Chair, in semicircles, with a wide floor between. Accordingly, a rough division between the Ministerialists and those opposed to them marked the arrangement of places. The Ministers sat on a bench to the right of the Speaker's Chair, and near to the Clerk's table. They formed the Administration. That is to say, they looked after the doing of things. But they did not constitute the Government in the sense in which the term is now understood. They did not formulate the political or social policy of the Government and stand together in its success, or fall together in its failure. Something of the rude beginnings of a Cabinet were in existence, but nothing more. When a question affecting

the Government arose in the House of Commons, when any measure of importance was to be brought in, or when serious disturbances broke out in the country, it was the custom of the Lord Lieutenant to invite what were called 'the confidential servants' to meet him in his closet or at dinner to discuss the situation. The membership of this body varied from time to time. No office holder appears to have been summoned because he was an office-holder. It rested entirely with the Lord Lieutenant to call in anyone he pleased, or thought capable of giving him advice, in the Ministry or out of it. But the body usually included not only such office-holders in the Administration as the Lord Chancellor, the Chief Secretary, the Attorney-General, and the Solicitor-General, but also such outsiders as the Primate, the Speaker, the principal judges of the High Court, and some men of name and figure among the Lords and Commons. On the right of the Speaker also sat the stipendiaries of the Treasury. 'Castle men,' Lord Chesterfield calls them, in a manuscript letter which I came upon in the manuscript department of the British Museum, and thus explains them: 'They meddle with no cabals nor parties, but belong to the Lord Lieutenant.' Such members who were independent, more or less, sat to the Speaker's left.

Still, the Government and what may be called, for convenience' sake, the Opposition were not mentally or politically divided into rival or antagonistic bodies, each with its fixed opinions, and both organized and disciplined on party lines, analogous to those to be found in all Parliaments in the twentieth century, and which existed in the contemporary British Parliament at Westminster. The Government might be said to have had its unifying policy, even though it was more often than not a policy of saying 'No' to what was asked of them. But the Opposition was never much more than a loose body of unrelated opinions, grievances, and conceptions. It would be difficult to classify them, according to the motives that actuated them, or the interests they sought to uphold. The main underlying inspiration of such desultory resistance as the Opposition gave to the Government was personal rather than political. Accordingly, constant fluctuations occurred in the numbers and force of an Opposition which expressed no real unity of ideas and impulses. Members changed from the Opposition to the Ministerialists,

and from the Ministerialists to the Opposition, according as different influences, more especially the intrigues of the Castle, made themselves felt in the consideration of the particular questions at issue. There was a national or patriot party which supplied the nucleus of the Opposition, and tried to give definite shape and purpose to its discordant and ever-varying interests; but though strong in intellect they were powerless in numbers. They arose principally in the 'sixties of the eighteenth century. Led by Henry Flood, and moved by the writings of William Molyneux, Dean Swift, and Charles Lucas—the first apostles of Irish nationality to rise up out of the English colony—the first Opposition members insisted that Ireland, being a separate Kingdom under the British Crown, was independent of the Parliament at Westminster, and constitutionally subject only to the laws passed by its own Parliament in College Green. Their policy was, in fact, the policy which triumphed under Henry Grattan. But it has to be said of the Opposition, as a whole and at all times, that it was made up of conflicting views and discordant voices. It was held together loosely by a common discontent with the Government, and there was little unity of action, organized and systematized, in utilizing that mood for the good of the higher cause of national well-being.

Every Government in the circumstances could always rely upon a majority, composed mainly of office-holders and pensioners, doubly bound to them by ties of obligation, official and personal. Lord Charlemont makes the significant reflection that the quality of disinterestedness was a bar to the advancement of a public man. 'Government,' he says, 'has in all instances a confirmed predilection for mercenaries, and will never place any real confidence in such servants as take no wages.' It was stated in a debate in 1790 that these paid supporters of the Government then numbered 104. That was more than a third of the House, and nearly half of its active members. To the constant attendance of so numerous a band of dependants was due much of the subservient temper and tone of the Legislature. Those persons had no will of their own concerning any matter in which the Government was interested, save the will to make things smooth for their paymasters. Ireland was forced (as was well said at the time) to pay yearly a large sum for the stifling of the voices of its more independent representatives.

'My lord, you have spoiled a good patriot.' With this humorously candid remark did John Scott (afterwards Lord Clonmel) accept from the Viceroy, Lord Townshend, the offer of the Attorney-Generalship. There is, however, another aspect of the question. Office-holder was not always synonymous with knave and hireling in the Irish Parliament any more than in the contemporary English Parliament. 'I object to no man being in office,' said Henry Flood, 'a patriot in office is more the patriot for being there.' Thus did Flood, in an epigram, repel the charge made against him by Henry Grattan in 1793 that he had many years previously sunk his patriotism in office. Flood had led the Opposition against the high-handed and oppressive policy of Lord Townshend. Under Lord Harcourt, who succeeded Townshend as Viceroy in September, 1772, the affairs of Ireland were conducted, at least for a time, on more liberal principles. Three years later Flood, still the dominating personality of the House of Commons, got a post in the Administration. The news naturally caused a sensation. Flood in office! Flood, the organizer of the Opposition and its leader! Flood, who had been so scornfully indignant on observing a Treasury official—the bribing precursor of the modern Whip—plying his trade openly in the House of Commons. 'What's that I see?' exclaimed the orator. 'Shall the Temple of Freedom be still haunted by the foul fiend of bribery and corruption? I see personified before me an incarnation of that evil principle which lives by the destruction of public virtue.' And Flood himself was now an office-holder! 'Flood, the champion of his country, the bulwark of her liberties, her strong tower of defence against all assailants,' Lord Charlemont exclaims in his *Memoirs*: 'Flood, my friend, Flood, the dear partner of my heart and all its councils, anchor of my hope and pillar of my trust, Flood gave way and deserted the glorious cause in which he had been for fourteen years triumphantly engaged.' No wonder the desponding question was being asked: 'Is there no man pure and disinterested in the Irish Parliament?' The post was that of Vice-Treasurer to the Lord High Treasurer of Ireland. There was a salary of £3,500 a year, and nothing to do for it. But the money made no great appeal to Flood, for he possessed ample private means and was a bachelor. The truth is that Flood had become disheartened by his failure to establish a strong permanent

Opposition in support of Irish interests as against the English interests of the Ministry, and had come to the conclusion that he could serve Ireland more effectively in office. The Vice-Treasurer had a seat in the Irish Privy Council, and the Irish Privy Council had a far more controlling influence on policy and legislation than the Irish House of Commons.

The history of Flood's appointment and the circumstances that led up to it are set out in the correspondence of Simon Lord Harcourt, who was appointed Viceroy in 1772, and had John Blaquiere as his Chief Secretary. These letters are included in the 'Harcourt Papers,' of which a few copies were printed for private circulation in the last decade of the nineteenth century. More than any other episode of the time that I know of does it pierce to the underground methods of managing the Irish Parliament, and expose the materialistic or selfish forces that were at work there. Lord Harcourt, writing on June 19, 1774, to Lord North, the Prime Minister, and Lord Rochford, the Secretary of State concerned with Irish affairs, announces the death of Dr. Andrews, the Provost of Trinity College. He says he proposed to give the office, the salary of which was £2,000 a year, to John Hely Hutchinson. Probably there never has been in any land a more notorious and unblushing place-hunter than Hely Hutchinson to vex the soul of distributors of government patronage. His insatiable avarice for position and salary will live for all time in the witty saying of Lord North: 'If you were to give him all Ireland for an estate he would ask for the Isle of Man to be thrown in as a cabbage garden.' Among the posts held by Hutchinson were those of Alnager of Ireland—an official who measured woollens by the ell with a view to the collection of the tax then imposed on them—worth £1,000 a year, and Prime Sergeant, a legal post worth £1,100 a year. These snug sinecures he was willing to give up if he got the Provostship. The Lord Lieutenant would be glad of the exchange, for, as he told the Prime Minister, it would enable him to reward a deserving lawyer named Dennis by appointing him Prime Sergeant—the most important office opened to a barrister in Ireland, apart from the Bench—and to offer the other post to Flood, for whom, he confessed, he had long been anxious to make a proper provision. 'The Government,' he says, 'will obtain the assistance of a gentleman of powerful abilities by the acquisition of Mr. Flood.'

Lord North's reply, dated June 23, 1774, is of deep interest. It shows how Irish patronage was used for rewarding the services to the English Government, rendered not so much in Ireland as in England; and also how Flood's political past still hung around him in a cloud of suspicion. The Prime Minister says he was very sensible that Mr. Flood had good pretensions to as considerable an office as that of Vice-Treasurer, and indeed even to a better; but he feared 'much blame here and no small difficulty in carrying on the King's business' if he were to consent to the giving to Irishmen of posts 'which have so long and so uniformly been bestowed on members of the British Parliament,' It was, therefore, almost impossible for him to comply with Lord Harcourt's request, so far as it concerned Flood. He adds that it was reported in London that his Excellency had intended to recommend Flood for the Provostship. 'Although that office is,' he says, 'much better than the other, I do by no means think it above Mr. Flood's merit; but I submit to your Excellency whether Mr. Flood, whose early principles, prejudices, and practice have led him to oppose British government, can, with safety and propriety, be trusted with such a place for life, which, besides rendering him totally independent, gives him, in a manner, the disposal of a borough and the means of forming the principles of the young nobility and gentry of Ireland.'

Flood did, indeed, desire the Provostship. Harcourt, writing to North, on July 8, 1774, says:—

> Mr. Flood is greatly offended that the Provostship was not offered to him. I saw him yesterday and he complained most bitterly of the treatment he had received from Government, laying the greatest stress on the promise Mr. Blaquiere had made that he should have the first great office that became vacant. . . . He laid great stress on the difficulties and obstruction which he could have thrown in our way had he been disposed to be adverse and to put himself at the head of the Opposition, which, insignificant as it was latterly, would have been very formidable in the earlier part of the session under the guidance and direction of an experienced leader.

Flood added that the contempt with which he had been treated was a lesson to him to be very cautious in future in his dealings with the Castle, which paid so little regard to engagements.

Harcourt admits to North that in order to mollify Flood he had humbled himself by using words which concealed his real thoughts. He writes: 'I said that I thought

the faith of Government was pledged to make an ample provision for him, and if it was not done I should be ready to acknowledge he had been deceived and ill used.' Harcourt then goes on to say: 'Disagreeable, my lord, as it was to me to hold this kind of language, I chose rather to submit to it than to have made him a tender of the Provostship of the College that would have placed him in a situation of independence and given him the opportunity of becoming really extremely troublesome and formidable to this and all future Administrations.' Still, Harcourt urged North to consider 'whether it might not be advisable to secure Mr. Flood, almost at any expense, rather than to risk an Opposition which, conducted by a man of his abilities, may render the success of the Administration more precarious next Session.'

