

THE CATHOLIC UNIVERSITY OF AMERICA
CANON LAW STUDIES
No. 333

THE SACRED CONGREGATION OF THE SACRAMENTS

Its Competence in the Roman Curia

by

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A DISSERTATION

*Submitted to the Faculty of the School of Canon Law of the
Catholic University of America in Partial Fulfillment
of the Requirements for the Degree of
Doctor of Canon Law*

THE CATHOLIC UNIVERSITY OF AMERICA PRESS
WASHINGTON, D. C.
1954

NIHIL OBSTAT:

Clemens V. Bastnagel , J.U.D., S.T.L.

Censor Deputatus

Washingtonii, D. C., die 27a februarii, 1953.

IMPRIMATUR:

✠ Ludovicus Benedictus Kucera , D.D., LL.D.

Episcopus Lincolnensis

Lincolniae, die 2a martii, 1953.

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Printed by The Abbey Press, St. Meinrad, Indiana

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FOREWORD

It is a dogma of our faith that the primacy of jurisdiction over all of Christ's faithful, both sheep and lambs, belongs, by divine institution to the Roman Pontiffs as successors of St. Peter. This pre-eminence of universal authority has been recognized from the very earliest days of the Church, as is evidenced in the Acts of the Apostles, in the early councils, and in the writings of the Fathers of the Church.

Common sense will alone tell us that it would be humanly impossible for the Supreme Pontiff to discharge personally the numerous ecclesiastical affairs submitted to him. For this reason it was necessary for him to organize a body of assistants to aid him in his manifold duties. At first these men were few in number and greatly restricted in authority, but, as the administrative duties multiplied, the number of assistants increased and new offices were established.

Pope Sixtus V (1585-1590) was the first to introduce a truly systematic organization of offices, tribunals and congregations in an attempt to provide a more competent means of caring for the needs of the faithful entrusted to him. But even his successors found it necessary to make changes and additions as the circumstances of the times demanded. Not until the reign of Pope Pius X (1903-1914) was the scourge of former years eliminated. His revision of the entire Roman Curia consisted chiefly in establishing a definite and proper competency for each Office, Tribunal and Congregation—thus eliminating the practice of cumulative jurisdiction.

Pope Pius X instituted only one new Congregation—the *Sacred Congregation for the Discipline of the Sacraments*, more commonly known today simply as the *Sacred Congregation of the Sacraments*. The primary purpose of this dissertation will consist in the delineating of the competence of this Congregation and in a setting forth of the manner in which it exercises the duties entrusted to it by the Supreme Pontiff.

Since the Sacred Congregation of the Sacraments was not established until the year 1908, the historical part of this study consists of a survey and general synopsis of the gradual development of the entire curial organization, with special stress placed on those offices, tribunals and congregations which formerly expedited the business affairs that now fall within the competence of the Sacred Congregation of the Sacraments.

The writer wishes to express his sincere gratitude to His Excellency, the Most Reverend Louis B. Kucera, D.D., LL.D., Bishop of Lincoln, for the privilege of advanced study in Canon Law; to the members of the Faculty of the School of Canon Law of the Catholic University of America for their kind assistance and their helpful direction; and to all others who have contributed towards the completion of this dissertation.

PART ONE
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CHAPTER I

THE ROMAN CURIA PRIOR TO POPE SIXTUS V
(1585-1590)

A complete and detailed presentation of the origin and development of this body and of the various departments composing it would constitute a most extensive study, reaching far beyond the purpose of this work. Thus it becomes the aim of this historical survey merely to indicate the growth of the Roman Curia in general and to explore the competence of the early Offices and Congregations in order to determine which departments of the curia were, in former years, used by the Roman Pontiffs in the discharge of the particular duties now under the jurisdiction of the Sacred Congregation of the Sacraments. Thus an over-all view of the forerunners of this Congregation will be presented.

It is a dogma of faith that the Roman Pontiff is endowed with supreme and full power in the government of the universal Church. It is, nevertheless, very easily understood that he would be incapable of expediting all ecclesiastical affairs unassisted. Thus, in their solicitude for the Church, the successors of St. Peter in an ever-increasing degree have called upon the assistance of qualified men in the government of the Church.¹

Even though these first coadjutors were in no way organized into a systematic staff, they were the beginning of what

¹F. Wernz, *Ius Decretalium* (6 vols., Romae, 1898-1914), II, 700; N. Hilling, *Procedure at the Roman Curia* (New York: Joseph Wagner, 1907), p. 2.

later became known as the "*Curia Romana*," which in the course of time developed into a grand organization capable of rendering great services to the Church Universal.²

There is no detailed history of the changes in the constitution and organization of the Curia. Except for a few isolated cases, the curial development of the first thirteen centuries is hidden from our study. It is not known who did the work or how each stage of organization was debated and carried out. It is very evident, however, that the renaissance of Canon Law began with the reign of Pope Alexander III (1159-1181) and it was during these years that the real progress and growth of the Roman Curia first became apparent.⁸

By the fourteenth century there was a definite organization which, at first glance, could hardly be considered as a great victory for the Church. Yet, only a brief sketch of the development of this great structure is necessary to expose the beauty and the progress which shone forth from within the internal organization of the Church as it existed when Pope John XXII (1316-1334) accepted the Chair of St. Peter. Only when one visualizes the sufferings and strifes which the Church faced prior to his pontificate, will the historical element of this work add a personal touch.

Article I

During the First Three Centuries

To speak of the Roman Curia in the early ages of the Church is really an anachronism, for there could be no curia without some type of systematic organization designated by this name. But the anachronism is convenient because the title "*Curia Romana*" denotes exactly what is to be treated—the machine by means of which the Popes conducted their

² Hilling, *Procedure of the Roman Curia*, p. 7; A. Monin, *De Curia Romana* (Lovanii: Universitatis Catholicae Typographus, 1912), p. 4.

⁸ G. Barraclough, *Papal Provisions* (Oxford: Basil Blackwell, 1935), p. 2.

business.⁴ The classical definition of the Roman Curia embraces this very idea. "*Curia Romana est complexus dicasteriorum seu personarum moralium quibus Romanus Pontifex utitur in exercitio suae supremæ in universam ecclesiam jurisdictionis*"⁶

The first centuries of the Catholic Church, when it was waging a harrowing fight for its very existence, presented a most unfavorable period for the formation of its ecclesiastical institution. Had the popes attempted to call into existence any official staff to function publicly it would have been quickly exterminated by the Caesars.⁶ For this reason the bishops of Rome were satisfied to confer with the *Roman Presbyteri* on matters affecting the interests of the Church? Their foremost consultors therefore were the Roman clerics, priests and deacons, but for the more important business matters, including the concession of special favors where great knowledge and wisdom were required, they frequently called the neighboring bishops into counsel.⁸

Moreover, there was not a truly great need for a permanently organized staff of assistants at that time. For during the early centuries of Christianity ecclesiastical laws binding the Universal Church were very few in number. In fact, there were hardly any universal laws in existence other than

⁴ R. L. Poole, *Lectures on the History of the Papal Chancery* (Cambridge, England: Cambridge University Press, 1915), p. 2.

»Wernz, *lus Decretalium*, II, n. 620; M. Coronata, *Institutiones juris Canonici ad Usus Utriusque Cleri et Scholarum* (5 vols., Taurini: Marietti, Vol. I, 4. ed., 1949; Vol. II, 3. ed., 1947; Vol. III, IV, 3. ed., 1948), I, n. 327; J. Chelodi, *lus de Personis iuxta Codicem juris Canonici* (ed. altera a Sac. Ernesto Bertagnolli recognita et aucta, Tridenti: Libr. Edit. Tridentum, 1927), n. 160; D. Bouix, *Tractatus de Curia Romana* (Parisiis, 1859), p. 2.

«Hilling, *Procedure at the Roman Curia*, p. 7.

⁷ Coronata, *Institutiones juris Canonici*, I, n. 327; Monin, *De Curia Romana*, p. 4; J. De Luca, *Relatio Romanae Curiae forensis, in suo magno opere Theatrum Veritatis et iustitiae* (16 toms, in 9, Coloniae Agrippae: Apud Henricum Rommerskirchen, 1706), Tom. VII, lib. 15, pt. 2, disc. IV, n. 7; Hilling *op. cit.*, p. 7.

⁸ Monin, *De Curia Romana*, p. 4.

those found either in Sacred Scripture or in the Apostolic Tradition. Furthermore, these few existing laws called for a most rigorous observance, so much so that to dispense from them was considered unlawful.⁹

Whatever tempering of the laws was done during those first three centuries was done by the individual bishops, each within his own diocese, where he was the sole author of most of the laws, especially of the laws governing the qualifications of the ordinands,¹⁰ and matrimonial impediments.¹¹

Article II

From the Fourth to the Thirteenth Century

Following the period of the persecutions, the more peaceful life of the Church facilitated universal legislation with papal authority. Consequently, by the sixth century the popes had begun to reserve certain dispensations to themselves.¹² These reservations in time became quite numerous, and played an important part in the establishment of the various offices during this period.

Thus, from the fourth century onward certain officials were designated to assist with the increasing business matters of the papal court. A group of *notarii* was set up to assist the seven deacons who were in charge of the seven districts of the city of Rome. The *College of Defensores* assisted the deacons in the administration of the property of the

⁹ J. Brys, *De Dispensatione in lure Canonico* (Brugis: Beyaert, 1925), pp. 11, 31.

¹⁰ L. Thomassinus, *Vetus et Novae Ecclesiae Disciplina* (3 vols., Venetiis, 1730), Pars II, lib. III, c. 24, n. 14; M. Stiegler, *Dispensation, Dispensationswesen und Dispensationsrecht in Kirchenrecht* (Mainz, 1901), pp. 72, 76.

¹¹ F. Wemz—P. Vidal, *Ius Canonikum ad Codicis Norman Exactum* (7 vols. in 8, Romae: apud Aedes Universitatis Gregorianae, Vol. I, 1938; Vol. II, 3 ed., a P. Phillippo Aguirre recognita, 1943; Vol. V, 3. ed., a Phillippo Aguirre recognita, 1946; Vol. VI, 2 ed., a P. F. Cappello recognita, 1949), V, n. 405; J. Rigantius, *Commentarium in Regulas, Constitutiones et Ordinationes Cancellariae Apostolicae* (4 vols. in 2, Coloniae Allobrogum, 1751) Reg. XLIX, n. 5.

¹² Brys, *De Dispensatione in lure Canonico*, p. 65.

Roman Church. Although it was the primary duty of these *Collegia* (deacons, notaries, *defensores*) to care for the city of Rome itself, in the time of Pope Gregory the Great (590-604) they were also called upon to assist in matters concerning the Universal Church.¹³

This staff was succeeded by a more elaborate group of administrators, among whom were the seven *ludices Palatini*, who soon appropriated to themselves the first places in the Roman Court.¹⁴ In contrast to the later organization of the papal curia, when papal consistories were named from high ecclesiastical figures, the offices of the *ludices Palatini* were held equally by men in minor orders and in many cases by men not even in the clerical state.¹⁵

While the popes placed much reliance in these specific offices in caring for the routine business matters of lesser importance, they continued to reserve the "*Causae Arduae et Miores*" to their own personal care. But as the volume of official business rapidly increased and became more difficult, the popes sought advice and assistance from the synods of the Roman clergy, the Provincial Synods, and especially the General Synods of the West, which came into prominence during the time of Pope Leo IX (1049-1054).¹⁶

By the middle of the twelfth century the Roman Curia was in a drastic condition. The system (if it could be called such) then in existence was overwhelmed with a still greater influx of business matters, caused chiefly by the changing policies and practices in the exercise of papal dispensatory power. Restrictions upon the bishops were increased and this meant that the Roman Pontiff himself became deluged with petitions for dispensations which had hitherto been cared for by local bishops. It became impossible for the

¹³ Poole, *Lectures on the Roman Chancery*, pp. 15-16.

¹⁴ Hilling, *Procedure at the Roman Curia*, p. 12; Poole, *loc. cit.*

¹⁵ Hilling, *loc. cit.*; Poole, *op. cit.*, p. 17.

¹⁶ Monin, *De Curia Romana*, p. 6; Bouix, *De Romana Curia*, p. 147; De Luca, *Relatio Romanae Curiae Forensis*, disc. 5, n. 1; Hilling, *op. cit.*, p. 11.

popes to convene synods as often as necessity seemed to demand.¹⁷

Furthermore, the various offices established previously to lighten the burden of the popes and also the recurrently held synods were but a conglomeration of individual governing bodies in which the highest positions were all too frequently achieved in consequence of the ancient evils of nepotism and simony.

The Palatine judges, who had once held such high positions, first fell to the level of merely municipal administrators, and by the thirteenth century they were almost forgotten; at any rate they were of very little benefit to the Roman Pontiff by this time, when church affairs necessitated a competent body of offices to relieve him of the ever increasing pressure.¹⁸

Article III

From the Thirteenth Century to Sixtus V

The General Synods which had reached their height in the latter part of the eleventh century gradually began to relinquish their duties to the Roman Cardinals, who even prior to this time had been active in work quite similar to that of the synods.¹⁹ The final conversion of the administrative work from synods to the cardinals was accomplished during the pontificate of Innocent III (1198-1216).²⁰

From this time on the *Causae Arduae et Maiores* (matters of faith, important questions of ecclesiastical discipline and weighty matters of administration) were decided with the

¹⁷ Monin, *De Curia Romana*, p. 16; Hilling, *Procedure at the Roman Curia*, p. 13; P. Maroto, *Institutiones Juris Canonici ad Normam Novi Codicis*, (2 vols., Vol. I, 3. ed., Romae, 1919-1921), Vol. II, n. 826.

¹⁸ Hilling, *op. cit.*, p. 14.

¹⁹ De Luca, *Relatio Romanae Curiae Forensis*, disc. IV, n. 6.

²⁰ De Luca, *loc. cit.*; Hilling, *Procedure at the Roman Curia*, p. 13.

assistance of the cardinals at regular meetings, so-called *papal consistories*.*)

During the early years of the life of the Roman Consistory as the all-important institution in the government of the Church Universal, the popes were accustomed to call the cardinals into their palace for daily consultation, as was the practice especially of Alexander III,²² or at least three or four times a week.²³ The *Corpus Iuris Canonici* contains many of the decisions given by the popes in consistory, as is evidenced by the frequent formula "*de communi fratrum nostrorum consilio*" (with the advice of our brethren).²⁴ This is also indicative of the fact that, regardless of the importance and the prominence of these consistories, they held no more than a consultive and directive position in relation to the Universal Church.²⁶ Their duties were restricted to the discussion and investigation of the affairs of the Church brought before them. Final decisions were made only by the Holy Father, who personally presided over these consistorial gatherings.²⁰

At first matters of judicial as well as administrative character were referred to the consistory, on which occasions the popes called their cardinals into session, discussed the case with them, and gave their decisions. In the course of time, however, certain types of cases (principally petitions for dispensations) became so numerous and difficult that even daily consistories were no longer capable of giving proper attention to them.²⁷ In fact, the concession of dispensations from the impediments to marriage and the re-

21 Hilling, *op. tit.*, pp. 14, 17; Monin, *De Curia Romana*, p. 6; Maroto, *Institutiones*, II, n. 826; De Luca, *op. tit.*, disc. IV, n. 7.

22 Hilling, *op. tit.*, p. 14.

23 Monin, *De Curia Romana*, p. 7; De Luca, *op. tit.*, disc. V, n. 5.

24 C. 5, *de poenis*, V. 9, in VI^o; c. un., *de poenis*, XII, 20, in Extravag. com.

25 Monin, *op. tit.*, p. 8; Bouix, *De Romana Curia*, p. 2; De Luca, *Relatio Romanae Curiae forensis*, disc. V, n. 23.

26 Monin, *loc. tit.*; De Luca, *op. tit.*, disc. V, n. 24.

27 Hilling, *op. tit.*, p. 15; Monin, *loc. tit.*; Bouix, *op. tit.*, p. 275.

ception of orders, all of which were reserved to the Holy See by the thirteenth century, became so numerous during the later middle ages that the Council of Trent advised a less severe practice in this regard.²⁸

Even before the Council of Trent, however, the popes had taken a vast step forward in an attempt to alleviate their self-imposed burdens. The center of the papal government in the early thirteenth century was still found in the consistories and the remnants of the Palatine judges. But these two great institutes, which had formerly been so influential were then fast declining.²⁹

Thus, as the business transactions of the Holy See continued to increase, the reigning pontiffs found it necessary to form special commissions and offices under the direction of cardinals. At first the specific duties of these commissions and offices were not clearly defined. The popes merely assigned one or another of the commissions to care for the particular cases as they were submitted to him, and more often than not they ceased to exist and function as a unit once their mission was accomplished.³⁰

The initial step of designating official departments under the direction of the cardinals was actually taken when there first appeared a cardinal at the head of the *Apostolic Chancery*. Yet, the powers of this office at no time permitted it to act in its own right. It was always restricted to the expediting of pontifical letters and dispensations. But as papal reservations increased during the latter half of the thirteenth century, the Chancery became overburdened and it became necessary to divide its work with the Apostolic Penitentiary³¹ and with a special office referred to as the *communis da-*

28 Cone. Trident., sess. XXIV, *de ref. matrim.*, c. 5.

29 Hilling, *Procedure in the Roman Curia*, p. 14; Wernz, *lus Decretalium*, II, n. 637; Maroto, *Institutiones*, II, n. 826.

30 Monin, *De Curia Romana*, p. 8; Hilling, *op. cit.*, pp. 16-18; Wernz, *op. cit.*, II, n. 638; W. Humphery, *Urbs et Orbis* (London, 1899), pp. 280-281.

31 P. Baart, *The Roman Court* (4. ed., New York, 1899) n. 263; J. Ferreres, *La Curia Romana* (Madrid, 1911), n. 827; Monin, *op. cit.*, p. 85.

ta, which later developed into the *Apostolic Datary*,³² both of which, as it will be seen subsequently, played an important role in handling much of the business now under the jurisdiction of the Sacred Congregation of the Sacraments.

Originally the powers of the Sacred Penitentiary extended only to the internal forum, but the faculties of the Cardinal *Poenitentiarius* soon became so extensive that even by the end of the thirteenth century he was authorized to exercise his powers in the external as well as the internal forum.³⁸

Moreover, the dispensatory faculties granted to the Sacred Penitentiary gradually increased to such an extent that by the middle of the sixteenth century the decisions and dispensations granted by the *Poenitentiarius* were almost without restraint.³⁴ He was authorized to grant dispensations from matrimonial impediments. He legitimated children and dispensed from the lack of age or from bodily defects and from other irregularities prohibiting the lawful exercise or the reception of orders.³⁵

At first, the duties of the *Apostolic Datary* consisted simply in drawing up the petitions for dispensations and other favors for presentation to the popes. It did not possess the authority to grant dispensations of its own power, for as Amydenus (1586-1656) wrote: "*Papa concedit gratias, non datarius.*"TM

However, it was not long before the *Datarius* (prefect of the Apostolic Datary) was given the faculty to grant dis-

32 Hilling, *op. tit.*, pp. 14, 119; Monin, *op. cit.*, p. 121; B. Ojetti, *De Romana Curia* (Romae; Ex Cooperative Typographica Manuzio, 1910), p. 157.

33 W. Kubelbeck, *The Sacred Penitentiary and its Relation to the Faculties of Ordinaries and Priests*, The Catholic University of America Canon Law Studies, n. 5 (Washington, D. C.: The Catholic University of America, 1918), pp. 7-10, 24.

34 Monin, *De Curia Romana*, p. 88; Ojetti, *De Romana Curia*, p. 127.

35 Ojetti, *op. cit.*, p. 128; Monin, *loc. cit.*; Kubelbeck, *op. tit.*, p. 24.

36 Amydenus, *De Officio et Iurisdictione Datarum nec non de Stylo Datarum* (Coloniae, 1702, in folio), lib. I, cap. V, n. 10; Ojetti, *De Romana Curia*, p. 172.

pensations and other favors by reason of ordinary power. Hence it was often referred to as the *officium gratiae concessae* in contradistinction to the office of the Chancery or the *officium gratiae expeditae*.³⁷

The primary duties of the Datary were the conferral of non-consistorial benefices and the granting of matrimonial dispensations in the external forum. Moreover, it was also within the scope of the Datary to dispense from the irregularities for the reception of orders.³⁸

Toward the middle of the sixteenth century almost all matrimonial dispensations in the external forum were granted by the Datary. Previously, as was noted above, the Sacred Penitentiary shared competency in these matters. Nevertheless, the Datary was the office to which petitions for matrimonial dispensations in the external forum were ordinarily and properly referred.³⁹

The *Secretariate of Briefs* was another office which enjoyed, *vigore facultatum suarum*, a share of the papal dispensatory powers together with the Sacred Penitentiary and the Apostolic Datary. Hence, it must also be acknowledged as one of the early predecessors of the Sacred Congregation of the Sacraments.

Among the faculties conceded to the Secretary of Briefs were those which permitted him to grant certain dispensations from the requirements for the reception of sacred orders and the privilege of a private chapel along with the indult to preserve the Blessed Sacrament in private chapels,⁴⁰ all of which now belong to the Sacred Congregation of the Sacraments.

Many other specific offices were created during this same period (i.e., from the thirteenth to the middle of the six-

³⁷ M. Lega, *Praelectiones in Textum Iuris Canonici de Iudiciis Ecclesiasticis* (hereafter cited *Praelectiones*) (4 vols., Romae, 1896-1901), II, n. 253; Ojetti, *op. cit.*, p. 176.

³⁸ Lega, *Praelectiones*, II, nn. 253-254.

³⁹ Ojetti, *op. cit.*, p. 213; Monin, *De Curia Romana*, p. 131.

Monin, *op. cit.*, p. 146; Ojetti, *op. cit.*, p. 187; Hilling, *Procedure at the Roman Curia*, p. 113.

teenth century), for instance, the Sacred Roman Rota, whose principal duties consisted in the handling of contested benefices and other ecclesiastical-civil controversies;⁴¹ the *Apostolic Signatura*, whose primary task it was to examine and give advice regarding questions of an extraordinary nature;⁴² and the *Apostolic Camera*, to which were entrusted the papal finances and the administration of the temporal rights and goods of the Holy See.⁴³ However, the competence of these offices did not remain strictly regulated, for the popes were accustomed to appoint special commissions within these departments as circumstances demanded. Their powers varied from time to time. Oftentimes, certain faculties were granted to one or the other of the offices or tribunals by some popes, only to be retracted by others.⁴⁴

Nevertheless, one must admit that great progress was made during the thirteenth, fourteenth and fifteenth centuries in the formation of a competent organization to assist the Roman Pontiffs in the government of the Church. But, again, the effectiveness of these offices was short-lived. The innumerable petitions for dispensations and the other business affairs of the papal curia soon reached proportions that defied any attempt at control. As a consequence, the entire curia was in dire need of a major reform before the close of the sixteenth century. Indirectly it was the Fathers of the Council of Trent and their reform measures, and directly Pope Sixtus V (1585-1590), who were responsible for the reorganization of the Roman Curia at that time.

41 Hilling, *Procedure at the Roman Curia*, p. 134; Ojetti, *De Romana Curia*, p. 143; De Luca, *Relatio Romanae Curiae forensis*, disc. XXXV, n. 60; Lega, *Praelectiones*, II, nn. 43, 60.

42 Lega, *op. cit.*, II, nn. 30-41; Ojetti, *op. cit.*, n. 153; Baart, *The Roman Court*, p. 253; Monin, *De Curia Romana*, pp. III, 116, 118.

43 De Luca, *op. cit.*, disc. XI; Ojetti, *De Romana Curia*, p. 181; Lega, *op. cit.*, II, nn. 81-86; Monin, *op. cit.*, p. 136.

44 Baart, *The Roman Court*, p. 253; Kubelbeck, *op. cit.*, p. 24.

CHAPTER II

THE ROMAN CURIA FROM SIXTUS V TO PIUS X (1903-1914)

Article I

The Reform of Sixtus V

The transition from the temporary commissions and offices to a more stable permanent and organized system of cardinalitial Congregations appeared for the first time under Pope Paul III (1534-1549) with the establishment in 1542 of the *Congregatio pro sancta Inquisitione* (also referred to as the Congregation of the Inquisition, or simply as the Holy Office).¹

Following this precedent, Pope Pius IV (1559-1565) formed the *Congregatio pro executionibus et interpretatione concilii Tridentini*² (also known as the Congregation of the Council) ;³ and Pope Pius V (1566-1572) established the *Congregatio pro Indice librorum prohibitorum*⁴ as well as the *Congregatio pro consultationibus episcoporum et aliorum praelatorum*⁵ (more commonly known as the Congregation of Bishops).

Although the appearance of these four Congregations did not suppress the employment of the temporary provisional type entirely, the importance of the latter was greatly diminished by Pope Sixtus V when he rearranged the whole system of ecclesiastical administration through a complete

¹ De Luca, *Relatio Romanae Curiae forensis*, disc. XIV, n. 3; F. Cappello, *De Curia Romana iuxta reformationem a Pio X sapientissime inductam* (2 vols., Romae, Ratisbonae, Neo-Eboraci, Cincinnati: Friderickus Pustet, 1911-1912) I, 59.

² *Bullarum Diplomatum et Privilegiorum Sanctorum Romanorum Pontificum Taurinensis Editio* (24 vols. et Appendix, Augustae Taurinorum, 1857-1872), VII, 300. Hereafter this collection will be cited as *Bull. Rom.*

³ Monin, *De Curia Romana*, p. 38.

* Monin, *op. cit.*, p. 32.

⁵ *Bull. Rom.*, VIII, 994; Monin, *op. cit.*, p. 52.

elaboration and methodical organization of stable cardinalitial Congregations. He realized that, in order to obviate the difficulties which were prevalent at the time he was elected to the throne of St. Peter, a logical, orderly and constant organization was necessary. Accordingly, by means of his Constitution *Immensa aeterni Dei*,* of January 22, 1588,⁷ he instituted fifteen specific departments, which he called Congregations, and to each of these he assigned a specific field of labor.⁸

In the words of Pope Sixtus V himself, this methodical organization of cardinalitial Congregations was arranged for a more facile and adequate handling of the manifold and complex work heaped upon the Holy See.⁹ Yet, in spite of the stabilized character of these Congregations and the fact that a definite competence had been outlined for each, they all underwent certain changes in the course of the succeeding centuries; several disappeared entirely, others were established; the affairs formerly considered by one Congregation were transferred to the jurisdiction of another. Oftentimes the individual popes indiscriminately distributed various matters to whichever department of the Roman Curia appeared the least burdened at the time. Moreover, from the time of Pope Sixtus V until the time when Pope Pius X (1903-1914) issued his Constitution *Sapienti consilio*¹⁰ in 1908, there was hardly a pope who did not signalize

e Bull. Rom., VIII, 985-997.

T“Const. ‘Immensa’ habet revera datam 22 Ianuarii 1587, at, quia, ante Pium X anni computabantur in datatione bullarum a die 25 Martii, seu die Incarnationis non Nativitatis Domini, inde fit ut revera annus quo illa constitutio edita est non fuerit in communi computatione annus 1587 sed 1588.” Coronata, *Institutiones Iuris Canonici*, I, n. 329, p. 391, footnote 5. Cf. also Simier, *La Curie Romaine* (Paris: Editions de la “Revue Augustinienne,” 1909), p. 128, footnote 2.

⁸ Monin, *op. cit.*, p. 9.

⁹ Bull. Rom., VIII, 986, n. 2.

¹⁰ *Acta Apostolicae Sedis, Commentarium Officiale* (hereafter cited AAS) (Romae, 1909-) I (1909), 7-19. Cf. also *Codicis Iuris Canonici Fontes cura Emi Petri Card. Gasparri editi* (hereafter cited *Fontes*'),

his pontificate by the foundation of some new Congregation.¹¹

Article II

Forerunners of the Congregation of the Sacraments —
(*Quoad Competentiam*)

In view of the complex development of the entire Congregational system during the centuries subsequent to the reform of Sixtus V, it is not an easy task to determine which Congregations, Tribunals or Offices were used by the Roman Pontiffs in the discharge of the duties now handled through the Sacred Congregation of the Sacraments. These matters were usually given over to this or that Congregation depending upon whether they were related to matters of faith, discipline or ceremonies. In other respects they were referred to the Sacred Penitentiary or to the Apostolic Datary, depending again upon the nature of the matter and the circumstances of the time.

The following observations will give some idea of the manner in which many of the issues pertaining to the discipline of the Sacraments were intermittently assigned to the care of the various departments of the Roman Curia, prior to its reorganization by Pope Pius X.

A. The Congregation of the Holy Office

The primary purpose of the Holy Office at the time of its institution by Pope Paul III was to combat heresies, to denounce heretics and to inquire into and search out existing errors in order to protect the faithful and to preserve the true faith.¹² Nevertheless, subsequent popes successively introduced numerous variations in its competence.

(9 vols., Romae [postea civitate Vaticana]: Typis Polyglottis Vaticanis, 1923-1939. Vols. VII-IX ed. cura et studio Emi Iustiniani Card. Serardi.), n. 682.

¹¹ Humphrey, *Urbis et Orbis*, pp. 388-389.

¹² Cappello, *De Curia Romana*, I, 61; J. Sagmiiller, *Lehrbuch des katholischen Kirchenrechts*, (Vol. I in 4 parts, Freiburg im Breigau: Herdersche Verlagshandlung, 1925-1934), I, 543; Monin, *De Curia Romana*, p. 16.

