

PRESENTATION TO NATIONAL GATHERING OF
MISSIONARIES OF MERCY

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(For Private Circulation Only)

Good morning and thank you for your gracious welcome. I am most grateful for your kind invitation to present at this National Gathering of the Missionaries of Mercy on the subject of the Special Faculties granted to the Missionaries by the Supreme Pontiff.

There will be two presentations. The first presentation will focus on the Nature and Purpose of Canon Law, especially penal law in the life of the Church. The second presentation will offer an overview of those factors which exempt or mitigate from the imposition of penalties and will allow for general questions and discussion.

In this first presentation, on the Nature and Purpose of Canon Law, especially penal law, I will begin by offering some brief comments reflecting on the faculties granted to the Missionaries of Mercy. Then I will examine some canons that provide a foundational understanding of canon law in general and penalties in particular. In conclusion, I will detail what constitutes each of the five canonical crimes whose penalties the Missionaries of Mercy are authorized to remit.

This presentation is not intended to be an exhaustive treatment of penal law. It will not be possible in the short time we have together to present every legal doctrine in minute detail. Please know that many questions can be answered by simply reading the pertinent canons, consulting good legal commentaries and sharing your practical experience with each other. As I was preparing for this presentation I kept asking myself: "What do the Missionaries of Mercy want to know? They are already intelligent, well formed, well trained priests. So what do they want to know? I decided to ask a few of the Missionaries themselves and concluded that what might serve you best is to review the special faculties you have received. And to consider again two fundamental questions: What do the faculties mean? And how are they to be exercised? So here goes...

INTRODUCTION:

Pope Francis declared 2016 to be "An Extraordinary Jubilee of Mercy. In his letter promulgating the Holy Year *Misericordiae Vultus* Art. 10 he states: "Mercy is the

very foundation of the Church's life. All of her pastoral activity should be caught up in the tenderness she makes present to believers; nothing in her preaching and in her witness to the world can be lacking in mercy. The Church's very credibility is seen in how she shows merciful and compassionate love."

Among the many initiatives taken to promote and concretize the Mercy of God was the establishment of certain priest confessors as "Missionaries of Mercy" to preach the inexhaustible Mercy of God and to make that mercy abundantly available in the celebration of the Sacrament of Penance.

Misericordiae Vultus 18 states: "During Lent of this Holy Year, I intend to send out *Missionaries of Mercy*. They will be a sign of the Church's maternal solicitude for the People of God, enabling them to enter the profound richness of this mystery so fundamental to the faith. There will be priests to whom I will grant the authority to pardon even those sins reserved to the Holy See, so that the breadth of their mandate as confessors will be even clearer. They will be, above all, living signs of the Father's readiness to welcome those in search of his pardon. They will be missionaries of mercy because they will be facilitators of a truly human encounter, a source of liberation, rich with responsibility for overcoming obstacles and taking up the new life of Baptism again....."

Certain sins so gravely offend against Christ and the Church that they are also established as ecclesiastical crimes. When the offender approaches a confessor and confesses a sin that constitutes a crime, the intervention of competent ecclesiastical authority is normally necessary, not in order that the sin be forgiven, any confessor can absolve any sin, but that the ecclesiastical penalties attached to the crime can be remitted. Certain crimes are so grave that the remission of penalties is reserved to the Apostolic See. Any priest, even one without the faculty to hear confessions can absolve from all penalties if the penitent is in danger of death, even if an approved priest is present, c. 967. Should the penitent recover recourse is not necessary unless the censure is reserved to the Apostolic See, c. 1357.3. To remit penalties reserved to the Apostolic See in ordinary circumstances requires that the priest have the faculty to do so.

Pope Francis, faithful to his promise to grant certain priests "the authority to pardon even those sins reserved to the Holy See..." granted special faculties to the Missionaries of Mercy, to remit the penalty of automatic excommunication attached to certain crimes, the remission of which had previously been reserved to the Apostolic See.

–These crimes are: Profaning the Eucharistic species by taking them away or keeping them for a sacrilegious purpose (c. 1382); the use of physical force against the Roman Pontiff (c. 1370); the absolution of an accomplice in a sin against the Sixth Commandment (c. 1385) and a direct violation against the sacramental seal by a confessor (c. 1386) The recording by means of a technical device of what the priest or the penitent says in a Sacramental Confession (whether real or simulated), or the divulcation of such a recording through the means of social communication. These faculties remain in place under the supervision of the Pontifical Council for Promoting the New Evangelization

There is nothing more urgent or more important than to reconcile one who is excommunicated. It will be helpful to recall the serious consequences of excommunication: the excommunicated person is prohibited from: (1) having any ministerial participation in the celebration of the Eucharist or any other ceremonies of worship; (2) celebrating the sacraments or sacramentals and receiving the sacraments; (3) exercising any ecclesiastical offices, ministries, or functions, or placing acts of governance (c. 1331.1) Therefore there is a particular urgency to reconcile the contrite excommunicate.

Some observations on the faculties themselves. I think that it's worth mentioning that half of the faculties granted to the MM involve remitting penalties that only clerics can incur and when....in truth....was the last time a penitent confessed physical force against the Roman Pontiff?