Nothing came of the negotiations, so far as Flood was concerned. Hely Hutchinson got the Provostship. University sentiment was greatly outraged by the appointment. Hely Hutchinson was a B.A. of the College, but academically he was hardly qualified for the post. Yet, if he was no scholar, he was a very practical man; and proved, from the business point of view, a very capable Provost. His splendid audacity and unblushing perseverance in the hunt for offices appears not to have lost its edge, with all its success. It is amusing to read that he was on the look-out for more. Blaquiere writing in 1775, says: 'He is still dissatisfied and ever will be until he engrosses the stations of Primate, Chancellor, Lord Chief Justice of the King's Bench, etc., etc., etc., in his own person. . . . His clerk is hearth money collector, his butler a walking officer.' Blaquiere, himself another inveterate jobber, was appointed Alnager. In August, 1775, Harcourt was in a position to offer Flood a Vice-Treasurership. The office was among those of high rank and considerable emolument at the disposal of the Government. It was granted to three persons jointly, who were formerly paid by fees and allowances. In 1775, the King, in response to an address from Parliament, gave his consent to the payment of a fixed salary in lieu of the fees and allowances, which were to go into the public revenue. The salary was fixed at £10,500, which the three joint holders of the office divided between them, with the additional £2,500 for the payment of deputies. The other holders, with Flood, were Lord Nugent and Mr. Ellis, two members of the British House of

Commons. Flood still thought he was entitled to something higher, and, according to Harcourt, was in an irritated and most unreasonable mood. 'A man who, though of the greatest consequence in this country, is, I am sorry to say, very difficult to deal with,' is Harcourt's description of him. North, writing to Harcourt on September 16, 1775, hopes Flood will close with the offer, and declares that if he persists in declining it the office will be given to a member of the British Parliament. 'The conduct of the British House of Commons has for several years past,' he says, 'been so loyal, so steady, and, indeed, so disinterested, that it would be of the worst consequence to the King's affairs that they should suppose themselves sacrificed to the importunities of any body of men in other parts of his Majesty's dominions.' Ultimately Flood gave way. Harcourt, in a letter dated October 9, 1775, informs the Prime Minister that he has accepted the Vice-Treasurership. 'Since I was born,' the Viceroy declares, 'I never had to deal with so difficult a man owing, principally, to his high strained ideas of his own great importance and popularity.' But Harcourt is fully convinced that he has done an excellent thing for the Government in thus securing Flood. He thinks that if Flood exerts his great abilities in the service of the Crown, 'as he ought to do,' this long depending affair will have had a very happy issue.

The motives which moved Flood are easy to understand and appreciate. The Parliament was bound in iron bands. Such a position must have tended to convince members of insight and energy of the hopelessness of doing any good merely by criticizing or opposing the Government, and that the right course was to try to get inside the powerful official circle in order to influence legislation and administration at the source. But for Flood it proved an unfortunate venture. He got the office at the cost of much vexation of spirit and hurt to his pride. He held it for six years. During that long term he was practically extinguished in parliamentary life. He appears to have had no influence whatever in public affairs. He was never called to the councils of the Lord Lieutenant. Gradually he ceased to vote with the Government. In 1779 he spoke in support of an amendment to the Address in favour of free trade. After that he made no attempt to conceal his hostility to the Government. Punishment quickly followed. In the autumn of 1781 he was deprived of his office and his seat in the Privy

Council. Flood recrossed the floor of the House of Commons, a disappointed and soured man, to join the Opposition, then a really powerful force under the leadership of Henry Grattan, who had entered Parliament a few weeks after Flood had sunk into the political obscurity of an office-holder, and by his ability and eloquence had made himself the foremost public man both outside and inside the House of Commons. Flood had come round again to the opinion that the right policy was that which Grattan was then endeavouring to accomplish, the policy of adapting the structure and procedure of the Irish Parliament to the situation, circumstances, and needs of the Irish nation.

The principal personage in the working of this dubious system of managing the Irish House of Commons was the Chief Secretary. He was invariably an Englishman who came over in the train of every Lord Lieutenant, as the principal parliamentary subaltern of the British Ministry, and for whom a seat was immediately found in the House of Commons as the representative of one of the nomination boroughs at the disposal of the Government. His leading assistants in the House of Commons were the two law officers, the Attorney-General and the Solicitor-General. When he left office, after a few years' service, he usually retired to England to enjoy for the rest of his life the emoluments of some lucrative Irish sinecure. Among the offices bestowed on departing Chief Secretaries were those of the Master of the Rolls and the Chancellor of the Exchequer. Looking back from the point of view of the twentieth century, it seems incredible that so important a judgeship and so high a Government office in Ireland could be filled by Englishmen, living in England, who had been given them as rewards for administrative services in Ireland. The explanation is that both posts were sinecures. The Englishman holding them had nothing to do beyond pocketing the salaries. Some light on this strange state of affairs is derived from debates in the Irish House of Commons which are reported in 'The Parliamentary Register,' the Hansard of the Irish Parliament. The salary of the Chief Secretary was £2,500. On November 22, 1783, a motion to increase it by another £2,500 was moved by Sir John Blaquiere, who had ceased to be Chief Secretary, but still sat in the House of Commons. He mentioned that if it had not been for the generosity of the House,

during the time he was in office, he should often have been out of pocket. 'The duties of the station were extensive and required great abilities and assiduity,' he said. 'He could wish that men of ability and of connection in a neighbouring kingdom should be appointed to that station, and that gentlemen who had filled the office might not be under the necessity to accept of places the salaries of which they spent out of the kingdom.' Incidentally, it may be mentioned that Blaquiere had done very well for himself. Along with being Chief Secretary he had been Alnager of Ireland, Bailiff of the Phœnix Park, and Commissioner of the Paving Board. He continued to reside in Ireland after his resignation of office, and has the distinction of being the only Chief Secretary that had ever done so. Sir Edward Newenham threw ridicule on Blaquiere's proposal. He supposed it would next be moved that increases of salaries should be paid to 'the private secretaries, the coachmen, the cook, and the Castle scullion boys.' The Attorney-General, on behalf of the Government, strongly supported the motion for the reason that it would put an end to what he called 'the scandalous system of granting great Irish offices for life to retiring Chief Secretaries.' He gave a list of the offices, which included the Clerk of the Hanaper, the Clerk of the Council and the Vice-Treasurers, as well as the Master of the Rolls and the Chancellor of the Exchequer. 'Feed the hungry and the starving before you double the cloth of the rich,' exclaimed Sir Henry Cavendish. But by 71 votes to 28 the House decided to increase the salary of the Chief Secretary by the reduced sum of £2,000, thus making it £4,500.

A case in point was that of William Gerard Hamilton, a Scotsman and a lawyer of the English Bar. He is known in parliamentary history as 'Single-speech Hamilton.' His only speech in the English House of Commons was his maiden speech, on November 13, 1755, which is unreported but highly praised in contemporary diaries and memoirs. He came to Ireland in 1761 as Chief Secretary, with Edmund Burke as his private secretary, and, after three years' service, returned to England with a life interest in the salary of the office of Chancellor of the Exchequer, £1,800 a year. The matter was raised in the Irish House of Commons, on March 3, 1784—twenty years afterwards—when it was moved, 'that it is the opinion of the House

that the Chancellor of the Exchequer ought to be resident in the Kingdom.' It came out in the debate that the task of looking after the Irish revenue was thrown upon the Attorney-General, though he had no expert knowledge of finance and had responsible legal duties of his own to discharge. 'For my part,' said the law officer of that day, 'I would no more undertake the management of finance than I would the command of the fleet of England.' Still, some held that it would be an act of injustice to compel Hamilton to give up his sinecure. 'It is his freehold,' said George Ponsonby, 'and the House can no more deprive him of it than it can me of my estate.' It was then announced by the Government that as Hamilton had agreed to relinquish the office in exchange for a life pension on Ireland of £2,500, the motion was unnecessary.

Another remarkable illustration of this system of conferring an important post—or rather its title and the salary—upon a retiring Chief Secretary is afforded by the case of Richard Rigby. By rescuing the Duke of Bedford from a murderous mob at Lichfield races in 1752, Rigby secured a constant and influential patron for life in that nobleman. On the appointment of the Duke as Viceroy in 1758 Rigby accompanied him to Ireland as Chief Secretary. He was completely deaf in the right ear. In the House of Commons he turned this affliction to a comically useful purpose. As his seat was at the gangway end of the Treasury bench, members who thought themselves entitled to places and pensions used to come and sit on the steps of the gangway and pour their petitions, demands, and threats into his irresponsive ear. Rigby, however, always turned a most sympathetic ear to his own claims of preferment. He has made a name for himself in English, as well as Irish, parliamentary history, as an unblushing placeman. He is the original of that lowest type of corrupt wire-puller and political parasite, 'Rigby,' in Disraeli's *Coningsby.* He was not twelve months in Ireland when he was appointed Master of the Rolls, and a few years later he got another prime sinecure in a Vice-Treasurership. In 1768, on his return to England, he was made Paymaster of the Forces. He lived a merry and self-indulgent life, denying himself no pleasure, and yet, when he died at Bath, in 1788, he left half a million sterling of public money, which he had been unable to spend. It was only then that the salary of the Master of the Rolls was brought back to Ireland.

No Irishman was given the supreme direction of Irish affairs. The Chief Secretary, as I have said, was invariably an Englishman. The appointment of an Irishman to the post, if ever thought of by the British Ministry, was considered only to be rejected. Strong objections to it were, apparently, also entertained in Ireland. Lord Buckinghamshire, the Viceroy, writing to the Ministers in London, when the office was vacant in 1780, says in one letter: 'No Irishman could be appointed without causing jealousy and disgust'; and in another: 'The nomination of any gentleman in this kingdom would inevitably lead to intrigue and jealousy.' Only one Irishman filled the post under the Irish Parliament, and he was the last, Castlereagh, Chief Secretary to Lord Cornwallis, and the 'Statesman of the Union,' as he is described in his epitaph in Westminster Abbey. Indeed, Castlereagh owed his appointment entirely to the accident that, owing to the illness of Pelham, the Chief Secretary, the duties of the office were discharged by him during the Rebellion of 1798, he being then Keeper of the Privy Seal, a post which he got from Camden, the preceding Lord Lieutenant, in July, 1797. He gave entire satisfaction to the British Administration during that crucial period, but, as he laboured under the disability of being an Irishman, the new departure taken in giving him the post, when Pelham resigned towards the close of 1798, was not decided upon without grave hesitation and misgiving on the part of some of the British Ministers. In the *Castlereagh Correspondence* there is a letter from Lord Camden, dated November 4, 1798, to Castlereagh, in which he says: 'Mr. Pitt is disposed as much as possible to your appointment, and although I believe there are others who entertain strong prejudices against the appointment of an Irishman to be Chief Secretary to the Lord Lieutenant, yet your merits will, I doubt not, overcome the objections.' Castlereagh's promotion gave the greatest pleasure also to Lord Cornwallis. In a letter to the Duke of Portland, the Viceroy writes in the highest terms of the ability and judgment of his new Secretary. That Castlereagh was Irish was, certainly, a disadvantage. But then, the intimate knowledge of affairs and persons in Ireland which he owed to his nationality was most useful. And, after all, 'he is,' says Cornwallis, 'so very unlike an Irishman,' that, 'although I admit the propriety of the general rule, I

think he has a just claim to an exception in his favour.' According to a letter of Lord Hardwicke—the first Viceroy after the Union—in the *Hardwicke Papers*, the Chief Secretaryship was, at this time, an extremely lucrative office. Castlereagh was making £9,000 a year. This sum included the sinecure of £1,500 as Keeper of the Privy Seal. Charles Abbot, the first Chief Secretary under the Union, was paid £5,000 British, or £5,416 13*s.* 4*d.* Irish, a year.