As the official guardian of the faith and morals of the faithful it is only proper that this Congregation should exercise authority over questions concerning the Pauline privilege, and the dispensations from the matrimonial impediments of disparity of worship and mixed religion. But authors also indicate that other matters were oftentimes assigned to the Holy Office.¹³ This was true especially whenever there was any connection whatever with faith. Ojetti (1862-1932) clearly stated that it was within the right of the Holy Office to take cognizance of all questions and matrimonial impediments arising from the commission of a public delict, or which carried with them a suspicion of heresy, e.g., the impediment of crime with an attempted second marriage.¹⁴ Wernz (1842-1914)-Vidal (1867-1938) also mentioned that questions dealing with attempted marriages by persons bound by solemn religious profession or sacred orders were to be referred to the Holy Office.¹⁵ However, in commenting on these impediments, Cappello said that whatever may have been the discipline of the old law, it was certain that after the year 1908 questions of this type belonged to the competence of the Sacred Congregation of the Sacraments, not to the Holy Office.¹⁶

The Holy Office was also the proper Congregation for handling and deciding whatever difficult cases of doubt concerning the validity or invalidity of the sacraments were submitted to the Holy See,¹⁷ whereas today such matters

¹³ Hilling, *Procedure at the Roman Curia*, p. 56; Cappello, *op. cit.*, I, 62; Monin, *op. cit.*, p. 16; Wernz-Vidal, *his Canonium*, V, n. 410.

¹⁴ «Quando impedimentum oritur ex publico delicto, cuius cognitio spectat ad S. Officium, cuiusmodi sunt ea omnia, quae secumferunt suspicionem de haeresi (ut esset impedimentum criminis ex secundis nuptiis attentatis, etc.), dispensatio concedenda est a S. Officio.” B. Ojetti, *Synopsis Rerum Moralium et iuris Pontificii* (Romae, 1899), s. v. *Impedimenta matrimonii*, p. 250.

¹⁵ *Ius Canonium*, V, n. 410.

¹⁶ *De Curia Romana*, I, 97.

¹⁷ Hilling, *op. cit.*, pp. 56-57; Ojetti, *De Romana Curia*, p. 83; Wernz, *Ius Decretalium*, II, n. 658; Sagmuller, *Lehrbuch*, I, 543.

belong to the Holy Office only when the difficulty arises from a *dubium iuris*.¹⁸

B. The Congregation of the Council

The original duties of this Congregation were to promote the observance of the decrees of the Council of Trent and to settle or clarify any controversies or doubts which might arise in individual cases.¹⁹

Just as the Holy Office held jurisdiction over all matters of faith, so the Congregation of the Council, in the course of time, received the faculties to treat all matters concerned with the decrees of the Council of Trent, and from Sixtus V, all that was necessary "*ad reformationem cleri et populi . . . ad divinum cultum propagandum, devotionem excitandam, et mores Christiani populi ad praescriptum eiusdem concilii (Tridentini) comparendos*"²⁰ This, in effect, meant that all disciplinary matters were subject to the jurisdiction of this Congregation, either exclusively or at least cumulatively, especially with the Congregations of Bishops and Regulars.²¹

Practically all types of matrimonial cases were submitted to the Congregation of the Council, with the exception of such only as were reserved to the Holy Office, as also the judicial cases, which were handled by the Sacred Roman Rota. Moreover, after the silencing of this tribunal in the eighteenth century, even judicial cases were decided by this Congregation.²²

Again, this same Congregation also dealt with issues concerning the validity of ordinations and *sponsalia* as well as

¹⁸ Cf. *infra*, pp. 39-41.

¹⁹ Monin, *De Curia Romana*, pp. 38-40; Cappello, *De Curia Romana*, I, 187; Sāgmüller, *op. cit.*, I, 549; Ojetti, *De Romana Curia*, pp. 84-85.

²⁰ Const. *Immensa aeterni Dei*, 22 ian. 1588—*Bull. Rom.*, VIII, 955; Cappello, *op. cit.*, I, 188.

²¹ Monin, *op. cit.*, p. 40; Ojetti, *op. cit.*, p. 88; Hilling, *Procedure at the Roman Curia*, pp. 63-64.

²² Cappello, *De Curia Romana*, I, 188-189.

many other disciplinary matters relative to the administration and reception of the sacraments. For most of these questions were either explicitly or implicitly related to the Tridentine decrees.²³ It made decisions and issued decrees concerning the Holy Eucharist. It was authorized to grant dispensations from the laws regulating the time, place and conditions for receiving Holy Communion.²⁴ It is interesting to note in this regard that it was the Congregation of the Council that issued the well-known decrees on daily Communion²⁵ and in favor of the sick, the latter of which permitted under certain conditions the reception of Holy Communion without the observance of the usual fast.²⁶

Among other faculties formerly granted by this Congregation but later transferred to the Congregation of the Sacraments were those which concerned the reservation of the Blessed Sacrament, the use of a private oratory, and many other similar permissions relative to the celebration of Mass.²⁷

C. The Congregation of Bishops and Regulars

This Congregation²⁸ was primarily concerned with the business affairs pertaining to bishops and regulars. But indirectly and by custom it was gradually commissioned to accept all appeals of priests, religious and laity against the

²³ Monin, *op. cit.*, pp. 40-41; Cappello, *op. cit.*, I, 188; J. Martin, *The Roman Curia* (New York, Cincinnati, Chicago: Benziger Brothers, 1913), p. 46.

²⁴ Martin, *The Roman Curia*, p. 42.

²⁵ S. C. C., deer. *Sacra Tridentina Synodus*, 29 dec. 1905—*Fontes*, n. 4326.

²⁶ S. C. C., deer. *Post editum*, 7 dec. 1906—*Fontes*, n. 4331.

²⁷ Martin, *op. cit.*, p. 43.

²⁸ This Congregation was the result of a union in 1601 of the *Sacra Congregatio pro Consultationibus Episcoporum aliorumque Praelatorum* (established by Pope Gregory XIII in 1576) and the *Sacra Congregatio super Consultationibus Regularium* (instituted by Pope Sixtus V in 1586). It was also the forerunner of the Sacred Congregation of the Religious established by Pope Pius X. Cf. Monin, *op. cit.*, pp. 52-53; Ojetti, *De Romana Curia*, p. 97; Hilling, *op. cit.*, p. 73.

ordinances and decisions of their respective bishops and superiors regular.²⁹

This general outline of competence led former authors to refer to this Congregation as the "*occupatissima*" of all the Roman Congregations. It held concurrent jurisdiction with the Sacred Congregation of the Council in all matters treated by it except the formal interpretations of the decrees of the Council of Trent, and the judicial procedure in matrimonial cases.³⁰ In fact, this Congregation, together with the Congregation of the Council, more than any others was concerned with the matters which Pope Pius X later assigned to the Sacred Congregation of the Sacraments.³¹

D. The Congregation of Sacred Rites

The original scope of this Congregation³² was restricted to liturgical matters and the process of canonization, but in the course of time its faculties were extended considerably. Monin stated that only the liturgical functions were treated exclusively by the Congregation of Rites, while at the same time it also exercised many other faculties which it possessed cumulatively with the Congregation of Bishops and Regulars and the Congregation of the Council.³³

On September 3, 1903, Pope Pius X published a list of one hundred and forty-two faculties enjoyed by the Congregation of Rites.³⁴ Many of these faculties were later transferred to the Sacred Congregation of the Sacraments, e.g.,

²⁹ Martin, *The Roman Curia*, 53; Ojetti, *De Romana Curia*, pp. 100-101; Cappello, *De Curia Romana*, I, 188-189; De Luca, *Relatio Romanae Curiae forensis*, disc. XVI, n. 24.

³⁰ Ojetti, *loc. cit.*; De Luca, *op. cit.*, disc. XVI, n. 17; Monin, *De Curia Romana*, pp. 42-44.

³¹ Hilling, *Procedure at the Roman Curia*, pp. 73-74.

³² The Congregation of Sacred Rites and Ceremonies was divided in 1601 into two distinct Congregations—the Sacred Congregation of Rites and the Sacred Congregation of Ceremonies.

³³ *De Curia Romana*, p. 28.

³⁴ S. C. R., deer., 7. sept. 1903—*Acta Sancta Sedis* (41 vols., Romae, 1865-1908), XXXVI (1903-1904), 412-419 (hereafter cited ASS).

the granting of permission to reserve the Blessed Sacrament in churches and oratories not having this right by law, to celebrate Mass in a private oratory, on board ships, or at unusual hours, also to confer orders *extra temporal*

E. The Congregation for the Propagation of the Faith

This Congregation, founded by Pope Gregory XV (1621-1623) in the year 1622³⁶ was entrusted with the care of all ecclesiastical affairs within the territorial limits subjected to its jurisdiction (i.e., the so-called mission territories), except such as were reserved to the Holy Father himself.³⁷ In other words, the Congregation for the Propagation of the Faith was formerly authorized to treat, within the territories assigned to it, all the matters handled by the other Congregations for the rest of the world.³⁸

Pope Pius X, however, made two major changes in regard to this Congregation. First of all, he withdrew many countries from its jurisdiction and placed them under the common law of the Church. Secondly, all questions relating to faith, matrimony and the sacred rites were also withdrawn from the competence of this Congregation and entrusted to the other Congregations, according to the respective competence of each.³⁹

Thus, as far as some countries were concerned the Sacred Congregation for the Propagation of the Faith was the immediate forerunner of the Sacred Congregation of the Sacraments in so far as it alone was commissioned by law to care for the disciplinary questions and to grant dispensations and other favors in matters pertaining to the administration and the reception of the sacraments in the mission territories under its jurisdiction.

MAAS, I (1909), 86-87.

³⁶ Const. *Inscrutabili divinae*, 22 iun. 1622—*Bull. Rom.*, XII, 690-693; *Fontes*, n. 200.

³⁷ *Bull. Rom.*, XII, 692, #2.

³⁸ Monin, *De Curia Romana*, p. 68; Ojetti, *De Romana Curia*, p. 114; Wemz, *Ius Decretalium*, II, n. 765.

³⁹ Const. *Sapienti consilio*, I, 6°, 1,2—AAS, I (1909), 12.

F. The Apostolic Datary and the Sacred Penitentiary

It was noted in the preceding chapter that prior to the Council of Trent and the innovation of the Congregational system, all matrimonial dispensations were granted through the Tribunal of the Sacred Penitentiary, and the Offices of the Apostolic Datary and the Secretariate of Briefs. The Congregations by no means absorbed all of their competence in these matters.

The *Apostolic Datary* continued to serve as the ordinary and proper office for the handling of papal dispensations, especially from public matrimonial impediments in the external forum, until the eighteenth century when the civil disturbances brought about a temporary cessation of its functions.⁴⁰ After the French Revolution, however, the Datary was reactivated with its former competence, which had been previously outlined by Pope Benedict XIV (1740-1758) in his Constitution *Gravissimum*, of November 26, 1745.⁴¹

Besides pointing to the right to grant dispensations from matrimonial impediments this constitution also stated that the Datary, as well as the Secretariate of Briefs, was empowered to dispense from the irregularities *ex defectu vel ex delicto*, and to grant permission to celebrate Mass on portable altars and in private chapels.⁴²

As regards the *Sacred Penitentiary*, it will be recalled that the laws enacted up to the sixteenth century had extended its authority to the external as well as the internal forum. However, Pope Pius V, by means of his Constitution *Ut bo-*

⁴⁰ Monin, *De Curia, Romana*, p. 131; Ojetti, *De Romana Curia*, p. 213; Wernz-Vidal, *Ius Canonicum*, V, n. 409, p. 529, footnote 41.

⁴¹ *Benedict XIV Pont. Opt. Max. olim Prosperi Cardinalis de Lambertinus Bullarium* (commencing with tome III the title is *Bulla/rri Romani Continuatio Summorum Pontificum Benedicti XIV, Clementis XIII, Clementis XIV, Pii VI, Pii VII, Leonis XII et Pii VIII*, 9 tomes in 14, Prati: In typographia Aldina, 1845-1856), I, 603-605, (hereafter cited *Bull. Rom. Continuatio*).

⁴² *Loc. cit.*

nus paterfamilias, of May 18, 1569,⁴³ confined its jurisdiction to matters of the internal forum. But then again when the Datary was impeded in the exercise of its offices during the civil restlessness of the eighteenth century, the Sacred Penitentiary stepped in and supplied for the Datary by granting dispensations in both the external and the internal forums.⁴⁴

Finally, when the civil affairs adjusted themselves and the Datary was reinstated in its former office of dispensing in the external forum, the Sacred Penitentiary was again restricted, but with the provision that it should retain the power of granting dispensations from matrimonial impediments, etc., to the poor or the quasi-poor in both forums.⁴⁵ These same faculties were kept intact by the Sacred Penitentiary until the subsequent legislation of Pope Pius X declared that it was once again limited to the internal forum only.⁴⁶

The observations presented in this historical survey are by no means intended to be even an attempt to expose the complete competence of the early Offices, Tribunals and Congregations. Yet, they do suffice to indicate that the growth of the Roman Curia coincided very closely with the gradual development in the practice of the exercise of papal dispensatory power, especially in regard to the relaxation from the impediments to marriage and sacred orders.

Moreover, this brief synopsis also clearly indicates the confused condition of the Roman Curia at the beginning of the twentieth century and the serious need for a revision of the entire set-up. The cumulative competency over the various matters by the many diverse departments of the Curia was without doubt the principal cause of this chaotic state of affairs.

⁴³ *Bull. Rom.*, VII, 750-752.

⁴⁴ Kubelbeck, *The Sacred Penitentiary and its Relation to Faculties of Ordinaries and Priests*, p. 27.

⁴⁵ Kubelbeck, *op. cit.*, pp. 27-28.

⁴⁶ Kubelbeck, *op. cit.*, p. 28.

PART TWO

THE SACRED CONGREGATION OF THE SACRAMENTS

CHAPTER III

INSTITUTION

Article I

Purpose and Necessity

Prior to the much needed reformation of the Roman Curia by Pope Pius X, the fundamental obstacle impeding the efficiency of the various departments of the Roman Curia had always been the practice of exercising cumulative jurisdiction. During the first years of the Congregational system this practice was not a truly grave hindrance, but as the business matters of the papal curia rapidly increased, it became most evident that a more precise and better organized curia would be necessary if it was to provide adequately for a more competent government of the universal Church.

It has been seen that many, in fact most, of the major changes in the Roman Curia throughout the course of the centuries were occasioned by the need of a better and a more reliable means of caring for the ever increasing number of petitions and dispensations. This was especially true in regard to matrimonial dispensations and the dispensations from irregularities for the reception of sacred orders. Father Heston, in his recent work on the Roman Curia,¹ stated that it was in the field of the discipline of the sacraments that Pope Pius X found one of the most glaring examples of dissipation of effort and overlapping of competence in the Roman Curia. Furthermore, he stated that with such

¹ *The Holy See at Work* (Milwaukee: The Bruce Publishing Company, 1950), p. 65.

mixed competence, the handling of matrimonial dispensations and other similar items could become very confusing and entail long delays. Yet, not until Pius X revised the Curia in 1908 was there a specific department instituted and set apart for these all-important matters.

The above mentioned Supreme Pontiff, recognizing the need for more efficiency within his curia, resolved to reconstruct the entire system of Congregations, Tribunals and Offices. This great revision was officially accomplished by means of the Constitution *Sapienti consilio*, of June 29, 1908,² and the *Ordo servandus*,³ which, although issued three months later, was given in conjunction with the Constitution *Sapienti consilio*.

In the preamble of the same Constitution, the Sovereign Pontiff gave the reasons which prompted him to reorganize the Roman Curia. He definitely made it clear that the former cumulation of jurisdiction impeded the real efficiency of the individual departments and prevented them from performing their respective duties within a reasonable time.⁴ Thus, by suppressing all cumulative jurisdiction and by determining a fixed number of Congregations, each with a distinct and limited competence, he made it possible for the individual departments of the Roman Curia to discharge the

² AAS, I (1909), 7-19: *Fontes*, n. 682: Ojetti, *De Romana Curia*, pp. IX-XLIII.

³ *Ordo servandus in Sacris Congregationibus, Tribunalibus, Officiis Romanae Curiae*, Pars Prima, *Normae Communes* (hereafter cited *Normae Communes*), Pars altera, *Normae Peculiares* (hereafter cited *Normae Peculiares*)—AAS, I (1909), 36-108; Ojetti, *De Romana Curia*, pp. XLIV-XCI.

⁴ Consti. *Sapienti consilio*: "... atque ipsa jurisdictio unicuique Congregationi primitus attributa, modo novis Romanorum Pontificum praescriptis, modo usu aliquo sensim inducto ratoque habito, mutationibus, obnoxia fuit. Quo factum est ut hodie singularum iurisdictio, seu *competentia*, non omnibus perspicua nec bene divisa evaserit; plures ex Sacris Congregationibus eadem de re ius dicere valeant, et nonnullae ad pauca tantum negotia expedienda redactae sint, dum aliae negotiis obruantur."—AAS, I (1909), 8.

functions assigned to them with more facility, rapidity, and with far greater perfection.⁵

In readjusting the departments of the Roman Curia, Pope Pius X found it most expedient to institute a new Congregation, to which he entrusted the care of the *universa Sacramentorum disciplina*, the very matters which had up to that time provided the major portion of the business submitted to the Holy See. The official title given to this newly established Congregation was "*Sacra Congregatio de Disciplina Sacramentorum*" but it is now more commonly known simply as the "*Sacred Congregation of the Sacraments*"

The present structure of the Roman Curia consists of eleven Sacred Congregations, three Tribunals and five Offices. The S. Congregations in the order listed in the Code (canons 247-257) are: the S. Congregation of the Holy Office, the S. Consistorial Congregation, the S. Congregation for the Discipline of the Sacraments, the S. Congregation of the Council, the S. Congregation of the Religious, the S. Congregation for the Propagation of the Faith, the Congregation of Sacred Rites, the S. Ceremonial Congregation, the S. Congregation for Extraordinary Ecclesiastical Affairs, the S. Congregation for Seminaries and Universities, and the S. Congregation for the Oriental Church. The Tribunals (canons 258-259) are: the Sacred Penitentiary, the Sacred Roman Rota, the Apostolic Signatura. The Offices (canons 260-264) are: the Apostolic Chancery, the Apostolic Datary, the Apostolic Camera, the Secretariate of State, and the Secretariate of Briefs to Princes and of Latin Letters.

§ Const. *Sapienti consilio*: "Cum vero in praesenti res quoque sit de ecclesiasticis legibus in unum colligendis, maxime opportunum visum est a Romana Curia ducere initium, ut ipsa, modo apto et omnibus perspicuo ordinata, Romano Pontifici Ecclesiaeque operam suam praestare facilius valeat et suppetias ferre perfectius.

Quamobrem, ... statuimus ac decernimus, ut Congregationes, Tribunalia et Officia, quae Romanam Curiam componunt et quibus Ecclesiae universa negotia pertractanda reservantur, ... a die III mensis Novembris MDCCCXVIII, non alia sint, praeter consueta sacra Consistoria, quam quae praesenti Constitutione decernuntur, eaque, numero, ordine, competentia, divisa et constituta maneant his legibus, quae sequuntur."—*Loc. cit.*

Article II
Constitution

For the most part, the S. Congregation of the Sacraments adopted the traditional constitution of the older Congregations. Nevertheless, because of the diversified field of jurisdiction of this Congregation, it possesses a peculiar constitution of its own, which enables it to perform the duties assigned to it with greater facility and fidelity. In general the personnel of the S. Congregation of the Sacraments is the following:⁰

A. *The Cardinal Members*

Not unlike the other Congregations this Congregation consists principally of a number of cardinals who are designated by the Supreme Pontiff.⁷ These cardinals hold the authoritative position within the Congregation, for they alone enjoy the right of a deliberative vote for reaching a decision in whatever business is submitted to the common deliberation of the Congregation.⁸ There is no fixed law designating a specific number of cardinals to be assigned to the particular departments of the Roman Curia. This depends upon the nature and the amount of the business transacted by the respective Congregations and the free election of the Roman Pontiff, who determines the number accordingly.⁹ It is interesting to note in this regard that at the present time there are twenty-five cardinals assigned to the S. Congregation of the Sacraments as compared with

⁰ Basically, the personnel of the various Congregations is quite similar, but specifically they differ not only from that of the S. Congregation of the Sacraments but even among themselves. This is especially true in regard to the titles given to the different officials.

⁷ Canon 246; Moroto, *Institutiones*, II, 242.

⁸ Coronata, *op. cit.*, I, 338; Wemz-Vidal, *Ius Canonicum*, II, 483; Maroto, *op. cit.*, II, 238.

⁹ Formerly, Pope Sixtus V had assigned five cardinals to each Congregation with the exception of the S. Congregation of the Inquisition, which had seven. Cf. Wemz-Vidal, *loc. cit.*; Maroto, *op. cit.*, II, 242.

the original number of ten at the time of its institution by Pope Pius X.¹⁰

B. The Prefect

From the number of cardinals forming the principal body of this Congregation, the Pope designates one whose duty it is to preside over the activities of the Congregation and to direct the others in their proper functions. In the S. Congregation of the Sacraments this particular cardinal is given the title of *Cardinal Prefects*

Although among themselves the cardinals are all equal in so far as each enjoys the right of one vote, Maroto (1875-1937) emphasized that the Cardinal Prefect is the first among them and that he enjoys a special authority by reason of his position.¹² Furthermore, according to the *Normae Peculiares*, besides supervising the functions of the Congregation in general, the Cardinal Prefect possesses the authority and the faculty to dispense, and to confirm many of the important decisions which are not reserved to the Supreme Pontiff himself.¹³

C. The Major Officials

The major officials (*administri seu officiates maiores*) of

¹⁰ These figures were taken from the *Annuario Pontificio* (Roma: Typographia Poliglotta Vaticana, 1912-), for 1950, p. 770, and the AAS, I (1909), 112-113.

¹¹ *Normae Peculiares*, Cap. VII, Art. III. n. 1—AAS, I (1909), 85; Maroto, *Institutiones*, II, 238, 242; Ojetti, *De Roman Curia*, p. 70.

The Prefect of the S. Congregations is always one of the cardinal members except when the Roman Pontiff has reserved that position to himself, as he has done in the case of the Holy Office, the Consistorial Congregation, and the S. Congregation for the Oriental Church, or unless he has designated another as Prefect, as in the S. Congregation for Extraordinary Affairs, wherein the Secretary of State is the Prefect. In these cases the duties of the Prefect are, for all practical purposes, performed by a cardinal secretary. Cf. Monin, *De Curia Romana*, p. 196. Coronata, *Institutiones Iuris Canonici*, I, 330; Maroto, *op. cit.*, II, 238-239.

¹² *Institutiones*, II, 238.

¹³ Cap. VII, Art. III, n. 12—AAS, I (1909), 88, 89.

the S. Congregation of the Sacraments are the secretary and the three subsecretaries, all of whom are prelates and are freely selected by the pope.¹⁴

The first of the major officials after the Cardinal Prefect is the secretary, who, although not a cardinal, is customarily a titular archbishop.¹⁶ Just as the Cardinal Prefect is the over-all moderator of the activities in general, so the secretary is the more immediate supervisor in regard to the more particular functions. He also enjoys certain dispensatory faculties together with the authority to give the final decision in questions which are not of major importance.¹⁶

Assigned to assist the secretary are three sub-secretaries, each of whom is placed in charge of one of the three special sections or commissions within the Congregation.¹⁷ In order to show the position of these three subsecretaries and the special sections under their supervision, one should recall that it was the purpose of the institution of the S. Congregation of the Sacraments to provide for a more faithful and a speedier transaction of the business entrusted to it. The internal structure of this Congregation was designed with that end in view. Thus, within the Congregation proper there are three distinct sections with special officials assigned to each. This division into sections is based on a threefold division of the matters considered by the Congregation in its official capacity. The first section deals with all matrimonial dispensations granted through the Congre-

¹⁴ *Normae Communes*, Cap. I, n. 2—AAS, I (1909), 36; *Normae Peculiares*, Cap. VII, Art. III, n. 1—AAS, I (1909), 85.

Since the major officials actually possess the rank of a prelate they are more commonly referred to simply as *Prelates*, Cf. Maroto, *op. cit.*, II, 238, 239.

¹⁵ Wernz-Vidal, *lus Canonicum*, II, 483. The corresponding official of the three Congregations in which the Supreme Pontiff is Prefect is known as *assessor*. Cf. Maroto, *op. cit.*, II, 239; Monin, *loc. cit.*

¹⁶ *Normae Peculiares*, Cap. VII, Art. III, n. 17 (b) et 18—AAS, I (1909), 90, 91.

¹⁷ *Normae Peculiares*, Cap. VII, Art. III, nn. 1, 4-6—AAS, I (1909), 85, 86; Maroto, *loc. cit.*

gation.¹⁸ The second is also occupied exclusively with questions involving matrimony, but it is authorized to exercise its functions only in those matters concerning the Sacrament of Matrimony which do not pertain to the granting of dispensations from the impediments, e.g., the solution of doubts concerning matrimonial law, the hearing of questions in which the validity of marriages are concerned, the concessions for a sanation *in radice*, and the handling of all petitions and dispensations from marriages which are ratified but not consummated, etc.¹⁹ The third section is entrusted with the care of all questions and problems touching upon the discipline of the six other sacraments, e.g., disciplinary questions involving the doubtful validity of ordinations, the concession of dispensations from irregularities and impediments or from other disciplinary norms, etc.²⁰ Not only are the three subsecretaries assigned to direct the activities of their respective sections, but even they are authorized to grant some of the dispensations of lesser importance. The *Normae Peculiares* expressly mentioned that the subsecretary of dispensations, or even his assistant (*adiutor*), was authorized to concede dispensations from the minor impediments, unless the prefect or the secretary had expressly reserved one or the other to himself.²¹

¹⁸ *Normae Peculiares*, Cap. VII, Art. II, n. 4: "Ex tribus subsecretariis unus, cum adiutore ac scriptoribus aliquot, in petitiones omnes circa impedimenta matrimonii praecipue incumbit."—AAS, I (1909), 85.

¹⁹ *Normae Peculiares*, Cap. VII, Art. III, n. 5: "Alter subsecretarius, cum adiutore ac scriptoribus aliquot, ceteras curabit preces ad matrimonia pertinentia, uti sanationes in radice, natalium restitutiones, quaestiones de iustis aut irritis coniugiis vel de dispensatione in matrimonio rato, dubia, et huiusmodi alia."—AAS, I (1909), 85-86.

²⁰ *Normae Peculiares*, Cap. VII, Art. III, n. 6: "Tertius Subsecretarius, cum adiutore et aliquot scriptoribus, sacrae Ordinationis aliorumque Sacramentorum rebus, excepto matrimonio, vacabit."—AAS, I (1909), 86.

²¹ Cap. VII, Art. III, nn. 17, a) et 22—AAS, I, (1909), 90, 92.

D. The Minor Officials

The minor officials (*administri seu officiales minores*), more commonly referred to simply as *administri*, such as the *studii adiutores*, writers (*scriptores*)† archivists (*archivistae*), protocolists (*protocollistae*), and the distributors (*distributores*), after having passed a *concursum*, are chosen by secret ballots of the *Congressus*, after which they are approved by the pope.²²

E. The Consultors

Besides the ordinary officials, each Congregation consists of a number of learned theologians and canonists known as consultors. They are appointed by the Supreme Pontiff himself, and although they play a major role in many of the decisions, especially in the more important and difficult matters, their votes are merely consultive. It is their duty to study whatever representations or claims are submitted to them, to discuss them among themselves, and finally to advise the Prelates and Cardinals of their opinions.²³

It was stated above that the authoritative members of the S. Congregations are the Cardinals. This fact becomes more evident from a consideration of another division within the S. Congregations. For there exists within all the departments of the Roman Curia, except the S. Roman Rota, a distinction between the *plena Congregatio*, or the so-called full Congregation, and the *Congressus*. The former is the general session of the entire body of the cardinal members, to whom the more serious affairs (*negotia graviora*) are pro-

²² The duties of these minor officials, although indicated by their very titles, are described in the *Normae Peculiares*, Cap. VI, nn. 3-5—AAS, I (1909), 71-73. Usually mentioned along with this group are the apparitors (*apparitores seu ianitores*), who are known as the *deservientes*. They comprise the staff of servants, custodians and janitors. Cf. Maroto, *Institutiones*, II, 241; Wernz-Vidal, *Ius Canonicum*, II, 483.

²³ *Normae Peculiares*, Cap. VI, n. 1; Cap. VII, Art. III, n. 2—AAS, I (1909), 70, 85; Maroto, *loc. cit.*; Cappello, *De Curia Romana*, I, 178; Ojetti, *De Romana Curia*, p. 70.

posed for their deliberation and judgment. Among matters which are considered to be of a serious nature and therefore are reserved to the common consideration and judgment of the cardinals are the following: a) the examination of petitions for dispensations whenever serious controversies arise, either by reason of the nature of the matter or whenever a doubt is present concerning the legitimacy of the cause or because of the rarity of a certain type of dispensation; b) the final judgment in cases on non-peaceful separation of spouses; c) sanations *in radice*; d) dispensations from the bonds of marriages which are ratified but not consummated; e) all questions of law concerning the place, time and conditions required for the celebration of Mass, for the reception of Holy Communion and for the reservation of the Most Blessed Sacrament. In general, all petitions for extraordinary dispensations as well as all serious problems of a disciplinary nature are submitted to the cardinals in the *plena Congregatio* for a thorough examination and solution.²⁴

On the other hand, the Cardinal Prefect, the Secretary and the three subsecretaries constitute what is known as the *Congressus*. The functions of this particular group are: a) to prepare whatever matters are to be treated by the cardinals in the *plena Congregatio*; b) to judge and even to grant dispensations and faculties in the less important matters (*negotia minora*) according to the special powers given to it by the pope; c) to see to it that all things are performed according to the norms governing the procedure within the Congregation, and d) to execute the decisions of the *plena Congregation*.