Some have argued that the granting of these special faculties is more a gesture than a real difference, a way for the Church to communicate its desire for more people to take advantage of the mercy offered in the sacrament of penance. Some further contend that the Pope's intention was less about the technical details -- and more the hope that the Missionaries of Mercy would help to bring the Pope's focus on the centrality of mercy to the local churches.

However, it must be stated that there is absolutely a benefit to these special faculties that cannot be simply dismissed as mere gesture. The fact remains that certain crimes whose remission was reserved to the Apostolic See can now be remitted locally and easily by the Missionary of Mercy confessor.

-As a canonist I have to also state that the language of the faculty grant to the Missionaries is imprecise and can lead to confusion.

“Pope Francis has granted you the faculty to ABSOLVE”those sins reserved to the Holy See..”

It confuses sin with crime and absolution of sin with remission of penalties. To be sure All Sin is Sin but not all sins are Crimes. On the other hand All Crimes are grave sins. Absolution concerns SIN, remission concerns PENALTY. Any confessor can absolve from sin. But not every confessor can remit the penalties incurred by the commission of certain sins that constitute ecclesiastical crimes. Let's try as best we can to more precise in our canonical language so that it reflects most properly our theology concerning sin and crime.

ROLE OF CANON LAW IN THE LIFE OF THE CHURCH

The Church has, at various times in its history, been described as a *communitas perfecta*, a perfect and supreme society that has as its goal the promotion of salvation of humanity. A society in this understanding is an organization of members united for a common end. It is called perfect because it is complete in itself; that is, the Church does not require any external agencies in order to achieve its end of promoting salvation. Like any organization, the Church is governed by rules that enable it to achieve its end, and this is the most basic function of canon law. What is this end? While civil law is focused on temporal happiness (*felicitas*), canon law focuses on one's eternal happiness (*beatitudo*). Canon law has as its supreme law and end the salvation of souls.

John Paul II promulgated the revised *Codex iuris canonici* in 1983 by means of the Apostolic Constitution *Sacrae disciplinae legis*. Recognizing that in the aftermath of the Second Vatican Council the place of law in the Church was again being questioned by many, he offers the following observation on the role of canon law:

In actual fact the Code of Canon Law is extremely necessary for the Church. Since, indeed, it [the Church] is organized as a social and visible structure, it must also have norms: in order that its hierarchical and organic structure be visible; in order that the exercise of the functions divinely entrusted to her, especially that of sacred power and of the administration of the sacraments, may be adequately organized; in order that the mutual relations of the faithful may be regulated according to justice based upon charity, with the rights of individuals guaranteed and well defined; in order, finally, that common initiatives, undertaken for a Christian life ever more perfect may be sustained, strengthened and fostered by canonical norms.

This explanation offers four clear definitions for the role and function of canon law, explanations that are not present in the *Code of Canon Law* itself.

First, canon law makes the hierarchical and organic structure of the Church visible. While the Church is the mystical body of Christ, it is incarnate in physical structures on earth. Canon law provides good order to the Church and defines how it is to function. This includes questions such as how bishops are to be appointed, how the supreme governing authority of the Church is to be exercised, and norms for the acquisition and alienation of property. This provides a defined and expectable order in the Church to its members.

Second, canon law ensures the proper exercise of the sanctifying function of the Church. This respects the salvation of humanity as its primary purpose. Sacraments are understood as ways that divine grace is made present, and canon law provides clear norms for their celebration. The Church understands itself as being bound to follow the sacraments as established by Jesus Christ, and, as a result, firm conditions are required to ensure their valid celebration. These requirements are present in canon law in detailed form; for example, the Eucharist can only be celebrated by a priest (*sacerdos*) using pure bread and wine and not by a deacon using rice crackers and grape juice. These requirements ensure the sacrament is real and valid and, consequently, grace is offered in a definitive manner and is available to aid the salvation of the faithful.

Third, canon law provides rights, obligations, and methods of resolving conflicts in the Church. Like any society, the Church's members, whether physical persons or legal (juridic) persons, have rights and obligations. These are articulated clearly in the canonical system. The canonical system also provides a system of trials and recourse to ensure the proper exercise of these rights and obligations. The Church is a firmly hierarchical society, and there are occasions where a juridic superior may not function according to the norm of law. In these cases, the one claiming harm may make recourse to a hierarchical superior. Additionally, physical and juridic persons can vindicate their rights using canonical trials and seek redress. Certain crimes can be punished according to the norm of law, and, in fact, a trial is necessary to impose certain penalties. These procedures recognize that if rights are to have any meaning, they are by their nature in need of a mechanism that ensures their enforceability.

Fourth, canon law attempts to provide the structures that sustain and direct the Church's common initiatives. These structures are defined and directed in canon law. For example, a parish or a diocese must have certain bodies that aid its

superior in governing the parish or diocese. There are norms to ensure that Catholic schools, faculties, and universities follow the Church's mission. Social communications are regulated to ensure the effective and authentic proclamation of the gospel and transmission of the Christian faith. The simple facts of keeping the bills paid and the buildings open is guided by canon law.