There was also a post called Principal Secretary of State in Ireland. Despite its high-sounding title, the holder of if had no settled part in public affairs. It was but another of the highly-paid sinecures in which the Irish Parliament abounded. 'No duty, no responsibility is attached to the office,' says Buckingham, Lord Lieutenant, writing to his Chief Secretary and brother, W. W. Grenville, April 11, 1788, 'and the salary is £1,500 Irish, exclusive of the fees of the Signet Office, which are given to the Clerk who enters the fiants.' The post was appropriately filled for many years by John Hely Hutchinson. He got it in 1777, and held it until his death in 1794. From an account of the office, written by Hely Hutchinson, it appears that the Principal Secretary of State in Ireland was first appointed in the second year of Elizabeth, 'to keep the Signet as in England, and make all bills, warrants and writings that require signature, and have his fees for the same.' After the Revolution it lost its importance but not its salary, which was given to English members of Parliament as a reward for services rendered at Westminster. Hely Hutchinson was one of the first Irishmen appointed to the post, and he, like his immediate predecessors, held it for life. It then went with the Chief Secretaryship, to give, as was said, dignity and rank to that office ; and in these circumstances was filled by Pelham and Castlereagh, the two last Chief Secretaries before the Union. It passed out of existence with the Irish Parliament.

Hely Hutchinson states, in his account of the Principal Secretary of State in Ireland, that the Chief Secretary to the Lord Lieutenant rose to power after the Revolution. He had two clerks, one in charge of the civil department and the other in charge of the military department, who were like ministers under him. 'There is no country probably in Europe,' says Hely Hutchinson, 'where such various powers and departments are in one man, and that

man unknown to the Constitution; and yet in the course of a long life I have not known more than two men in that office who had any previous acquaintance with public business.' Even so, the command of the Irish House of Commons was in the Chief Secretary.

> It is a command [said Henry Grattan in 1791] that makes him more forcible than Demosthenes, and more persuasive than Tully, or, if the name of Solomon delight him more, Solomon in all his glory, sitting among his State concubines. See at the feet of a young lad the tributes of a degraded Court, see prostrate at his feet the wisdom of age and the flames of youth, the grey head of experience, the country gentleman's shattered mask, and the veteran Crown lawyer's prostituted conscience and howling remorse.

The great patriot and orator thus concluded his outburst of invective: 'You do not make this man a Colossus but he makes you pigmies; and both lose your natural proportion; he his natural inferiority, and you, your natural superiority in your native land.'

An instructive example of the willingness of members in receipt of the Government hush money to consent to any and every claim which their paymasters might make, is afforded by their conflicting action in regard to Catholic Emancipation in the years 1795 and 1796. In the summer of 1794 some of the leading moderate Whigs in England seceded from their party to join the Tory Administration of Pitt, for the purpose of vigorously prosecuting the war against revolutionary France. Part of the new policy of the Coalition was to make a change in the system of governing Ireland. The Whigs were favourable to the admission of Catholics to the Irish Parliament. One of them, the Duke of Portland, was made Secretary of State for the Home Department, in whose jurisdiction Ireland was then included. Lord Fitzwilliam, another Whig, was appointed Viceroy, and arrived in Dublin early in January, 1795. In April Grattan brought in an Emancipation Bill, which was read a first time by the House of Commons, without opposition, as the Government had directed. There was every hope of its passing, when alarm was raised in London, the King interposed, the Cabinet changed their mind, Fitzwilliam was recalled, and the same supple majority which was ready to carry the Bill in April, at the word of the Government, threw it out in May, by 155 votes to 84. In October, 1795, Grattan had only 19 supporters when he next moved a resolution in favour of

the emancipation of the Catholics. It was the last time this great question was submitted to the Irish Parliament.

Another peculiarity of the Irish Parliament was its unusual tenure of membership. A seat in the Irish House of Commons was vacated by the member being made a peer or a judge, or by his taking Holy Orders in the Established Church, but by no other means, save expulsion or death. Until seven years before the Union there was no provision to compel a member to resign on his appointment to an office of profit under the Crown, or even to afford him a means of escape by the formal acceptance of a nominal one, such as the Stewardship of the Chiltern Hundreds in the Imperial Parliament. This state of things also helped to keep the Irish Parliament in bondage to the British Ministry. Members who got places and pensions were not obliged to go to their constituencies for a renewal of trust; and as such members formed a third of the House of Commons, during the last half century of the Parliament, the Government, as I have already pointed out, could always depend upon the unwavering support of a permanent majority to further their own ends or to defeat the reforming schemes of the Patriot Party.

It is true that in the seventeenth century there existed a simple mode of resignation for members grown tired of parliamentary life, or too old or feeble to attend the session in Dublin. A letter to the Speaker, giving one excuse or another, seems to have been sufficient to give a member the desired freedom. The Commons Journals contain many instances of such applications. On November 14, 1634, Sir Henry Bingham, one of the members for the borough of Castlebar, wrote that he 'is dangerously hurt by a fall from his horse,' and, therefore, 'humbly besought this honourable House that another might be elected in his room.' Thomas Leake, a knight of the shire for Donegal, wrote, on November 17, simply that it was his 'humble request' to be relieved of the service of the House. On November 18 Henry Lord Maltravers, one of the members for the borough of Callan, sent a letter that 'in respect of his occasions in England he cannot attend the affairs of the House.' In all these cases writs for the return of new members were issued. On November 25, in the same year, Sir William Blake, being sick, 'got liberty to go into the country,' and it was further agreed at his own request, 'that in case he did not come by the first of the next term,'

another member should be elected in his stead. On the following day it is recorded that Arthur Chichester, a knight of the shire for Antrim, who 'was licensed by this House to go to England last session, and now being not returned,' a new writ was issued for his constituency. Then, on the first day of a subsequent session, January 26, 1635, it is ordered that Sir Henry Bingham is still to continue member for Castlebar 'notwithstanding a former order for the electing of another in his stead.' Again, six years later, on May 20, 1641, a writ was issued for an election of a burgess for the borough, or corporation, of 'Malloe' (Co. Cork) 'in the stead and place of William Kingswell, Esq., he being extremely sick of a consumption and not likely to recover.'

This practice, of letting every member go who wanted to, continued through the seventeenth century, and was brought to an end in the early years of the eighteenth. In 1704, Mr. Caulfield, one of the members for the borough of Charlemont, wrote requesting that a new writ might be issued for his seat as he desired to travel abroad. A committee was appointed to search for precedents; and they reported, 'that the excusing of members at their own request, or upon letters, from the service of this House, and thereupon issuing out new writs to elect other members to serve in their places is of dangerous consequence and tends to the subversion of the constitution of Parliament.' On the following day the House passed a standing order that no writs for elections in the place of members excusing themselves from the service of the House were to be issued at the desire of such members, 'notwithstanding any former precedent to the contrary.' It would seem, therefore, as if it were no longer possible for a member to resign his seat. In 1743 the Corporation of Sligo petitioned the House to order an election for the borough, on the ground that one of its members, Francis Ormsby, had not attended since 1731, owing to ill-health. The application was supported by Ormsby. Writing to the Speaker he said he had 'not the least room to expect that he should ever be capable of attending to his duty in Parliament,' and accordingly desired that the House would be pleased to issue a new writ, 'or otherwise do what in their great wisdom they should think proper.' The House refused the prayer of the petition by 106 votes to 79, but, having regard to the physical incapacity of the member they passed a resolution excusing him 'for not attending

in his place.' Ormsby survived until 1751, but never sat in the House again.

Many Bills were brought in by the Patriot Party to provide for the vacating of seats on the acceptance of pensions and offices. By thus reducing the number of members subservient to the Government it was hoped to give freer play to independent political opinion. But these measures were defeated by successive Ministries, until 1793, when the passing of the Place Bill (33 Geo. III, c. 41) at last crowned the movement of the Patriots with success. The Bill was brought in by a private member, named Forbes, and the Government offered no opposition to it. It enacted that a member accepting any office under the Crown then in existence thereby vacated his seat, but was eligible for election, as in England. It also excluded from the House all persons holding offices, the duties of which were inconsistent with the obligations of a member of Parliament, all pensioners during pleasure or for a term of years, the husbands of women who held such pensions, and all persons appointed to offices under the Crown created after the passing of the Act. Moreover, four offices, called the Escheatorships of Ulster, Munster, Leinster, and Connaught, each with a salary of thirty shillings, were created to serve the purpose of enabling members to resign, by the nominal acceptance of a Government post.

Froude, in his *English in Ireland*, remarks that 'in parting with the power which had alone enabled the Viceroys to carry on the Government'—the appointment of members of Parliament to offices and pensions without rendering their seats vacant—'Pitt, it is likely, had already determined that the days of an independent Irish Legislature were numbered.' As a matter of fact, the Place Bill had an effect undreamt of by its promoters. It unexpectedly helped Pitt, the Prime Minister, Cornwallis, the Lord Lieutenant, and Castlereagh, the Chief Secretary, in carrying the Union. During the momentous parliamentary struggle in the closing years of the eighteenth century, when the fate of the Irish Parliament was still shrouded in uncertainty, the Place Bill enabled the Government to thin out the ranks of their opponents by inducing those who were willing to be bribed, and yet pretended to have conscientious scruples against voting for the Union, to vacate their seats for nomination boroughs by the acceptance of offices or pensions, in order to make

way for Unionists. Thus, with the help of the Place Bill, the majority hostile to the Union, when it was first proposed, was transformed into a minority, and the Government avoided the risky expedient of trying to obtain a majority by dissolving Parliament and submitting the question of the Union to the whole electorate.

In a modern democratic kingdom the Sovereign is not constitutionally responsible. He reigns, but does not govern. The Ministry, which is responsible, governs. Under the old Irish Parliament the Viceroy and his Ministers both reigned and governed, and yet had no constitutional responsibility. They controlled the legislative power of the Parliament, and in the administration of the country they were, as the Executive, supreme. It is not true, then, to say that the old Irish Parliament was little more than a debating society—though, it must be added, a magnificent debating society, when one remembers the moving eloquence of Grattan, Curran, Plunket, and Bushe. The ease with which the British Ministry induced the Irish Parliament to vote its own extinction, by offers of titles and pelf, appears to be inexplicable to many commentators on the Union, both Irish and British. Everything considered, is it so very surprising after all ?

MICHAEL MACDONAGH.

NOTES AND QUERIES

THEOLOGY

THE IMPETRATORY FRUIT IN THE MASS

Rev. Dear Sir,—Pesch (*De Sac.*, par. 1, p. 397), in discussing the first and second intention of the priest, says: 'Rationabiliter agit sacerdos, qui praeter intentionem absolutam offerendi missam ad talem vel talem finem addit etiam conditionatam, quae valeat in casu quo missa vel secundum priorem intentionem applicari non possit, vel tantae efficaciae sit, ut, concessione prioris rei facta, aliqua praeterea efficacia supersit ad alium finem assequendum. Fieri quoque potest, ut Deus pro sua liberalitate non solum illam rem concedat, pro qua impetranda missa primo loco oblata est, sed etiam res, quae secundae intentioni respondeant.'

1°. Do you think it would be lawful for a priest to follow this opinion in practice, adding a personal intention of his own, even in stipend Masses, and even when he is reasonably sure that the subject of his first intention is *capax* ?