It is evident, therefore, that the functions of the S. Congregations center about the cardinals; for even though the

²⁴ A more detailed listing of the particular cases reserved to the *plena Congregatio* may be found in the *Normae Peculia/res*, Cap. VII, Art. III, n. 11—AAS, I (1909), 87-88.

²⁶ *Normae Peculia/res*, Cap. II, n. 2—AAS, I (1909), 62; Cf. *Normae Peculia/res*, Cap. VII, Art. III, n. 12, for a detailed listing of the faculties granted to the *Congressus* of the S. Congregation of the Sacraments.—AAS, I (1909), 88-89.

other officials share in the ordinary and routine matters, it is for the cardinals to handle the more serious and difficult affairs, and they alone of all in the S. Congregations can exercise a deliberative vote.

Article III

General Norms governing the Sacred Congregations

For the most part, the norms and regulations accompanying the Constitution *Sapienti consilio* were retained and later adopted for the Code of Canon Law. The general norms governing the activities of the various departments of the Roman Curia are almost an exact repetition of those that Pope Pius X had enacted. A few of the more important of these norms are worthy of mention here.

Canon 243, § 1, states that each of the Congregations, Tribunals and Offices of the Roman Curia, in the performance of its duties, must observe the discipline and rules of procedure prescribed by the Roman Pontiff. Authors commenting on this canon state that the rules and regulations prescribed by Pope Pius X are still effective.²⁰

The rule of secrecy, binding all who belong to the departments of the curia, is effective within the limits and according to the laws of each particular unit. It was first prescribed by Pope Benedict XIV,²¹ later confirmed by Pope Pius X,²² and then retained in the second paragraph of canon 243. Although the ministers of each of the departments of the Roman Curia must take the oath to observe secrecy in all matters committed to their respective departments, not all are bound with the same severity as the members of the Holy Office and of the Consistorial Congregation.²³

²⁰ S. Woywood, *A Practical Commentary on the Code of Canon Law* (8. ed., 2 vols., New York: Joseph F. Wagner, Inc., London: B. Herder, 1944)), I, n. 188; Coronata, *Institutiones Juris Canonici*, I, 334.

²¹ Const. *Sollicita ac provida*, 9 iul. 1753, § 12—*Fontes*, n. 426.

²² *Normae Communes*, Cap. III; *Normae Peculia/res* Cap. III, Art. II, n. 4. Cf. AAS, I (1909), 40, 80.

²³ Coronata says that the "Secret of the Holy Office" not only binds the members of the Holy Office, but also all members of the

A fundamental principle to be observed by all the Congregations, Tribunals and Offices is that they are not to decide anything of an extraordinary or grave character without first notifying the Roman Pontiff, and that all decisions, concessions and resolutions must have pontifical approval unless special faculties have been granted to their respective Moderators, and except also for the sentences of the Tribunals of the Roman Rota and the Apostolic Signatura.³⁰

Another very important principle governing the general procedure within the Roman Curia declares that, if any S. Congregation or Office has refused a favor asked of it, the same favor cannot be validly obtained from another S. Congregation or Office or from the local ordinary, even though they have that power, unless the S. Congregation or Office from which the favor was first asked gives its consent. An exception is immediately made, however, in favor of the Sacred Penitentiary, thus safeguarding its exclusive right to grant favors in the internal forum independently of any previous application in the same matter to one of the S. Congregations.³¹

The task of reorganizing the Roman Curia was definitely accomplished by Pope Pius X, but in spite of the elimination of the concurrent exercise of jurisdiction over matters of the same nature, it was still to be expected that doubts and problems would continue to arise regarding the competence of the particular departments within the Roman Curia. In order to provide for such problems as might arise, Pope Pius X authorized the Consistorial Congregation to solve the

S. Consistorial Congregation who take part in the appointment of bishops, the erection of dioceses, etc., until these matters are lawfully published. The penalty for the violation of this secret is an ipso facto incurred excommunication most specially reserved to the Roman Pontiff.—*Institutiones Juris Canonici*, I, 332.

³⁰ Const. *Sapienti Consilio*, in fine—AAS, I (1909), 18: Cf. Also canon 244.

³¹ Canon 43; *Normae Peculiares*, Cap. I, n. 2—AAS, I (1909), 60-61.

doubts in each individual case.⁸² Since then, however, the Code, in canon 245, has indicated that a special commission of cardinals, which the Roman Pontiff shall appoint in each individual case, will decide such controversies if they should happen to arise.

⁸² Const. *Sapienti consilio*, I, 20, 4—AAS, I (1909), 18.

CHAPTER IV

LIMITATIONS OF COMPETENCE

Although the very title of the "*Sacra Congregatio de disciplina Sacramentorum*" denotes the general range of its competency, it is not infrequent for doubts to arise in various types of particular cases. This is especially true in regard to questions which are closely associated with the administration of the sacraments, the celebration of the Holy Sacrifice of the Mass and the reservation of the Blessed Sacrament, but which actually fall within the competence of one of the other Congregations.

Pope Pius X not only limited the competency of this Congregation to matters concerning the sacraments, but more specifically restricted it to such matters as regard the discipline of the sacraments. "*Est huic Sacrae Congregationi proposita universa legislatio circa disciplina septem sacramentorum* . . . J'l were the words he used in stating the general principle in which he determined the competency of the S. Congregation of the Sacraments.

After having expressed this fundamental rule, however, the same Supreme Pontiff proceeded to present a more specific description of the matters which were thenceforth to be submitted to this Congregation. He did this in a twofold manner: negatively, by declaring that certain matters, even though they concerned the sacraments, and seemingly belonged within the competence of the S. Congregation of the Sacraments, were to be reserved to one of the other Congregations or to one of the Tribunals; positively, by enumerating various types of cases which definitely fall within the scope of the S. Congregation of the Sacraments. For the sake of clarity, the same approach, used also by the Code (can. 249), will be followed in this work. The writer feels

1 Const *Sapienti consilio*, I, 30, 1—AAS, I (1909), 10.

that the proper competence of the S. Congregation of the Sacraments can best be specified through a determination of which matters *in re etiam sacramentaria* do not belong to it, while at the same time it will be indicated to which Congregation or Tribunal these particular matters are now reserved by law.

The competence of the S. Congregation of the Sacraments is limited: a) by reason of the matter treated; b) by reason of the persons involved; c) by reason of the territory subjected; and d) by reason of the procedure followed.

Article I

By Reason of the Matter Treated

It may be said that there are three different types of cases subtracted from the competence of the S. Congregation of the Sacraments by reason of the matter treated, namely: 1) those which are closely associated with the right of the Holy Office to safeguard the faith and morals of the faithful; 2) questions concerning the rites and ceremonies, which are reserved to the Congregation of Sacred Rites; and 3) those which are only indirectly connected with the sacraments, such as the Mass, etc.

A. The Holy Office

It was definitely declared by Pope Pius X that all matters of faith and morals were to be reserved exclusively to the Holy Office.² This was nothing new in view of the fact that the primary purpose of the Holy Office has always been the protection of the faith and morals of the faithful. But, besides the questions directly concerned with the doctrine of the sacraments, there are other cases of a disciplinary nature, which likewise are reserved to the Holy Office.

In the Constitution *Sapienti consilio* it was stated that the faculty belonged exclusively to the Holy Office to take cog-

² Const. *Sapienti consilio*, I, 1°, 1: "Haec sacra Congregatio, cui Summus Pontifex praeest, doctrinam fidei et morum tutatur."—AAS, I (1909), 9.

nizance of those things which concerned the Pauline privilege and the impediments of disparity of worship and mixed religion.³

The reason for placing these dispensations under the jurisdiction of the Holy Office is evident, for this Congregation as the designated custodian of the faith must have within its power the necessary means both to preserve that faith and to defend it against whatever dangers may threaten it. There is no doubt that mixed marriages do present a definite danger to the faith and morals of the faithful concerned.⁴

All commentators on the Constitution *Sapienti consilio* agreed that it belonged to the Holy Office to declare what formalities were to be observed and what conditions were required for the use of the Pauline privilege and for the concession of dispensations from the impediments of disparity of worship and mixed religion.⁵ There was, however, some discussion with relation to disciplinary matters concerning marriages contracted upon the application of the Pauline privilege or after the dispensations had been obtained.

Many authors with Ojetti seemed to be of the opinion that all matrimonial issues, excepting only the Pauline privilege and the above mentioned dispensations, belonged exclusively to the S. Congregation of the Sacraments, even though the divergent factors related to the same case.⁶ In other words, Ojetti seemed to think that, if two parties had entered a marriage after having received permission to use the Pauline privilege, but later contested the validity of that marriage on the grounds of another impediment, e.g., consanguinity, then the solution of such a case belonged to the S. Congregation

81, 1°, 5: "Etsi peculiaris Congregatio sit constituta *de discipline, Sacramentorum*, nihilominus integra manet Sancti Offici facultas ea cognoscendi quae circa privilegium, uti aiunt, Paulinum, et impedimenta disparitatis cultus et mixtae religionis versantur, praeter ea quae attingunt dogmaticam de matrimonio, sicut etiam de aliis Sacramentis, doctrinam."—AAS, I (1909), 9.

4 Monin, *De Curia Romana*, p. 225.

5 Monin, *op. cit.*, p. 226.

6 Ojetti, *De Romana Curia*, pp. 54, 56.

of the Sacraments. Cappello, Monin, Simier and others favored the extension of the competence of the Holy Office to all matrimonial cases involving marriages entered into after the application of the Pauline privilege, or after the granting of a dispensation from the impediments of disparity of worship or mixed religion, even if such a marriage were impugned on account of an impediment of consanguinity, etc?

The position of the Holy Office in this regard was definitely clarified by means of an official declaration of the Consistorial Congregation, in which it was stated that the competence of the Holy Office should be extended to all matters which either directly or indirectly concerned the Pauline privilege or the aforementioned dispensations, and to all questions arising from marriages following the use of the Pauline privilege or the granting of dispensations from the impediments of disparity of worship or mixed religion.⁸ The same clarification was incorporated in the Code.⁹

In spite of the reply of the S. Consistorial Congregation, the jurisdiction for cases of ratified and non-consummated marriages in which at least one party was a non-Catholic seemed, for a time at least, to have been interpreted other-

⁷ Cappello, *De Curia Romana*, I, 101, 102; Monin, *op. cit.*, p. 227; Simier, *La Curie Romaine*, p. 17; J. Besson, "La reorganization de la Curie Romaine," *Novelle Revue Théologique* (Tournai, 1869-), XLI (1910), 8.

⁸ "Competentiam S. Officii se extendere ad omnia quae sive directe sive indirecte, in iure aut in facto se referunt ad Privilegium Paulinum et ad praefatas dispensationes. Et ad mentem, quae est: supplicandum SSmo ut statuatur ac decernatur ut quaelibet quaestio circa praefacta matrimonia deferatur Sacrae Congregationi S. Officii, salva huic Sacrae Congregationi potestate, si ita conseat et casus ferat, quaestionem ipsam remittendi ad aliud S. Sedis officium." —AAS, II (1910), 56.

⁹ "Ipsa sola cognoscit ea quae, sive directe sive indirecte, in iure aut in facto, circa privilegium, uti aiunt, Paulinum, et matrimonii impedimenta disparitatis cultus et mixtae religionis versantur; itemque ad eam spectat facultas dispensandi in hisce impedimentis." Cf. can. 247, §3.

wise. For, according to canon 249, § 3, of the Code,¹⁰ it seems as though the S. Congregation of the Sacraments was to be considered competent to handle cases of ratified and non consummated marriages even when one party was a non-Catholic. The same seems to be true in consideration of Chapter II, n. 9, § 2, of the Rules to be observed in the drawing up of the process in cases of ratified and non-consummated marriages, as issued by the S. Congregation of the Sacraments in 1923.¹¹

Five years later (1928) the Holy Office was asked whether the Supreme Congregation of the Holy Office had exclusive jurisdiction in all matrimonial cases which were in any way brought before the Holy See between a Catholic party and a non-Catholic party, whether baptized or unbaptized. The response given by the Holy Office was: "In the affirmative, especially, in consideration of canon 243, § 3, and without prejudice to the prescription of canon 1557, § 1, n. I."¹²

¹⁰ *Tpsa* [Congregatio de disciplina Sacramentorum] cognoscit quodque et *exclusive* de facto inconsummationis matrimonii et de existentia causarum ad dispensationem concedendam, nec non de iis omnibus, quae cum his sunt connexa." Cf. also canon 1962.

¹¹ *Regulae Servandae in Processibus super Matrimonio Rato et non Consummato*, 7 maii 1923: "Si contingat dispensationem peti a parte acatholica, Ordinarius petitionem ad hanc Sacram Congregationem aequè remittat; additis tamen necessariis et opportunis explicationibus de petitionis fundamento, de oratoris qualitatibus personalibus, aliisque adiunctis ad rem facientibus."—AAS, XV (1923), 393-394.. Cf. also T. Lincoln Bouscaren, *The Canon Law Digest* (hereafter cited *Digest*) (2 vols., and Supplement through 1948, Milwaukee: Bruce, 1934-1949), I, 767.

¹² "Suprema S. C. S. Officii, die 18 ianuarii, 1928, ad dubium...

*¹¹. Utrum in quibuslibet causis matrimonialibus inter partem catholicam et partem acatholicam, sive baptizatam sive non baptizatam, quocumque modo ad Sanctam Sedem delatis, Suprema Sacra Congregatio Sancti Officii exclusivam habeat competentiam/ respondendum decrevit: *Affirmative, habita praesertim ratione can. 247, § 3, et salvo praescripto can. 1557, § 1, n. 1/"—AAS XX (1928), 75; cf. also Bouscaren, *Digest*, I 763. Can. 1557, § 1, n. 1, refers to the fact that the Roman Pontiff has the exclusive right to judge: a) those who hold the highest governmental rank in a nation; b) their sons and daughters; c) those who have the immediate right of succession.

Thus, since 1928, the solution of all cases involving a non-Catholic, whether petitioner or respondent, brought in any way whatsoever before the Holy See belongs exclusively to the Holy Office. In consequence of this reply, the special permission to draw up a case of a ratified but non-consummated marriage involving a non-Catholic must be sought from the Holy Office, not from the S. Congregation of the Sacraments. Once the faculty has been obtained by the ordinary and the process has been properly concluded, it is to be returned to the Holy Office. Nevertheless, it is the usual practice of the Holy Office to delegate the S. Congregation of the Sacraments to decide the case according to any special *clausulas* which the Holy Office may see fit to add, since the S. Congregation of the Sacraments has special *commissarii* trained to handle the *ratum et non consummatum* type of cases. When the latter Congregation has completed the case, it is returned to the Holy Office, which in turn responds to the ordinaries.¹³

It is likewise to be noted that it was the Supreme Congregation of the Holy Office which in 1942 issued the decree concerning the precautions to be observed in the handling of cases of impotence and non-consummation. In issuing this decree the Holy Office was simply exercising its prerogative to safeguard the morals of those concerned by laying down specific rules for insuring the protection of natural and Christian modesty against all danger or threat of offense, through a close guarding of this modesty at all times.¹⁴

The institution of the S. Congregation of the Sacraments also necessitated a more accurate understanding of the distinction between questions which concerned the doctrine of the sacraments, and those which were of a purely disciplinary nature. This was especially true in connection with any decision regarding the validity or the invalidity of one

¹³ William J. Doheny, *Canonical Procedure in Matrimonial Cases* (2. ed., 2 vols., Milwaukee: Bruce, 1948), II, 226.

¹⁴ S. C. S. Off., *Decretum*, 12 ian. 1942—AAS, XXXIV (1942), 200; Bouscaren, *Digest*, II, 549, 550.

or another of the sacraments whenever there was present some doubt or controversy concerning the essential elements (i.e., the minister, the matter or the form) of the sacraments.¹⁵

In practice, such questions or controversies could arise from a doubt of law (*dubium iuris*, i.e., if it was doubted whether the person who administered the sacrament was a legitimate minister, or whether the matter or the form was sufficient for validity), or from a doubt of fact (*dubium facti*, i.e., if it was doubted whether or not the legitimate minister was present, or whether the proper matter and form were actually used in specific cases).¹⁶ In the case of the former it is doubted who may be the minister or what is the proper matter or form,¹⁷ whereas a *dubium facti* implies that the requisites for a valid minister, matter or form are known, but there is question whether they were actually present. This distinction is of importance, because questions arising from a *dubium iuris* touch upon the very essence of the sacraments and are, therefore, reserved exclusively to the Holy Office. On the other hand, the solution of questions arising from a *dubium facti* are disciplinary and ordinarily belong within the competence of the S. Congregation of the Sacraments.¹⁸

Canon 1993, § 1, of the Code, states that in the cases in which the obligations contracted through sacred ordination are impugned the bill of complaint must be submitted to the

¹⁵ Cappello, *De Curia Romana*, I, 98, 99; Monin, *De Curia Romana*, pp. 223, 224.

¹⁶ Cappello, *op. cit.*, I, 99, 100; Monin, *op. cit.*, pp. 224, 225.

¹⁷ A *dubium iuris* is present then only when a certain, i.e., secure, solution cannot be achieved after one has looked into the teaching of the Church according to Sacred Scripture, Tradition, and the common consent of the theologians. Thus, if one proposes a question the solution of which can be gained through the sources here noted, there is not present a *dubium iuris*, but rather an *ignorantia iuris*. Cf. Monin, *op. cit.*, p. 225, footnote 1; Cappello, *op. cit.*, I, 100.

¹⁸ Cappello, *loc. cit.*; Monin, *loc. cit.*; Exception is made here in favor of the S. Roman Rota, which alone is authorized to treat the marriage cases requiring judicial procedure.

S. Congregation of the Sacraments; but it further adds that, if the ordination is impugned on account of a substantial defect of the sacred rites, the petition must be sent to the S. Congregation of the Holy Office.¹⁹ The reason for this exception and others similar to it is evident; matters of a doctrinal character are involved, the care of which is always entrusted to the vigilance of the Holy Office.²⁰

.Another matter which certainly appears to fall within the competence of the S. Congregation of the Sacraments, but which has, in fact, been withdrawn from it in favor of the Holy Office, concerns the Eucharistic fast of priests prior to celebrating the Holy Sacrifice of the Mass. Although it belongs to the S. Congregation of the Sacraments to dispense from the Eucharistic fast for the laity, the same dispensation, and all questions relating to it, for a priest celebrant is reserved exclusively to the Holy Office.²¹

The reason for this reservation seems to be best explained in the light of the fact that the sacrilegious violation of this fast is considered so grave that there is reason for suspicion of heresy, a crime which was reserved to the Holy Office by Pope Pius X as well as by the Code.²² Cappello, for instance, when he commented on the crimes which induced the suspicion of heresy, included the crime of *sollicitatio ad turpia*.

19 The same exception is made in the Rules to be observed in cases concerning the nullity of sacred ordination or of the obligations inherent in Sacred Orders, issued by the S. Congregation of the Sacraments on June 9, 1931.—Bouscaren, *Digest*, I, 812; AAS, XXIII (1931), 457. Cf. also Const. *Sapienti consilio*, I, 3, 3—AAS, I (1909), 11.

20 Cf. canon 247, § 1, and the Const. *Sapienti consilio*, I, 1, 5—AAS, I (1909), 9.

21 Referring to the Holy Office, the Code states: “Ipsa una competens est circa ea omnia quae ieiunium eucharisticum pro sacerdotibus Missam celebrantibus respiciunt.”—Cf. can. 247, § 5.

22 A. Toso, *Ad Codicem Iuris Canonici Commentaria Minora* (5 vols., Romae: Marietti, 1920-1927), III, 54 (hereafter cited, *Commentaria Minora*); A. Vermeersch-J. Creusen, *Epitome Iuris Canonici* (3 vols., Mechliniae-Romae: H. Dessain, Vol. I, 7. ed., 1949; Vol. III, 5. ed., 1936), I, n. 362. Cf. also Const. *Sapienti consilio*, I, 1, 1.—AAS, I (1909), 9, and can. 247, § 1.

He stated that when such a case was to be treated in the external forum, it should be denounced to the Holy Office, not to the S. Congregation of the Sacraments.²³

There are many other disciplinary matters concerning the sacraments and the Mass which fall within the scope of the Holy Office by virtue of their intimate connection with the special prerogative of this Congregation to use whatever means are necessary, not only to protect and safeguard faith and morals, but also to eliminate whatever dangers may threaten them. This has been evidenced through the numerous private replies given by the Holy Office in the past, as well as through the special instructions issued in the manner of warnings, admonitions, etc.

B. The Congregation of Sacred Rites

Canon 247, § 1, after stating that the *universa legislatio circa disciplinam septem Sacramentorum* belongs to the S. Congregation of the Sacraments, makes the exception, "*incolumi iure... Sacrorum Rituum Congregationis circa ritus et caeremonias quae in Sacramentis conficiendis, ministrandis et recipiendis servari debent*" Furthermore, canon 253, § 1, agrees verbatim with the Constitution *Sapienti consilio* in declaring more specifically that only matters which concern the rites and ceremonies strictly regarded (*proxime spectant*) are reserved to the Congregation of the Sacred Rites.²⁴

In order clearly to understand the proper competence of the Congregation of Sacred Rites in these matters, one must clearly note that all questions involving the essential rites and ceremonies required for the validity of the sacraments are of a doctrinal nature; consequently, they are reserved exclusively to the Holy Office. Likewise, the Congregation of Sacred Rites is not competent to consider matters of a

²³ *De Curia, Romana*, I, 209.

²⁴ II, 8, 1: "Haec sacra Congregatio (Congregatio Sacrorum Rituum) ius habet videndi et statuendi ea omnia, quae sacros ritus et caeremonias Ecclesiae Latinae *proxime* spectant, non autem quae latius ad sacros ritus referuntur,...—ASS, I (1909), 13.

strictly disciplinary nature, even though they are liturgical in the broad sense of the term, i.e., those questions which merely touch upon the liturgy and which are now incorporated into disciplinary law properly so-called. There is question here of matters that are strictly liturgical.

Because of this distinction made in law between the rites and ceremonies as strictly liturgical matters and the disciplinary questions which are merely liturgical in the broad sense of the term, it is necessary to point out the true concept of what is meant by purely liturgical matters in order to understand the proper competence of these two Congregations in this regard.²⁵

Monin²⁶ furnished a very distinct concept of what were to be considered strictly liturgical matters. According to him, the sacred rites were simply the many prayers which are prescribed to be recited or sung in the celebration of Mass, in the administration of the sacraments, in the Divine Office or any of the other ecclesiastical functions. On the other hand, the ceremonies are the acts, gestures and other motions which accompany the prayers, e.g., the sign of the cross, genuflections, inclinations or whatever else is to be used in external worship, namely, the altar, vestments, lights, etc. The cumulation of the rites and ceremonies, as understood in this sense, concur to form what is referred to as the liturgical matters strictly regarded.²⁷ Consequently, it is only in reference to these matters, and others similar to them, that the Congregation of Sacred Rites is competent to legislate concerning the Mass and the Sacraments.²⁸

²⁵ p. Oppenheim, *Institutiones Systematico-Historicae in Sacram Liturgiis*, Series II (*Liturgia Fundamentalis*), A. *Tractatus de lure Liturgico*, Pars II, *De lege scripta et non scripta* (Taurini: Marietti, 1939), pp. 39- 42.

²⁶ De *Curia Romana*, p. 300.

²⁷ Cappello, *Tractatus Canonico-Moralis de Sacramentis* (5 vols., Romae: Marietti, Vol. I, 5. ed., 1945; Vol. V, 6. ed., 1950), I, n. 50; Vermeersch-Creusen, *Epitome*, I, n. 368; A Van Hove, *De Legibus Ecclesiasticis* (Melchliniae-Romae: H. Dessain, 1930), p. 10.

²⁸ Authors do not all agree in their understanding of the meaning of the terms "rites" and "ceremonies" as used in the Constitution

It may be worthy to note here that, although the word "*ritus*" was omitted in II, 3°, 1, of the Constitution *Sapienti consilio*, it was included together with the word "*caeremonias*" in other passages of the same constitution, in which references were made to the competence of the Congregation of Sacred Rites.²⁰ In II, 6°, 4,³⁰ of the same Constitution the term *sacrorum rituum* is used, but the term *caeremoniarum* is omitted. Canon 252, § 4, of the Code, retains the same word order that was used by the constitution, whereas canons 249, § 1, and 253, § 1, include both terms. The writer sees no reason whatsoever for believing that the omission of these words in the above mentioned passages was meant as a way for distinguishing the competence in regard to the rites and ceremonies in such a manner that questions concerning the rites should belong to the S. Congregation of the Sacraments while questions concerning the ceremonies were to be reserved to the Congregation of Sacred Rites. It seems that neither Pope Pius X nor the wording in the Code meant to distinguish between the rites and the ceremonies, but that they rather used the two terms synonymously and in a promiscuous manner.³¹ Furthermore, there would be a definite contradiction in law if one were to interpret II, 3°, 1, of the Constitution *Sapienti consilio*, in such a manner as to subtract only the ceremonies from the competence of the S. Congregation of the Sacraments, since II, 8°, 1, of the same

Sapienti consilio and the Code. Some distinguish in the manner stated above, while others contend that the rites are the sacred actions themselves which are used in divine worship, and the ceremonies are to be understood as the manner of performing those actions. Others use the terms "*rites*" and "*ceremonies*" as synonymous or as in a promiscuous manner signifying the rules and regulations to be observed in external worship. Besides these, there are many other opinions relative to the proper connotation of these terms. Cf. Oppenheim, *op. cit.*, p. 40.

20II, 8°, 1, 2—AAS, I (1900), 13; *Normae Peculia/res*, Cap. VII, Art. VIII, 2—AAS, I (1909), 99.

30 AAS, I (1909), 12.

31 Cf. canons 1; 249, §1; 253, §1; 733, §1; 755, §2; 818; 1002; 2378.

Constitution, stated that both the rites and the ceremonies fall under the competence of the Congregation of Sacred Rites.

The distinction between the competence of these two Congregations may be summarized with the statement that the Congregation of Sacred Rites is not authorized to determine where or when the Holy Sacrifice of the Mass may be licitly celebrated, nor does it answer the same questions concerning the administration of the sacraments. Such matters belong to the S. Congregation of the Sacraments. It does, however, pertain to this S. Congregation to watch over the rubrics prescribed for the celebration of Mass and the administration of the sacraments; also to interpret, correct and urge the observance of the same. For example, the permission to confer solemn baptism in private homes is obtained from the S. Congregation of the Sacraments, but the rubrics to be followed in so doing are prescribed by the Congregation of Sacred Rites. Similarly, under ordinary circumstances the same is true in regard to all special faculties, privileges or dispensations of a disciplinary nature concerning the Holy Sacrifice, the sacraments and the reservation of the Sacred Species. The favors are granted by the S. Congregation of the Sacraments, but the rubrics to be observed in the use of them are defined by the Congregation of Sacred Rites, either directly or through the S. Congregation of the Sacraments.

One must bear in mind, however, that even though the competence of each Congregation has been established and determined by law, the authority of the respective Congregations may also be extended in virtue of some special faculty which they receive from the Supreme Pontiff. For it is certainly within the power of the pope to enlarge or to restrict the power of any of them at any time.

For instance, according to the *Normae Peculiares* of Pope Pius X the S. Congregation of the Sacraments possessed the faculty to enable the blind or the nearly blind to celebrate the Sacrifice of the Mass by permitting them to use consistently

the votive Mass of the Blessed Virgin Mary or the *Missa pro defunctis*.²² Moreover, the right of the S. Congregation of the Sacraments to grant such a permission was again confirmed through a declaration of the S. Consistorial Congregation given on March 14, 1910.³³ Hence there is no doubt that this faculty formerly belonged to the S. Congregation of the Sacraments in accordance with the general rule described above.

On January 12, 1921, however, the Congregation of Sacred Rites issued an Instruction,³⁴ in which it not only set forth the norms to be observed by a partially blind priest who has received the faculty of using the said votive Masses, but also declared that "a priest who is losing his sight, or whose sight is so weak, either accidentally or habitually, that he can read only very coarse type, may obtain from the supreme pontiff or from the Congregation of Sacred Rites,³⁵ a dispensation allowing him to celebrate ... either a votive Mass of the Blessed Virgin or the so-called Mass of the deceased."³⁶

Rather than admit that the two Congregations enjoy a concurrent competence in this regard, it seems more logical, in view of the fact that the Instruction of the Congregation of Sacred Rites was issued at a later date, that one should accept the declaration made in the Instruction as a transfer of a particular faculty from one Congregation to the other. In other words, it seems that the Instruction is a manifestation of the limitation of the competence of the S. Congregation of the Sacraments on the one hand, and an extension of

²² Cap. VII, Art. III, n. 10, reads: "Peculiariter vero ad earn (i.e., S. C. Sacramentorum) pertinent has concedere facultates... sub litt. g) "coeco aut coecutienti ut litare possit cum facultate legendi Missam Votivam B. M. Virginis aut pro defunctis."—AAS, I (1909), 87.