Some observations on penal life in the life of the Church...

Punishment may seem entirely out of place in a community of grace and charity. Yet, the consequences of the original sin and our fallen nature are all too evident. The intellect is darkened, we do not see the truth as we ought and the will is constrained, we do not act as we ought. Church members reflect the limitations of the human condition and are weak and sinful. In spite of the Lord's leadership and the Spirit's guidance, some members, including ordained ministers, go astray. Sometimes, when their misdeeds are serious and public and clearly contrary to the faith or discipline of the Church, the community must respond with a sanction.

Punitive action is sometimes required for the good of the individual offender and for the integrity of the community. Therefore it follows that penalties in the Church have two purposes: 1. The conversion, repentance and reconciliation of the offending person, and 2. The restoration of order and reparation of scandal.

Still, punishment is a last resort. Pastoral exhortation, kind admonition, familial correction, earnest entreaty and even firm rebuke should all precede penalties, c.1341. And even in its application, leniency and mercy temper the severity of the canonical penalty.

Penal Law & Precepts:

Laws are general rules issued for the entire community by those who have legislative authority. Precepts are orders given to individuals or specific groups by those with executive authority, (c. 49) The canons of the code contain most of the Church's penal laws: canons 1364-1399. The pope can add or alter these laws for the universal church, and he can issue penal precepts as well. Penal regulations may be given for particular churches.

Those who have legislative authority, diocesan bishops, the pope, can promulgate penal laws, and they can also attach penalties to the laws of higher authorities, c. 1315. However, they should do so sparingly, only with great restraint and when

truly necessary. (cc. 1317-1318). Such laws are to be interpreted strictly. (c.9) This reflects the Church's long standing attitude toward penalties: that they might be interpreted benignly, in order to protect rights of all.

Those with executive authority, diocesan bishops, vicars general, episcopal vicars major superiors of clerical communities, can issue precepts with penalties attached but should rarely do so and only after careful consideration. (c. 1319).

Religious can be penalized by bishops/local ordinaries in those areas in which they are subject to their authority, for example, pastoral care, liturgy apostolates. (c. 1320, 678)

The Church's Innate Right to Impose Penal Sanctions

Book Six: Sanctions in the Church, 1311-1399

Can. 1311 — § 1. The Church has its own inherent right to constrain with penal sanctions Christ's faithful who commit offences.

The Code of Canon Law affirms the Church's innate and proper right to penalize law breakers. The Church presumably possesses an "innate" right based on its nature and not derivative of any human power such as the State. This right is also proper, i.e., exercised in its own name. The Church, as an original and independent society, has its own end and appropriate means for attaining it. Among these means are the power to create and enforce laws, if need be with penal sanctions, for those persons who violate these laws or juridical norms.

Christ's faithful are defined as

1. Those who have been baptized or received into the Church
2. Those who possess sufficient use of reason
3. Those who have completed seven years of age UNLESS they determine another age. (Choosing Rite, ordination...marriage...penalties (completed 16yrs)

CIC 17 Code held that ALL baptized Catholics were bound by ecclesiastical law unless explicitly exempt and no exception was provided for penal law.

The revised law also includes a new paragraph offering a rationale for the Church's sanctioning power:

*§ 2. The one who is at the head of a Church must safeguard and promote the good of the community itself and of each of Christ's faithful, through pastoral charity, example of life, advice and exhortation and, if necessary, also through the

imposition or declaration of penalties, in accordance with the provisions of the law, which are always to be applied with canonical equity and having in mind the restoration of justice, the reform of the offender, and the repair of scandal. This is an important addition as it allows for a more proper and pastoral understanding of why we have penal law in the life of the Church.

What are the types of Penal Sanctions? There are two essential divisions of Penal Sanctions

Can. 1312 — § 1. The penal sanctions in the Church are:

1° medicinal penalties or **censures**, which are listed in cann. 1331-1333;

2° **expiatory penalties**, mentioned in can. 1336.

Canonical penalties have traditionally been defined as “the deprivation of some good, imposed by lawful authority in order to correct the offender and punish the offense.”

Canonical penalties are generally divided into two categories: Censures & expiatory penalties.

Medicinal penalties

1. censures, i.e., excommunication, interdict, and suspension) are designed to bring about the correction of an offenders behavior and his or her reintegration into the full life of the Church (cc. 1331 excommunication; 1332 interdict, suspension, 1333)
2. Expiatory penalties seek to compensate for harm done to the life of the Church (c. 1336) Formerly, CCIC 17, *vindictive penalties*.

The faculties granted to the Missionaries of Mercy concern the remission of the censures not expiatory penalties.

A censures never ceases of its own accord, but always by remission. The offender always has the right to the remission provided that he/she has fulfilled the pre-requisites by remission, c. 1347.2, and ceases his/her unrepentant attitude, c. 1358.1. This is because the principal and direct object pursued by the censure is the correction of the offender and the end of his obstinate conduct, consequently, the censure cannot be imposed in in perpetuity, for a specific time, or for an unspecified time if the period of time depends on the will of the superior.