2°. In that case, do you think that there is good ground for holding that the beneficiary of his second intention would participate, in some measure, in the *ex opere operato* fruit of the Mass ?

1°. We think it lawful—and advisable. In connexion with 'impetration,' the 'second' intention may be 'absolute,' i.e., independent altogether of the effects secured by the subject of the 'first' intention. But, as regards the 'satisfactory' effects the intention in the case of 'stipend Masses' must be based on the double condition : 1°, that the primary subject be incapable of benefitting ; 2°, that, in that hypothesis, the donor does not intend the effects for himself or for his friends. The presumption is always very strong against the fulfilment of the second condition.

2°. Yes—with the qualifications mentioned.

PROBLEM IN BINATION

Rev. Dear Sir,—Your article on the Mass and the Eucharist in the new Code, in the February number (1918) of the I. E. Record—particularly on Mass Honoraria, p. 111—seems to open up very important questions for priests in England. Would you mind answering the following questions in the next issue of the I. E. Record :—

Under the new Code of Canon Law will priests who have to duplicate on Sundays and holydays of obligation, be allowed to receive an

offering for the first Mass and fulfil any of the following obligations with the second Mass: (1) for a deceased benefactor of the Secular Clergy Fund; (2) for a deceased fellow-priest who is a member of the Pact, i.e., to fulfil a Pact obligation; (3) *Missa pro populo*?

Thanking you in anticipation.

A Priest.

Under the old law, the opinion was quite probable that a priest might fulfil an obligation in justice when he said a 'second' Mass, provided he did not receive, in connexion with that 'second' Mass, a honorarium (the usual case) or a quasi-honorarium (e.g., in the case of a *Missa pro populo*). The new law would seem to be somewhat more strict inasmuch as it prohibits a priest from discharging, on one and the same day, a honorarium-obligation and *any* other obligation arising from justice. Apart from special concession, then, our correspondent's third query must be answered in the negative—the practice is condemned by both laws. In the first case, we think, the obligation need not be one in justice at all; if so, neither law affects it. The second case is more doubtful: it strongly suggests a contract or quasi-contract. But again, that need not be so: the obligation may very well be regarded as one arising from a simple promise or from the laws or rules governing the association. Anyhow, the obligation has got to be proved; and, till we hear to the opposite, we are justified (we think) in standing by the reply given by the Congregation of the Council on the 14th September, 1878.[1]

POSTPONEMENT OF ABSOLUTION

Rev. Dear Sir,—On reading your article, 'Penance in the New Code,' I see that you do not agree with the interpretation of Canon 886 given by the commentator on Father Marc. I beg to submit some of the reasons that perhaps influenced the commentator in his interpretation of said canon, and I shall be very much obliged if you let me know what you think of them. I imagine the commentator would reason thus: 'The confessor cannot at his own discretion defer absolution in the case of a relapsing sinner who is duly disposed. But, though, as 'judge,' he may think a penitent sufficiently contrite and disposed to receive absolution, he may, as 'physician,' pronounce him insufficiently disposed for *immediate* absolution; and, consequently, if there be no strong reason to the opposite, he may (and sometimes ought to) defer absolution for a short time, even against the penitent's own wishes, in order that the latter be preserved from relapse.'

Now, the reasons why this statement does not contradict Canon 886 may be expressed in this way:—

(1) Without distorting the meaning of the canon, you may tacitly add the words, 'Si confessarius (ut judex aut ut medicus) dubitare nequeat de poenitentis dispositionibus. . . .' But the confessor may sometimes *ut medicus* doubt about the penitent's being so disposed *now* as to draw from absolution all the benefit he can and should draw from it.

(2) One may hardly suppose that the Holy See meant by the said

[1] The query and reply are given by Lehmkuhl, *Th. Mor.*, ii. 296 (note).

canon to go against the common opinion of all the theologians (Marc, Supp., p. 927). It practically never happens that the Holy See officially stands up against the common opinion held for centuries by the chief theologians on a matter of natural or divine law.

(3) The Code itself indicates that the confessor should act as 'physician': 'Meminerit sacerdos in audiendis confessionibus se judicis pariter et medici personam sustinere ac divinae justitiae simul et misericordiae ministrum a Deo constitutum esse ut honori divino et animarum saluti consulat' (Canon 888). Now, according to the common teaching of the theologians—confirmed by experience—the best method by which the confessor ('as physician') can provide for 'the honour of God and the salvation of souls,' is the postponement of absolution, even though the penitent himself is really contrite; because it prevents many offences against 'the honour of God' and many relapses detrimental to 'the salvation of souls.'

(4) The true meaning of Canon 886 has to be gathered from the preceding decrees to which it refers. But many of these decrees are directed against the Jansenists and old rigorists, whose aim it was to renew the severity of the first centuries as regards the administration of the sacrament of Penance, by emphasizing the necessity of first testing the full and steadfast amendment of the sinner for a long space of time.

(5) If by 'dispositions' (886) we mean only what affects the confessor as 'judge,' i.e., sufficient contrition and purpose of amendment, it would follow that absolution could never be postponed till a penitent discharges a grave obligation, e.g., to avoid a proximate occasion of sin, become reconciled to his enemies, make restitution, etc.—which is not only against the common opinion of all theologians, but also evidently most dangerous to good morals and the salvation of souls.

These are some of the reasons that probably influenced the commentator. As the matter is so important and practical, I should like very much to have your opinion.

SACERDOS.

The statement to which our correspondent takes exception was almost as mild as his own protest. Discussing the question of postponing absolution, we said, in connexion with Canon 886, that 'though the only commentator we have read on the subject maintains the opposite,[1] we think that the canon as it stands, and according to any plain and unprejudiced interpretation, strikes a heavy blow against the policy, advocated by St. Alphonsus,[2] of putting off a penitent whose dispositions are certain, whenever such a course is deemed by the confessor conducive to his spiritual welfare or to the more certain fulfilment of his obligations.'[3] The editor's commentary on the canon had been: 'the meaning is [that the absolution is to be 'neither refused nor postponed'] if the confessor, both as judge and as physician, decides that the penitent is disposed (cf. Can. 888, § 1). For the confessor cannot, by way of test merely, or at his own discretion, defer absolution without the penitent's consent; but he *can* do so by way of remedy, viz., when, as

[1] Marc, *Inst. Mor. Aph.*, ii. Supp. (in 1814-17).
[2] vi. 462.
[3] I. E. RECORD, January, 1918, p. 21.

physician, he deems it a useful or necessary means to secure the fulfilment of the penitent's purpose of amendment. This "is certain and commonly admitted by all," says St. Alphonsus (vi. 462): it is the "true common view," as Lugo states (d. 14, n. 169).'[1]

There are two preliminary points on which there need be no controversy, but which, unless provided for, are liable to cause confusion. The first is this. Though a penitent appears at first sight to be fully disposed, there may be circumstances that will make a prudent confessor pause before coming to a definite conclusion. There may be a deep-rooted habit of sin; or the penitent may have relapsed repeatedly after confession, without having made any real effort; or he may have failed time after time to discharge, say, a serious obligation of restitution. In these and similar cases, his past record may lessen the value of his present protestations. If so, the confessor *may* 'have doubts about his dispositions,' and Canon 886 will have no application.

Secondly, though we hold that a properly disposed penitent has a strict right in justice to immediate absolution,[2] we admit that he may renounce that right in normal cases. If, with full knowledge of his rights, and without being over-awed or influenced unduly by the rigour of the confessor, he consents to postponement,[3] little can be said against —and perhaps much in favour of—the policy. In a sense, everyone who makes a sacramental confession may be said to 'ask for absolution'[4] —and this increases the force of Canon 886 very considerably—but we are willing to admit that, in almost any given case, the penitent may suspend the priest's obligation if he pleases.

But, leaving these matters aside, we come to the test case. May a penitent, who is certainly disposed, but is, at the same time, obliged (say) to pay a considerable sum in restitution, be refused absolution until he has actually discharged his obligation? The teaching of a few years ago is expressed pretty accurately by Lehmkuhl: 'if it is considerably more difficult for the penitent to return than to fulfil his grave obligation, let him be absolved at once . . . but, if it be more difficult for him to fulfil the grave obligation by which he is bound than to return, let the absolution be deferred.'[5] Does the Code condemn this postponement, or does it not? Canon 886, taken as it stands, certainly does condemn it, as 'Sacerdos' will admit. But *must* it be taken as it stands? Or may the distinction, imported by 'Sacerdos,' be admitted? One might brush the addition aside with the old-time remark, 'Ubi lex non

[1] Loc. cit.

[2] The policy of 'Sacerdos' was defended in the past on St. Alphonsus' principle that the penitent has a right, not to immediate absolution, but to absolution in the near future (vi. 462). It is hard to justify the principle, and Canon 886, we believe, leaves it indefensible.

[3] Cf. Ferreres, *Comp. Th. Mor.* (Code edition), ii. 727: 'cum poenitens libenter in dilationem consentiat.'

[4] Ibid. n. 727 (note): *Petit absolutionem*, omnis qui instituit confessionem sacramentalem.'

[5] ii. 557.

distinguit, neque nos distinguere debemus.' But that would be hardly fair. The best authorities always allowed us to import distinctions when we could show sufficient cause. So the question comes to this: *Is* there sufficient cause in the case? On the basis of the old teaching, 'Sacerdos' thinks there is: we are inclined to the other view, and for the following reasons:

1°. Canon 886 is not found in previous legislation. The pre-Code writers were too timorous to use it. As Father Marc correctly states, the previous teaching was of quite a different type: he uses the fact against the canon, we use it in its favour. The older canonists employed the words, but always with a qualification: they added 'per se,' or 'generally' or 'as a rule,' or some other phrase of the kind,[1] and under the phrases they sheltered the exceptions. The Code might easily have used the phrases, too: as a matter of fact, it has discarded them completely; and, once they are gone, the exceptions they sheltered must go as well. The law, in so far as it drops the qualifications, is new; and, in so far as it is new, it must be judged, not by the old laws, but on its merits (6, 3°).

2°. The canon, taken as it stands and in the sense we support, is the natural culmination of a long development from the rigour of the early centuries to the comparative mildness of our own. When the Christian world was young, absolution was postponed as a rule till the penitent had proved the sincerity of his repentance by discharging the severe penances imposed. It was only when the faith had penetrated through the world and when the early fervour had appreciably cooled that the milder method began to be adopted. It made its way gradually and in face of many protests; and secured a firm footing only when experience had proved that a method admirably suited to a small community of saints would have disastrous effects when applied to men and women of the normal type. Even when established finally it was not quite safe from attack: we need only recall the vigorous efforts of the Jansenists to have the old régime restored, and the equally vigorous Papal condemnation of the dogmatic errors underlying the movement and of the practical consequences it would certainly involve.[2] In our own time the last echoes of the disturbance had passed away, and the only relic of old-time rigour was found in the provision for special cases mentioned by 'Sacerdos.'

This provision, it must be remembered, was made on principles essentially different from those of the Jansenists. No one suggested that postponement was essential for a valid absolution; the contention was merely that it might tend occasionally to promote the penitent's spiritual welfare. But the same causes that led the Church to modify the rigour of her early discipline were operating still; and many thought that the time had come for a further advance in the same direction. We have quoted Lehmkuhl already as recording the stage of development

[1] See the manuals *passim*.