²⁸ S. C. Consist., 14 mart. 1910—AAS, II (1910), 649.

³³ S. R. C. *Instr.*, 12 ian. 1921—AAS, XIII (1921), 154-156.

³⁸ For practical purposes, it is to be noted that the Apostolic Delegates possess this same faculty. Cf. Vermeersch-Creusen, *Epitome*, I, Appendix I, faculty no. 34, f, g.

³⁸ Translation by Bouscaren, *Digest*, I, 370.

the power of the Congregation of Sacred Rites on the other. Moreover, the reason for the transfer of authority is rather obvious, especially when one realizes the intimate relationship between the two faculties. Whereas it was formerly necessary to petition the S. Congregation of the Sacraments for the indult allowing the celebration of the votive Masses, and the Congregation of Sacred Rites for the regulations to be observed in the use of the indult, the present arrangement obviates the evident inconvenience of having recourse to two separate Congregations.

C. The Congregation of the Council

No explicit restrictions are placed upon the jurisdiction of the S. Congregation of the Sacraments in favor of the S. Congregation of the Council according to the legislation of the Code. Nevertheless, there are many questions relative to the discipline of the sacraments which are reserved to this S. Congregation. Canon 250, § 1, states: "*Congregationi Concilii ea pars negotiorum est commissa, quae ad universam disciplinam cleri saecularis populiue Christiani refertur.*"³⁷

This is the general principle that regulates the extent of the competence of the S. Congregation of the Council. Thus, it no longer has any authority to legislate or render judgment upon questions directly relating to the sacraments. It will no longer issue any decrees regarding the validity of marriages or of Sacred Orders, nor will it in the future issue decrees on daily Communion or on the fast postulated in the reception of the Most Holy Eucharist. It does, however, belong to this S. Congregation to watch over the precepts of the Church and to grant, for sufficient reasons, dispensations from the same.³⁸ Furthermore, in the direct ex-

³⁷ The wording of canon 250, § 1, is taken almost verbatim from the Constitution *Sapienti consilio*, I, 4°, 1—AAS, I (1909), 11.

³⁸ After stating the general principle relating to the competency of the Sacred Congregation of the Council, Canon 250, §2, states: "Quamobrem ipsius est curare ut christianae vitae praecepta serventur, cum facultate opportuna ab eisdem fideles dispensandi;..." Cf. also Const. *Sapienti consilio*, I, 4°, 2—AAS, I (1909), 11.

ercise of its disciplinary authority over the clerics and the faithful concerning the various matters within its jurisdiction, the legislation of the S. Congregation of the Council often touches upon matters which are indirectly connected with the discipline of the sacraments.

Pope Pius X reserved to the S. Congregation of the Sacraments the authority to grant all necessary dispensations from the impediments and irregularities prior to the reception of Sacred Orders.³⁰ The Supreme Pontiff referred here to the dispensations to be granted to the *ordinandi*, but made no mention of the irregularities contracted by clerics already in Sacred Orders. Consequently, it was not long before the Consistorial Congregation was asked whether the faculty of conceding to clerics, *iam in sacro Presbyteratus ordine constitutis*, dispensations from irregularities, or from the title of sacred ordination, belongs to the S. Congregation of the Sacraments, or rather to the S. Congregation of the Council. The subsequent response given by the Consistorial Congregation on February 27, 1909, stated that such dispensations belonged to the S. Congregation of the Council.⁴⁰

Two years later the same Consistorial Congregation clarified the position of these two Congregations still further by stating that dispensations from irregularities arising *ex defectu* were to be granted by the S. Congregation of the Sacraments, while the S. Congregation of the Council was authorized to grant the dispensations from the irregularities arising *ex delicto**⁴¹

³⁸ Const. *Sapienti consilio*, I, 3°, 2—AAS, I (1909), 10.

⁴⁰ S. C. Consist., 27 febr. 1909: "Utrum facultas concedendi clericis, iam in sacro Presbyteratus ordine constitutis, dispensationem ab irregularitate, vel a titulo sacrae Ordinationis, spectet ad Congregationem Concilii?" The response then given was: "Spectare ad S. Congregationem Concilii,"—AAS, I (1909), 251.

⁴¹ The doubt as proposed read: "Utrum, vi decisionis huius S. Congregationis Consistorialis die 27 februarii 1909, facultas concedendi presbyteris dispensationem ab irregularitate, sive haec oriatur ex delicto, sive ex defectu, spectet ad S. Congregationem de Sacramentis, an potius ad S. Congregationem Concilii?" Pope Pius X, after having heard the secretaries of the two Congregations, called

It is to be noted that this decision of the Consistorial Congregation was given in reference to a question to which came the reply issued in February of 1909. Thus, whereas the 1909 decision stated that the S. Congregation of the Council was competent to grant dispensations to clerics already in Sacred Orders and from all irregularities, the reply of 1911, speaking also of the *facultas concedendi presbyteris dispensationem ab irregularitate*, restricted the S. Congregation of the Council to those solely which arose *ex delicto*. In view of the latter decision, the S. Congregation of the Sacraments is competent to dispense from all irregularities prior to the reception of Sacred Orders, and from the irregularities arising *ex defectu* for those already in the sacred priesthood. On the other hand, the S. Congregation of the Council is restricted to the concession of dispensations to priests who have contracted irregularities *ex delicto*.

The reason for this distinction is evident when one considers the primary distinction of the jurisdiction proper to each congregation. In the case of an irregularity contracted *ex delicto* by a priest, the discipline of the cleric himself is the primary issue. In regard to the reservations made in favor of the S. Congregation of the Sacraments, the discipline is more directly connected with the administration and reception of the sacraments.

The following considerations will also prove useful in the attempt to clarify the proper competence of these two Congregations, especially when the factors of a relationship are proximate.

Even though the S. Congregation of the Council is no longer competent, either in a disciplinary or in a judicial capacity, to deal with questions directly concerned with the sacraments or the Holy Sacrifice of the Mass, it continues to have authority over certain questions which are remotely

for the giving of the following reply: "Dispensationem ex defectu reservari ad S. Congregationem de Sacramentis, ex delicto autem ad S. Congregationem Concilii."—S. C. Consist., *Romana*, 28 nov. 1911—AAS, III (1911), 658.

connected with them, e.g., Mass stipends and stole fees.⁴² Moreover, even though the faculty of reducing the burden of Masses is reserved exclusively to the Supreme Pontiff, he concedes it to the Bishops through the S. Congregation of the Council.⁴³

In virtue of the fact that the S. Congregation of the Council is the duly authorized guardian over the precepts of the Church, it also belongs to this Congregation to confer the faculty of satisfying the precept of hearing Mass in a private oratory, but *de facto* this faculty is granted by the S. Congregation of the Sacraments together with the indult for the use of the private oratory.⁴⁴

One last distinction which should be clarified here concerns the laws pertaining to the various types of fasts. Briefly, it may be stated that all dispensations and questions relating to the Eucharistic fast fall within the competence of the S. Congregation of the Sacraments, except when there is question of the priest celebrant, in which case the Holy Office alone is competent to act. The S. Congregation of the Council is entrusted with the care of the general laws of fast and abstinence, however, and is authorized to dispense from the fast prescribed for the day preceding the consecration of a sacred building.⁴⁵

Article II

By Reason of the Persons Involved

According to the present arrangement of the Roman Curia, the authority of the S. Congregation of the Sacraments is without application whenever such matters as are normally within its jurisdiction concern either the religious or any member of the Oriental rite.

⁴² Canon 250, § 2.

⁴³ Cappello, *De Curia Romana*, I, 192.

⁴⁴ Monin, *De Curia Romana*, p. 258, footnote 2; cf. also, S. C. C., *Decretum*, 8 aug. 1911, ad III—AAS, III (1911), 391.

⁴⁵ *Normae Peculiares*, Cap. III, Art. IV, n. 4, c—AAS, I (1909), 94; cf. also, canon 1162, § 2.

A, *The Congregation for the Religious*⁴⁶

Before any consideration is given the restrictions placed on the S. Congregation of the Sacraments in regard to the religious, it will be helpful to note just who are to be included under the term of religious.

Both the Constitution *Sapienti consilio* and canon 251, § 1, of the Code clearly state that the S. Congregation for the Religious has exclusive authority over questions regarding: a) members, whether men or women, of religious orders and congregations who are professed with either solemn or simple vows; b) all who lead a community life, like religious, but who are not professed with the vows of religion (e.g., Sulpicians, Oratorians, Paulists, etc.); and c) all secular Third Orders (e.g., of the Franciscans, the Dominicans, the Carmelites, the Premonstratensians, the Hermits of St. Augustine, the Servites, etc.).⁴⁷ Although the members of Third Orders are not religious in the strict meaning of the term, they do have an approved rule and are placed under the government of a religious order.⁴⁸

In regard to the limitations of the S. Congregation of the Sacraments in matters pertaining to the religious, canon 251, § 3, referring to the S. Congregation for the Religious,

⁴⁶ This Congregation was the immediate successor of the "Congregatio Episcoporum et Regularium," which was the result of the union in 1601 of the "Episcoporum Congregatio" and the "Congregatio super consultationibus Episcoporum et aliorum Praelatorum." It was given its present title, "Sacra Congregatio Negotiis religiosorum sodalium praeposita," by Pope Pius X. In this work, however, the writer will refer to this Congregation simply as the S. Congregation for the Religious.

⁴⁷ "Haec sacra Congregatio iudicium sibi vindicat de iis tantum, quae ad sodales religiosos utriusque sexus turn solemnibus turn simplicibus votis adstrictos, et ad eos qui, quamvis sine votis, in communi tamen vitam agunt more religiosorum, itemque ad tertios ordine saeculares, in universum pertinent, sive res agatur inter religiosos ipsos, sive habita eorum ratione cum aliis."—Const. *Sapienti consilio*, I, 5°, 1—AAS, I (1909), n. 12; cf. also Martin, *The Roman Curia*, p. 54.

⁴⁸ Martin, *loc. cit.*

states: "*Huic denique Congregationi reservatur concessio dispensationum a iure commune pro sodalibus religiosis, firmo praescripto can. 2k7, § 5.*"⁴⁰ Thus the only Congregation authorized and qualified in law for the exercise of any jurisdiction in matters involving the religious is the Holy Office, that is, in the question of the Eucharistic fast to be observed by priests in preparation for the celebrating of Mass. Accordingly, no other Congregation is competent to grant religious a dispensation from the common law; such authority is reserved exclusively to the S. Congregation for the Religious. Whenever there is question of the conferring of Orders on religious of simple or solemn vows, the S. Congregation for the Religious grants all necessary dispensations.⁵⁰ This rule, however, does not extend to individual members of the secular Third Orders, as is clearly shown by the words of the Constitution *Sapienti consilio*, namely, "*haec sacra Congregatio iudicium sibi vindicat de iis tantum, quae ad Sodales Religiosos... et ad eos qui... in communi vitam agunt more religiosorum... itemque ad tertios ordines saeculares in universum pertinent.*"TM In the first and second places the law speaks of individual persons, but in the third it refers, not to tertiaries as individuals, but to the Third Orders as such. In other words, tertiaries are subject to the S. Congregation for the Religious only in so far as they are tertiaries; on the other hand, dispensations from general laws pertaining to the discipline of the Sacraments in favor of individual members of Third Orders are within the jurisdiction of the S. Congregation of the Sacraments.⁶²

49 Cf. also, Const. *Sapienti consilio*, I, 5°, 3—AAS, I (1909), 12.

50 "Itaque eidem Congregationi (de disciplina Sacramentorum) tribuuntur ea omnia, quae huc usque ab aliis Congregationibus, Tribunalibus, aut Officiis Romanae Curiae decerni concedique consueverant... ut dispensationes ordinandis concedendae, salvo iure Congregatione negotiis Religiosorum sodalium praepositae ad moderandam eorum ordinationem;..."—Const. *Sapienti consilio*, I, 3°, 2

AAS, I (1909), 10.

sii, 5°, 1—AAS, I (1909), 11, 12.

62 Cappello, *De Curia Romana*, I, 218, 219.

Furthermore, it must not be overlooked that reference is made here to dispensations from the *common law*, which points directly to the peculiar authority given to the S. Congregation for the Religious. It is obvious that the S. Congregation of the Sacraments should have no jurisdiction over the rules or the common law as enacted in the individual religious constitutions, but the common law of the Church universal binds the religious not as religious but as members of the Catholic Church.⁸³

Pope Pius X made only one exception to the general rule which stated that the concession of dispensations to religious from the common law was to be reserved to the S. Congregation for the Religious. The *Normae Peculiares* contain a list of faculties which were reserved exclusively to the S. Congregation of the Sacraments. Among these faculties is the one stating that the latter is authorized to excuse the faithful, and even the religious, from the law of the Eucharistic fast.⁸⁴ The Code remained silent in regard to the above cited exception, thereby restricting still more the authority of the S. Congregation of the Sacraments in matters pertaining to the religious. This particular silence on the matter also gave rise to a doubt which was submitted to the special Commission of Cardinals, who confirmed the further restriction of the Code.⁸⁵

It is to be stated, therefore, that the S. Congregation for the Religious is competent to dispense from the impediment of lack of requisite age, from irregularities, and from the

⁸³ Cappello, *De Curia Romana*, I, 218, 219.

⁸⁴ Cap. VII, Art. III, n. 10, 1): "Peculiariter vero ad eam pertinet has concedere facultates, quae ad omnem tollendam ambiguitatem heic recensetur, hoc est:...) eximendi fideles, ipsosque sodales religiosos, quoties opus sit, a lege ieiunii eucharistici."—AAS, I (1909), 86-87; Cappello, *De Curia Romana*, I, 207.

⁸⁵ Coetus S. R. E. Card., *Dubia*, dec 1822: "Utrum facultas concedendi sodalibus religiosis, utriusque sexus, dispensationem super lege ieiunii eucharistici ad Sacram Synaxim recipiendam, pertineat ad Sacram Congregationem de disciplina Sacramentorum an ad Sacram Congregationem de Religiosis."—Resp.: "Pertinere ad Sacram Congregationem de Religiosis."—AAS, XV (1923), 39.

requirements regulating the time and title for religious in their reception of Sacred Orders. Moreover, it concedes all dispensations regarding the time, the place, and the conditions for the celebration of Mass, the reception of Holy Communion and the reservation of the Blessed Sacrament.⁵⁶

The foregoing are all matters of the common law from which the S. Congregation for the Religious may dispense, but, if and when the religious wish to obtain any special permissions, faculties, or privileges in regard to these same matters, even they must approach the S. Congregation of the Sacraments; for it alone is competent to grant such favors.⁵⁷

B. The Congregation for the Oriental Church

Prior to the *Motu proprio Dei providentis* of Pope Benedict XV on May 1, 1917,⁵⁸ the S. Congregation for the Propagation of the Faith had been composed of two major sections; one for the care of the Church of the Latin rite within specifically defined territories, and the other for the administration of the affairs of the Oriental rite. This division must be given close consideration if one is to determine the exact meaning of the words which Pope Pius X used in defining the limits of the competence of each, at least during

««The following doubts were proposed to the special Commission of Cardinals: a) “Cuinam Congregationi competentia tribuenda sit quoad dispensationem ad Ordines sacros recipiendos a religiosis sive ex defectu aetatis sive ab irregularitate, sive quoad alias condiciones quae ad conferendos Ordines requiruntur, sive quod ad studia pertinet quae sacris ordinationibus sunt praemittenda.” b) “Cuinam Congregationi competentia tribuenda sit quoad religiosos dispensandos, qui propter morbum vel alia de causa a Missae celebratione physice vel moraliter impediuntur, veluti si pedibus consistere non valeant.” In response to both doubts the Commission of Cardinals declared that such matters belonged to the competence of the S. Congregation for the Religious.—AAS, I (1909), 251.

87 Monin, *op. cit.*, pp. 270-271; Cappello, *De Curia Romana*, I, 218-219; Wemz, *Ius Decretalium*, I, n. 158; A. Vermeersch, *De Religiosis Institutis et Personis Tractatus Canonico-Moralis* (2 vols., Vol. II, 4. ed., Brugis, 1909), n. 382.

63 AAS, IX (1917), 529-531.

the period from the Constitution *Sapienti consilio* (1908) until the time of the above cited Motu proprio "*Dei providentis*."

After having stated the particular territories which were placed under the jurisdiction of the S. Congregation for the Propagation of the Faith, Pope Pius X, in expressing his desire to preserve the unity of rule in matters touching faith, matrimony, and the discipline of the sacred rites, prescribed that all such matters received by this Congregation were to be handed over to the proper Congregation for solution.⁸⁰ There is no doubt that the S. Congregation for the Propagation of the Faith was limited in these matters in so far as they concerned the Latin rite, but Cappello, in his commentary on the Constitution *Sapienti consilio*, also placed these same restrictions on the special section in charge of Oriental affairs.⁶⁰

He based his solution upon the general declaration that all cases which in any way touched faith, matrimony, and the discipline of the sacred rites, when they were received by the S. Congregation for the Propagation of the Faith had to be referred to the competent Congregation. He made no distinction between the two separate parts of the one Congregation. Consequently, he concluded that all problems regarding matrimony (without prejudice to the rights of the Holy Office), even though involving Orientals, were to be remitted to the S. Congregation of the Sacraments for solution in a disciplinary way, and to the S. Roman Rota for judiciary solutions.⁶¹

⁸⁰ Const. *Sapienti consilio*, I, 6, 4: "Nihilominus, ut unitati regiminis consularur, volumus ut Congregatio de Propaganda Fide ad peculiaries alias Congregationes deferat quaecumque aut fidem attingunt, aut matrimonium aut sacrorum rituum disciplinam."—AAS, I (1909), 12.

⁶⁰ Cappello, *De Curia Romana*, I, p. 247, quest. VI.

⁶¹ Cf. M. W. Dziob, *The Sacred Congregation for the Oriental Church*, The Catholic University of America Canon Law Studies, No. 214 (Washington, D. C.: The Catholic University of America Press, 1945), pp. 66, 67.

At first glance one could incline to agree with the reasoning of Cappello, but immediately after the paragraphs in which the restrictions were imposed upon the S. Congregation for the Propagation of the Faith for the affairs of the Latin Church the Constitution itself stated that with the Congregation there was joined the S. Congregation "*pro negotiis rituum orientalium, cui integra moment quae huc usque servata sunt*"*⁶² Moreover, it is to be recalled that up to that time this same S. C. *pro negotiis ritus orientalis* still possessed the vast powers conferred upon it by Pope Pius IX. Therefore, it was to continue to care for all of the affairs of the Oriental Church and every member thereof.⁶³

This was also confirmed in the *Normae Peculiares*** wherein it was reaffirmed that this S. Congregation would retain its jurisdiction *ex integro*. Relying upon these texts, Monin expressly stated that the S. Congregation for the affairs of the Oriental rite supplanted all of the Congregations except the Holy Office whenever Orientals were concerned in any manner whatsoever, with reference also to the questions relating to matrimony.⁶⁵

In the light of what has been stated above, the writer firmly agrees with Monin in declaring that the S. Congrega-

⁶² Const. *Sapienti consilio*, I, 6°, 6—AAS, I (1909), 13.

It should be noted that here the Constitution used the plural "*rituum orientalium*" but the *Normae Peculia/res* retain the singular "*ritus orientalis*." The title according to Pope Pius IX's Constitution *Romani Pontificis* was in the singular form. Cf Dziob, *op. cit.*, p. 54, footnote 41.

⁶³ All authors agree that previous to the Constitution *Sapienti consilio* there were no restrictions of its competence by law. However, Monin did state that it had been the practice to submit questions of faith to the Holy Office, and matters requiring judicial procedure to the S. Roman Rota.—*De Curia Romana*, p. 284; cf. also, A. De Smet, *De Sponsalibus et Matrimonio Tractatus Canonici et Theologici* (Brugis: Car. Beyaert, 1909), pp. 433, 435.

«Cap. VII, Art. VI, n. 4—AAS, I (1909), 97.

es *Curia Romana*, pp. 285-287. Most authors also provided that cases of the internal forum as well as those requiring a judiciary procedure were to be submitted to the proper Tribunals. Cf. also De Smet, *loc. cit.*

tion *pro negotiis ritus orientalis* was untouched by the provisions of the Constitution *Sapienti consilio*, which limited the powers of the S. Congregation *pro negotiis ritus latini*. Therefore, although it may have been the practice for the former to remit matrimonial cases to the S. Congregation of the Sacraments, there was no express law giving rise to an obligation to do so, as Cappello had contended.

After Pope Benedict XV established the S. Congregation for the Oriental Church⁶⁶ as an independent Congregation, it continued to hold its jurisdiction over all business of every kind which pertained to the members, the discipline, or to the rites of the Oriental Church, with the sole exception of matters of faith which fell under the jurisdiction of the Holy Office. Furthermore, the same extensive competence that had been provided by Pope Benedict XV was incorporated into the Code (canon 257).⁶⁷ Consequently, the S. Congregation of the Sacraments is absolutely incompetent in matters touching any of the Oriental rites or members thereof, even if such matters be of a mixed nature. On the other hand, the S. Congregation for the Oriental Church is authorized to solve all cases or problems of a mixed nature, i.e., all questions concerned with the marriages between Catholics of the Latin rite and Catholics of the Oriental rite belong to the S. Congregation for the Oriental Church. The same is to be said in regard to the celebration of Mass by priests of the Oriental rite in churches of the Latin rite, or vice versa.⁶⁸

Article III

By Reason of the Territory Subjected

In the exposition regarding the proper competence of the other Congregations relative to the discipline of the sacraments, the nature of the matter treated and of the persons

⁶⁶ This Congregation was given the title "*Sacra Congregatio pro Ecclesia Orientali*" by Pope Benedict XV, the title it retains to this day.

⁶⁷ Dziob, *op. cit.*, pp. 83-85.

⁶⁸ Woywood, *A Practical Commentary on the Code of Canon Law*, I, n. 201.

involved was given primary attention; but the jurisdiction of the S. Congregation of the Sacraments was restricted also by reason of the territory subjected, in so far as there are certain territories within which this Congregation is without authority to exercise its ordinary powers in matters pertaining to the discipline of the sacraments. The S. Congregation for the Propagation of the Faith and the S. Congregation for the Oriental Church possess almost exclusive authority over the discipline of the Church and its subjects within certain circumscribed territories. The purpose of this article, therefore, is to point out: a) which territories are abstracted from the jurisdiction of the S. Congregation of the Sacraments; b) what matters have been withdrawn from this Congregation in these regions; and, lastly, c) to which S. Congregation are these particular matters entrusted.

A. The Congregation for the Propagation of the Faith

Prior to the Constitution *Sapienti consilio*, the portion of the world subject to the S. Congregation of the Propagation of the Faith was far greater than that which was subject to the other Congregations. Furthermore, it possessed the same authority over the countries within its jurisdiction that all the other Congregations together enjoyed for the countries subject to the common law.

Pope Pius X, recognizing the disproportionate burden resting on this Congregation, saw fit to restrict its territorial limits. He first declared that the jurisdiction of this Congregation would be circumscribed to those regions where the hierarchy was not yet established, and to such places where, even though the hierarchy had been established, it was still in its initial stage.⁹ Secondly, he withdrew many

« Const. *Sapienti consilio*, I, 6°, 1: "Sacrae huius Congregationis iurisdictio iis est circumscripta regionibus, ubi, sacra Hierarchia nondum constituta, status missionis perseverat. Verum, quia regiones nonnullae, etsi Hierarchia constituta, adhuc inchoatum aliquid praeseferunt, eas Congregation! de Propaganda Fide subiectas esse volumus."—AAS, I (1909), 12.

countries or portions of countries from the jurisdiction of the S. Congregation for the Propagation of the Faith and placed them under the authority of the other Congregations.⁷⁰

Despite the restrictions made by Pope Pius X, the mission fields, even today, extend over a vast portion of the world; easily more than half the extent of the earth, with approximately 1,135,000,000 persons, remains subject to the S. Congregation for the Propagation of the Faith.⁷¹ This is accounted for by the fact that many ecclesiastical provinces and dioceses still remain under the authority of this Congregation in the same manner as all Vicariates Apostolic and Prefectures.⁷²

At the present time the following territories are governed by this Congregation: all of Africa, with the exception of a few dioceses in Algeria and Tunis; Northern Albania, the Indonesian Archipelago, Australia, New Zealand, and Oceania; Japan, Korea, Formosa, China, India and Indo-China. Also to be included are all the Apostolic Prefectures and Vicariates in countries not officially classified as missionary territories, e.g., those in Bolivia, Brazil, Chile, Colombia, Venezuela, etc., as well as the Catholics in the Scandinavian countries, and many dioceses behind the so-called Iron Curtain.⁷³

It hardly seems necessary or even expedient that all of the territories subject to the S. Congregation for the Propagation of the Faith be listed here. Let it suffice to say that, all in all, there are almost two hundred regularly established

⁷⁰ Const. *Sapienti consilio*, I, 6*, 2—AAS, I (1909), 12.

⁷¹ Heston, *The Holy See at Work*, p. 92.

⁷² Const. *Sapienti consilio*, I, 6*, 3—AAS, *loc. cit.* The Consistorial Congregation was asked whether Vicariates which were suffragans to Provinces previously exempted from the S. Congregation for the Propagation of the Faith were to remain subject to the same Congregation. The reply, given on Nov. 12, 1908, was in the affirmative, but with the notation that such Vicariates should be erected into dioceses and placed under the common law, as soon as possible. Cf. AAS, I (1909), 148, 151; Monin, *De Curia Romana*, p. 276.

w Heston, *The Holy See at Work*, pp. 92, 93.

dioceses, and well over four hundred prefectures and vicariates, which are withdrawn from the jurisdiction of the S. Congregation of the Sacraments.⁷⁴

The competence of the S. Congregation for the Propagation of the Faith in regard to the matters over which it was authorized to act was clearly set forth by Pope Pius X. In order to provide for a greater unity of government, he declared that this Congregation was not, even within its own territories, to transact business which related to faith, or matrimony, or to the discipline of the sacred rites.⁷⁶

It was further stated that, whenever such questions were proposed by one subject to the S. Congregation for the Propagation of the Faith, this Congregation was to hand them over for solution to the proper Congregation, namely, matters of a doctrinal character were to be transmitted to the Holy Office; matters regarding matrimony were to be referred to the S. Congregation of the Sacraments; and questions relating to the sacred rites were to be transmitted to the Congregation of Sacred Rites according to its competence. The same regulations were adopted in canon 252, § 4, of the Code.⁷⁶

From this it is evident that the S. Congregation for the Propagation of the Faith is competent to exercise its authority, within the above stated territories, over all matters reserved to the S. Congregation of the Sacraments for the rest of the world⁷⁷ with one exception: all questions pertaining to matrimony, even in missionary territories, are to be referred to the S. Congregation of the Sacraments, but through the instrumentality of the S. Congregation for the

⁷⁴ Heston, *op. cit.*, p. 93.

⁷⁶ Const. *Sapienti consilio*, I, 6°, 4—AAS, I (1909), 12.

⁷⁸ "Haec autem Congregatio tenetur ad competentes Congregationes deferre negotia quae aut fidem attingunt, aut causas matrimoniales, aut generales normas circa sacrorum rituum disciplinam tradendas vel interpretandas." Cf. also, Const. *Sapienti consilio*, *loc. cit.*

⁷⁷ Without prejudice to the rights of the S. Congregation for the Oriental Church, according to the Motu proprio *Sancta Dei Ecclesia* of Pope Pius XI. Cf. letter B of this article.

Propagation of the Faith. Thus, even though the former is not restricted by any territorial limits in questions concerning matrimony, the discipline relating to the other six sacraments, to the time, to the place, and to the conditions prescribed for the celebration of Mass, to the reception of Holy Communion and the reservation of the Blessed Sacrament in missionary regions, belongs to the S. Congregation for the Propagation of the Faith.⁷⁸

B. The Congregation for the Oriental Church

In the preceding section it was noted that the government of a major portion of the world, i.e., the so-called mission territories, has been withdrawn from the common law of the Church and placed under the authority of the S. Congregation for the Propagation of the Faith. Despite this arrangement, however, Pope Pius XI (1922-1939) reiterated the declaration that serious inconveniences and difficulties still arise in some mission lands where all the available forces should be united for the preaching of the gospel to the infidels or for the opening of a way for the return of the dissidents. He also stated that the multiplicity of jurisdictions of two or more S. Congregations, an asset in regions where the Church is established in a firm and orderly manner, becomes a great hindrance to the unity of discipline so necessary for the struggle against the dangers threatening the faith in these regions.⁷⁸

In view of the above stated conditions Pope Pius XI de-

⁷⁸ There is one minor exception to be made here, even in respect to matrimony. The S. Consistorial Congregation was asked: "Utrum Congregatio de Propaganda, ob peculiararia adiuncta Moderatorum dioecesium et missionum in longinquis regionibus Indiarum, Tonkini, Sinarum, Japoniae, Australiae, Oceaniae aliisque huiusmodi, etiam in posterum concedere possit Episcopis, Vicariis apostolicis, Praefectis vel Moderatoribus missionum *formulas* facultatum, quarum plures matrimonium respiciunt." The response given was in the affirmative, but with the proviso that the S. C. of the Sacraments should be consulted. Cf. AAS, I (1909), 149, 151.