What constitutes a criminal act?

Can. 1321 — § 1. Any person is considered innocent until the contrary is proved.

§ 2. No one can be punished unless the commission by him or her of an external violation of a law or precept is gravely imputable by reason of malice or of culpability.

§ 3. A person who deliberately violated a law or precept is bound by the penalty prescribed in that law or precept. If, however, the violation was due to the omission of due diligence, the person is not punished unless the law or precept provides otherwise.

§ 4. Where there has been an external violation, imputability is presumed, unless it appears otherwise.

It is a basic Christian right not to be punished except according to law, (c. 221.30) Normally penalties are imposed through a judicial or administrative process, *ferendae sententiae*, however, *latae sententiae* penalties are incurred by the very commission of the delict.

What constitutes a punishable offense?

Three elements must be present for an offense to be punishable: Objective element, subjective element and legal component.

-There must be an objective element is “an external violation of the law” no merely internal act of the mind or will would be subject to a penalty.

-The subjective element requires that the violation in question be gravely imputable by reason of malice or of culpability.

“Malice” may be understood as the deliberate intention of violating a law or precept.

“Culpability” on the other hand involves the ‘omission of due diligence’, i.e., the law or precept was violated through culpable ignorance of the law or neglect of one’s legal responsibilities.

-The legal component of an offense means that not every violation of a law or precept is punishable, even if gravely imputable by reason of malice or culpability. Not every violation of a law is subject to a penalty; only those for which the law so provides. Hence the long standing maxim: *nullum crimen, nulla poena sine lege*/No crime, no punishment without law.

Let's now examine the five crimes/delicts for which the Missionaries of Mercy have been granted the faculties to remit penalties

As we consider these five crimes/delicts let us be guided by Canon 18: Laws which prescribe a penalty, or restrict the free exercise of rights, or contain an exception to the law, are to be interpreted strictly. Our interpretation cannot be so broad as to include every as a possible offender and it cannot be so narrow as to render the crime impossible to commit. Laws that establish a penalty are not retroactive C.9.

-PROFANING THE EUCHARISTIC SPECIES BY TAKING THEM AWAY OR KEEPING THEM FOR A SACRILIGIOUS PURPOSE

OLD C. 1367

Can. 1382 — § 1. One who throws away the consecrated species or, for a sacrilegious purpose, takes them away or keeps them, incurs a *latae sententiae* excommunication reserved to the Apostolic See; a cleric, moreover, may be punished with some other penalty, not excluding dismissal from the clerical state.

To profane the Lord in the Most Blessed Sacrament constitutes the gravest offense, always, everywhere and in all places. Many motives can lead to the desecration of the Blessed Sacrament, hatred for Christ, hatred for His Church, participation in witchcraft or satanic ritual.

A person incurs the penalty:

-By deliberately "throwing away the sacred species," – by intentionally throwing a consecrated host or the precious blood on the ground, spitting out the host after receiving Holy Communion, throwing away the consecrated species with anger, contempt, hatred.

To Throw away (abicit/abicere) the consecrated species...with hate, anger, contempt,

**Pontifical Council for the Interpretation of Legislative Texts
Responsum ad Dubium**

The Fathers of the Pontifical Council for the Interpretation of Legislative Texts, at their plenary session on 4 June 1999, decided to respond in the following way to the dubium:

Q. Whether or not the word "*abicere*" in canons 1367 *CIC* and 1442 *CCEO* should be understood only as the act of throwing away.

R. *Negative and "ad mentem"*.

The "mind" is that the word "*abicere*" should be considered to include any voluntarily and gravely contemptuous action towards the Sacred Species.

The Supreme Pontiff John Paul II, at the audience granted on 3 July 1999 to the undersigned President, was informed of the aforementioned decision, confirmed it and ordered it to be published.

STORY: Lay minister....pouring precious blood down sacrarium....sink...

-Or for a sacrilegious purpose takes them away or keeps them....obscene or impious acts, black mass, satanic rites, magic, superstition....

STORY: Gentleman in Italy, taking Host...FB video.....Is this really God....Placing Host on his eye...like a patch..

Keeping the Blessed Sacrament at home to protect from profanation or keeping the Blessed Sacrament at home for other reasons, i.e., lay minister reserving Blessed Sacrament to bring later to a sick person or who forgets that the Host is in the pyx they have placed in a drawer....does not incur the penalty. Taking away or keeping of the Blessed Sacrament in these circumstances, though prohibited, is not done for sacrilegious purposes.

Reserved to Congregation for the Doctrine of the Faith, for the external forum reserved to the Apostolic Penitentiary for internal forum.

THE NORMS OF THE MOTU PROPRIO

"SACRAMENTORUM SANCTITATIS TUTELA" (2001) Graviora delicta USE OF PHYSICAL FORCE AGAINST THE ROMAN PONTIFF

Can. 1370 — § 1. A person who uses physical force against the Roman Pontiff incurs a *latae sententiae* excommunication reserved to the Apostolic See; if the offender is a cleric, another penalty, not excluding dismissal from the clerical state, may be added according to the gravity of the crime.