[2] For some details on the matter, cf. *I. T. Quarterly*, January, 1911, pp. 43 sqq., April, 1911, pp. 212 sqq.

reached in his own time: we may quote him also as testifying to the need for its further extension—going so far as to suggest that the milder principle might be availed of, occasionally, even in the case of the 'doubtfully' disposed:—

The confessor as physician should consider before God which is better for the penitent—to be absolved [at once] or kept without absolution for a time. To decide this, account should by all means be taken of the character of the penitent and of the condition of the times and places in which we live. For, when faith tends to be languid and the penitent can hardly be brought to make a confession, it is dangerous to defer absolution, so that this very fact itself may be a reason why absolution should be given to a *doubtfully* disposed penitent. Hence it is that, frequently in our days, a confessor should incline more towards giving absolution than he would have been justified in doing in earlier times, when faith was vigorous and active.[1]

The other spokesmen of our time were clearly of the same opinion. Noldin, for instance, after stating that postponement was never a 'necessary' means, nor obligatory on the confessor, summed up his views in a sentence: 'absolution is never to be postponed in case of a disposed penitent, if he himself be unwilling.' [2] And Génicot, dealing with relapsing sinners, records his conviction that 'the utility of postponement—asserted by Lessius and the older teachers to have been proved by experience—is, in at least many places, very doubtful at the present day. . . . Recourse should not be had to it, except with the greatest caution.' [3]

The time was ripe for a further development. The restrictive clauses of the old theology had outlived their usefulness. And that, we believe, is why the Code states categorically that 'if the confessor cannot have any doubt about the dispositions of the penitent, and if the latter asks for absolution, the absolution is to be neither refused nor postponed' (886).

The recent commentators are not very enlightening. Father Arregui repeats the old teaching, quotes the canon also, but makes no attempt to reconcile them.[4] Father Sebastiani reprints his previous statements, and makes no mention of the canon at all [5]—not a very satisfactory way of escaping from the difficulty. The writer of the 'Supplement' to Father Noldin's text-book adopts the same easy method: he mentions neither subject nor canon.[6] Father Ferreres, though, evidently feels that the canon has made a change: as we have seen already, he allows postponement only when the penitent freely consents; and his solution of our test case on restitution is substantially the same as our own.[7] The change in the Sabetti-Barrett *Compendium* is more eloquent. The provision for postponement 'when the confessor prudently decides that it is useful

[1] ii. 558.
[2] iii. 406.
[3] ii. 370.
[4] *Summ. Th. Mor.*, 622.
[5] *Summ. Th. Mor.* (1918), n. 491.
[6] 1918, p. 65.
[7] Loc. cit., ii. 732.

for the penitent's amendment' has disappeared.[1] The word 'saepe' is deleted from the query 'an expediat saepe uti praedicto remedio, differendo absolutionem poenitenti sufficienter disposito?'; and the reply, instead of providing for the old exceptions, is given simply in the words of Canon 886.[2]

Our opinion regarding the arguments proposed by 'Sacerdos' is based on what we have stated. But they deserve an answer individually:

1°. His distinction is fully sanctioned by the best writers in the past, but we think the weight of evidence is against its being allowed to modify Canon 886. His suggestion, moreover, we are afraid, would lead to postponement in nearly all cases; very few are 'so disposed as to draw from absolution all the benefit they can and should.'

2°. The Holy See, we admit, does not generally condemn the common view. But it does occasionally. The decree of the late Pope, on the dispositions required for Communion, is a case in point. And the parallel between it and Canon 886 is suggestive.

The matter, we may add, is *not* one 'of the natural or divine law': it is simply one of ecclesiastical discipline.

3°. We doubt whether the rôles assigned by 'Sacerdos' to the 'judge' and 'physician' can claim the support of Canon 888. According to the canon, the physician is a man of 'mercy' (§ 1), prohibited from adopting measures that would be quite within the judge's sphere (§ 2). Whereas, if 'Sacerdos'' suggestion be correct, the confessor, in his mild capacity as 'physician,' is expected to adopt more rigorous measures than he could in his strict capacity as 'judge.'

We admit that some advantage may be secured occasionally by delaying absolution. But, joined with it, there is the great disadvantage that the penitent is in the meantime 'an enemy of God, incapable of all merit and satisfaction.'[3] In times past the advantage was held to prevail occasionally. It seems to us that—as in the parallel instance of Communion—the Church has now come to the conclusion that the 'disadvantage' predominates in the concrete circumstances of our own times, and that the policy must be reversed.

4°. The documents, we believe, bear witness to the development described above. But, like all the documents cited in the 'Notes,' they must be employed with caution.[4] Some of them are partially opposed to the canons, as we are reminded by Cardinal Gasparri in his Preface (p. 37): 'vix animadvertere attinet canones haud semper cum suis fontibus omni ex parte in sententia congruere.'

5°. In some of the cases enumerated, there may be doubt as to the penitent's dispositions. If so, Canon 886 may be left out of account, as we agreed at the beginning. But, if there is *no* doubt, absolution, we believe, must be given at once. And the underlying principles are,

[1] Contrast the 1919 edition, n. 797, with its predecessor (1915), same number.
[2] Contrast same editions, n. 798.
[3] See the 'Instruction' of the Propaganda (3rd Oct., 1736)—a strong document in favour of immediate absolution. It is quoted in several of the manuals.
[4] Cf. I. E RECORD, January, 1919, p. 61.

1°, that the matter is one of justice; 2°, that the policy of postponement is likely, in our days, to deter the faithful from approaching the Sacraments; 3°, that the immediate grant of sacramental grace is a more important consideration in the spiritual life than any advantages secured by its refusal.

THE RECITATION OF THE OFFICE

Rev. Dear Sir,—Might I ask your opinion on the following cases :—

1°. John, without cause, delays his Office till 11 p.m. He intends to continue it till 12.12, if necessary, as the real time of his locality is 12 minutes behind Greenwich. At 11.15 he is called to a sick person and does not return till 12 o'clock. He feels tired on his return and retires to rest without saying any more of the Office, claiming that the obligation ceases at 12, and that to continue till 12.12 would be to use a privilege—which no one is obliged to do. I supported him, but another curate held that he was bound to use the 12 minutes—and that, even though he had not intended to make use of them when he started the Office.

2°. John has a busy Sunday—binates, assists at Communion at third Mass, collects from door to door from 11.30 till 3.0; baptizes three children at 3.30, and assists at Benediction. He has the faculty of saying five decades of the Rosary 'si officium ob aliquod legitimum impedimentum recitare non valeat,' and uses it in this case. Usually on Sunday evening he takes two hours reasonable recreation with his fellow-priests. On this day, however, he foregoes part of this to anticipate Matins and Lauds of Monday, when he will be travelling. Is this allowable, or should he say Matins and Lauds of the Sunday instead?

3°. The 'Sacrosanctae' is to be said 'flexis genibus . . . praeter quam ab iis qui ob certam infirmitatis vel gravioris impedimenti causam nequeunt genuflectere.' Can a priest who recites it in a train obtain the effect granted by Leo X?

Capellanus.

Taking the queries in order:—

1°. The first raises points on which, we are afraid, the theologians will never come to an agreement. We discussed them in an earlier issue,[1] and would ask 'Capellanus' to read the replies. Our general conclusion was that everyone is free to adopt whatever recognized system of time-calculation he pleases, and even to change from one to another, provided his purpose is not to escape an obligation. If John normally adopts Greenwich time—or even had decided *bona fide* to adopt it on this occasion, before the difficulty arose—we do not see that he was in any way obliged to avail of the additional 12 minutes. But if—as appears to have been the case—he mapped out his programme on a local-time basis, he was obliged to stand by it till the obligations attaching to the day (as he defined it) had been all duly fulfilled. His tired feeling, we presume, was not serious enough to exempt him; and the reasons he alleged were insufficient—the 'obligation ceased at 12,' but '12' had not arrived on *his* calculation: he was not obliged 'to use a privilege,' but he *was* obliged not to so manipulate privileges as to escape a serious

[1] I. E. Record, January, 1918, pp. 50-8.

obligation. If the reasons are valid at all, they exempt him from the Office from March till September—and would exempt him for life, if the 'summer-time' were extended, as it might be, to the whole year. For he may put off the Office till 11 p.m. (Greenwich) and then declare himself free on the ground that, 1°, the obligation ceases at 12 (summer-time), 2°, no one is obliged to use the Greenwich-time privilege. A system that leads to this result is interesting as a curiosity, but can hardly claim a hearing in the forum of conscience.

2°. The extent of commutation-faculties depends on the words of the concession and, to some degree, on approved local interpretation. Sometimes they are very liberal; in America, for instance, many priests are allowed to substitute a short prayer for Matins and Lauds on any day on which their confessional duties keep them engaged for five hours.[1] Perhaps something of the kind holds in 'Capellanus'' diocese. The description he gives is too vague for satisfactory discussion. But we are not inclined to think very highly of 'two hours' recreation' as a 'legitimate impediment.'

3°. The 'gravius impedimentum' has been interpreted in the past in the light of the 'infirmitas,' and taken to involve some kind of physical incapacity. The best authorities expressly exclude 'travellers' from the benefit of the exception clause.[2] But that need cause no trouble. There is no necessity to say the prayer *immediately* after the Office; the traveller will reach his destination sometime, and then he can fulfil the condition without inconveniencing himself or others.

M. J. O'Donnell.

CANON LAW

PARISH PRIESTS' OBLIGATIONS IN REGARD TO ATTENDANCE AT FUNERALS AND THE CARE OF THE SICK

Rev. Dear Sir,—Kindly enlighten me on the following points, in your next issue of the I. E. Record :—

I. A parish priest has recently made a rule in his parish—though not in force in the diocese—that the remains of deceased persons are to be taken to the church before burial. This rule was not published, and is only made known to the friends of deceased when they go to the parish priest to make arrangements for funeral service. If the remains are not taken to the church, owing to such short notice, is the parish priest justified in not attending funeral service, and preventing his curates from doing so?

II. In above case, does said parish priest come under censure in not asking the prayers of congregation for the deceased, when notice of deceased's death was handed in, and placed on the altar, as is customary? The curate of said parish priest requested the prayers of the congregation for said deceased, in another church of same parish, as also did two parish priests of adjoining parishes.

[1] Sabetti-Barrett, *Compendium*, n. 583. [2] Maurel, *Indulgences*, p. 118.

III. Are the representatives of said deceased justified in withholding dues, till reparation of scandal is made?

IV. A parish priest was called on three times, on same day, his curate being absent from parish, to administer the Last Sacraments to a dying person. Each time his housekeeper announced that he was not in, although messenger saw him in his sitting-room. When messenger inquired for nearest telegraph office, to wire for a priest, the parish priest came out and told messenger to go to a priest, recently ordained, in the neighbourhood, and he would give him faculties. Was such conduct justifiable? Should parish priest have attended case himself?

Thanking you for enlightenment on above.