⁷⁹ Motu proprio *Sancta Dei Ecclesia*, 25 mart. 1938—AAS, XXX (1938), 155, 156.

dared that he was giving full and exclusive jurisdiction to the S. Congregation for the Oriental Church in those regions where by far the greater number of Christians were Catholics of the Oriental rite or dissidents thereof, and the Latins were comparatively few in number. The countries thus placed under the exclusive jurisdiction of this Congregation in 1938 according to the *Motu proprio Sancta Dei Ecclesia* were: Egypt and the Peninsula of Sinai, Eritrea and Northern Ethiopia, Southern Albania, Bulgaria, Cyprus, Greece, the Dodecanese Islands, Iran, Iraq, Lebanon, Palestine, Syria, Trans-jordan, Asiatic Turkey, and the part of Thrace that is subject to Turkey.⁸⁰

Consequently, in the above mentioned regions, the S. Congregation for the Oriental Church possesses, not only for the faithful of the Oriental rite but also for the faithful of the Latin rite, all of the faculties which the other S. Congregations possess for the faithful of the Latin rite outside of these territories, without prejudice to the rights of the Holy Office and without diminution of the reservations which had hitherto been made to the S. Congregation of the Sacraments in regard to these same territories.⁸¹ But, since these territories had previously belonged to the jurisdiction of the S. Congregation for the Propagation of the Faith, the S.

⁸⁰ The text of the *Motu proprio Sancta Dei Ecclesia*,—I, reads as follows: “Sacra Congregatio pro Ecclesia Orientali, cui praeest ipse Romanus Pontifex, plenam et exclusivam jurisdictionem habet in regionibus quae sequuntur: in Aegypto et in peninsula Sinaitica, in Erythraea et in parte septentrionali Aethiopiae, in Albania australi, Bulgaria, Cypro, Graecia, Dodecaneso, Iran, Iraq, Libano, Palestina, Syria, Transjordaniam, asiaticam Turearum republicam et in Tharcia Turearum ditioni subiecta.”—AAS, XXX (1938), 157, 158; Bouscaren, *Digest*, II, p. 111.

⁸¹ *Motu proprio Sancta Dei Ecclesia*,—II; “Quare in praefatis regionibus non solum pro fidelibus ritus orientalis, sed etiam pro fidelibus latini ritus... eadem Sacra Congregatio omnibus facultatibus potitur, quas aliae Congregationes pro fidelibus ritus latini extra illa territoria obtinent, incolumi tamen iure Congregationis S. Officii, ac integris manentibus quae huc usque reservata sunt S. Congregationi de disciplina Sacramentorum,...”—*Loc. cit.*

Congregation for the Oriental Church merely inherited the very same faculties which the former still possesses in accordance with the prescripts of canon 252 for the faithful of the Latin rite who are within its jurisdiction and live outside the regions named in the *Motu proprio*.⁸²

In the same manner, since the S. Congregation of the Sacraments did and still does have exclusive jurisdiction over all matrimonial cases (with the exception of the ones reserved to the Holy Office) in regions subject to the S. Congregation for the Propagation of the Faith, it retains the very same authority in regard to those who have been placed under the jurisdiction of the S. Congregation for the Oriental Church, by reason of the *Motu proprio Sancta Dei Ecclesia*. This exception must be taken into consideration, even though it was stated in Article I of the *Motu proprio* that this Congregation was given *full and exclusive* jurisdiction within these territories. Nevertheless, with the exception of questions concerning matrimony, everything else designated under the jurisdiction of the S. Congregation of the Sacraments in canon 249 belongs to the S. Congregation for the Oriental Church for the faithful of the Latin rite in territories under its "full and exclusive" jurisdiction.

Let it be stated again that this S. Congregation is not in any way whatsoever restricted by territorial limitations in matters pertaining to matrimony. Both the S. Congregation for the Propagation of the Faith and the S. Congregation for the Oriental Church may receive such cases from their subjects, but they must refer them to the S. Congregation of the Sacraments for solution. On the other hand, the latter has no faculties to handle cases of any kind whenever the faithful of the Oriental rite are involved.

Article IV

By Reason of the Procedure Followed

It is by divine institution that the pope is the supreme legislator, judge and administrator of the universal Church.

⁸² Dziob, *The Sacred Congregation for the Oriental Church*, p. 132.

He has supreme and full jurisdiction in all phases of activity within the Church, whether they concern the legislative, administrative or the judicial order.⁸³ Furthermore, all authors admit that there is no distinction of jurisdiction in the Supreme Pontiff himself, but if the various organs through which the Roman Pontiff is accustomed to exercise his jurisdiction are considered, there is an evident distinction between the exercise of judicial and administrative jurisdiction.⁸⁴ It is this distinction which one must consider in order to determine the proper competence of the Sacred Roman Rota relative to the various matters which concern the discipline touching the sacraments.

Since it is also the manner of procedure to be used rather than the nature of the matter concerned that determines which questions are to be reserved to the Sacred Penitentiary, the second section of this article will treat of the disciplinary matters connected with the administration of the sacraments which are to be treated in the internal forum.

A, The Sacred Roman Rota

In order that one may understand clearly the true extent and nature of the factors of relationship between the S. Congregation of the Sacraments and the Sacred Roman Rota it is necessary to have a clear notion of the distinction between administrative and judicial jurisdiction as it exists in relation to the exercise of the supreme jurisdiction inherent in the Roman Pontiff. Both of these departments exercise true jurisdiction in the external forum and in the name of the Supreme Pontiff. The exercise of judicial jurisdiction is reserved entirely to the Tribunals, while the exercise of extrajudicial or administrative jurisdiction properly belongs to the Sacred Congregations.⁸⁶

⁸³ Cf. canons 218, 219.

⁸⁴ Ojetti, *De Romana Curia*, p. 23; Monin, *De Curia Romana*, p. 176.

⁸⁶ The general rule states that the Sacred Congregations are not to treat judicial cases. Nevertheless, there are two exceptions expressly stated in the Code: 1) causes of heresy and other matters pertaining judicially to faith are judged by the Holy Office (Can.

Although both the Constitution *Sapienti consilio* and the Code make this distinction, neither gives a definite, fixed and clear norm on which it is based.⁸⁰ Nevertheless, this is a matter of practical importance if it is to be determined in every instance which cases are to be classified under the administrative jurisdiction of the S. Congregation of the Sacraments, and which fall under the judicial jurisdiction of the Sacred Roman Rota. The solution lies in determining which cases require the judiciary order (*ordinem iudicarium*) and which may be treated in an administrative or disciplinary manner (*in linea disciplinari*). For a clearer notion of the judicial and administrative powers, as such, it is useful to review the following considerations.

Both the Tribunals and the S. Congregations are executors of the law with papal authority, but they differ in the same manner as the judge and the public administrator.⁸⁷ The former executes the law by judging (*iudicando*) and the latter performs his duties by doing or acting (*faciendo seu agendo*). The end sought by the judge is the observance of the law; the end sought by the public administrator is the public welfare or utility. The judge settles conflicts which arise between citizens in the exercise of a disputed right;

247, § 2); 2) causes of beatification and canonization, even in so far as they must be handled in the judicial forum, properly belong to the Congregation of Sacred Rites, which has its own tribunal to judge such cases. Cf. canon 253, §3; cf. also Wenz-Vidal, *lus Canonicum*, II, 484.

⁸⁰ The Constitution *Sapienti consilio*, II, 2°, states: "... non solum iubemus 'per sacras Congregationes non amplius recipi nec agnosci causas contentiosas, tam civiles tam criminales, ordinem iudicarium cum processu et probationibus requirentes/ ... sed praeterea decernimus, ut causae omnes contentiosae non maiores, quae in Romana Curia aguntur, in posterum devolvantur ad Sacrae Romanae Rotae tribunal...." Cf. AAS, I (1909), 15. Canon 259 reads: "Causae ordinem iudicarium requirentes aguntur apud Sacram Romanam Rotam et apud Supremum Tribunal Signaturae Apostolicae intra fines et secundum normas traditas in can. 1598-1605, salvo iure Congregationis S. Officii et Congregationis Sacrorum Rituum in causas sibi proprias."

⁸⁷ Ojetti, *De Romana Curia*, pp. 20-23; Cappello, *De Curia Romana*, I, 48-49; Monin, *De Curia Romana*, p. 177.

the public administrator removes obstacles which may arise in the observance of laws, that is, either he prevents the obstacles from arising through the use of preventive remedies, or he promotes the activity of the citizens in one way or another. Both effect the execution of the laws and the common good of the citizens: the one by protecting the rights of the people, the other by safeguarding their welfare or utility.⁸⁸

It should also be recalled here that the ordinary of a diocese is both the judge and the administrator of his diocese, but the superiors of a bishop as a judge are the Metropolitan and the Sacred Tribunals of the Roman Curia, whereas the Sacred Congregations alone are the superiors of a bishop as an administrator.⁸⁹

In regard to ecclesiastical cases the norm for judging whether specific questions are to be handled in a judiciary manner, and therefore referred to the Tribunals, or whether they are to be settled in an administrative way, and therefore to be subjected to the jurisdiction of the Sacred Congregations, is resolved into two different opinions.

Relying on the above made distinction and comparison, Ojetti (1862-1932) did not hesitate to conclude that causes which concern some right (*aliquod ins*) are to be referred to the judge, and therefore to the bishop or to the tribunal, and that those which touch merely the welfare (*interesse*) belong to the administrator, and therefore are to be submitted to and decided by either the bishop or the Sacred Congregations. He therefore concluded that the jurisdiction of the Sacred Congregations is differentiated from the jurisdiction of the Tribunals principally by reason of the nature of the matters involved.⁹⁰ In other words, Ojetti stated that all cases which concern some right are by nature judicial, and must always be treated in a judicial manner *{via iudi-*

⁸⁸ Ojetti, *op. cit.*, p. 20; Monin, *op. cit.*, p. 178; Cappello, *De Romana curia*, I, 49.

⁸⁹ Ojetti, *op. cit.*, p. 23; Monin, *op. cit.*, p. 179.

⁹⁰ Ojetti, *loc. cit.*; Monin, *op. cit.*, pp. 179, 181.

ciaria) by the Tribunals, while causes which pertain to the mere welfare are administrative by their nature, and must always be treated in a disciplinary or administrative way (*in linea disciplinari*) by the Sacred Congregations.

Cappello, however, absolutely disagrees with Ojetti's opinion that all cases involving a right must always be submitted to a judicial trial.⁹¹ At the same time he proposes an altogether different criterion in order to distinguish the jurisdiction of the Sacred Congregations from the jurisdiction of the Tribunals, namely, that the quality or the manner of procedure, and not the nature of the matters involved, must be given primary consideration, so that the matters which must be treated in a strictly judicial manner (*in via iudiciaria seu contentiosa*) are to be referred to the Tribunals, and those which are to be handled in an administrative disciplinary manner (*in linea disciplinari*) must be submitted to the Sacred Congregations.⁹²

The practical difference between the two opinions is evident. Both Ojetti and Cappello agree that matters which concern only the welfare (*quae merum quoddam interesse attingunt*) do not admit a strictly judicial process, and are therefore to be sent exclusively to the Sacred Congregations. Both admit also that all cases regarding a right can be sent to the Tribunals, since all cases of this kind do admit a strictly judicial process. Cappello, however, absolutely disagrees with Ojetti when the latter contends that all cases concerning a right must be referred to the Tribunals, for he states that there are times when it is very difficult, in fact impossible, to solve an administrative affair without deciding at the same time some judicial controversy closely associated with it.⁹³

The writer agrees with Cappello in so far as it definitely

91 Referring to the opinion of Ojetti, Cappello says: "Haec sententia, salva debita reverentia, nobis nullatenus arridet."—*De Curia Romana*, I, 48.

92 Cappello, *De Curia Romana*, I, 49-50; Monin, *op. cit.*, p. 181.

93 Cappello, *De Curia Romana*, I, 49; Ojetti, *De Romana Curia*, pp. 22-23; Monin, *op. cit.*, p. 182.

seems that Ojetti went much too far in restricting the business of the Sacred Congregations solely to matters which do not concern a right, for it does not seem repugnant that the Sacred Congregations could handle such cases, provided, of course, that they are treated in an administrative, disciplinary manner. *De facto*, there are matters regarding controverted rights which can be decided sometimes in an administrative manner and sometimes in a strictly judicial manner. Consequently, such matters may be sent either to the Sacred Congregations or to the Tribunals for solution.⁹⁴

Although the writer supports Cappello in that the ultimate norm for deciding the competent department depends upon which manner of procedure is to be used, it must be noted that still another question immediately arises, namely: what determines the manner of procedure to be followed in specific cases? This question is not answered directly either in the Constitution *Sapienti consilio* or in the Code.

First of all, the above cited Constitution does not say that every cause which concerns a right must be referred to the Tribunals, but simply states that contentious cases requiring the judiciary order must be sent to the Sacred Rota.⁹⁵ It need not necessarily be concluded from this that every case involving a right must be classified as a contentious case requiring a judicial process.⁹⁶

Towards the end of the same Constitution the following rule appears: all sentences, whether of favor or of justice, need papal approbation, with the exception of: (a) those for which special faculties have been granted to the respective moderators of the Offices, Tribunals and Sacred Congrega-

⁹⁴ Cappello, *De Curia Romana*, I, 51, 53; Monin, *De Curia Romana*, pp. 182- 183; Wemz-Vidal, *Ius Canonicum*, II, 487. Cf. *infra*, pp. 89-91.

⁹⁵ Const. *Sapienti consilio*, II, 2°—AAS, I (1909), 15.

⁹⁶ Cappello states that the Const. *Sapienti consilio* (II, 2°) “decernit non causas singulas quae ius attingant, sed tantum *contentiosas* esse deferendas ad Sacram Rotam; iamvero praeter causas contentiosas dantur et aliae ius respicientes, pro quibus intervenire potest iurisdictio voluntaria.”—*De Curia Romana*, I, 51.

tions, and (b) the sentences of the Sacred Rota and of the Apostolic Signatura.⁹⁷ This rule clearly shows that the Sacred Congregations are not limited to the concession of favors only, but that they also give sentences of justice, sentences which regard not merely the welfare but also directly and immediately touch the right itself. It is evident, therefore, that not only strictly administrative matters, but also affairs concerning rights can be referred to the Sacred Congregations, where they can be decided in an administrative manner, i.e., *ordine iudiciario non servato*.TM

The *Normae Peculiares* give definite evidence that there are some cases which may be settled either by the Sacred Congregations or by the Tribunals depending upon the manner of procedure to be used in the treatment of them.⁹⁹ There is question here of cases which could have been presented to the Tribunals, therefore, cases in which a right is involved, but which have actually been introduced in one or the other of the Sacred Congregations to be treated in an administrative way. The rule states that once the administrative manner of procedure has been accepted, or at least has not been refused by the parties concerned, it is no longer permitted to institute a strictly judicial trial concerning this same case.

⁹⁷ Const. *Sapienti consilio*, in fine: "Praeterea, sententiae quaevis, sive gratiae via, sive iustitiae, pontificia approbatione indigent, exceptis iis pro quibus eorundem Officiorum, Tribunalium et Congregationum Moderatoribus speciales facultates tributae sint, exceptisque semper sententiis tribunalis Sacrae Rotae et Signaturae Apostolicae de ipsarum competentia latis."—AAS, I (1909), 18.

⁹⁸ Cappello, *De Curia Romana*, I, 52-53; cf. also, Wemz-Vidal, *Ius Canonicum*, II, 487.

⁹⁹ Cap. III, Art. II, n. 10: "Questione semel instituta penes Congregationem aliquam administrationis ac disciplinae tramite, et a partibus admisso aut saltem non recusato hoc agendi modo; his iam non licet eadem de causa actionem stricte iudicalem instituere.

Eoque minus, deliberata re atque ad sententiam deducta, fas erit hoc agere.

Est nihilominus Congregationi sacrae facultas, quovis in stadio quaestionis, ad iudices ordinarios causam deferre."—AAS, I (1909), 65.

Canon 16 of the *Lex Propria Sacrae Romanae Rotae et Signaturae Apostolicae*TM states that an appeal or recourse to the Sacred Rota cannot be admitted against the dispositions of ordinaries if they are not given in the form of a judicial sentence.¹⁰¹ Again, the basis for the distinction between the exercise of judicial and administrative jurisdiction is not the nature of the case, but rather the procedural form used by the respective authority.¹⁰²

Both the Constitution *Sapienti consilio* and canon 249, § 3, of the Code, in speaking of questions concerning the validity of marriage and sacred ordination and other matters concerning the discipline touching the Sacraments, state that they juridically belong to the Sacred Congregation of the Sacraments, but it is immediately added: "*si tamen Congregatio iudicaverit huiusmodi quaestiones iudicario ordine servato esse tractandas, tunc eas ad Sacrae Romanae Rotae tribunal remittat*"¹⁰³ Concerning this, Cappello states that whenever the Constitution speaks of the cases to be referred to the Roman Rota it always makes mention of those cases which are to be treated in a judicial manner, i.e., *iudicario ordine servato* or *summo iure tractandis*, or it determines the manner in which they are not to be treated by the Sacred Congregations; never does it state that cases involving a right are not to be decided in a purely administrative manner.¹⁰⁴

Most authors, including Cappello, contend that no perfect distinction can be outlined between these two powers from a consideration of the organs through which they are exer-

¹⁰⁰ Issued in conjunction with the Constitution *Sapienti consilio* (hereafter cited *Lex Propria*). Cf. AAS, I (1909), 20-36.

¹⁰¹ "Contra dispositiones Ordinariorum, quae non sint sententiae forma iudiciali latae, non datur appellatio seu recursus ad Sacram Rotam; sed earum cognitio sacris Congregationibus reservatur." —AAS, I (1909), 24.

¹⁰² Cappello, *De Curia Romana*, I, 52.

¹⁰³ Const. *Sapienti consilio*, I, 3*, 8—AAS, I (1909), 11.

¹⁰⁴ *Loe. cit.*

cised,¹⁰⁸ but certainly it seems that there should be some criterion which the S. Congregations use for determining whether individual cases should be remitted to the S. Rota or retained and settled in an administrative fashion. In the same manner, whenever a case is sent to the S. Rota, the Tribunal must refer it to the proper Congregation if it concerns a question which, according to its judgment, should be treated in an administrative manner, i.e., one in which it sees itself to be incompetent. The same may be said also in regard to the special Commission of Cardinals when they are called upon for the solution of doubts of competence, for they, too, should have some criterion more discriminating and fundamental for settling doubts arising between the S. Congregations and the Tribunal of the S. Rota.

In one of his recent works, Cappello proposes a three-fold criterion to be considered in the determination of the proper procedure to be used in the solution of specific cases, namely, the nature of the matter itself, the prescripts of law, and finally the will of the litigants themselves.¹⁰⁹ Although, for the most part, such criteria may serve to govern the manner of procedure in ordinary controversies, it does not seem that the S. Congregation of the Sacraments would be bound by such norms in its treatment of cases concerning the validity of a marriage or an ordination, for this Congregation has been given a peculiar competence in these matters. Canon 249, § 3, states that, if in the solution of marriage cases a more thorough discussion or investigation is required, the S. Congregation should submit the cases to the proper tribunal. The Constitution *Sapienti consilio*, how-

¹⁰⁸Maroto, *Institutiones*, I, n. 863; Wernz- Vidal, *Ius Canonicum*, II, 487; Cappello, *De Curia Romana*, I, pp. 50 ff.; Roberti, *De Processibus* (2 vols., Romae: apud Aedes Facultatis Iuridicae ad S. Appollinaris, 1926), I, 65.

¹⁰⁹"Utrum controversia dirimenda sit ordine indicaria an via administrativa, pendet ex ipsa rei natura, vel ex legis praescripto, vel demum ex voluntate litigantium." Cf. *Praxis Processualis ad Normas Codicis et Peculiarium S. Sedis Instructionum* (Taurini—Romae: Marietti, 1940), p. 2.

ever, stated that, if the S. Congregation judged that certain questions of this kind should be treated in a judiciary manner, they should be remitted to the S. Rota.¹⁰⁷ The reason for this seems to be based upon the fact that a more rigid examination of the matter in question could be best conducted by means of a judicial process, which is outside the scope of the S. Congregation of the Sacraments. In this regard, Wernz-Vidal state that in many cases the manner of procedure seems to depend upon the prudent judgment of the officials of the S. Congregation.¹⁰⁸ This seems both reasonable and quite feasible, since there is no express norm other than the fact that the S. Congregation should remit the case to the proper tribunal whenever it feels that a more thorough investigation should be made in the judiciary order.¹⁰⁰

It is not to be denied, however, that there are questions which, by their nature or by a prescript of the law, require the solemnities of law and thus must be handled always in a strictly judicial manner by the S. Rota. Of special importance here is the fact that all causes which are sent to the Roman Curia because of appeal from the sentence of ordinaries or their tribunals must be directed to the proper tribunal in Rome.¹¹⁰ Furthermore, the Instruction *Provida* Art. 1, §§ 1, 3)¹¹¹ states: Matrimonial cases which concern the bond cannot be decided by agreement of the parties or of the husband and wife, nor by committing the decision to arbiters, nor by an oath decisive of the controversy; but only

¹⁰⁷l, 3°, 3—AAS, I (1909), 11.

¹⁰⁸*Ius Canonicum*, II, 487, III.

¹⁰⁹The S. C. Consist. (*In Romana*, 28 ian. 1909), in reply to a question concerning the remission of causes by the S. Congregations to the S. Rota, stated that all questions concerning the validity of marriage which require a judicial process must be submitted to the S. Rota. Cf. AAS, I (1909), 211.

¹¹⁰Wernz-Vidal, *Ius Canonicum*, II, 487, II.

¹¹¹*Instructio servanda a tribunalibus dioecesanis in pertractandis causis de nullitate matrimoniorum*, S. C. Sacr., 15 augusti 1936—AAS, XXVIII (1936), 314 ff.; Cf. also, Bouscaren, *Digest*, II', 471-530.

by public authority through the judgment of a competent tribunal, or by the ordinary in the cases which admit of an exceptional procedure.”¹¹² Consequently, whatever appeals may be made with reference to sentences given in such cases are to be made to the S. Rota, not to the S. Congregation of the Sacraments.

B. The Sacred Penitentiary

Pope Pius X restored the Sacred Penitentiary to the same status it enjoyed when it was originally instituted. During the intervening centuries this Tribunal had received far-reaching powers, which were exercised in the external forum as well as the internal forum. Included in these special powers was the faculty of dispensing from matrimonial impediments, even those which were public.¹¹³

The Constitution *Sapienti consilio*, however, stated that the authority of the Sacred Penitentiary was once again being limited entirely to those things which regarded the *forum internum*, whether sacramental or non-sacramental.¹¹⁴ The Code retains the same legislation by reaffirming that this Tribunal has jurisdiction for the internal forum only. It is authorized to grant favors for the internal forum exclusively, such as the absolutions, dispensations, commuta-

¹¹² Translation according to Bouscaren, *op. cit.*, II, 473. Even though many of the formalities of the regular process are omitted in some cases, especially in those which are mentioned in canon 1990, they remain judicial in character. The mere abstraction of such formalities does not transfer them from the category of judicial causes to that of administrative cases. Cf. the authoritative declaration of the Pontifical Code Commission of Dec. 6, 1943. The Commission was asked: “II. Utrum processus de quo in canone 1990 sit ordinis iudicialis, an administrativi.” The reply given was: “Affirmative ad primam partem, negative ad secundam.”—AAS, XXXVI (1944), 94.

¹¹³ Cf. *supra*, pp. 9, 20-21.

¹¹⁴ II, 1—AAS, I (1909), 9.

tions, faculties, etc.¹¹⁵ Therefore, all dispensations from irregularities and matrimonial impediments in the internal forum are to be sought from the Sacred Penitentiary, not from the S. Congregation of the Sacraments.

The Sacred Penitentiary is often referred to as the "*Congregatio conscientiae*" in so far as it treats the same matters in the internal forum which are reserved to the exclusive jurisdiction of the S. Congregations in the external forum.¹¹⁶

Matters of the internal forum may be either sacramental, as arising in the tribunal of penance, or non-sacramental. Certainly, there is no doubting the fact that all sacramental cases submitted to the Holy See must be referred to the Sacred Penitentiary, always with an observance of the prescribed precautions for the due safeguarding of the seal of confession. However, there are also extra-sacramental matters which should be handled in the internal forum. Such would be the cases wherein there is reference to irregularities and impediments which are occult by nature and in fact. In regard to impediments which by nature are public but in fact are occult, it should be noted that dispensations are usually granted not for the internal forum only, but that such dispensations may be granted in the internal forum when it is not likely that the irregularities or impediments will become known to more than a very few.¹¹⁷

In matrimonial cases it may happen that two impediments occur, one occult, the other public. In this contingency, ap-

¹¹⁶ Canon 258, § 1, reads: "Huius tribunalis iurisdictio coarctatur ad ea quae forum internum, etiam non sacramentale, respiciunt; quare hoc tribunal pro solo foro interno gratias largitur, absolutiones, dispensationes, commutationes, sanationes, condonationes; excutit praeterea quaestiones conscientiae easque dirimit."

lie Monin, *De Curia Romana*, p. 322.

¹¹⁷ Cappello, *De Sacramentis*, V, n. 227; Bouscaren-Ellis, *Canon Law: A Text and Commentary* (Milwaukee: The Bruce Publishing Company, 1949), p. 435; Monin, *De Curia Romana*, p. 323; P. Gasparri, *Tractatus Canonice de Matrimonio (editio nova ad mentem Codicis L. C., 2 vols., Romae: Typis Polyglottis Vaticanis, 1932), I, nn. 210, 289.*

plication should be made to the Sacred Penitentiary for a dispensation from the occult impediment with mention that a petition has been or is to be sent to the S. Congregation of the Sacraments (or one of the other Congregations if it so happens that they are competent in the case involved) for a dispensation from the public impediment, all mention of the names of the persons being omitted. On the other hand, there should not be any mention of the occult impediment in the petition that is sent to the S. Congregation of the Sacraments.¹¹⁸

¹¹⁸ Bouscaren, *loc. tit.*; Cappello, *loc. tit.*

CHAPTER V

EXCLUSIVE COMPETENCE

Article I

General Principle

The chapter of the Code which treats of the Roman Curia indicates only in broad outline the work that is entrusted to the S. Congregation of the Sacraments. Nevertheless, the fundamental principle declaring the competence of this Congregation is clearly stated in the first part of canon 249, § 1:

*Congregationi de disciplina Sacramentorum
praeposita est universa legislatio circa disciplinam
septem Sacramentorum....*

It is evident from this that the Code simply confirmed¹ the original status of this Congregation as the lawfully designated and official guardian of the entire body of disciplinary legislation relating to the confection, the administration and the reception of the seven sacraments.

One must keep in mind, however, that this is a very general and broad statement and therefore one which admits exceptions, as is immediately pointed out in the second part of the same paragraph:

*... incolumi iure Congregationis S. Officii circa
ea quae in can. 247 statuta sunt, et Sacrorum Rituum
Congregationis circa ritus et caeremonias quae
in Sacramentis conficiendis, ministrandis et reci-
piendis servari debent.*

The exceptions referred to here, as well as all others, were pointed out and clarified in the preceding chapter, wherein the competence of this Congregation was discussed from a negative point of view. Consequently, it is only when one prescind from these exceptions that one can properly state, and without prejudice to the rights of the other Congrega-

¹ This is almost an exact repetition of the word order found in the Constitution *Sapienti consilio*, I, 3°, 1—AAS, I (1909), 10.

tions, that the S. Congregation of the Sacraments is entrusted with the care and enforcement of the *entire* body of the disciplinary legislation relating to the sacraments.

Furthermore, it would be almost useless for one to attempt to provide an exhaustive and detailed account of all the particular types of questions which might possibly be included within the administrative scope of this Congregation. For in spite of the many restrictions placed on its jurisdiction, it continues to embrace a very extensive field of work. Hence, it now remains simply to determine as far as possible and to designate in positive terms which matters concur to form the field of labor for the S. Congregation of the Sacraments.

Paragraph two of canon 249 asserts in a positive manner that it pertains to the S. Congregation of the Sacraments to decide all questions and to grant whatever concessions are customarily granted in regard to the discipline of the sacraments and the celebration of the Holy Sacrifice of the Mass.

Can. 249, § 2: *Ad illam itaque spectant ea omnia, quae decerni concedique solent turn in disciplina matrimonii, turn in disciplina aliorum Sacramentorum necnon in celebratione Sacrificii Eucharistid, Us tantum exceptis quae aliis Congregationibus reservata sunt.*

The terminology here used is again very general and most extensive. In fact it merely affirms that, since this Congregation is the lawful guardian of the canons of the Code dealing with the discipline of the sacraments, all questions concerning the practical application of these canons are to be submitted to it for solution. Also, whenever dispensations or any other special favors, faculties or indults are sought in regard to matters pertaining to the discipline of the sacraments, it is to this Congregation that the petitions should be referred.

In the subsequent treatment of these particular matters the writer prescinds from a consideration of the law relating to them, except when it seems useful or necessary for the proper understanding of the competence of the Congrega-

tion. The same is to be said also in regard to the general and special disciplinary regulations which the Congregation itself is bound to observe in conducting its business.

Article II

Ad illam... spectant ea omnia, quae decemi concedique soient...in disciplina matrimonii

Although the disciplinary legislation relating to the administration and the reception of the sacrament of matrimony comprises a comparatively small number of the canons of the Code, it is a well known fact that these few canons are the source of numerous problems which demand the direct attention of the Holy See, and, more specifically, of the S. Congregation of the Sacraments.