Intentionally doing physical violence to the Roman Pontiff due to his preeminent ecclesial status as Bishop of Rome and successor of the Apostle Peter is subject to a *latae sententiae* excommunication. If the offender is a cleric, dismissal from the clerical state could be added according to the gravity of the offense.

For an offense to exist there must be physical, external, and violent action directed toward the person of the Roman Pontiff. Not his reputation or goods. A verbal assault, though extremely distasteful would not constitute a physical assault. ... The action must be unjust, lawful defense would be excluded.

Physical force may result in injury or damage to the person of the Pope, if it is manifested with blows, injuries or the intention to kill. It may affect his personal liberty if he was kidnapped or imprisoned, or his personal dignity, if someone spat upon him or tore his clothes.

Physical force must be external, but the offense is not always public, in my very well be occult, in other words, not publically known.

If the offender was a cleric and dismissal had been added, the Missionaries of Mercy could remit penalty but not re-admit the cleric offender to the clerical state. That would be reserved to the Apostolic See.

ABSOLUTION OF AN ACCOMPLICE IN A SIN AGAINST THE SIXTH COMMANDMENT OF THE DECALOGUE

OLD 1378

Can. 1384 — A priest who acts against the prescription of can. 977 incurs a *latae sententiae* excommunication reserved to the Apostolic See.

Canon 977: The absolution of an accomplice in a sin against the sixth commandment is invalid except danger of death.

The moral impropriety of a priest hearing the confession of his partner in any sin, i.e., theft, fraud, bodily injury, etc, is so evident that it hardly needs to be demonstrated. Confession is the admission of one's sinfulness to God and the Church in the person of the priest administering the sacrament. The danger of a lack of sincere conversion or a firm purpose of amendment, the danger of seeking *easy* forgiveness is only too obvious in such a case. Experience shows that there is a particular risk with sins against chastity. It is not because they are the worst sins, but because of the particular danger of abusing the sacrament of penance with the

accompanying scandal, and the danger of easy repetition of such sins, that the Church has forbidden, by positive law, a priest to hear the confession of an accomplice in a sin against the sixth commandment.

This prohibition against absolving one's accomplice in a sin against chastity and the nullity of such absolution is not a penalty. It is a limitation of the priest's faculty to absolve for the protection of the dignity of the sacrament and for the spiritual welfare of the penitent, as well as the priest.

Priest: any Catholic priest

Penitent: any Christian penitent, (even those not Catholic, c. 844, 3 &4)

Sin: *Only* against the 6th commandment.

Sin must be grave and external, committed at any time, even before priest received sacred ordination.

Must be mortal/grave sin on the part of both persons, if one of them does not commit a grave sin, it is not forbidden for the priest to absolve the person and absolution can be validly given.

Treated more fully by moral and pastoral theologians. When you hear sixth commandment think sex. Sexual act....mutual masturbation...pornography.... Did the priest commit a sin with the penitent against sixth commandment?

Did he "confer" absolution? Or only 'hear' the confession?

Did he simulate? Pretend to give absolution? In that case he is guilty of another offense, simulation of a sacrament, C. 1379.5 punished with just penalty.

If the priest did not recognize the penitent he did not knowingly absolve, absolution is valid. He may have come to know later that penitent had been to him for confession.

Priest incurs penalty.

Penitent: No absolution conferred, no penalty.

Results:

- i. Absolution is invalid
- ii. Priest is excommunicated (c. 1378 §1)
 - (a) Reserved to the Apostolic See
 - (b) *Graviora delicta*
- b. Exception in danger of death

A DIRECT VIOLATION AGAINST THE SACRAMENTAL SEAL BY A CONFESSOR

OLD 1388

Can. 1386 — § 1. A confessor who directly violates the sacramental seal incurs a *latae sententiae* excommunication reserved to the Apostolic See; he who does so only indirectly is to be punished according to the gravity of the offence.

Under canon 983, a confessor has the obligation of the sacramental seal concerning sins heard in confession, and the obligation not to use the knowledge acquired in confession, even though there is no danger of revelation. These two grave obligations admit of no exception.

The Fourth Lateran Council (1215) produced one of the first comprehensive teachings concerning the Sacrament of Penance and the sacramental seal. Addressing various problems ranging from abuses to heretical stands against the sacrament, the council defended the sacrament itself, stipulated the need for the yearly sacramental confession of sins and reception of the Holy Eucharist, and imposed disciplinary measures upon priest confessors.

This council attached the penal sanction of deposition from office, and confinement for violating the seal of confession. The priest was barred from having any office in future and the penances would have included fasting.

The council decreed, “Let the confessor take absolute care not to betray the sinner through word or sign, or in any other way whatsoever. In case he needs expert advice he may seek it without, however, in any way indicating the person. For we decree that he who presumes to reveal a sin which has been manifested to him in the tribunal of penance is not only to be deposed from the priestly office, but also to be consigned to a closed monastery for perpetual penance.”

Regarding the object of the seal, doctrine distinguishes between what is essential and what is accidental. The essential object is all sins heard in a penitent's confession, including sins of both the penitent and other persons, mortal or venial, occult or public, if they were revealed for the purpose of absolution and have been heard by the confessor by virtue of sacramental knowledge.