T. P. B.

I. The Code has confirmed the old legislation which required that, as a general rule, deceased persons should be taken to the church before burial.[1] Thus, Canon 1215 states that 'unless a grave cause prevents it, the dead bodies of the faithful should be transferred, before they are buried, from the place in which they are to the church, where the funeral service, that is, the whole series of exsequial rites which are described in the liturgical books, is to be performed.' In many places in this country, however, local custom has modified the general law: the transference of deceased persons to the church before burial is a purely optional proceeding. Wherever a centenary or immemorial custom of this nature exists, the Ordinary may still allow its continuance, if he deems its removal inadvisable on account of the peculiar circumstances of the locality.[2]

In the diocese with which our correspondent is concerned, there is evidently a custom against the obligatory transference of deceased persons to the church before burial; and if it is centenary or immemorial—the fact that it is still continued in the diocese generally is an indication that it is—subordinate superiors, such as parish priests, have no right to impose any binding rule in the matter, until the Ordinary first takes action; though, of course, they may use their influence to have the funeral service carried out in accordance with the general regulations. If the custom, however, is an ordinary one, it is abolished by Canon 1215; and a parish priest is quite within his rights in insisting upon the observance of the general law.

It is clear from what has been said, that if the custom was centenary or immemorial—and presumably it was—the parish priest was not justified in refusing to attend the funeral: the friends of the deceased were quite within their rights in not bringing the body of the deceased to the church. Neither was his action lawful, even though the custom was an ordinary one and, consequently, abolished by the new legislation,

[1] *Rituale Romanum*, Exequiarum Ordo: 'Constituto tempore, quo corpus ad ecclesiam deferendum est, convocetur Clerus, et alii qui funeri interesse debent, et in parochialem, vel in aliam ecclesiam, juxta loci consuetudinem, ordine conveniant.'

[2] Canon 5 Codicis: 'Aliae, quae quidem centenariae sint et immemorabiles, tolerari poterunt, si Ordinarii pro locorum et personarum adjunctis existiment eas prudenter submoveri non posse.'

if there was a grave reason for not bringing the body to the church ; and the shortness of the notice given, the continuance of the custom in the rest of the diocese, and the prejudice which exists in certain localities against transferring the bodies of deceased persons to the church before burial might constitute such a reason. If no grave cause existed, then, looking at the matter in the abstract, we think that the parish priest was justified in not attending: his action was, not a refusal to give Christian burial to the deceased, but rather a refusal to give him a mutilated form of it. The concrete circumstances might, however, render his abstention imprudent and even unlawful. The full funeral service is clearly not required by Canon 1215 in all possible circumstances. We think, therefore, that a parish priest should not insist upon it, if his doing so would stir up widespread enmity against himself, and thereby interfere with the fruitfulness of his ministry.

II. The parish priest was not justified in refusing to ask the prayers of the congregation for the deceased. Even though his relatives acted wrongly in preventing the deceased from being brought to the church, that was no reason for depriving him of this privilege. The parish priest, however, did not incur any censure, nor was he, we think, guilty of grave sin, apart, of course, from scandal or any similar circumstance which may have been present.

III. The representatives of deceased are not justified in refusing to pay dues ; they cannot take the law into their own hands, and themselves inflict punishment on the parish priest. If they wish to obtain redress, they should lodge a complaint with the Bishop.

IV. The parish priest himself should certainly have attended the sick person : it is on him, not on his curate, that the obligation of exercising the pastoral charge primarily rests. Canonists, in dealing with the residence to which a parish priest is bound, insist very strongly on its being active and laborious : mere material presence in the parish, they maintain, does not of itself suffice. St. Alphonsus is quite clear on this point. 'Hence,' he states, 'doctors commonly say . . . that a parish priest is not regarded as residing, if he does not himself discharge the more important duties, namely, the preaching of the divine word, the administration of the sacraments, etc.' [1] Benedict XIV, on this subject, writes thus: 'It must be noted here that it is by no means sufficient, in order that a person may fulfil the law of residence which the Council of Trent and the Supreme Pontiffs commend so much and impose, if he is present merely in body, yet spends his time in idleness, or takes upon himself only the lighter duties, and commits the rest to delegates . . . this, however, is certain that such slothful parish priests are guilty of a deadly crime and should be punished by their superior in accordance with the gravity of their guilt.'[2]

Now, one of the most important of the pastoral duties is the care of the sick ; and, consequently, a parish priest who neglects it, or has it discharged entirely by others, does not live up to the idea of that laborious residence so much insisted upon by ecclesiastical writers.

[1] *Th. Mor.*, lib. iv. n. 127.

[2] Inst. 17, n. 6.

But there is even more specific teaching on this matter. The Code,[1] the Roman Ritual,[2] and the Maynooth Synod,[3] all lay the strongest emphasis on a parish priest's obligation to assist the sick. As the prescriptions of the Maynooth Fathers are very explicit, and bear directly upon the case under consideration, we shall quote them :—

A parish priest should always have before his mind that the care of the sick is one of his principal duties. If they are in danger of death, he should fortify them without delay with the sacraments of the Church, and provide for their frequent visitation, even by lay people. When asked he should not refuse to visit the sick frequently, and even when not asked he should, either himself or through another priest, visit them frequently or at least once a week, frequently administer to them the Sacred Viaticum and, where it is possible, assist them when dying.

From what has been said, it is evident that the parish priest's refusal to administer the Last Sacraments to the sick person would not be justified without some excusing cause, even though his curate were present in the parish. In the latter's absence, his conduct was much more reprehensible still.

Before concluding, to avoid all misunderstanding, we desire to say —though it should be hardly necessary to do so—that we take no responsibility for the statements made in this query. Our correspondent has evidently a concrete case or cases before his mind, but whether he has given the facts correctly is quite another question. Our reply must be understood to apply merely to the case or cases as submitted to us.

ADMINISTRATORS OF CATHEDRAL PARISHES IN ENGLAND AND THE MASS 'PRO POPULO'

REV. DEAR SIR,—Some few months ago you decided that the administrator of a cathedral in England, where he controls and administers the funds as if it were an ordinary parish, is bound to say the Masses *pro populo,* because he is to all intents and purposes a parish priest. May I ask if his parish could be made *inamovibilis* ? I have an idea that the priest in charge of a cathedral parish could not be made 'irremovable.' If this is so, could he be regarded as a parish priest and enjoy ordinary faculties as a parish priest? If he could not then it would seem that he is really not a parish priest, and not obliged to say the *Missa pro populo.*

INTERESTED.

A closer study of the Code has only helped to confirm us in the opinion that an administrator of a cathedral, or rather of a cathedral parish, in England is bound by the obligation of the Mass *pro populo.* The existence of the administrator indicates that the parish is a mensal one ; and, in Canon 1423, § 2, the episcopal *mensa* is enumerated amongst the moral personalities to which parishes may be united. Now, Canon 471, § 1,

[1] Canon 468.
[2] De Visitatione et Cura Infirmorum.
[3] Statute 287.

prescribes that, in a parish united to a moral person, a vicar should be appointed to discharge all the pastoral duties; and the last section of this same canon declares that such a vicar has all the rights and duties of a parish priest.

A vicar or administrator of this kind, in accordance with Canon 471, § 3, may be removed by the Ordinary in the same way as a parish priest; and, consequently, he may be either removable or irremovable. But, so far as the Mass *pro populo* is concerned, it does not matter what the nature of his tenure is. The law makes no distinction in this matter between removable and irremovable parish priests and vicars; and, consequently, we must conclude that the former as well as the latter are bound by this obligation.

The faculties, too, of a removable parish priest and a removable vicar are ordinary. Ordinary jurisdiction is defined to be that which is attached by law to an office (c. 197). The tenure by which a person holds an office does not, therefore, affect the nature of his faculties. Even though he is removable at will, the faculties which are attached to the office by law, and which he acquires through the office, are ordinary.

IN COMMON ERROR AND POSITIVE AND PROBABLE DOUBT THE CHURCH SUPPLIES JURISDICTION

REV. DEAR SIR,—Father Augustine, commenting on Canon 209, seems to hold that the Church does not supply jurisdiction in common error, unless there is in addition a 'coloured title'; in other words, it seems to be his opinion that the stricter, rather than the more liberal, view on this matter has been confirmed by the new legislation. In regard to doubtful jurisdiction, he holds that the opinion favouring the existence of the jurisdiction must be more probable than the opposite one, in order that the Church may supply. Are these views well founded?

An answer in the pages of the I. E. RECORD would much oblige.

INTERESTED.

The passage in which Father Augustine gives expression to these views is the following:—

Canon 209 provides for the common good and public security as well as for the tranquillity of conscience by re-affirming the well-known principle that the *Church supplies the necessary jurisdiction when a common error or a positive doubt arises.* Of course, the *common error*, to have this effect, must be accompanied by a *titulus coloratus* or an apparent title to the office one exercises. An intruder has no such claim. But if an Ordinary or confessor were commonly but erroneously supposed to have the necessary faculties, the Church would supply the defect of real jurisdiction. The same effect is produced by a positive and *probable doubt*, i.e., one which for certain reasons and circumstances inclines more to one side than to the other, in this case more to the side of the power being vested in the person whose court is sought.[1]

[1] Commentary, vol. ii. p. 190.

In regard to the part of this quotation which refers to common error, the first thing that strikes one is that it seems to contain a contradiction. The author states explicitly that common error must be accompanied by a 'coloured title,' in order that jurisdiction may be supplied; but immediately after he implies that a title would not be necessary if an Ordinary or confessor were commonly but erroneously supposed to have the necessary faculties. We really cannot see how the two positions are to be reconciled.

On the main question we have not the slightest doubt. We are quite convinced that the Church supplies jurisdiction in common error, even though it is unaccompanied by a 'coloured title.' Canon 209 states simply that 'in common error . . . the Church supplies jurisdiction'; and we cannot go behind the words of the law. This position receives confirmation—if confirmation be needed—from the controversy which existed on this subject prior to the publication of the Code. Those who drafted Canon 209 were, of course, aware that some canonists insisted upon, whilst others denied, the necessity of a 'coloured title'; it is clear, therefore, from the form of this canon, that they meant to adopt the more liberal view.

We do not agree with Father Augustine's teaching regarding doubtful jurisdiction, viz., that the Church supplies only when the opinion favouring the existence of the jurisdiction is more probable than the opposite one. It is a recognized principle of interpretation that the words of a law must be given their ordinary meaning. Now, Father Augustine, in regarding probable doubt as 'one which for certain reasons and circumstances inclines more to one side than to the other, in this case more to the side of the power being vested in the person whose court is sought,' departs from the recognized meaning of this term. A doubt or opinion is probable, if there is a good strong reason to support it, even though the opposite view may be based upon even a more solid foundation. There is no need to quote any authority in support of this statement: it is one of the presuppositions of the controversy on probabilism. Hence, it is our opinion that the Church supplies jurisdiction, if there is a grave positive reason for affirming its existence, even though there may be a somewhat stronger one for denying it.

J. KINANE.

LITURGY

THE TITULAR OF A CHURCH. THE 'MEMORIALE RITUUM' AND CERTAIN BLESSINGS

Rev. Dear Sir,—I read with interest your article on 'The Titular of a Church,' in the March number of the I. E. Record.

I. A chaplain to a convent, situated in St. Patrick's parish at W., is not clear on the question of his Titular. In the diocesan *Ordo* one reads this direction: 'In Suff. S.S. ad literam N. dicendum est nomen S. Patroni propriae ecclesiae.' The chapel of the convent is an iron building. It was duly blessed according to the Ritual by the Vicar-Forane, and is placed under the invocation of the 'Sacred Heart of Mary.' The parish church is equally an iron building, known as 'St. Patrick's Church.' Does an iron church or chapel come under the description of a building 'only temporarily destined for divine worship . . . which cannot have a Titular in the strict liturgical sense'?