The Constitution *Sapienti consUio* made explicit mention of some of the particular aspects of matrimonial discipline which are treated by this Congregation. The Constitution, I, 3°, 2, reads:

Itaque eidem Congregationi tribuuntur ea omnia, quae decemi concedique consueverant.. .in disciplina matrimonii, uti dispensationes in foro externo, ... sanationes in radice, dispensatio super rato, separatio coniugum, natalium restitutio seu légitimâtTM prolis.2

Moreover the same Constitution and canon 249, § 3, also specify that there are some questions concerning the validity of the marriage bond itself, which are to be submitted to this Congregation for solution.

A. Matrimonial Dispensations

In regard to matrimonial dispensations it is to be recalled that the Roman Pontiff as the supreme legislator is able to dispense from all purely ecclesiastical laws, and hence also from all matrimonial impediments arising from ecclesiastical legislation. Nevertheless, it has been intimated repeatedly in passing that the exercise of the dispensatory power of the pope is discharged in the natural course of events

²AAS, I (1909), 10.

through the agency of the various S. Congregations, according to the faculties conceded to each.

There is no doubt that the S. Congregation of the Sacraments is the principal organ of the Roman Curia through which matrimonial dispensations are granted today. For canon 249, § 2, declares that the S. Congregation of the Sacraments is authorized to grant dispensations in the external forum from all impediments which admit of customary relaxation, with the exception of those which are reserved to the other Congregations.³

It is said that this Congregation is competent to dispense from all matrimonial impediments which admit of customary relaxation. Accordingly, the following observations should prove helpful in order that one may realize the authority of the Congregation in this regard.

First of all, there is no question here of the impediments of divine origin, from which the Supreme Pontiff himself cannot dispense, e.g., antecedent and perpetual impotence, *ligamen* (i.e., arising from a *matrimonium ratum et consummatum*), and consanguinity in any degree of the direct line. Moreover, the Church never dispenses from any impediment concerning which there is a controversy whether it is of divine or ecclesiastical origin, e.g., consanguinity in the first degree of the collateral line.

Again, there are other impediments of purely ecclesiastical origin from which the Church practically never dispenses, namely, the episcopate, the priesthood, and affinity in the direct line once the marriage which gave rise to it has been consummated, or from which the Church is accustomed not to dispense, such as the sacred orders of the diaconate and sub-diaconate, and from solemn religious profession. This

³ These exceptions, as pointed out in the preceding chapter, are made in favor of the Holy Office (whenever one of the parties concerned is a non-Catholic), of the S. Congregation for the Oriental Church (whenever even one of the parties is a member of an Oriental rite), and of the S. Congregation for the Propagation of the Faith in virtue of the special faculties granted to it for certain mission territories.

is evident from the constant practice of the Church and from the fact that these impediments are expressly excluded from the special faculties granted to the Apostolic Delegates and to local ordinaries?

Besides the above mentioned impediments from which the Church regularly does not dispense, there are other impediments from which the Church ordinarily does not dispense for the purpose of allowing persons to contract marriage. Among these might be mentioned the impediments of age and abduction. Of interest in this regard is the fact that the Church dispenses from these and others more readily in order to procure the convalidation of a marriage than it does in order to allow persons to contract marriage?

Actually, however, despite the rarity of the occasions on which the Church relaxes the law in regard to some of the impediments forbidding marriage, it still remains that the ordinary channel through which matrimonial dispensations are granted is the S. Congregation of the Sacraments. It is to this S. Congregation that one must have recourse whenever a dispensation is sought from an impediment the relaxation of which is reserved to the Holy See.

Canon 1040 expressly states that the Roman Pontiff alone can abolish or modify the ecclesiastical impediments of marriage, and likewise that no one else can dispense from these laws except in so far as this power is conceded to him either in the common law or by special indult from the Holy See.

In this regard, it is well known that the Code gives very extensive faculties to ordinaries, pastors, confessors and other priests, which enable them to dispense on extraordinary occasions? Furthermore, in virtue of the quinquennial faculties granted to the local ordinaries and of the more

4 Cf. Vermeersch-Creusen, *Epitome*, I, Appendices, I, III. It may be recalled that the impediments of priestly orders and of affinity as specifically qualified are also excluded from the extraordinary faculties granted by law in canons 1043-1045.

6 Cappello, *De Sacramentis*, V, nn. 338, 474.

«Canons 81; 1043-1045; 1098; 1313.

extensive faculties of the Apostolic Delegates⁷ it will be very seldom that recourse to the S. Congregation itself will be necessary.

B. Radical Sanations

Besides the simple concession of dispensations from the matrimonial impediments, it is also within the province of the S. Congregation of the Sacraments to grant radical sanations (*sanationes in radice*). The law of the Code in regard to the *sanatio in radice* is stated in canons 1138-1141. It is not intended at this point to enter into a detailed discussion of the notions of, the requisites for, and all the effects of a radical sanation. These questions have already been treated *ex professo* in another dissertation, to which the reader is here referred.⁸

The point of interest here, however, is that it is to this Congregation that recourse must be had for any sanations of marriages the invalidity of which is a matter of the external forum, except when the impediments of disparity of worship and mixed religion are concerned.

It is also to be observed that even though canon 1141 states: "*Sanatio in radice concedi unice potest ab Apostolica Sede*," the Apostolic Delegate and the local ordinaries in the United States, by virtue of the faculties granted to them by the S. Congregation of the Sacraments, are also authorized to grant sanations according to the conditions appended to their respective faculties.⁹

⁷ The Apostolic Delegates have the faculty of dispensing from all impediments of ecclesiastical law, except those which arise from affinity in the direct line when the marriage which gives rise to it has been consummated, from sacred orders, and from solemn religious profession.—Vermeersch-Creusen, *Epitome*, I, Appendix I, faculty nn. 31. 32.

⁸ Harrigan, *The Radical Sanation of Invalid Marriages*, The Catholic University of America Canon Law Studies, n. 116 (Washington, D. C.: The Catholic University of America, 1938).

⁹ Vermeersch-Creusen, *Epitome*, I, Appendix I, faculty no. 33, et Appendix III, II, faculty no. 4.

C. Legitimation

Another matter expressly reserved to this Congregation according to the Constitution *Sapienti consilio* is the *natalium restitutio seu legitimatio prolis*.

Although legitimation is ordinarily effected by means of a papal rescript in connection with the concession of certain matrimonial dispensations, it is also possible for an illegitimate person to petition the Holy See for a rescript of legitimation even when there is no question of a dispensation to be granted for the convalidation of the parents' marriage. Whichever the case may be, however, when a papal rescript of legitimation is sought in the external forum the petition should be directed to the S. Congregation of the Sacraments, unless there is question of persons subject to the S. Congregation for the Oriental Church or to the S. Congregation for the Propagation of the Faith.¹⁰

D. Dissolution of Non-consummated Marriages

The competence of the S. Congregation of the Sacraments over all questions involved in the granting of a dispensation from the *matrimonium ratum et non consummatum* is exclusive, with the sole exception of the cases in which one of the parties is a non-Catholic or a member of one of the Oriental rites.¹¹

Can. 249, § 3: *Ipsa (i.e., S. C. Sacramentorum) cognoscit quoque et exclusive de facto inconsummationis matrimonii et de existentia causarum ad dispensationem concedendam, nec non de iis omnibus, quae cum his sunt connexa. Potest tamen cognitionem horum omnium, si id expedire iudicaverit, ad Sacram Romanam Rotam remittere.*

In this regard it is to be noted, first of all, that the actual concession of this dispensation is reserved to the Supreme

¹⁰ Wemz-Vidal, *Ius Canonikum*, V, n. 615: McDevitt, *Legitimacy and Legitimation*, The Catholic University of America Canon Law Studies, n. 138 (Washington, D. C.: The Catholic University of America Press, 1941), pp. 192-193.

¹¹ Cf. *supra*, pp. 37-39, 57.

Pontiff himself;¹² yet the handling of these cases constitutes a major portion of the work of the S. Congregation of the Sacraments.¹³

It is Catholic doctrine that in order that the Supreme Pontiff may validly grant a dispensation of this type two facts must be certainly proved, namely, that the marriage was really never consummated, and that there is a just cause for the granting of the dispensation.¹⁴ Thus it is that the primary objective of this Congregation in the exercise of its authority over cases of non-consummation is to ascertain the truth in regard to the alleged non-consummation and the existence of a legitimate cause in favor of the dispensation.

This same Congregation, however, usually commits to the local ordinaries the actual task of investigating the case and of collecting the evidence from which the truth of the facts may be proved with certainty. For this purpose the S. Congregation of the Sacraments issued a special Instruction, in which it outlined in detail the entire procedure to be observed by the diocesan tribunals in performing the task entrusted to them. This Instruction, commonly known as the *Catholica doctrina*,TM emphasizes two points of law, which should be considered here in relation to the privative competence of this Congregation over all questions relative to the *ratum et non consummatum* type of cases.

The first is that the local tribunals are by no means competent to decide the question of the non-consummation of a

¹² It is disputed whether or not the power of dissolving the bond of a valid but non-consummated marriage can be delegated by the Pope to others. Concerning this, Cappello states: "*De facto numquam conceditur, sed R. Pontifex per se ipse directe et immediate gratiam dispensationis tribuit.*"—*De Sacramentis*, V, n. 762.

¹³ Heston, *The Holy See at Work*, p. 70.

¹⁴ Can. 1119.

¹⁵ The official title of this document is: "*Regulae Servandae in Processibus super Matrimonio Rato et non Consummato*" (Hereafter cited *Catholica doctrina*).—AAS, XV (1923), 389 ff. Cf. also, Bouscaren, *Digest*, I, 764-792.

marriage or the existence of a just cause for the granting of the dispensation. This is reserved exclusively to the S. Congregation of the Sacraments. In fact, no inferior judge can even so much as institute the proceedings in cases of non-consummation unless permission to do so has first been obtained from the same Congregation¹⁸ (or from the Holy Office, or, in the cases of Orientals, from the S. Congregation for the Oriental Church),¹⁷

The second point to be considered here is that, even though the investigations prescribed in these cases are conducted in the manner of a strictly judicial process, the ultimate grant of the dispensation itself is by its very nature administrative.¹⁸ Hence, the only manner in which they ever reach the S. Roman Rota is by way of exception. Because of the importance and the gravity of the dispensation, and consequently also of the truth of the facts upon which the validity of the dispensation depends, canon 249, § 3, provides that the S. Congregation itself may at its own discretion submit the acts of the inferior court to the tribunal of the S. Roman Rota in order that the fact of non-consummation may be more accurately examined and established in a strictly judicial manner.

The simple observation to be made here is that even though the S. Congregation of the Sacraments makes use of the S. Roman Rota and the local tribunals, their role in these cases is one of an informative agent. It still remains that the Congregation alone is competent to decide the necessary questions in preparation for the actual concession of the dispensation by the Supreme Pontiff.

¹⁸*Catholica doctrina, Regulae l-4r-AAS*, XV (1923), 390-391. Cf. also. cans. 1962, 1963, 1966, 1985.

¹⁷ The S. Congregation for the Oriental Church has likewise issued an Instruction regulating the procedure in cases of non-consummation for Orientals. Cf. S. C. Or., 10 iun. 1935.—AAS, XXVII (1935), 333.

¹⁸ This fact is expressly asserted in the introduction to the *Regulae* of the *Catholica doctrina*.—AAS, XV (1923), 390.

E. Nullity Cases

Can. 249, § 3: *Pariter ad eam deferri possunt quaestiones de validitate matrimonii, quas tamen, si accuratorem disquisitionem aut investigationem exigant, ad tribunal competens remittat.*

In order to understand the competence of the S. Congregation of the Sacraments over the various issues concerning the validity or invalidity of the marriage bond, it is necessary to bear in mind that this Congregation is not competent to decide any questions which demand a judicial solution. This is important in so far as canon 1576, § 1, 1°, clearly legislates that contentious causes which involve the bond of marriage can be decided only by public authority through the judgment of a competent tribunal. Consequently, whenever appeals are made to the Holy See against the sentences of the inferior courts they are to be referred to the S. Roman Rota, not to the S. Congregation of the Sacraments.¹⁹

This does not mean, however, that this Congregation lacks all competence even in nullity cases which are treated in the judiciary order. In order to clarify the position of the Congregation in this regard, the Pontifical Code Commission has recently published the following replies, which are of the greatest importance.

The first refers to the question of the right of the S. Congregation of the Sacraments to intervene in a judicial cause after the cause has been instituted by the promoter of justice. The incident giving rise to the doubt is an interesting one. It seems that after the promoter of justice in the Diocese of Versailles had impugned a particular marriage, the S. Congregation of the Sacraments intervened by forwarding to the Bishop of that Diocese a letter in which, among other things, it was stated: "*Videtur non bene perspicui in quo adsit bonum publicum, nempe scandali remotio, ob quam unice promotor iustitiae tales causas ex officio movere potest...*" Accordingly, the ordinary of the Diocese

¹⁹ Coronata, *Institutiones Iuris Canonici*, III, n. 1483f p. 425, nota 3; cf. also *supra*, pp. 66 ff., 72-73.

of Versailles terminated the proceedings which had already been begun. Later, however, his solicitude for the party concerned prompted him to have recourse to the S. Roman Rota. The Rota referred the case to the Supreme Pontiff, who in turn authorized the Code Commission to decide upon the question.²⁰

The question asked was: "Whether, after the marriage has been attacked for nullity by the promoter of justice, and an action has thereupon been instituted, the S. Congregation of the Sacraments has the right to intervene on the ground that there is no proof of the urgency to remove the scandal, which is the only reason for which the promoter of justice can introduce a case *ex officio*" The subsequent reply given by the Code Commission on July 24, 1939, was: "In the negative."²¹

Again, on the occasion of the publication of the Motu proprio *Qua cura* of Pope Pius XI on December 8, 1938, certain questions arose regarding the exact limits of the competence of this Congregation in cases involving the nullity of marriage. Whereupon, the Congregation itself asked that the controversy on this matter be authoritatively decided. The questions asked and the answers given were as follows:

I. Whether the S. Congregation of the Sacraments has general and pre-eminent jurisdiction in cases of the nullity of marriage, so that it can call these cases for a hearing before itself or suspend their progress or the execution of sentences pronounced in them?

Reply: In the negative.

II. What rights has the said S. Congregation in cases of the nullity of marriage?

Reply: In cases of the nullity of marriage the S. Congregation of the sacraments has:

a) the right to decide questions concerning the validity of marriage, which are referred to it, provided these ques-

²⁰ The background of this case is given by Coronata in his *Institutiones Juris Canonist*, III, n. 1480.

²¹ Cf. Bouscaren, *Digest*, II, 547; Coronata, *loc. cit.*

tions do not require a more thorough discussion or investigation, as provided in canon 249, § 3 (i.e., a judicial investigation);²²

b) the right to determine questions regarding the competence of a judge by reason of quasi-domicile, according to the Instruction of the same S. Congregation, of December 23, 1929;²³

c) the rights mentioned in the Circular Letter of the same S. Congregation of July 1, 1932, on the sending of an annual report of matrimonial cases to the said Congregation;²⁴ as well as the rights mentioned in numbers IV and V of the Motu proprio *Qua cure*, on the organization of ecclesiastical tribunals in Italy for deciding cases of the nullity of marriage.²⁶

II I. Whether in cases of the nullity of marriage the promoter of justice and the defender of the bond are to be considered as delegates or representatives of the S. Congregation of the Sacraments, so that this Congregation can control their activity?

Reply: In the negative.

IV . Whether and how the said S. Congregation can intervene in the steps which precede the denunciation of the nullity of a marriage as mentioned in canon 1971, § 2?

Reply: In the negative, safeguarding, however, the right of recourse, *re adhuc integral* against the decision of the ordinary.²⁷

These replies may be further clarified through a brief examination of the references made to the Motu proprio *Qua cura*.

²² Cf. *supra*, pp. 71-72.

²⁶ AAS, XXII (1930), 168-171; Bouscaren, *Digest*, I, 797-801.

²⁴ This Letter is concerned principally with the contents and the manner of making out the report. Cf. AAS, XXIV (1932), 272; Bouscaren, *Digest*, I, 801.

²⁶ AAS, XXX (1938), 410-413.

²⁶ Cf. can. 1725, 1°.

²⁷ Pont. Comm., *Romana et aliarum*, Resp., 8 iul. 1940—AAS, XXXII (1940), 317-318; Bouscaren, *Digest*, II, 105-107.

Number IV of the *Motu proprio* asserts that this Congregation is authorized to define the rights and the duties of the diocesan tribunals, as well as the proper manner of handling nullity cases according to the circumstances and conditions which prevail.²⁸

Number V of the same *Motu proprio* further declares that the S. Congregation of the Sacraments is to be especially vigilant over the work of the tribunals and also is to see to it that the various officials perform their duties rightly and diligently according to such norms as the said Congregation has issued, or may issue in the future.²⁹

It is not the intention of the writer to give an account or even to cite all of the instructions, replies and letters which have been issued by this Congregation in the performance of the duties entrusted to it. But it is indeed proper to note that it was the S. Congregation of the Sacraments that issued the well known decree *Provida*, of August 15, 1936, which contains in detail the norms and regulations to be observed by the diocesan tribunals in handling cases involving the nullity of marriages.³⁰

²⁸ "Horum tribunalium iura et officia necnon practicam agendi rationem Sacra Congregatio de Disciplina Sacramentorum definiet, etiam circa tempus quo quae supra statuimus executioni demandanda sint, necnon circa normas temporarias relate ad causas pendentes."—AAS, XXX (1938), 412.

²⁹ "Sacra Congregatio de Disciplina Sacramentorum vigilem sedulamque, pro suo munere, det operam, ut turn Officiales, turn indices, turn, praesertim, promotores iustitiae et vinculi defensores muneribus suis rite naviterque perfungantur iuxta normas ad eadem S. C. editas vel edendas."—AAS, XXX (1938), 412-413. Cf. also, the letter of the S. Congregation of the Sacraments, Jan. 5, 1937, on the duties of the defender of the bond.—Bouscaren, *Digest*, II, 541.

³⁰ *InstructTM servanda a tribunalibus dioecesanis in pertractandis causis de nullitate matrimoniorum*.—AAS, XXVIII (1936), 314 ff.; Bouscaren, *Digest*, II, 471-530.

This same Congregation has also issued special norms and regulations for handling cases of nullity of marriage in the regional tribunals of Italy (AAS, XXXII [1940], 304), and in the ecclesiastical tribunals of the Philippine Islands (AAS, XXXIII [1941], 363) and of Canada—(AAS, XXXVIII [1946], 281).

Thus it is that, whereas the S. Congregation of the Sacraments handles the *ratum et non consummatum* type of cases directly and with exclusive competence, it deals with the so-called nullity cases only indirectly and in a supervisory manner, in so far as it merely exercises a vigilance over the functioning of the local tribunals which hear and adjudicate questions of invalidity by virtue of their own authority conferred on them by law.

F. Other Questions and Cases

Besides the specific and peculiar competence which the S. Congregation of the Sacraments enjoys in regard to the various questions mentioned in the preceding pages, it is also to be noted that there are certain other types of processes in the Code concerning matrimonial questions that can be decided in a purely administrative manner.

The formalities to be observed in the prenuptial investigation of the freedom of the parties to marry is a disciplinary matter and clearly administrative in character, for there is no question whatsoever of contentious cases in matters of this type. Consequently, all difficult questions in this regard are to be submitted to the S. Congregation of the Sacraments. Moreover, it has also issued instructions, both for the purpose of explaining the canons of the Code (cans. 1019-1034) relative to the prenuptial investigations, and in order to aid the ordinaries and pastors in the faithful observance of these canons.³¹

The process prescribed for the establishing of the facts in cases involving the presumed death of a spouse (can. 1069,

³¹ S. C. Sacr., *Instr.*, 6 mart. 1911—AAS, III (1911), 102. The same Congregation also issued an Instruction on July 4, 1921, relating to the proof of the freedom of the parties to marry, and the obligation of the pastors to send a notification of all contracted marriages to the parishes of baptism.—AAS, XIII (1921), 348-359; Bouscaren, *Digest*, I, 497-498. A more recent Instruction on this same subject was issued on June 19, 1941—AAS, XXXIII (1941), 297-308; Bouscaren, *Digest*, II, 253-276.

§ 2), since it is merely an investigation of the fact of a former marriage, may be either administrative or judicial.⁸²

Although the administrative procedure is the normal method for handling cases of presumed death, it may happen that the ordinary, at his own discretion, may remand such a case to the judicial tribunal for formal trial. If so, any subsequent appeal of the case to the Holy See must be made to the tribunal of the S. Roman Rota, and not to the S. Congregation of the Sacraments.⁸⁸

On the other hand, if the ordinary or his delegate conducts the investigation in a purely administrative manner and the petitioning party receives an unfavorable decision, recourse, if it is so desired, is to be made to the S. Congregation of the Sacraments. Moreover, if the ordinary, or his delegate, is faced with a case of this nature which is so extremely difficult and complicated that he cannot arrive at a moral certitude concerning the facts, and he feels that it warrants further consideration, it should be forwarded to the same Congregation for solution.⁸⁴

An identical situation exists also in relation to the competence of the S. Congregation of the Sacraments over cases concerning the separation of consorts (cans. 1128-1132).

⁸² Rice, *Proof of Death in Pre-Nuptial Investigation*, The Catholic University of America Canon Law Studies, n. 123 (Washington, D. C.: The Catholic University of America Press, 1940), p. 43; Doheny, *Canonical Procedure*, II, 697.

⁸³ Doheny (*loc. cit.*) mentions that only two cases involving presumed death were tried by the S. Rota in recent years, and in both cases the question of *ligamen* and nullity were the primary considerations. Cf. *Sacrae Romanae Rotae Decisiones seu Sententiae* (ab anno 1909) (Romae: Typis Vaticanis, 1912-), XX (1928), 426-433; XXI (1929), 339-344.

⁸⁴ Cappello, *De Sacramentis*, N, nn. 398-399; Doheny, *Canonical Procedure*, II, 596-597.

In the year 1868, the, S. Congregation of the Holy Office issued an Instruction, which is still recognized as the classical source in the study of cases of presumed death (cf. *Fontes*, n. 1002). This Instruction was also reproduced in its entirety by the S. Congregation of the Sacraments. Cf. AAS, VI (1914), 436; Bouscaren, *Digest*, I, 508-511.

For, since the bond of marriage is not in jeopardy, the ordinary may employ either the administrative or the judicial process in order to examine the nature, the merits and the other problems involved in separation cases. Furthermore, if the administrative process is used, the S. Congregation is not only competent to settle whatever particular questions may arise in the course of the investigations, but it is also qualified to accept and to decide upon any recourse that may be referred to the Holy See against the decision of the ordinary or his vicar general. Again, if the judicial form is invoked, the appeal is to be directed to the court of second instance or to the S. Roman Rota.³⁵

From the foregoing considerations it is evident that there are very few questions relating to the sacrament of matrimony which are not either directly or indirectly under the watchful guardianship of the S. Congregation of the Sacraments.

Moreover, from the contents of the various instructions, replies and letters issued by this same Congregation in the past, one can readily infer that the Congregation is not only competent but also most willing to assist the ordinaries and their tribunals in solving any difficulties or doubts that may arise in connection with matrimonial discipline.

Article III

Ad illam itaque spectant ea omnia, quae decemi concedique solent.. in disciplina aliorum Sacramentorum

³⁸ The Pontifical Code Commission was asked: "I. An separatio coniugum ob causas, de quibus in canone 1131, §1, forma administrativa decemenda sit. II. An in causis separationis coniugum, de quibus in canone 1131, §1, in secundo gradu eadem servanda sit forma ac in primo gradu. The replies, given on June 25, 1932, were: Ad I. Affirmative, nisi ab Ordinario aliter statuatur ex officio vel ad instantiam partium. Ad II. Affirmative.—AAS, XXIV (1932), 284. Cf. also Cappello, *De Sacramentis*, V, n. 830; Doheny, *Canonical Procedure*, II, 642, 645, 647.

There is no doubt that the sacrament of matrimony furnishes occasion for very much of the business handled by the S. Congregation of the Sacraments. In fact, the Code is most general in its specification of the competence of this Congregation in regard to the remaining sacraments.

The *Normae Peculiares* of Pope Pius X were a little more explicit in stating that it was within the competence of the S. Congregation of the Sacraments to decide whatever disciplinary questions were submitted to the Holy See in regard to the time, place and conditions for the lawful administration and reception of the sacraments.³⁸

It will be seen, however, in the following observations that the Congregation itself will not be called upon to decide upon issues relating to these sacraments nearly as much as it is in relation to the sacrament of matrimony, and this for obvious reasons.

A, Baptism and Confirmation

Under ordinary circumstances it will very seldom be necessary for one to have recourse to the Holy See in order to baptize or confirm outside the time or place prescribed by law.³⁷

The Code gives the local ordinaries ample authority to provide for most contingencies. However, canon 776, § 1, 2°, states that the ordinaries may not permit the solemn conferral of baptism in a private home outside of the danger of death, except in particular cases and when in his prudent and conscientious judgment there is a just and reasonable cause for not bringing the child to the church.

Consequently, if the conditions of a particular diocese are such that the ordinary feels that a general permission to baptize solemnly outside the church is necessary to provide properly for the needs of the faithful, he should request

³⁸ Cap. VII, Art. III, n. 11, b)—AAS, I (1909), 88.

³⁷ Canons 770-776; 790-792.

a special indult from the S. Congregation of the Sacraments.³⁸

Canon 782, § 2, states that the extraordinary minister of the sacrament of confirmation is any priest who, either by the common law or by special indult of the Apostolic See, has received the faculty to confirm.

That such an indult is obtainable from the S. Congregation of the Sacraments was very definitely exemplified through the fact that it was this Congregation that issued the recent decree, of September 14, 1946, authorizing pastors and others to administer the sacrament of confirmation to persons who are in danger of death.³⁹

Also worthy of notice are the replies and instructions issued by this same Congregation relative to the proper age for the reception of confirmation,⁴⁰ and the rules concerning the sponsors at baptism and confirmation.⁴¹

Ordinarily, when there is reason to doubt whether or not the sacraments of baptism or confirmation were administered validly, the simplest remedy is to administer the sacrament again *sub conditione*. Hence, it will be very seldom that such questions will be submitted to the Holy See. However, if the circumstances are such as warrant a decision from the Holy See, the matters should be referred either to the Holy Office or to the S. Congregation of the Sacraments,

³⁸ S. C. Sacr., *Romana et aliarum*, 22 iul. 1925—AAS, XVII (1925), 452; Bouscaren, *Digest*, I, 346; Woywod, *Practical Commentary*, I, n. 673.

³⁹ AAS, XXXVIII (1946), 349; Bouscaren, *Digest*, Supplement through 1948, p. 105; cf. also the replies given by this same S. C. Sacr. on December 30, 1946, and on January 2, 1947—Bouscaren, *Digest*, Supplement through 1948, pp. 114, 115. Although the reply of December 30, 1946, declared that hospital chaplains were not included under the decree of September 14, 1946, a subsequent indult (November 18, 1948) was given to certain chaplains in the United States whereby the same privilege was extended to them.—*The Jurist*, IX (1949), 261.

⁴⁰ AAS, XXIV (1932), 271; Bouscaren, *Digest*, 348.

⁴¹ S. C. Sacr., *Instr.*, 25 nov. 1925—AAS, XVIII (1926), 43-47; Bouscaren, *Digest*, I, 338-344.

depending upon whether there is present a *dubium iuris* or a *dubium facti*.⁴²

B. Penance and Extreme Unction

The sacrament of penance is a sacrament which, by its very nature, is almost completely withdrawn from the jurisdiction of the S. Congregation of the Sacraments. This is easily understood when one realizes that practically all questions involved in the administration of this sacrament are matters of the internal forum, and therefore are reserved exclusively to the Sacred Penitentiary.⁴³

Extreme unction is such in its nature that it is almost impossible even to imagine a circumstance in which it would be necessary, in practice, to consult the Holy See concerning some difficult question with which one might be confronted in the administration of this sacrament.

Furthermore, the S. Congregation of the Sacraments is not accustomed to assert itself in purely theoretical cases. If such solutions are desired, the approved authors or the Pontifical Code Commission should be consulted.⁴⁴

Again, all doctrinal questions involving the essential rites of the sacraments should be submitted to the Holy Office,⁴⁵ while doubts or questions concerning the non-essential rites and ceremonies should be referred to the Congregation of Sacred Rites.⁴⁶

Indeed, in view of these facts it seems that it would be most unusual for the S. Congregation of the Sacraments ever to be called upon to solve any disciplinary problems connected with the sacrament of extreme unction.

Yet, it is not beyond the realm of possibility that this same Congregation may, if the conditions and circumstances arise, see fit to issue an Instruction relating to this particular sacrament, just as it has in regard to some of the others. Such an action would be entirely within the competence of this Congregation in so far as it is the responsibility of the

⁴² Cf. *supra*, pp. 39-40.

⁴³ Cf. *supra*, pp. 73-75.

⁴⁴ Cf. *infra*, pp. 118, 122.

⁴⁵ Cf. *supra*, pp. 39-42.

⁴⁶ Cf. *supra*, pp. 43-47.