Direct violation occurs when a confessor reveals the object of the sacramental seal together with the name of the person who committed the sin, the attaching: "sin to sinner." Indirect violation of the seal occurs when a confessor reveals the object of the seal together with the circumstances, which carry the danger of revealing the name if the sinner or raising suspicion about her or him.

(Just as an aside, a great movie which deals with this very topic is Alfred Hitchcock's *I Confess*, which deals with a priest who hears a murder confession and then is framed for the murder. As a priest, I was in agony during much of the movie.)

THOSE WHO RECORD OR DIVULGE CONFSSIONAL KNOWLEDGE

The Congregation for the Doctrine of the Faith, 1988, in order to protect the sanctity of the sacrament of Penance and in order to defend the rights of ministers and Christian faithful within the same sacrament regarding the sacramental seal and secrecy connected to Confession, in virtue of the special faculty conferred by the Supreme Apostolic Authority of the Church (can. 30), has determined that: Without prejudice to the prescription of can. 1388, anyone who by means of any technical device makes a recording of what the priest or the penitent says in a Sacramental Confession (either real or simulated) by oneself or by another person, or who divulges it through the means of social communication, incurs excommunication *latae sententiae*.

To commit the offense the offender must have the intent.

For example, if someone is recording something in the Church... say organ music that is being played... and accidentally records a confession in the nearby confessional, he isn't going to incur the delict (no intent). Now upon hearing of the accidental recording, he ought to destroy it (and all copies), as it would be too easy to knowingly copy/distribute the recorded confession (a grave sin and likely one incurring the delict). Additionally, upon hearing the recording, the one possessing it is also bound by the Secret of Confession.

Canon 983 § 2 states: “An interpreter, if there is one, is also to observe this secret, AS ARE ALL OTHERS who in any way whatever have come to knowledge of sins from a confession.” The obligation to keep knowledge of confessional matters secret is over and above the natural law based on a person’s right to privacy, c. 220. Although the obligation falling on persons other than the confessor is not called the *seal* in the Code, it is most serious and the transgressor is punished with a just penalty, not excluding excommunication, c. 1388. § 2.

Now I will offer an overview of those factors which exempt from the imposition of penalties.

Those Exempt from All Penalties

Can. 1322 — Those who habitually lack the use of reason, even though they appeared sane when they violated a law or precept, are deemed incapable of committing an offence.

Imputability presupposes a free, deliberate, human act. The person who habitually lacks the use of reason cannot function freely and deliberately. Such a one is comparable to an infant and hence absolved of responsibility before the community, however serious the violation (c. 99)

Now we will review canons 1323 and 1324 that prescribe those not liable to a penalty and those for whom the penalty is mitigated.

John Huels, “The Pastoral Companion: A Canon Law Handbook for Catholic Ministry” 160-161. Proposes questions to be determine whether the crime of abortion has been committed. These questions may be adapted to determine if a particular sin also constitutes a crime. INCLUDED WITH THIS HANDOUT.

Can. 1323 — No one is liable to a penalty who, when violating a law or precept:

1° has not completed the sixteenth year of age;

The general age of majority is established in c. 97.1 at eighteen years. Penal majority is established as not having completed the sixteenth year, midnight on sixteenth birthday.

-2° was, without fault, ignorant of violating the law or precept; inadvertence and error are equivalent to ignorance;

There is ignorance in anyone who does not know something. Violated a law that *he did not know about*

-Did not know he was violating a law
Inadvertence: Not realizing

Error: wrongly thinking that a certain behavior is legitimate.

Thus there is greater mitigation., because it includes anyone who did not know that there was a law as well as anyone who, even though he could have known it, did not know that at a given time he was violating it.

-3° acted under physical force, or under the impetus of a chance occurrence which the person could not foresee or if foreseen could not avoid;

A person's freedom to act is excluded by absolute physical force. Physical force is the reason why the offense was committed. To put it another way, if there had been no physical force the offense would not have been committed. Chance occurrence that the person could not foresee, or if foreseen could not be avoided is similar to absolute physical force in that it excludes the person's freedom of acting, there is not a human act.

A situation where the result could not be foreseen or, if foreseen, could not be avoided, an example would be anyone "throws away the consecrated species" as a result of tripping over something does not incur the penalty of c. 1367.

-4° acted under the compulsion of grave fear, even if only relative, or by reason of necessity or grave inconvenience, unless, however, the act is intrinsically evil or tends to be harmful to souls;

Grave fear is a "trepidation of the mind because of present or future danger" Fear is the consequence of moral compulsion or psychological pressure caused in the subject by the threat of something harmful, which in turn threatens his/her freedom. It does not exclude a person's freedom to act but it does cause them to act under duress. The fear can be absolute, most reasonable people would agree that

such a circumstance engenders ‘universal’ fear or relative, grave for a given person though not necessarily for others.

The offender is NOT exempt when the act itself is intrinsically evil, murder, abortion, or is harmful to souls, heretical teaching, preaching, or publications. This is because certain significant ecclesial values to be fostered are at stake and their violation needs to be addressed by church authorities.