Your article also states that every church or oratory which has received the solemn blessing has a Titular. The chaplain is informed that St. Patrick is the Titular to be invoked under the letter *N*, in the Suffrage of the Saints. The chaplain feels quite at sea about his Titular, and he wishes to know what name he should place under the letter *N*.

The chaplain would be grateful for the information as to what rite is the feast of the Titular of the parish church to be kept in the Mass and Office said by the convent chaplain. So far, the chaplain has kept this feast 'sub ritu duplici 1 cl., cum *Credo*, sine *Octava*.'

II. Your article, 'Mass on Holy Thursday,' published March, 1918, in the I. E. Record, has given rise to some doubts about the lawfulness of several other functions carried out in a convent chapel according to the directions of the *Memoriale Rituum* for small churches. Is it at least permissible for a chaplain to nuns to follow the *Memoriale Rituum* on Ash Wednesday for the blessing of the ashes; on the feast of the Purification for the blessing of the candles; on Palm Sunday for the blessing of the palms?

May I ask you for a reply in time to guide the anxious chaplain for next Palm Sunday? It is hardly necessary to say that a refusal to bless the palms would bring discredit on the chaplain.

Chaplain.

I. An iron church or chapel, although it must not be consecrated, can receive the solemn blessing and can, therefore, have a Titular. One of the canons of the new Code states[1]: 'Ecclesia ex ligno vel ferro aliove metallo benedici potest, non autem consecrari.' It is clear from the wording of the whole canon that there is question of the solemn blessing, and not of the mere *benedictio loci*. If further proof is needed we may point to a subsequent canon which says[2]: '*Unaquaeque* ecclesia consecrata vel benedicta suum habeat titulum.' The *benedictio loci*, according to all, does not confer a 'Title.' An iron church is really a church, and is so

[1] 1165, § 4. [2] 1168, § 1. The italics are ours.

called by the canon we have quoted. It is not destined for merely temporary use, at least not necessarily. It may have to serve the needs of a congregation for quite an indefinite period. No doubt, the intention may be to supply its place, in happier times, by a more costly and more permanent structure. But the same might be said of many churches of stone; for no church can be expected to last *for ever*. What is true of the parish church is also true of the convent chapel. Each has legitimately received the solemn blessing, and each has, therefore, its Titular. We have already pointed out[1] that the word 'Patron' is sometimes used instead of 'Titular'; but the more correct modern usage is to speak of the Titular of a *church* and the Patron of a *territory*.

Our correspondent does not clearly state whether he is simply chaplain to the convent or is also attached to the parish church. If he is a curate in the parish, he is bound to take notice of the Titular of the church, just in the same way as the parish priest. We gather, however, that the chaplain, although living in the parish, is not attached to the parish church. If this supposition is correct, he will take no notice of the rite according to which the feast of St. Patrick is celebrated in the parish church, but will follow the ordinary directions for the celebration of the feast in England; nor is the name of St. Patrick to be inserted by him in the Suffrage of the Saints. Since he is not 'servitio ecclesiae addictus' he has no special obligations towards its Titular. This principle has been enunciated several times by the Congregation of Rites.[2]

With regard to the Titular of the convent chapel, there can be no difficulty, since the name of the Blessed Virgin (to whom the chapel is dedicated) is already included in the *Suffragium*, and cannot be repeated. A difficulty may suggest itself regarding the celebration of the feast of this Titular. There is no feast of the 'Sacred Heart of Mary.' In a precisely similar case the Congregation of Rites decided[3]: 'Festum Assumptionis B.V.M. habendum esse pro titulari Provinciae, ejusque conventuum qui titulo gaudent ejusdem B.V.M., absque adjuncta denominatione alicuius Mysterii de qua Festum speciale celebratur.' Of course, the feast of the Assumption is already celebrated as a double of the first class, with an octave. As long, therefore, as the chaplain holds his present position the letter *N* should not be a cause of worry.

II. The *Memoriale Rituum* makes provision not only for the ceremonies of Holy Week but also for the blessing of the candles on the feast of the Purification, of the ashes on Ash Wednesday, and of the palms on Palm Sunday. No one holds that the functions of Holy Week can be carried out in non-parochial churches according to the *Memoriale* without an apostolic indult (or an immemorial custom which supposes such an indult).[4] It is generally held, too, that the same rule is to be

[1] See I. E. Record, March, 1919, p. 247.
[2] Decr. Auth., n. 3255, Ad II, 1, 4 ; n. 3431, etc.
[3] Decr. Auth., n. 2529, Ad 1 et 2.
[4] Codex. Can. 63, § 2.

applied to the functions on the feast of the Purification, Ash Wednesday and Palm Sunday. Thus, Van der Stappen writes[1] :—

Notandum vero est quod functiones sacras persolvere modo in Memoriale Rituum descripto licet tantum in minoribus ecclesiis parochialibus, non autem in ecclesiis quae parochiales non sunt, nempe in oratoriis regularium, fratrum religiosorum, et monialium seu feminarum religiosarum; etenim in hujusmodi ecclesiis et oratoriis, Officia Hebdomadae sanctae. aliaque similia juxta Memoriale Rituum persolvi non posse rescribendum censuit S. Rituum Congregatio (Decret. 16 Martii, 1876, Mechlinien.. n. 3390). Itaque hujusmodi ecclesiae et oratoria indigent indulto speciali, ut in ipsis functiones sacras juxta Memoriale persolvere liceat.

De Amicis is equally emphatic [2]:—

Benedictio cinerum. candelarum et palmarum . . . fieri nequit in ecclesiis quae parochiales non sunt. neque in oratoriis regularium, religiosorum et monialium. seu Congregationum religiosarum, si non habeant indu tum asservandi SS. Sacramentum, et careant sufficienti numero ministrorum, ad solemniter functiones peragendas; etenim in hujusmodi ecclesiis vel oratoriis officia hebdomadae sanctae aliaque similia juxta memoriale rituum persolvi non posse rescribendum censuit S.R.C. (D. 3390), et indigent speciali indulto.

A more recent writer. however. holds the contrary view. Having laid down that an indult is required for the use of the *Memoriale* in non-parochial churches during Holy Week, P. Victorii ab Appeltern proceeds [3] :—

Pro aliis autem functionibus. uti Benedictionis Candelarum, Cinerum, Palmarum. non est opus speciali facultate. ut juxta idem parvum Rituale Benedicti XIII peragantur. sed, nisi copia adsit sacrorum Ministrorum, juxta illud semper et ubique expleri possunt.

He does not even suggest that there is a second opinion on the matter, and contents himself with citing the *Ephemerides Liturgicae* (vol. xi. p. 361). and a declaration of the Congregation of Rites (Decr. n. 3813). Unfortunately. we are unable to verify the former reference, so as to be able to examine the arguments used. The declaration of the Congregation is this: 'Benedictiones Candelarum, Cinerum atque Palmarum esse ex obligatione faciendas in omnibus Ecclesiis Collegialibus; in aliis autem posse fieri.' Here it is not stated *how* these blessings are to be given—solemnly or according to the *Memoriale*. Appeltern, apparently, wishes us to infer that, since no distinction is made, either method may be followed. We must say that the conclusion is a rather wide one, in view of the Mechlin answer. But if one admits the validity of the conclusion it would be *possible* to understand that answer and explain it in a sense which is not contradictory. The reputation of the writer we have named is deservedly high, and any opinion he puts forward is worthy of serious consideration. This particular view of his we cannot regard as altogether improbable, though it must be confessed that the weight of evidence and authority is on the other side.

[1] Vol. v. Q. 134, 2. [2] *Caerem. Paroch.*, tomus ii. p. 125.
[3] *S. Liturg. Promptuarium*, vol. i. p. 522.

THE 'ASPERGES' BEFORE A LOW MASS

Rev. Dear Sir,—Where there is holy water in the stoup at every door of the church, is there still an obligation on the priest to sprinkle the congregation before the principal Mass on Sundays and holydays of obligation? If there is such an obligation at a Low Mass, please state whether the antiphon, versicle, response and prayer are to be sung or merely read.

Pastor.

The fact that there is holy water in the stoup at every door of the church has nothing to do with the question. Whatever obligation exists is restricted to Sundays[1] and should not be extended to holydays of obligation. It cannot be proved that the *general law* imposes any obligation when there is question of a Low Mass in a parochial church. In fact, it is now generally held that there is no such obligation.[2] In many dioceses, however, there is a synodal law which should be observed.

Before a Low Mass it is sufficient to read the antiphon, versicle, response and prayer. They need not be sung.[3]

CELEBRATION OF MASS BY PRIESTS ON RETREAT

Rev. Dear Sir,—Will you kindly say, in an early issue of the I. E. Record, what is the meaning of priests not saying Mass while on retreat. Ought not the practice be discontinued?

X.

There is no law forbidding priests to say Mass during retreat. But, generally speaking, during a general diocesan retreat it would be inconvenient, if not impossible, to provide for the celebration of many Masses. That is the only reason we know.

A QUERY REGARDING PATRONS

Rev. Dear Sir,—I shall be grateful for a reply to the following in the next issue of the I. E. Record:—

1. The Patrons of a city, and of the diocese in which the city is situated, are an Abbot and Confessor, and a Bishop and Confessor, respectively. The feast of the former is celebrated in the city as a double of the first class with an octave, while that of the latter is celebrated in a similar manner throughout the diocese. Which of these Patrons is to be considered in the city as the 'principalis loci Patronus'?

2. Is an exsequial Mass forbidden in the city on the feast of one Patron and of the other?

A Subscriber.

1. Both. The Abbot is the principal Patron of the city, *as a city*; the Bishop is the principal Patron of the city *as forming part of the diocese.* There is here no question of what is known as a secondary Patron.

2. It is forbidden on both feasts.

T. O'Doherty.

[1] S.C.R. Decr., n. 1322, ad 3.

[2] Appeltern, op. cit., vol. i. p. 293; Wapelhorst, p. 131.

[3] Wapelhorst, loc. cit.

DOCUMENTS

TWO NEW PREFACES TO BE INSERTED IN ALL ROMAN MISSALS

(*April* 9, 1919)

PRAEFATIONES IN MISSALI ROMANO INSERENDAE

I

PRAEFATIO IN MISSIS DEFUNCTORUM

Per omnia saecula saeculorum.
R. Amen.
V. Dominus vobiscum.
R. Et cum spiritu tuo.
V. Sursum corda.
R. Habemus ad Dominum.
V. Gratias agamus Domino Deo nostro.
R. Dignum et iustum est.

Vere dignum et iustum est, aequum et salutare, nos tibi semper et ubique gratias agere, Domine sancte, Pater omnipotens, aeterne Deus, per Christum Dominum nostrum. In quo nobis spes beatae resurrectionis effulsit: ut quos contristat certa moriendi conditio, eosdem consoletur futurae immortalitatis promissio. Tuis enim fidelibus, Domine, vita mutatur, non tollitur: et dissoluta terrestris huius incolatus domo, aeterna in caelis habitatio comparatur. Et ideo cum Angelis et Archangelis, cum Thronis et Dominationibus, cumque omni militia caelestis exercitus, hymnum gloriae tuae canimus, sine fine dicentes.