S. Congregation of the Sacraments to watch over and to insure the proper administration of all of the sacraments.

C. Holy Orders

As regards the sacrament of holy orders, the Constitution *Sapienti consilio* of Pope Pius X simply stated that it belongs to the S. Congregation of the Sacraments to grant dispensations for the ordinations of non-religious,⁴⁷ and to receive questions submitted to the Holy See concerning the validity of ordinations and the obligations attached to the reception of sacred orders.⁴⁸

According to the *Normae Peculiares* this Congregation was given the express faculty of issuing rescripts or induits permitting the conferral of sacred orders, and the consecration of bishops on days other than those admitted by law.⁴⁸

The same Congregation was also authorized to concede dispensations from the lack of canonical age (canon 975), from the requirements of a title of ordination (canons 979-981), and from the observance of the prescribed intervals of time between the reception of the individual orders (canon 978).⁶⁰

In the matter of irregularities, it will suffice here simply

47 Whenever dispensations are necessary for the reception of sacred orders by the religious, the dispensation is granted through the S. C. for the Religious.—Cf. *supra*, p. 52.

«I, 3°, 2—AAS, I (1909), 10.

49 Cap. VII, Art. III, n. 10—AAS, I (1909), 86-87. Canon 1006 sets down the present legislation as regards the time for ordinations, etc. It may also be noted that on May 18, 1940, the S. Congregation of the Sacraments granted a special induit, effective for a period of three years, to the bishops of the U. S. permitting them to confer major orders on any feast day of the double rite of the first or second class, and on certain Saturdays at the close of the scholastic year.—Bouscaren, *Digest*, II, 249.

80 Cap. VII, Art. III, n. 12—AAS, I (1909), 89. Bouscaren calls attention to the special induits which when given by the S. Congregation of the Sacraments to the Ordinaries of Ireland permitted them to dispense from the *interstices*, and from the required age, provided the discrepancy did not involve a duration of more than one year.—Bouscaren, *Digest*, II, 239.

to state that the S. Congregation of the Sacraments is competent to dispense from all irregularities of the external forum, whether *ex defectu* or *ex delicto*, in preparation for the reception of sacred orders, but only from the irregularities arising *ex defectu* for those already in the sacred priesthood. For it was pointed out previously that the S. Congregation of the Council is empowered to grant dispensations from irregularities incurred by priests through the commission of an offense to which an irregularity is attached. The same is true also of the requirements regulating the title of ordination. The S. Congregation of the Sacraments is competent to dispense only when there is question of a defect of title prior to the reception of the sacred priesthood.⁵¹

The Apostolic Delegates possess the faculty to dispense those who already are ordained, as regards the celebration of Mass and the acquirement of ecclesiastical benefices, from all irregularities derived *ex defectu**² provided that no scandal and no harm to sacred functions result therefrom.⁵³ In the faculties given to the Apostolic Delegates there is no provision which permits them to dispense from irregularities prior to the reception of sacred orders. Hence, unless a special indult has been granted in favor of particular places, such dispensations are reserved to the S. Congregation of the Sacraments.⁵⁴

It was mentioned above that according to the Constitution *Sapienti consilio*** the S. Congregation of the Sacraments was designated as the proper Congregation to receive and to decide upon questions relating to the validity of ordinations and the obligations contracted in the reception of major orders, for example, the observance of celibacy or the recitation of the Divine Office. However, it was not until

⁵¹ Cf. *supra*, pp. 48-49.

⁵² Not, however, from the irregularities derived *ex delicto*, as mentioned in canon 985, 3, 4.

⁵³ Vermeersch-Creusen, *Epitome*, I, Appendix I, faculty no. 4.

⁵⁴ As regards the faculty of the ordinaries and confessors to dispense from occult irregularities arising *ex delicto*, cf. canon. 990.

551 , 3°, 2, 3—AAS, I (1909), 10.

the new legislation of the Code became effective that all cases involving the validity of ordinations and the obligations connected with the reception of orders were reserved exclusively to the Holy See. For, before the Code the ordinaries and the local diocesan tribunals were permitted to decide such cases themselves.⁵⁶

Thus, whereas it was formerly necessary to consult the S. Congregation concerning questions of this nature only when some special difficulty arose, the Code very definitely states that it is the exclusive right of the S. Congregation of the Sacraments to receive and to examine all issues dealing with the validity of ordinations and the obligations attached to them.

Canon 249, § 3: *Eodem modo ad ipsam pertinet videre de obligationibus ordinibus maioribus annexis, atque examinare quaestiones de ipsa validitate sacrae ordinationis, aut eas ad tribunal competentis remittere.*

Canon 1993, § 1: *In causis quibus impugnantur obligationes ex sacra ordinatione contractae vel ipsa sacrae ordinationis validitas, libellus mitti debet ad Sacram Congregationem de disciplina Sacramentorum vel, si ordinatio impugnetur ob defectum substantialem sacri ritus, ad Sacram Congregationem S. Officii; et Sacra Congregatio definit utrum causa iudiciario ordine an disciplinae tramite sit pertractanda.*

According to these canons any case in which the obligations as contracted through sacred ordination, or also the validity of the sacred ordination itself, be called into question, even though the petitioner be a religious,⁵⁷ the bill of complaint must be sent to the S. Congregation of the Sacraments, or, if the ordination be impugned on account of a sub-

⁵⁶ Coronata, *Institutiones Iuris Canonici*, III, n. 1504.

⁵⁷ The fact that the S. Congregation of the Sacraments is also competent in matters of this nature in cases involving the religious was definitely asserted by the special Commission of Cardinals (of canon 245) in a reply given on December 7, 1922.—AAS, XV (1923), 39; Bouscaren, *Digest*, I, 159-160.

stantial defect in the sacred rite, to the S. Congregation of the Holy Office.⁵⁸

The S. Congregation then decides whether the case is to be treated in the form of a strictly judicial trial or in the so-called *via disciplinaris*. If it decides in favor of a formal trial, it remands the case to the competent diocesan tribunal,⁵⁹ which tribunal thereupon proceeds according to the special norms and regulations which have been outlined in detail by this same S. Congregation in the Decree of June 9, 1931.⁶⁰

On the other hand, if the Congregation decides that a particular case is such that it should be handled in a disciplinary manner, rather than by way of a formal trial, it remits the case back to the competent diocesan tribunal together with a mandate to institute an informative process for the ascertainment of the facts, after which the evidence discovered is returned to the same Congregation.

On the basis of the evidence submitted, the Congregation may decide the case outright, or it may return it for more evidence, or it may refer it to the S. Roman Rota for a more accurate and skillful examination in a judiciary manner. However, the S. Roman Rota does not issue the dispensation nor does it give the final decision in the cases thus referred to it. It merely pronounces upon the validity or invalidity of the ordination, and then sends its decision to the S. Congregation, which gives or does not give the declaration of nullity, according to the judgment of the S. Rota.⁶¹

It is seen, therefore, that the handling of cases in which one attacks the very validity of the sacred ordination, or impugns the obligations arising from the sacred ordination, is

⁵⁸ Cf. *supra*, pp. 39-41.

⁵⁹ Canon 1993, §2.

⁶⁰ wAAS, XXIII (1931), 457-492; Bouscaren, *Digest*, I, 812-832. If an appeal is made against the sentence handed down in such a trial, it is to be made in the same manner as all other appeals, i.e., according to canons 1594-1601.

⁶¹ Coronata, *Institutiones iuris Canonici*, III, n. 1504.

very much similar to the *ratum et non consummatum* type of case. For no inferior judge can draw up the process in these cases unless he has received the permission from the Holy See.⁶²

In connection with this same matter it should also be noted that the S. Congregation of the Sacraments, fully realizing the sublimity of the sacred priesthood and the great harm done to the Church and to the salvation of souls by those who, without having a vocation from God, presume to undertake the priestly ministry, issued to the ordinaries throughout the world a special Instruction (December 27, 1930) in which it outlined a set of norms for the purpose of enabling the ordinaries to observe more easily the prescriptions of the Code concerning the testing of candidates before they are promoted to orders.⁶³

In this same Instruction the Congregation called the attention of the bishops to the presence of certain abuses in this regard. Moreover, it further reminded the ordinaries of the prescriptions of the Code regarding the irregularities and the impediments of the reception of orders as well as many other conditions and qualifications required in the subject of ordination. It advised them concerning the means to be used in correcting the evil practices which had arisen in the course of time.

In fact, this same Instruction serves as a good example of the manner in which the S. Congregation of the Sacraments carries out the duties and responsibilities entrusted to it in its rôle of the lawfully designated custodian of the disciplinary legislation pertaining to the administration and reception of all of the sacraments. Similar words of counsel and admonition have also been given from time to time in behalf of most of the other sacraments.

D. The Holy Eucharist

It may be said in general that all disciplinary laws and dispensations from the laws relating to the place, time, and

62 Cf. S. C. Sacr., *Decretum*, 9 iun. 1931—AAS, XXIII (1931), 458.

68 AAS XXIII (1931), 120; Bouscaren, *Digest*, I, 463-473.

the conditions affecting the celebration of the Sacrifice of the Mass, the reception of the Most Holy Eucharist, the preservation of the Blessed Sacrament, and other matters of this kind are under the direct charge of the S. Congregation of the Sacraments.⁶⁴ However, only those matters which pertain to the Holy Eucharist as a sacrament will be considered within this section. The competence of the S. Congregation of the Sacraments in relation to the Holy Eucharist as a sacrifice will be treated in a subsequent article.

Actually there are two distinct aspects of the Sacrament of the Holy Eucharist with which this Congregation is most concerned: the administration and the reception of Holy Communion, and the preservation of the Sacred Species.

The legislation of the Code concerning the time, place, and the other conditions prescribed for the proper reception of Holy Communion by the faithful is both distinct and definite.⁶⁶ Most contingencies are provided for in the law itself, hence the primary function of the Congregation in regard to these matters is to watch over and to safeguard the precepts of the Code and to grant whatever dispensations and indulgences it considers feasible.

The fact that the S. Congregation of the Sacraments has the right to grant dispensations from the law of the Eucharistic fast is well known.⁶⁶ For it has been most benevolent and expeditious, especially in recent years, in the relaxation of this particular law. In fact Cappello, in commenting on the extensive concessions granted by the Holy See during the

«4 Const. *Sapienti consilio*, I, 3°, 2: "Itaque eidem Congregation! tribuuntur ea omnia, quae huc usque ab aliis Congregationibus aut Romanae Curiae decerni condedique consueverant... uti... dispensationes respicientes locum, tempus, conditiones Eucharistiae sumendae, Sacri litandi, adservandi Augustissimi Sacramenti; aliaque id genus." —AAS, I (1909), 10.

«« Canons 845-869.

««Attention is called to the right of the Holy Office to dispense priests about to celebrate Mass (cf. *supra*, p. 41), and the right of the S. Congregation of the Religious to dispense the religious. Cf. *supra*, pp. 53-54.

late war, considers the possibility that the present law may be changed.⁶⁷

It is not the intention of the writer to enter upon a discussion relative to the opportuneness of a change in the law. Nevertheless, it is evident from the various decrees and instructions which have been issued in recent years that everything possible is being done, not only to encourage the frequent reception of Holy Communion, but also to remove the obstacles which prevent so many of the faithful from partaking of the Most Holy Eucharist as often as they would like.⁶⁸

Moreover, the S. Congregation of the Sacraments, in the exercise of the duties entrusted to it, has been most gracious in granting a number of special indulgences to the Apostolic Delegates and the local ordinaries, permitting them to mitigate the law of the Eucharistic fast in favor of the sick, aged, night workers and others.⁶⁹ Thus, in practice it will

⁶⁷ *De Sacra/remntis*, I, n. 479.

⁶⁸ It may be recalled that the Decree *Sacra Tridentina, Synodus*, of December 20, 1905, was issued by the S. Congregation of the Council, which was competent in this matter before the institution of the S. Congregation of the Sacraments. But a more recent Instruction, issued by the latter, on the daily reception of Holy Communion was given on December 8, 1938—Bouscaren, *Digest*, II, 208.

⁶⁹ The regular faculties of the Apostolic Delegates in this matter enables them to grant to persons sick in bed, when there is no certain hope of their early recovery, even before they have been ill for a whole month, permission to receive Holy Communion once a week without fasting, i.e., though they have taken medicine or something to drink before receiving (canon 858, § 2). Also to grant the same permission to persons who, though not sick in bed, are so ill that in the judgment of the physician they cannot without some danger observe the Eucharistic fast. Vermeersch-Creusen, *op. cit.*, I, Appendix I, faculty no. 38.

The letters of the Apostolic Delegate in the U. S. A. announcing the special faculties granted by this Congregation to the Ordinaries of the U. S. may be found in Bouscaren, *Digest*, Supplement, through 1948, pp. 128-131. Bouscaren also indicates that the S. C. Sacr. has permitted persons who have begun their 60th year, or also pregnant women, to receive Holy Communion two or three times a week after having taken medicine or drink.—*Digest*, II, 216.

rarely be necessary for one to petition directly the S. Congregation for a dispensation from the law of the Eucharistic fast.

As regards the reservation of the Blessed Sacrament, the Code expressly determines the places in which It either must or may be permanently reserved,⁷⁰ after which it declares that an apostolic indult is necessary in order that one may consistently reserve It in any other church or oratory.⁷¹ Furthermore, it was stated in the *Normae Peculiares* that the S. Congregation of the Sacraments was empowered to grant the faculty "*adservandi Ssmam Eucharistiam in tern[^]plis aut in sacellis eo iure carentibus*"⁷²

That this same Congregation has always been most solicitous in its vigilance over all issues pertaining to the renewal and the reservation of the Sacred Species is evident from the many instructions and replies given in relation to these matters; for instance, the Instruction on March 23, 1929, regarding the faults to be avoided in the celebrating of the Sacrifice of the Mass and in the distributing and the preserving of the Most Holy Eucharist;⁷³ the Instruction on the careful custody of the Most Blessed Sacrament, issued by this Congregation on May 26, 1938;⁷⁴ and the Instruction of October 1, 1949, in which the S. Congregation explains the reasons which it considers sufficient for the granting of an indult permitting the reservation of the Blessed Sacrament in private chapels.⁷⁵

⁷⁰ Canon 1265, §1.

⁷¹ Canon 1265, § 2, allows the ordinary of the place to grant this permission provided there is a just cause, and then only *per modum actus*.

⁷² Cap. VII, Art. III, n. 10, a)—AAS, I (1909), 86.

⁷³ AAS, XXI (1929), 631; Bouscaren, *Digest*, I, 353-367.

⁷⁴ AAS, XXX (1938), 198; Bouscaren, *Digest*, II 377-388.

⁷⁵ AAS, XLI (1949), 508-511.

Article IV

*Ad ilium itaque spectant ea omnia, quae decerni
Concedique solent—in celebratione Sacrifici Eu-
charistici*

Just as it is the responsibility of the S. Congregation of the Sacraments to watch over the disciplinary legislation relative to the administration and the reception of the sacrament of the Holy Eucharist, so also is it the duty of the same Congregation to safeguard the prescripts of the Code in regard to the lawful celebration of the Eucharistic sacrifice.

Because of the diversity of the various questions which may possibly arise in relation to this particular aspect of the Holy Eucharist it is almost impossible to give a complete and definitive description of the competence of this Congregation over issues pertaining to the celebration of the Mass. However, the *Normae Peculiares*TM contain a list of faculties, which formerly belonged to the Congregation of Sacred Rites but were expressly transferred to the S. Congregation of the Sacraments by Pope Pius X at the time the latter was instituted. This list was drawn up with one expressed purpose, and that was the prevention of any and all ambiguity in the determining of the competence of this Congregation, especially in relation to the Congregation of Sacred Rites, which had previously been competent to watch over these same matters. Accordingly, the S. Congregation of the Sacraments is authorized to grant the following faculties, as set down in the pages here following.

A. Celebration of Mass in Private Chapels

The concession of the privilege permitting the celebration of Mass regularly in private chapels is reserved to the Holy See.⁷⁷ Moreover, the *Normae Peculiares* very explicitly au-

⁷⁶ Cap. VII, Art. III, n. 10—AAS, I (1909), 86-87.

⁷⁷ Canon. 822. It is also to be noted, however, that the Apostolic Delegate has the faculty of conceding an indult to infirm and aged priests in order that they may celebrate Mass in a private oratory. Cf. Vermeersch-Creusen, *Epitome*, I, Appendix I, faculty no. 34, b.

thorized the S. Congregation of the Sacraments to grant this particular favor as well as any other similar privileges which are customarily conceded, with due reverence always for the proper decorum and esteem due to the Divine Presence.⁷⁸

In this regard it is helpful to note that, in a letter to the ordinaries of Italy, the S. Congregation of the Sacraments clearly expressed the mind of the Holy See concerning the practice of celebrating Mass outside the regular places as determined by canon 822, § I.⁷⁹

Among other things, it stressed the fact that the law allows the local ordinaries to permit the celebration of Mass outside a church or a public or semi-public oratory only for a just and reasonable cause in some extraordinary case and then only *per modum actus*.⁸⁰

Again on October 1, 1949, this same Congregation issued an Instruction⁸¹ in which it reviewed the entire legislation concerning the celebration of Mass in private oratories as well as the use of portable altars.

In this Instruction the Congregation placed special emphasis on the faithful observance of the law of the Code in respect to the obligations of the individual ordinaries as described in canon 1195. It also called the attention of the ordinaries to the abuses which are most likely to arise in the consistent use of the privilege of a private chapel or portable altar, and urged them to guard strenuously against such abuses as might prevail in their respective territories.

B. Celebration of Mass SUB Dio

The right to celebrate Mass in the open air is included

w Cap. VII, Art. III, nn. 10, b) et 12—AAS, I (1909), 86, 89.

⁷⁹ S. C. Sacr., *litt.*, 26 iul. 1924—AAS, XVI (1924), 370; Bouscaren, *Digest*, II, 385.

⁸⁰ Canons 822, §4; 1195.

⁸¹ S. C. Sacr. *Instr.*, 1 oct. 1949—AAS, XLI (1949), 490-511. This Instruction is divided into four sections, namely, *pro postulandis Apostolicis indultis*: I. Oratorii domestici cum suis extensionibus; II. Altaris portatilis; III. Litandi Missam sine ministro; et IV. Asservandae SSmae Eucharistiae in privatis sacellis. Hereafter cited *Instructio*.

in the privilege of the portable altar. Canon 822, § 3, clearly asserts that the privilege of the portable altar is to be understood in such a sense that it also includes the faculty of celebrating Mass on a consecrated altar stone anywhere in a decent and respectful place; not, however, at sea. Moreover, paragraph two of the same canon states that if one does not possess the privilege by law it can be obtained only by means of an indult from the Holy See, that is to say, from the S. Congregation of the Sacraments.⁸² So, too, any questions which may arise in the use of this privilege should be submitted to the same Congregation.⁸³

C. Celebration of Mass aboard Ship

It was mentioned above that the privilege of the portable altar does not include the permission to celebrate Mass at sea. Hence, unless it is otherwise stated in the rescript granting the favor, it is clear that a separate and special indult is required if one wishes to offer the Holy Sacrifice while making a voyage by boat or ship.⁸⁴

D. Celebration of a private Mass on Holy Thursday

The present legislation of the Church definitely forbids private Masses on Thursday of Holy Week, unless there is present a just cause.⁸⁶ But by special indult from the Holy

⁸² The Apostolic Delegates have the faulty: "Concedendi in casibus particularibus indultum celebrandi extra ecclesiam et oratorium et erigendi altare sub dio ex rationabili causa, ad tramitem can. 822, 4."—Vermeersch-Creusen, *Epitome*, I, Appendix I, faculty no. 34, d.

⁸³ Cf. *Instructio*, II, De postulando privilegio altaris portatilis—AAS, *XLI* (1941), 501-506; S. C. Sacr., *Romana et aliarum*, 23 dec. 1912—AAS, *IV* (1912), 725.

⁸⁴ The Apostolic Delegates have the faulty: "Permittendi sacerdotibus navigantibus sive in mari sive in fluminibus, ut in navi Missam celebrare possint super altare portatile, dummodo locus in quo Missa celebratur nihil indecens aut indecorum praeseferat et periculum absit calicis effusionis."—Vermeersch-Creusen, *Epitome*, I, Appendix I, faculty no. 34t e.

⁸⁶ Canon 820. For a detailed treatment of this particular question the reader is referred to Godley, *The Time and Place for the Celebration of Mass*, The Catholic University of America Canon Law

See, permission is sometimes granted for the celebration of Mass in private oratories on Holy Thursday, and also individual priests, for no other reason than private devotion, have been similarly permitted to say a private Mass on this day. These privileges to private oratories and to individual priests for no other reason than private devotion show the attitude of the S. Congregation, and the general trend of readiness with which it grants the faculty.⁸⁰

E. Celebration of Mass at an Unusual Hour

Before the Code the law did not allow the celebration of Mass before dawn (*aurora*) *q*t after noon (*meridiamum*).⁸⁷ Canon 821, § 1, however, extended by two hours the period in which Mass may be celebrated, that is, from one hour before dawn, on the one hand, and to one hour after noon, on the other.

Although under ordinary circumstances this Congregation is competent to extend the period for celebrating the Holy Sacrifice, it will not always be necessary to seek this privilege directly from the Congregation itself. The Apostolic Delegates have been given certain faculties in this regard, which enables them to permit, for a reasonable cause, in particular cases or for a time, the Sacrifice of the Mass to be said any time after three o'clock in the morning.⁸⁸

F. Celebration of Christmas Midnight Mass outside the Provision of the Law

After setting forth the general principle relative to the time for the celebration of Mass, the Code made a special provision in favor of the Christmas midnight Mass. But even this exception is permitted only in churches where the

Studies, n. 275 (Washington, D. C.: The Catholic University of America Press, 1948), pp. 67-73.

⁸⁸ Godley, *op. cit.*, p. 72; Cappello, *De Sacramentis*, I, n. 737, (11).

⁸⁷ *Normae Peculiares*, Cap. VII, Art. III, n. 10, d)—AAS, I (1909), 87; Godley, *op. cit.*, p. 47.

⁸⁸ Vermeersch-Creusen, *Epitome*, I, Appendix I, faculty no. 36.

parochial and conventual Mass is said. Thus, in order that the Christmas midnight Mass may be celebrated in any other churches or chapels an apostolic indult is necessary.⁸⁹

The privilege of celebrating the three Christmas Masses consecutively at midnight is given by the Code to the priests who celebrate the community Mass in pious houses or in the residences of any religious community,⁹⁰ but if the same privilege is sought by others it will be necessary to have recourse to the S. Congregation of the Sacraments.⁹¹

G. Celebration of Two or Three Masses on the Same Day outside the Provision of the Law

This Congregation is also competent to take under advisement the granting of special faculties permitting priests to celebrate two or three Masses on days not provided for by the law.⁹²

Since these concessions are usually given to ordinaries in private, it is difficult to realize the full extent of the practice of the Holy See in this regard. Bouscaren gives some examples of instances in which the S. Congregation of the Sacraments has conceded indults allowing bishops to permit bination on days not of obligation,⁹³ and also trination on Sundays and Holydays of obligation.⁹⁴

Of special interest also is the fact that the same Congre-

⁸⁹ Canon 821, §2: "In nocte Nativitatis Domini inchoari media nocte potest sola Missa conventualis vel paroeclialis, non autem alia sine Apostolica indulto."

⁹⁰ Canon 821, § 3; Godley, *op. dt.*, pp. 92-93.

⁹¹ Cf. reply of the S. C. Consist., March 14, 1910—AAS, II (1910), 229.

⁹² Canon 806.

⁹³ On February 7, 1938, the Congregation granted to the Ordinary of Valparaiso the faculty to permit bination on the feasts of the Sacred Heart of Jesus, the Commemoration of the Blessed Virgin of Mount Carmel, and on the First Friday of every month, for the sake of the devotion of the faithful and because of the scarcity of priests.—*Digest*, II, 192.

⁹⁴ Bouscaren, *Digest*, II, 189, 192.

gation has recently granted to the Archdiocese of Cincinnati an indult permitting the priests of that Archdiocese to binate on certain weekdays, namely, on the occasion of marriages and funerals, or in order to enable them to renew the Sacred Species in oratories of convents.⁹⁵

As regards the concession of indults permitting the same priest to celebrate three Masses on the same day (outside of the Feast of Christmas and the Commemoration of All the Faithful Departed), it may be of interest to note that the Apostolic Delegate in the United States is authorized, under certain conditions, to grant this particular favor.⁹⁸

H. Use of a Scull-cap or of a Wig during the Celebration of Mass

The law prohibiting the use of a scull-cap, wig, or any other permanent covering on the head during the celebration of Mass is found in the liturgical books of the Church, and is only touched upon in an incidental manner by the Code.⁹⁷ Nevertheless, because of its intimate association with the discipline of the Mass, Pope Pius X committed this particular faculty to the S. Congregation of the Sacraments.⁹⁸

The Code also forbids any priest to wear a ring during his celebration of Mass, unless he is a cardinal, a bishop, or an abbot who has received the abbatial blessing, or unless he has an apostolic indult, likewise obtainable from the S. Congregation of the Sacraments.⁹⁹

Another special indult recently granted by the S. Congregation of the Sacraments to the Apostolic Delegate in the United States gives him the faculty of permitting an infirm

⁹⁵ Cf. *Jurist*, IX (1949), 262.

⁹⁸ Knowledge of this indult was obtained from the office of the Most Reverend Apostolic Delegate in Washington, D. C.

⁹⁷ Woywod, *Practical Commentary*, I, n. 714.

⁹⁸ *Normae Peculiares*, Cap. VII, Art. III, n. 10, f)—AAS, I (1909), 87.

"Canons 811, §2; 1378.

priest to celebrate Mass while seated, provided he celebrates in a private chapel and stands, in so far as it is possible, during the canon of the Mass, or at least from the consecration until the Sacred Species have been consumed.¹⁰⁰

The foregoing enumeration of faculties certainly must not be accepted as a complete exposition of the competence of this Congregation. It is rather an attempt to point out in a general way, and with practical examples, some of the types of questions or issues pertaining to the sacraments and the celebration of the Holy Sacrifice of the Mass which belong to this Congregation as matters of its competence. Thus, besides the particular points discussed in the preceding pages, there are many others which one may easily recognize as belonging to this same Congregation. It is hoped, however, that the examples given will amply suffice to show not only what the Congregation has done in the past, but also what it can and is accustomed to do if the necessary conditions and circumstances are present.

In brief, it may definitely be claimed that, in the exercise of the duties proper to it, this Congregation is accustomed to act in a diversified number of ways. Its primary objective is to watch over and to see that the disciplinary legislation regarding the sacraments and the Mass is religiously observed, for which purpose it often issues special instructions in order to clarify, explain and confirm the prescripts of the Code. It also resolves doubts, questions and controversies, and applies the prescripts of law in practical and particular cases. Just what authority these instructions and replies of the Congregation enjoy will be seen in the subsequent chapter.

Moreover, it has also been noted that the S. Congregation of the Sacraments is accustomed to grant many special faculties and indulgences permitting ordinaries as intermediate superiors to dispense from the prescripts of law whenever it

¹⁰⁰ Knowledge of this faculty was graciously supplied from the office of the Most Reverend Apostolic Delegate in Washington, D. C.

feels that the conditions and the circumstances warrant such concessions. Hence, one should always acquaint oneself with the faculties of one's local ordinary and the special faculties of the Apostolic Delegate of one's country before applying to the Congregation, lest the Congregation be overburdened unnecessarily.

CHAPTER VI

NATURE OF THE POWER AND MEASURE OF THE AUTHORITY

Article I

Preliminary Notions

The Roman Congregations are by their very nature the highest executive or administrative bureaux of the Pontifical government. The Code expressly states that whenever the term "*Sedes Apostolica*" or "*Sancta, Sedes*" occurs in the Code, it refers not only to the Roman Pontiff himself, but also to the Sacred Congregations and the Roman Tribunals and Offices, through which the Supreme Pontiff is accustomed to transact the affairs of the universal Church, unless from the nature of the matter or from the language used a different sense is manifest.¹

The jurisdictional power attributed to the individual Congregations is truly pontifical and supreme.² It is also *ordinary* in so far as it is permanently attributed to the Congregations by the law itself; yet it is vicarious, since it is exercised in the name of the Supreme Pontiff.³

¹ Canon 7.

² It follows, therefore, that properly the law does not allow the use of an appeal against the decisions of the Sacred Congregations. Instead, there is permitted only a particular remedy or the benefit of a new audience or hearing (*beneficium novae audientiae*). Cf. Coronata, *Institutiones juris Canonici*, I, n. 335; Chelodi, *De Personis*, n. 161; Cocchi, *Commentarium in Codicem juris Canonici ad Usus Scholarum* (hereafter cited *Commentarium*) (8 vols. in 5, Vol. III, 4. ed. recognita, Taurinorum Augustae: Marietti, 1940), III, n. 185; Maroto, *Institutiones*, II, n. 831.

³ Claeys, Bouuaert-Simenon, *Manuale Juris Canonici ad Usus Seminariorum* (3 vols., Vol. I, 5. ed., Gandae et Leodii, 1939), I, n. 406; Cappello, *Summa juris Canonici in Usus Scholarum* (3 vols., Vol. I, 4. ed., Romae: Apud Aedes Universitatis Gregorianae, 1945), I, n. 255; Wernz-Vidal, *Ius Canonicum*, II, 484; Chelodi, *De Personis*, n. 160.

Since the power of the Sacred Congregations is ordinary, even though vicarious, it is not lost on the death of the Roman Pontiff.

In general it may be stated that the Sacred Congregations exercise their power and perform their duties especially by issuing what are called *Acts*. The acts of the Congregations, however, are more properly referred to as *Decrees* in contradistinction to the Apostolic Constitutions, which the Holy Father issues in his own name.⁴

In order to determine the force and authority of the various decrees issued by the Sacred Congregation of the Sacraments, one must take into consideration the following distinctions and clarifications.