5° acted, within the limits of due moderation, in lawful self-defense or defense of another against an unjust aggressor;

The use of violence insofar as required to defend oneself or another against an unjust aggressor is not an offense, but could be often a virtuous act.

6° lacked the use of reason, without prejudice to the provisions of cann. 1324 § 1 n. 2 and 1326 § 1 n. 4;

As opposed to c. 1322, here we are concerned with someone who habitually has the use of reason but who at the time of acting lacks it because of some transitory mental disturbance, such a intoxication, effects of drugs, etc. The temporary lack of the use of reason at the moment of the offense excuses the offender if the delinquent had not deliberately sought or procured the lack of reason, the person did not deliberately become intoxicated/high.

7° thought, through no personal fault, that some one of the circumstances existed which are mentioned in nn. 4 or 5. Grave fear/Immoderate self defense

This would be a situation where the offender erroneously judged that the he or she was moved by grave fear, necessity or inconvenience, or was using “due moderation’ in the case of legitimate defense of oneself or another. As in 1323, 4 & 5 the act must not have been intrinsically evil or tending to be harmful to souls.

***John Huels, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*” 160-161. Proposes questions to be determine whether the crime of abortion has been committed. These questions may be adapted to determine if a particular sin also constitutes a crime. INCLUDED WITH THIS HANDOUT.

How the Special Faculties Granted to the Missionaries of Mercy Should be exercised”

The faculties granted to the Missionaries by the supreme pontiff are an act of executive power and governed by canons 136-137. These faculties are individual, personal, exercised only by the one to whom they have been granted and for the purpose for which they have been granted. Therefore they cannot be subdelegated, give to another, they cannot be exercised in favor of other crimes, they can be exercised only in the sacrament of penance, outside of the sacrament would require that the Missionary have recourse to the Apostolic See, the competent Congregation. They cease when revoke by the supreme pontiff.

Please note that the faculties granted to the Missionaries of Mercy can be exercised in favor of the penitent even in the case of doubt. Missionaries always have it to give and should do so. Surely this is the mind of the legislator. If the sin confessed sounds like, looks like, points to an ecclesiastical crime, the penalties for which a Missionary of Mercy can remit, then they should remit.

Formula for Remission:

The form of absolution is not to be changed when a priest, who has the faculty, remits a properly disposed penitent from an incurred censure. It is enough that the confessor intend to remit all censures. Before absolving the sin, the confessor may remit the censure using the formula which is given in the Rite of Penance. It must be noted that the formula of remission is not required. Yet, the intention of the confessor must be manifested in some way. If not, it remains purely an intention, not an act. If the intention remains internal, the remission juridically does not exist. It suffices that a confessor intends to remit when he absolves from sin. I personally prefer the option of remitting the penalty and then giving absolution. He could also simply say: "I remit/absolve the penalty of excommunication) or similar language that expresses his intention.

In these presentations I focused on the nature and purpose of penal law in the life of the Church, I offered some comments reflecting on the faculties granted to the Missionaries of Mercy. Then I examined some pertinent canons that provide a foundational understanding of penal law and penalties. Further, I detailed what constitutes each of the five canonical crimes whose penalties the Missionaries of Mercy can remit. Finally we considered some factors that exempt or mitigate from the application of penalties.

I hope these presentations have helped in some way to deepen your understanding concerning: What do the faculties mean? And how are they to be exercised?

In conclusion, the special faculties granted to the Missionaries of Mercy by the Supreme Pontiff cannot be dismissed as a gesture, a matter of optics, a nod towards the abundant mercy of God but there a real time, real world service to that mercy. The special faculties make the mercy of Christ and His Church more readily accessible. The forgiveness of Christ is always available yet at times the remission of penalties attached to some sins is not so accessible. Sometimes Rome is simply too far away. The special faculties not only emphasize the immediate, local and universal mercy of Christ, which is always a reality, but that the technicalities no longer have to get in the way. It must be remembered that the law of the church must be not be understood as an end in and of itself, it is not an exercise in a sterile juridical positivism but the law of the Church is always in service to the supreme law of the Church which is the salvation of souls. And what can be more saving than the Mercy of God which reconciles all to Christ and to His Church.

Come now, let us set things right, says the Lord. Though your sins be like scarlet, they may become white as snow; Though they be crimson red, they may become white as wool." Isaiah 1:18

John Huels, "The Pastoral Companion: A Canon Law Handbook for Catholic Ministry" 160-161. Proposes questions to be determine whether the crime of abortion has been committed. These questions may be adapted to determine if a particular sin also constitutes a crime. INCLUDED WITH THIS HANDOUT.

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RESOURCES WHICH YOU MAY FIND HELPFUL:

Beal, John P., et al., eds. *New Commentary on the Code of Canon Law*. New York/Mahwah, NJ: Paulist Press, 2000.

Huels, John, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, Montreal, 2009 (4th ed.).

Woestman, W, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, Ottawa, 1999 (2nd ed. 2000).