URBIS ET ORBIS

Sanctissimus Dominus Noster Benedictus Papa XV, ex Sacrorum Rituum Congregationis consulto, suprascriptam Praefationem propriam, in Missis Defunctorum ubique locorum in posterum recitandam, approbavit, atque in futuris Missalis Romani editionibus rite inserendam iussit. Die 9 aprilis 1919.

✠ A. Card. Vico, Ep. Portuen. et S. Rufinae,
S. R. C. Praefectus.

L. ✠ S. Alexander Verde, *Secretarius.*

II

PRAEFATIO IN FESTIS S. IOSEPH, SPONSI B. MARIAE VIRGINIS

¶ Sequens Praefatio dicitur in Festo, in Solemnitate et per Octavam S. Ioseph. In Missis votivis dicitur: *Et te in veneratione.*

Per omnia saecula saeculorum.
R. Amen.
V. Dominus vobiscum.
R. Et cum spiritu tuo.
V. Sursum corda.
R. Habemus ad Dominum.
V. Gratias agamus Domino Deo nostro.
R. Dignum et iustum est.

Vere dignum et iustum est, aequum et salutare, nos tibi semper et ubique gratias agere, Domine sancte, Pater omnipotens, aeterne Deus: Et te in Festivitate beati Ioseph debitis magnificare praeconiis, benedicere et praedicare. Qui et vir iustus, a te Deiparae Virgini Sponsus est datus: et fidelis servus ac prudens, super Familiam tuam est constitutus: ut Unigenitum tuum, Sancti Spiritus obumbratione conceptum, paterna vice custodiret, Iesum Christum Dominum nostrum. Per quem maiestatem tuam laudant Angeli, adorant Dominationes, tremunt Potestates. Caeli, caelorumque Virtutes, ac beata Seraphim, socia exsultatione concelebrant. Cum quibus et nostras voces, ut admitti iubeas, deprecamur, supplici confessione dicentes.

URBIS ET ORBIS

Sanctissimus Dominus Noster Benedictus Papa XV, ex Sacrorum Rituum Congregationis consulto, pro sua quoque pietate erga Sanctum Ioseph, Beatae Mariae Virginis Sponsum et Catholicae Ecclesiae Patronum, suprascriptam Praefationem propriam, in Missis de eodem Sancto Ioseph ubique locorum in posterum adhibendam, approbavit, atque in futuris Missalis Romani editionibus rite inserendam iussit. Die 9 aprilis 1919.

✠ A. CARD. VICO, Ep. Portuen. et S. Rufinae,
S. R. C. Praefectus.
L. ✠ S. ALEXANDER VERDE, *Secretarius.*

A MASS 'PRO DEFUNCTO' MAY BE SUNG ON ALL SOULS' DAY

(*January* 10, 1919)

ALBINGANEN.

DUBIUM

Rmus Ordinarius Albinganensis Dioecesis a Sacra Rituum Congregatione sequentis dubii solutionem humiliter expostulavit, nimirum:

Utrum attenta Constitutione Apostolica *Incruentum Altaris sacrificium*, dici 10 augusti 1915, in Commemoratione Omnium Fidelium defunctorum, liceat canere Missam pro defuncto, praesente cadavere?

Et Sacra Rituum Congregatio, audito specialis Commissionis voto, omnibus sedulo perpensis, rescribendum censuit:

Affirmative, iuxta Rubricas et Decreta. Missa autem sit una ex tribus Missis quae dicuntur in Commemoratione Omnium Fidelium defunctorum; et Orationi Missae addatur Oratio pro defuncto, sub unica conclusione.

Atque ita rescripsit et declaravit, die 10 ianuarii 1919.

✠ A. Card. Vico, Ep. Portuen. et S. Rufinae,
S. R. C. Praefectus.

L. ✠ S. Alexander Verde, *Secretarius.*

VICARS AND PREFECTS-APOSTOLIC ARE NOT 'DE JURE' ENTITLED TO A COMMEMORATION IN THE CANON OF THE MASS

(*March* 8, 1919)

DUBIUM

DE NOMINE ANTISTITIS EXPRIMENDO IN CANONE MISSAE

Ex canone 294 Codicis Iuris Canonici, ubi legitur 'Vicarii et Praefecti Apostolici iisdem iuribus et facultatibus in suo territorio gaudent, quae in propriis dioecesibus competunt Episcopis residentialibus, nisi quid Apostolica Sedes reservaverit,' exortum est et Sacrae Rituum Congregationi propositum, pro opportuna declaratione, sequens dubium nimirum:

'An Vicariis et Praefectis Apostolicis de novo iure competat, in proprio territorio, ut nominentur in Canone Missae?'

Et Sacra eadem Congregatio, audito specialis Commissionis voto, attento etiam can. 2 et altero 308 Codicis Iuris Canonici omnibusque perpensis, respondendum censuit *Negative* iuxta rubricas et decreta; quia de iure adhuc vigente, in Canone Missae, post verba *Antistite nostro* exprimendum est tantum nomen Patriarchae, Archiepiscopi et Episcopi qui sint Ordinarii loci, et in propria Dioecesi.

Atque ita rescripsit et declaravit, die 8 martii 1919.

✠ A. Card. Vico, Ep. Portuen. et S. Rufinae,
S. R. C. Praefectus.

L. ✠ S. Alexander Verde, *Secretarius.*

REVIEWS AND NOTES

The Principles of Christian Apologetics. For Senior Students. By Rev. T. J. Walshe. London: Longmans, Green & Co.

Apologetics, in theory at least, simply leads up to Faith. It ends where Dogmatic Theology begins. But, in reality, it is very necessary for all in these days of doubt and agnosticism. The fundamental principles that underlie all religious belief cannot be too often stated or defended. Our opponents do not tire in their endeavours to discredit religious belief by their appeals to scientific data that are, too often, nothing more than scientific hypotheses. But the absolute assurance and boldness with which these are put forward as scientifically proven would be worthy of derision did they not form a prejudice in the mind of novices and find, perhaps, acceptance. Hence the necessity in a work of Christian Apologetics of dealing with the various branches of Natural Science—Physics, Astronomy, Biology, Geology, Anthropology—sciences that point to conclusions relevant to the theistic argument. It is by endeavouring to comprehend the natural as well as the supernatural Revelation that foundations are more securely laid, and a better opportunity given of appreciating the harmony, beauty, and stability of the divine edifice of Faith. Even if the urgent need of a reasoned grasp of the foundations of Faith did not exist, the interest of the subject of Apologetics, the large outlook upon life which it involves, the coherence of its parts, and the cogency of its conclusions make it desirable that an examination into the principles of Theism should be an indispensable adjunct of Christian teaching. Christian Apologetics, then, is a very useful branch of learning for all Christians, but especially for youths who are thrown into contact with pseudo-scientific works and their defenders.

The author of the work before us has happily felt the necessity of bringing the physical sciences to bear on his arguments. He has done the work thoroughly, not hesitating to bring forward all the objections commonly launched against the various theses and disposing of them in true scholastic and scientific fashion. He has endeavoured, and with success, to reproduce in English form the classical arguments that are set forth in text-books of Apologetics, written chiefly in Latin, French, and German. He has avoided, as far as possible, technical nomenclature, so that the student or reader may follow more easily the trend of the discussion. If we might make a suggestion in regard to nomenclature we should say that scientific terms used might be explained in a footnote, or their derivation given in brackets. This would

help considerably to fix the ideas in the mind, and facilitate the understanding of the subject or argument. The reader cannot always be running to a dictionary for words derived from Greek, etc

A very useful and learned chapter on Agnosticism opens the book, and then the author deals in clear, concise, and exhaustive fashion with the classical proofs of God's existence. There is a freshness and originality in his dealing with this subject. The author is steeped in knowledge of the physical sciences and introduces them in his arguments happily and effectively. Science throughout the whole book is skilfully interwoven with Theology. In dealing with Theism and the errors opposed to it he deals very fully with Evolution in theory and in fact, with the theories of Lamarck, Darwin, Mendel, De Vries, etc., and honestly bestows praise on these pioneers wherever it is due. In dealing with the Unity of God he reviews Polytheism and Pantheism, and uses Astronomy and Geology as the handmaidens of theology, showing the perfect agreement of theology with scientifically-proved facts. Here we take the opportunity of congratulating him on the admirable charts he has here and there inserted in the book as résumés of various chapters. They show at a glance the whole subject. Especially admirable is the chart on the Days of Creation, showing how the account given in Genesis coincides with the geological periods and showing the corresponding varieties in the vegetable and animal world of these periods. The whole history of the earth's formation is thus seen at a glance, according to Revelation and the physical sciences. In the chapter on the Origin and Destiny of Man, a very interesting résumé is given of the geological periods and a complete account given of the various discoveries of human remains belonging to the periods. Here, again, by means of charts, we are able to co-ordinate the various natural sciences and see how they fit into one another, thus acquiring a complete and conprehensive grasp of the whole subject. Perhaps, one of the most interesting and exhaustive chapters is that on Religion from the standpoint of History. The author leads us through all the varieties of religion from east to west—in China, Japan, India, Persia, Arabia, Egypt, and Australia ; points out the origin and progress of religion, and the conclusions that may be drawn from the comparative study of the various religious systems.

We have dealt chiefly with the bearing of science and history on religion, as set forth by our author. It is scarcely necessary to say that theology is handled just as deftly and dexterously by him. The most abstruse subjects are clearly explained in a simple yet logical form, so that the reader has no trouble in grasping them. The arrangement of propositions is neat and well-ordered, always concise and clear. The style is graceful and attractive, and makes the reading pleasurable as well as interesting. Altogether the book is telling and convincing from start to finish. One feels that the author has a thorough grip of the whole subject, and is perfectly happy and at home in his exposition. The most difficult questions seem simple to him, and are made so for the reader. It is an admirable book for every class of reader.

M. R.

THE PILGRIMAGE OF LIFE. By Rev. Albert Muntsch, S.J. (Herder.)

IN a thick octavo volume of slightly over 200 pages, Father Muntsch presents us with sixty-three spiritual conferences, treating of man—his supernatural end, the means to attain that end, the dangers from self and from the world, and the ideals a Christian should copy. The author arranges the series under four heads, which he names: I. Life's Warfare; II. Our Spiritual Armour; III. When the Lamp of Hope Burns Low; IV. Thoughts for all Times. Though the conferences primarily regard lay people, most of them will be found of general practical utility. The conferences are agreeably written, the chapters are short, the style is conversational, and frequently an apt story, simile, or quotation points or adorns the moral. On page 80 we remark that the author includes mortification of the eyes and tongue among the acts of *interior* mortification. Other spiritual writers, such as St. Liguori, place mortification of the senses among the acts of *exterior* mortification.

D.

BOOKS, ETC., RECEIVED

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The Rosary Magazine (May). Somerset, Ohio.
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The Irish Monthly (May). Dublin: M. H. Gill & Son, Ltd.
The Catholic Bulletin (May). Dublin: M. H. Gill & Son, Ltd.
The Month (May). London: Longmans.
Études (May). Paris: 12 Rue Oudinot (VIIe).
Revue Pratique d'Apologétique (May). Paris: Beauchesne.
Revue du Clergé Français (May). Paris: Letouzey et Ané.
The Fortnightly Review (May). St. Louis, Mo.
The Lamp (May). Garrison, N.Y.
Revue des Jeunes (May). Paris: 3 Rue de Luynes.
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