The Eastern canon law is much simpler than the Latin law on the issue of reserved penalties. There are no automatic penalties in the Eastern code, so the above reserved sins (two reserved to the Apostolic See and one to the eparchial bishop) would concern the confessor more than the various penalties that a competent ecclesiastical authority must impose and remit. Among the crimes in the Eastern code, only one is reserved to the Apostolic See. The crime of using physical force against the pope or causing him another grave injury is to be punished with a major excommunication whose remission is reserved to the pope himself (CCEC, can. 1445, §1).

The absolution of the sin of abortion is reserved to the eparchial bishop in the Eastern law. However, a Latin Catholic priest validly and licitly absolves an Eastern Catholic from the sin of abortion, since the absolution of the sin is not reserved in the Latin law. Moreover, there is no automatic penalty connected with this sin in the Eastern Catholic churches.

IV. Remission of Penalty for Abortion

Abortion is the ejection of an immature fetus or the killing of a fetus procured in any manner and anytime from the moment of conception (CodCom, interpretation, CCLA, 1633). Abortion, which results in automatic excommunication for members of the Latin church, is likely the crime most often encountered in the sacrament of penance, and so it is a practical example to explain how a confessor should handle automatic censures. In this discussion, a typical case will be assumed, i.e., not the danger of a death situation and not a priest who has power to remit censures (bishops, Ordinaries, canons penitentiary, religious priests with solemn vows, and chaplains in hospitals, prisons, and on sea journeys).

When the priest hears the sin of abortion confessed, he must decide whether a crime was truly committed by ascertaining certain facts from the penitent. *If the answer is yes to any*

of the following questions, then the crime was not committed and the sin can be handled as usual. These same questions may be adapted for other sins that could result in automatic penalties, e.g., in the case of a penitent wanting to return to the practice of the Catholic faith after having joined another religion, thereby possibly incurring the penalty of automatic excommunication for apostasy, heresy, and/or schism.

1. Was it only an attempted abortion that did not succeed, or was it indirect? An example of an indirect abortion would be a hysterectomy when the intention was not to abort the fetus but only to remove a diseased uterus.

2. If the penitent was an accomplice to the abortion, would the crime have been committed without the accomplice's action or advice? For example, the doctor who directly procures the abortion might incur the penalty; on the other hand, the assistance rendered by a nurse may not be so direct and decisive as to incur the penalty. In addition, a parent or other who advises the abortion may have incurred the penalty if the daughter would not have acted without such advice.

3. Was the penitent ignorant, through no fault of his or her own, that a penalty was attached to the law forbidding abortion? It is not enough to know that abortion is a grave sin. One must also know that a penalty is incurred, although precise knowledge about the nature of the penalty is not required to incur it.

4. Was the penitent under eighteen at the time the crime was committed?

5. Was there inadvertence to or error of the law? Had the penitent acted without recalling that this was an offense that resulted in a penalty? Did the penitent make a mistake about the law, e.g., thinking it applied only to the person having the abortion and not accomplices?

6. Was it accidental and not intentional? If the mother, e.g., intended to get an abortion but accidentally had a fall that resulted in an abortion, she would not have incurred the penalty. It must be intentional with the result that an unviable fetus is aborted.

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7. Did the penitent have an imperfect use of reason (borderline mentally retarded, emotional disturbance, etc.)?
8. Had the penitent acted out of serious fear, even if only relatively serious, or through necessity or serious inconvenience? Was there, e.g., a serious fear about parental or societal reaction to a pregnancy? Was it a necessity, e.g., a doctor who performs an abortion to save the life of the mother?

9. Did the penitent erroneously believe that a circumstance in no. 8 above was verified? For example, did she think that having a child was a serious enough inconvenience in her circumstances to warrant an abortion when objectively it is not?
10. Did the penitent erroneously believe that the abortion was done in self-defense and therefore was justifiable? For example, if her life was in danger, did she think an abortion was an acceptable alternative?

11. Did the person procure the abortion while lacking the use of reason due to drunkenness or another mental disturbance that was culpable but not deliberately induced to commit or excuse the offense?

12. Was the abortion induced by a person in the serious heat of passion that was not voluntarily excited or fostered?

If the answer is yes to any of these questions, the automatic censure of excommunication was not incurred. If the answer is no to all of the above questions, then the person has likely incurred an automatic excommunication. If so, only the authorities and confessors listed above (section II, H 1-5) can absolve the censure. However, if remaining in a state of serious sin during the time necessary for the competent superior to provide a remission would be hard on the penitent, any confessor can remit the censure temporarily (section II, H 6).

A good way to continue is for the confessor to arrange for the penitent to return to him at an agreed upon time within the next month, notifying the penitent of the reason for this, namely, that he has the power only to absolve the censure temporarily, and he must have recourse to the local Ordinary for a definitive remission. (The penitent can return either in confession or outside it, although if he or she confesses behind the

grille it should be presumed that anonymity is desired.) Before the penitent returns, the confessor should request a remission from the local Ordinary and, if the confessor knows the penitent's identity, it should not be mentioned. When the penitent returns, the confessor informs the penitent of the remission.