It is to be noted first of all that the decrees of the Sacred Congregations in general are classified as either *doctrinal* or *disciplinary*, according as they are concerned with faith or morals, or with the practical government of the Church and the faithful.⁵ This discussion, however, will be restricted to the disciplinary decrees, since the competence of the Sacred Congregation of the Sacraments is itself restricted to disciplinary matters.

Again, these decrees are usually classified according to the purpose for which they are issued, namely; a) decrees of favor (*decreta gratiae*), which include privileges, dispensations, indults and other special faculties; b) decisions and resolutions (*decisiones seu resolutiones causarum*), i.e., replies given for the solution of doubts, etc., and c) executive decrees or instructions (*decreta executoria seu instructiones*).⁶

As to the extent of the decrees of the Sacred Congrega-

The Government of the Church during the vacancy of the Holy See is now regulated exclusively by the Constitution *Vacantis Apostolical Sedis*, issued by Pope Pius XII on Dec. 8, 1945.—AAS XXXVIII (1946), 65-99.

⁴ Cicognani, *Canon Law* (Authorized English version by O'Hara-Brennan, 2. ed., Reprint, Westminster, Maryland: The Newman Press, 1949), p. 80; Monin, *De Curia Romana*, p. 215.

⁵ Monin, *op. cit.*, pp. 216, 217; Coronata, *loc. cit.*,

⁶ De Meester, *Juris Canonici et Juris Canonico-Civilis Compendium* (hereafter cited *Compendium*) (3 vols. in 4, Vol. II, ed. nova, Brugis: Desclee, De Brouwer, et Soc., 1923), II, n. 584; Monin, *op. cit.*, pp. 217-218.

tions, it must be noted that some are *general* or *universal*, while others are *particular*. In this regard, authors distinguish between 1) *decreta formaliter generalia*, which concern the general order and are directed to the universal Church; 2) *decreta formaliter particularia*, which are concerned only with particular cases, individuals or specific places, and 3) *decreta particularia sed aequivalenter generalia*, which concern the general order but refer to particular persons only, e.g., an interpretation of a general law, but given only in a particular case.⁷

Moreover, practically all decrees emanating from the Sacred Congregations are issued with pontifical approval.⁸ This approbation may be given either *in forma speciali seu specifica* or *in forma communi*. Basically it is the type of confirmation given to the various decrees that determines their true value. For, if a decree is confirmed by the Supreme Pontiff *in forma speciali*, it is made by reason of that confirmation a pontifical law, that is, it becomes an act of the Roman Pontiff himself. On the other hand, a common confirmation (i.e., *in forma communi*) of a decree does not change the intrinsic value of the act, and hence it receives its essential force from the Congregation itself, receiving only extrinsically an added force from the Supreme Pontiff.⁹ Thus, as Cicognani states, even though the decrees of the Sacred Congregations are ordinarily given *in forma communi*,¹⁰ it still remains that, regardless of the manner in

⁷ De Meester, *loc cit.*; Blat, *Commentarium Textus Codicis Iuris Canonici* (6 vols., Romae: Libreria dei Collegio "Angelico," 1919-1927. Vol. II, 2. ed., 1921), II, nn. 230-231; Maroto, *Institutiones*, I, n. 339. Cicognani, *op cit.*, pp. 80-81; Monin, *op. cit.*, p. 219.

⁸ Canon 244, § 2, states that all favors and decisions of the Congregation need pontifical confirmation except those for which the respective moderators have received special faculties.

⁹ Coronata, *op. cit.*, I, n. 335; Cappello, *Summa Iuris Canonici*, I, nn. 317, 322-323; Maroto, *op. cit.*, II, n. 831, b; L. Choupin, *Valeur des Décisions Doctrinales et Disciplinaires du Saint-Siège* (3. ed., Paris: Gabriel Beauchesne, 1928), pp. 98-100; Cicognani, *op. cit.* p. 80; Monin, *op. cit.*, p. 216.

¹⁰ *Loc. cit.*

which they are confirmed, all acts of the Sacred Congregations issued with papal approval enjoy pontifical authority.¹¹

Article II

The Motu proprio "*Cum iuris canonici*"

The fundamental principle of present-day legislation in regard to the value of the decrees issued by the Sacred Congregations was set down by Pope Benedict XV (1914-1922) in his Motu proprio *Cum iuris canonici*, September 15, 1917,¹² just prior to the binding enactment of the Code of Canon Law. Section II of this Motu proprio reads:

*Sacrae Romanae Congregationes nova Decreta Generalia iam nunc ne ferant, nisi qua gravis Ecclesiae universae necessitas aliud suadeat. Ordinarium igitur earum munus in hoc genere erit tum curare ut Codicis praescriptis religiose serventur, tum Instructiones, si res ferat, edere, quae iisdem Codicis praeceptis maiorem et lucem afferant et efficientiam pariant.*¹³

¹¹ Cappello, *Summa Iuris Canonici*, I, n. 323. From a practical viewpoint, the formula which the Roman Pontiff uses in granting his approbation indicates the type of *forma*; v.g., the following formulae indicate an approbation conceded *in forma communi*. *Facto verbo cum Santissimo*, or a *S. Congr. ex audientia SSmi*, or *SSmus, D. N. resolutionem Emorum Patrum approbavit et confirmavit*, or *SSmus D. N. Pius Papa X, audita relatione R. P. D. Secretarii eiusdem S. Congregationis, supra relatum Emorum Patrum declarationem ratam habere et confirmare dignatus est*. On the other hand, the following formulae signify an approbation granted *in forma specifica*. *Ex motu proprio*, or *ex scientia certa*, or *De Apostolicae auctoritatis plenitudine declamamus, statuimus...*, or *Non obstante quacumque lege seu consuetudine in contrarium...*, or *Supplentes omnes iuris est facti defectus*, or *In audientia SSmus D. N. benigne dispensare dignatus est*, or simply *ab ipso Papa in audientia*. Cf. Cappello, *De Curia Romana*, I, 54-55; Cocchi, *Commentarium*, III, n. 185; Maroto, *Institutiones*, II, n. 831, p. 248, footnote 1; Coronata, *loc. cit.*; Choupin, *op. dt.*, pp. 72-73, 75; Beste, *Introductio in Codicem* (Collegeville, Minn.: St. John's Abbey Press, 1938), p. 241.

¹² AAS, IX (1917), 483-484. This Motu proprio may also be found at the beginning of the reprints of the Code of Canon Law.

¹³ AAS, IX (1917), 484.

A. Historical Background

In order to understand the canonical reasons for this act of jurisprudence on the part of Pope Benedict XV and to comprehend the juridic force of the decrees, especially the instructions, as described by him, it is necessary to consider, at least briefly, the historical background which prompted him to issue his *Motu proprio Cum iuris canonici*.

It is important to note that the principal duties and activities of the S. Congregations today are almost identical with the original functions of the S. Congregation of the Council, as regulated by Pope Pius IV (1560-1565) in his *Motu proprio Alias nos*, August 2, 1564, for at that time the S. Congregation of the Council was authorized simply to watch over and to effect the observance of the decrees of the Council of Trent.¹⁴

The faculty of authentically interpreting the decrees of the Council was not expressly granted even to this Congregation until Pope Sixtus V did so in his Constitution *Immensa aeterni Dei*, January 22, 1588.¹⁵ But, from that time until the enactment of the Constitution *Sapienti consilio*, June 29, 1908, this same S. Congregation of the Council retained the exclusive faculty of interpreting the laws of the Council of Trent.¹⁶ This particular faculty of authentic interpretation was a vast change from its original powers, for it often meant the enactment of entirely new legislation, especially in so far as restrictive or extensive interpretations were involved. In fact, at the time Pope Pius X reorganized the Roman Curia the jurisdiction of the S. Congregation of the Council embraced virtually the entire existing body of disciplinary legislation, both because the law was based substantially on the decrees of the Council of Trent and because

14 Cf. *Analecta, Iuris Pontificii (AIP)*, II (1857), 2251-2252; Schmidt, "The juridic value of the *Instruct*TM provided by the *Motu proprio 'Cum iuris canonici'* September 15, 1917," *The Jurist*, I (1941), 293; Ojetti, *De Romana Curia*, p. 84.

15 Ojetti, *op. tit.*, pp. 85-86; Schmidt, "art. cit.," *ibid.*, p. 295.

16 Wernz, *Ius Decretalium*, II, n. 651; Ojetti, *loc. tit.*

this same Council had to a great extent incorporated the previous legislation into its enactments.¹⁷

The fact to be noted here, however, is that the widespread powers of the S. Congregation of the Council were divided among the other Congregations by Pope Pius X in such a manner that each Congregation received an equal share of the administrative duties in the government of the Church. Consequently, all of the Congregations received the same extensive authority in their capacity as administrators, executors and especially as authentic interpreters of the law, each within its own competence.¹⁸

Furthermore, in spite of the constant and vigorous controversy relative to the value of the acts of the S. Congregations in the past, the more common opinion of the authors seems to indicate that most of the general enactments issued by them with pontifical approbation prior to the *Motu proprio* of Pope Benedict XV were of a truly legislative nature, whether in the form of authentic interpretations or in the form of materially new law.¹⁹ Hence, in the course of time the S. Congregations far exceeded the purely executive or administrative powers as they were originally granted by the *Motu proprio Alios nos*. Their powers were greatly increased with the gradual evolution of interpretative and legislative competence. Moreover, since the many decrees issued by the various Congregations were held as the equal of pontifical laws, each year saw a considerable amount of new legislation added to that already in existence.²⁰

AIP, II (1857), 2253; Wemz, *op. cit.*, II, n. 661, I; Schmidt, "art. cit.," *ibid.*, p. 296.

¹⁸ S. C. Consist. *Romana*, 11 febr. 1911—*AAS*, III (1911), 99-100; Cappello, *De Curia Romana*, I, 42; Monin, *De Curia Romana*, pp. 201-202; Wemz, *lus Decretalium*, II, n. 654.

¹⁹ For a detailed discussion concerning this controversy the reader is referred to Ojetti, *De Romana Curia*, pp. 11-12; Wemz, *op. cit.*, II, n. 661, III; Cappello, *De Curia Romana*, I, 40-41; Schmidt, "art. cit.," *ibid.*, pp. 297, 300-302.

²⁰ Kinane, "Recent 'Motu proprio' regarding the new Code of Canon Law," *The Irish Ecclesiastical Record*, N. Series X (1917), 421.

One can well imagine the difficulties and the confusion which was certain to arise from the repeated and constant influx of new legislation. In fact, it was in view of the aforementioned circumstances that Pope Benedict XV saw fit to issue his *Motu Proprio Cum iuris canonici* and to legislate therein: "*Sacrae Romanae Congregationes nova Decreta Generalia iam nunc ne ferant, nisi qua gravis Ecclesiae universae necessitas aliud suadeat.*" He recognized, as did Pope Pius X before him, that the new Code would remedy the current situation, but it was also his intention to provide "*— ne — crebra novarum legum varietate, tanti operis stabilitas in discrimen aliquando vocetur.*"²¹ In other words, it was evident that the stability of the Code would definitely be endangered if the former procedure on the part of the individual Congregations were allowed to continue, for thus all the difficulties which it was meant to eliminate would again arise.²²

B. Decrees

The Sacred Congregations, by virtue of the legislation of the *Motu proprio Cum iuris canonici*, were explicitly denied true legislative power.²³ It is precisely this expressed disposition of Pope Benedict XV that has given rise to the oft repeated query: Just what is the juridic value of the decrees, especially the instructions, issued by the Sacred Congregations?

²¹ These words are found in the introduction of the *Motu proprio Cum iuris canonici*—AAS, IX (1917), 483.

²² Kinane, "art. cit.," *ibid.*, pp. 421-422; Schmidt, "art. cit.," *ibid.*, pp. 290-291.

²³ An exception is made in this regard in favor of the Congregation of Sacred Rites, whose matters of competence are not touched directly by the Code. Cf. canon 2; Coronata, *Institutiones Iuris Canonici*, I, n. 335; Chelodi, *De Personis*, n. 161, c; Cocchi, *Commentarium*, III, n. 185.

Cicognani (*Canon Law*, p. 78) also states that some of the other Congregations have since been conceded a certain measure of legislative power by the Supreme Pontiff. Thus, he lists the S. C. of the Holy Office, the S. C. of the Council and the S. C. for the Propagation of the Faith as having at least some legislative power.

The wording of the *Motu proprio* is clear. It is evident that Pope Benedict XV intended that the Sacred Congregations should no longer be capable, of themselves, to issue general decrees which formally or equivalently have the force of law. Thus, they are not able to give authentic interpretations of the canons of the Code (i.e., *per modum legis*). The latter is reserved exclusively to the special Commission for the Authentic Interpretation of the Code, which was established for that very purpose.²⁴

It was provided in the *Motu proprio Cum iuris canonid* that the S. Congregations should not issue any new decrees, "*nisi qua gravis Ecclesiae universae necessitas aliud suar deat*" But, even in this particular contingency, it is not the Congregation itself which establishes the new law, for all authors agree that whenever the serious necessity of the Church demands new legislation and the Supreme Pontiff orders one of the Congregations to edit a new general decree, either by reason of a special mandate (antecedent) or with subsequent special and specific confirmation, it actually becomes an act of the Pope and must be considered as having been given by him.²⁵ Of themselves, the S. Congregations, unless they have been granted some extraordinary faculty, are able merely to propose or suggest new laws to the Roman Pontiff and then to prepare the matter for them.²⁶ Moreover, if for the good of the Church any of the S. Congregations should be called upon to issue such disciplinary decrees which are to have the force of general laws, they are to be duly promulgated in the "*Acta Apostolicae Sedis*" and in-

²⁴ *Motu proprio Cum iuris canonid*, II—AAS, IX (1917), 483; Cappello, *Summa Iuris Canonid*, I, nn. 58, 320.

²⁵ Cocchi, *loc. dt.*; Chelodi, *De personis*, n. 161; Coronata, *loc. dt.*; Cappello, *Summa Iuris Canonid*, I, nn. 322-323; Choupin, *op. dt.*, pp. 998-100; De Meester, *Compendium*, II, n. 584; Cicognani, *Canon Law*, p. 86.

²⁶ Maroto, *Institutiones*, I, n. 340; Wemz-Vidal, *Ius Canonicum*, II, n. 484; Chelodi, *loc. dt.*; Cappello, *Summa Iuris Canonid*, I, n. 320; Vermeersch-Creusen, *Epitome*, I, n. 264.

corporated into the Code according to the provisions outlined by Pope Benedict XV.²⁷

In regard to the particular decrees (*decreta particularia*) issued by the S. Congregations, it must be recalled that under ordinary circumstances they oblige only those to whom they are directed.²⁸ Thus the privileges, dispensations, indults and other special concessions granted by the S. Congregations are not in and of themselves general laws, nor do they concede the same faculty to others in similar cases or in the same manner of acting.²⁹

On the same basis the decisions and resolutions which are given *in linea disciplinari* and directed in answer to doubts or controversies between particular parties also lack the force of universal law. Other persons, even though they may be in the same condition and under identical circumstances, are not bound by such decisions.³⁰

It is possible, however, for particular decisions or resolutions by way of exception to serve as a source or even a means of bringing about a new general law. For, if the same particular decisions have been given repeatedly in similar cases, it may happen that they may concur to establish a specific practice or *Stylus Curiae*, i.e., a practice which gives rise to a legitimate custom.³¹

²⁷ Motu proprio *Cum iuris canonici*, III—AAS, IX (1917), 484; Cf. also canon 8; Coronata, *loc. cit.*; Blat, *Commentarium*, II, n. 230; Cappello, *Summa Iuris Canonici*, I, n. 60.

²⁸Wernz, *Ius Decretalium*, I, n. 146; Bargilliat, *Praelectiones Iuris Canonici* (37. ed., 2 vols., Parisii: Apud Baston, Berche et Pagis, 1923), I, 372; Cicognani, *op. cit.*, p. 86; Coronata, *Institutiones Iuris Canonici*, I, n. 335.

²⁹De Meester, *op. cit.*, II, n. 584.

³⁰Wernz, *loc. cit.*; Bargilliat, *loc. cit.*; De Meester, *loc. cit.* Cf. also canon 17, § 3.

³¹“Decisionibus repetitis Sacrarum Congregationum, quibus accedit approbatio Romani Pontificis, facile nascitur ius consuetudinarium per coniventiam legislatoris.”—Van Hove, *De Legibus Ecclesiasticis*, n. 326; Cf. also Chelodi, *op. cit.*, n. 161; Cicognani, *loc. cit.*; Claeys Bouuaert-Simenon, *Manuale*, I, n. 405; De Meester, *loc. cit.*

Also, according to some canonists, any particular rescript or decree duly promulgated in the *Acta Apostolicae Sedis* obtains the force of obliging all, unless the names of the places or persons for whom it was given are properly determinable. If these facts cannot be learned from the rescript as it is published in the *Acta Apostolicae Sedis*, they contend that it is to be held as an authentic general interpretation of law.³²

Cappello, on the other hand, while admitting that in practice the resolutions and decisions given by the S. Congregations are oftentimes interpretations of the canons of the Code, also makes it clear that, since they are issued *per modum rescripti vel resolutionis* (and not *per modum legis*) in the manner of responses to questions presented in particular cases only, they are only in a broad sense, and not properly called, authentic interpretations.³³

De Meester clarifies the matter in this regard still further when he states that it is not to be doubted that the *decreta interpretativa particularia sed aequivalenter generalia* (extensive or restrictive interpretations of the canons) do not and cannot have the authority of general law unless they are issued *per modum legis* in virtue of a special mandate from the Roman Pontiff or with his special approbation and then duly promulgated.³⁴

Consequently, it is only under extraordinary circumstances and by way of exception that any of the decrees, whether general or particular, of the S. Congregations gain and achieve the force of true law. It definitely is not within their ordinary jurisdiction, as executive and administrative agencies of the Roman Curia, to enact new legislation.

C. Instructions

Since the Instruction itself is but a species of the decrees

³² Wernz-Vidal, *Jus Canonicum*, I, n. 211, IV; Coronata, *loc. cit.*; Choupin, *op. cit.*, pp. 101-103; Vermeersch-Creusen, *Epitome*, I, n. 264, 2.

Summa Juris Canonici, I, nn. 58, 326. Cf. also canon 17, §3; Chelodi, *loc. cit.*; Cocchi, *op. cit.*, III, n. 185.

³⁴ *Compendium*, II, n. 584; Cf. also canon 17, § 2.

issued by the S. Congregations, it follows that whatever has been said in the foregoing holds true also for it. But, because of the very nature of the Instruction and the frequency of the occasions on which the faithful, the clergy, and especially the diocesan tribunals are affected by them, a more detailed consideration will be given to them from the positive viewpoint.

It is evident from the foregoing that Pope Benedict XV was referring to the decrees which imply the enacting of new laws when he declared: "*Sacrae Romanae Congregationes nova Decreta Generalia iam nunc ne ferant...*" Furthermore, in order to fortify this act of legislation, only those decrees which the Supreme Pontiff approved *in forma speciali* were to be regarded as capable of producing new legislation for the universal Church.

On the other hand, all decrees, either general or particular, if they are promulgated without any confirmation (which is practically never done)³⁵ or only with an approval given *in forma communi*, are to be acknowledged as acts of the S. Congregations themselves, and hence are to be considered merely as executive interpretations of law and as administrative dispositions meant to aid the observance of the precepts of the Code.³⁶ This in fact is the fundamental concept of the Instruction, which may be defined as an act of administrative power issued for the purpose of providing for the execution of a previously enacted and duly promulgated law.³⁷

The nature and the purpose of the Instruction was accurately described by Pope Benedict XV. After declaring that the S. Congregations were no longer capable of establishing new general laws, he immediately proceeded to outline the functions which were proper to them.

³⁵ So states Coronata, *Institutiones iuris Canonici*, I, n. 335.

³⁶ Coronata, *loc. cit.*

³⁷ Coronata defines instructions as: "Actus potestatis administrativae quibus leges latae et promulgatae executioni demandantur." *Op cit.*, I, n. 2.

*Ordinarium igitur earum munus in hoc genere erit turn curare ut Codicis praescripta religiose serventur, turn Instructiones, si res ferat, edere, quae Usdem Codicis praeceptis maiorem et lucem afferant et efficientiam pariant.*³⁶

Maroto emphasized the consideration that the Roman Congregations are by their nature in the executive order of ecclesiastical government, the essence of which consists in the power to govern, in the sense of safeguarding, urging and supervising the fulfillment of the law.³⁹ Thus it is commonly asserted, and very properly so, that the Instruction does not inherently (*per se*) and indiscriminately (*generatim*) have the force of universal law, but that it is rather a simple declarative norm, "*cuius directio servanda est, potius quam urgenda eius litteralis obligatio.*"TM It likewise does not possess any element of *authentic* interpretation, be it declarative, explanatory, restrictive or extensive, for all authentic interpretation of the canons of the Code is reserved exclusively to the Pontifical Commission.⁴¹ Yet, for purposes of practical interpretation they do have a great force. They enjoy a peculiar "*juridic force*"⁴² proper to their very purpose which, in the words of the *Motu proprio*, is to bring out in clearer light the precepts of the Code and to make them more effective. "The Congregations," says Cicognani on this point, "apply the canons to current questions, and this ap-

³⁸ *Motu proprio Cum iuris canonici*, II—AAS, IX (1917), 484.

³⁹ *Institutiones*, I, n. 340.

⁴⁰ Coronata, *op. cit.*, I, n. 335; Wernz-Vidal, *Ius Canonicum*, I, n. 211, III; Cocchi, *Commentarium*, III, n. 185; Vermeersch-Creusen, *Epitome*, I, n. 356; De Meester, *op. cit.*, II, n. 584; Claeys Bouuaert-Simonen, *Manuals*, I, n. 405.

⁴¹ *Motu proprio Cum iuris canonici*, I—AAS, IX (1917), 483.

⁴² Schmidt very aptly chose to use the term "*juridic force*" in contradistinction to "legal force" in order to emphasize the point that, while the Instruction, "as an instrument of ecclesiastical government does not have a *vis legis*, a force of law, or to use another traditional term, a *vis constitutionis*, it has decidedly a *juridic force*, proceeding not from legislative but from executive power, which is formally distinct from legislative jurisdiction."—*The Jurist*, I (1941), 292.

plication of law is its practical interpretation; it is also official, in this sense, that it comes from lawful authority.”⁴³

Moreover, it was not to be expected that the legislator could foresee all concrete circumstances which might arise in the course of time; nor is he expected to enact new legislation with the appearance of every particular contingency which may arise. This is exactly what Pope Benedict XV meant to forestall when he deprived the S. Congregations of their legislative power. Instead of new laws, it was Instructions that the S. Congregations were authorized to issue, and these for all practical purposes were deemed sufficient to accomplish the desired end.⁴⁴

It is in this manner that the Instructions, and even the particular decisions or resolutions given by the S. Congregations, can serve as the *complementa canonum*,** even to the extent of adding, not indeed new legislation, but a new obligation to the law already extant.⁴⁵ Furthermore, it is a matter of fact that the S. Congregations have issued general decrees in the past, in the manner of Instructions, which are actually observed as true laws.

The basic value of the Instruction follows from the declaration of the Motu proprio *Cum iuris canonici* that these documents are to be drawn up in such a manner that in reality they shall not only be explanations of, and complements to, the canons, but also be clearly recognizable as such, and therefore the canons themselves are cited in the text of these documents.⁴⁷

⁴³ *Canon Law*, p. 79.

⁴⁴ Cf. Schmidt, “art. cit.,” *ibid.*, pp. 311-312.

⁴⁵ Motu proprio *Cum iuris canonici*, II—AAS, IX (1917), 384.

⁴⁶ “Instructio vi nominis de se obligationem non importat; revera tamen quandoque legi, cuius execution! destinatur, novam aliquam obligationem addit.”—Coronata, *op. cit.*, I, n. 2. Cf. also Vermeersch-Creusen, *op. cit.*, I, n. 132; Maroto, *op. cit.*, I, nn. 337, f, et 180, A, a.

⁴⁷ “Eiusmodi vero documenta sic conficiantur, ut non modo sint, sed appareant etiam quasi quaedam explanationes et complementa canonum, qui idcirco in documentorum contextu peropportune afferentur.”—AAS, IX (1917), 384.

Thus, in so far as the Instructions call to mind and command the observance of existing legislation, they are of absolute obligation,⁴⁸ not by reason of the Instructions themselves, but in virtue of the laws which they restate or restore to practice.

On the other hand, the Instructions themselves are to be accepted merely as *explanations* of the law or as *recommendations* on how to obtain a more faithful observance of the law in concrete cases and under particular circumstances. Oftentimes they consist of *rules* or *directive norms*, which the Congregation sets forth in order to assist the ordinaries in the elimination of the various evils which threaten the Church and the faith and morals of the faithful. These Instructions do not constitute law for the simple reason that they are given as *directive norms*. Yet they must be obeyed, since they are intended as a preparation for the observance of ecclesiastical discipline, and they proceed from legitimate authority.

It is almost unimaginable to think that anyone would be so rash and imprudent as to ignore the acts of any given Congregation for the simple reason that they do not constitute law. After all, the S. Congregations are the supreme executive departments of ecclesiastical government, and accordingly all have at least a moral obligation to observe whatever disciplinary norms and rules are issued by them.

Furthermore, the realization that the Instructions are more often than not, clarifications or emphatic declarations of the mind of the Supreme Pontiff himself also imposes a greater moral suasion upon the individual and encourages a more faithful observance of the law.

Article III
Coercive Authority

Authors are in unanimous agreement that the S. Congregations, when acting within the scope of their competence, do have the power to employ coercive measures, even in the

⁴⁸ Cicognani, *Canon Law*, p. 87.

manner of general decrees, provided the approbation of the Holy Father has been previously obtained.⁴⁹

A practical example in this regard is the decree of the S. Congregation of the Consistory issued on December 30, 1918. By means of this decree the aforementioned Congregation declared that a suspension *a divinis* would be *ipso facto* incurred by all priests who rashly and arrogantly emigrated from Europe or the Mediterranean countries to America or to the Philippines without having previously obtained the necessary permission in writing. In addition, the same Congregation reserved to itself the right and power of granting absolution from this censure.⁵⁰

Most authors, however, while agreeing that a general decree of the S. Congregations needs the approbation of the Supreme Pontiff, add that they have the authority, and this without any special approval, to attach penalties to their particular decrees and precepts.⁵¹

On the other hand, Chelodi and Salucci maintained that the S. Congregations, with the exception of the Holy Office,

49 Cappello, *Tractatus Canonico-Moralis de Censuris iuxta Codicem Iuris Canonici* (hereafter cited *De Censuris*) (3. ed., Taurinorum Augustae: Marietti, 1933), n. 11; Cavigioli, *De Censuris Latae Sententiae* (Torino, 1919), n. 7; Cerato, *Censurae Vigentes Ipso Facto a Codice Iuris Canonici Excerptae* (2. ed., Patavii, 1921), n. 6, 2°; Chelodi, *Ius Canonicum de Delictis et Poenis et de Iudiciis Criminalibus* (5. ed., recognita et aucta a Pio Ciprotti, Trento: Liberia Moderna Editrice, 1943), n. 24, nota 5; Roberti, *De Delictis et Poenis* (Romae, 1938), n. 56; Vermeersch-Creusen, *Epitome*, III, n. 411; Salucci, *II Diritto Penale secondo il Codice di Diritto Canonico* (2 vols., Subiaco, 1926-1930), I, p. 102, nota 1.

80 "Sacerdotes qui, his legibus non servatis, temere arroganterque demigraverint, suspensi a divinis ipso facto maneat; qui nihilominus sacris (quod Deus avertat) operari audeant, in irregularitatem incidunt; a quibus poenis absolvi non possint nisi a sacra hac Congregatione."—AAS, XI (1919), 43; Cf. also Bouscaren, *Digest*, I, 97.

81 Vermeersch-Creusen, *loc. cit.*; Cavigioli, *loc. cit.*; Cerato, *loc. cit.*; Coronata, *Institutiones Iuris Canonici*, IV, n. 1693; Cappello, *De Censuris*, n. 11, nota. 7.

do not possess any power of inflicting penalties, unless the Supreme Pontiff gives them a mandate to do so.⁶²

The former opinion seems to be the more probable opinion, since canon 2220, § 1, states that all who have the power of enacting laws or of imposing precepts are also able to attach penalties to those laws or precepts.⁶³

In abstraction from what the S. Congregations themselves are able to do in the manner of inflicting penalties, it is apparent from an examination of the various Instructions issued by the S. Congregation of the Sacraments that they very frequently admonish the individual ordinaries to use their own power, especially that given to them in virtue of canon 2222, § 1, to enforce its rulings.

⁶² Chelodi (*op. cit.* n. 24) stated: "Poenas statuere pertinent ad potestatem legislativam." Hence he also said: "Non amplius vigenti iure... Congregatione Romanae nisi ex mandato Pontificis (excepto S. O.)."—*op. cit.*, n. 24, nota 7. Cf. also Salucci, *loc. cit.*

⁶³ Can. 220, § 1 reads: "Qui pollent potestate leges ferendi vel praecepta imponendi, possunt quoque legi vel praecepto poenas adnectere." In this regard Van Hove stated: "Potestatem dandi praecepta in Ecclesia vi potestatis iurisdictionis habent soli illi qui gaudent potestate iurisdictionis *fori externi* et in materiis sibi commissis, etiam si non gaudeant potestate legislativa."—*De Legibus Ecclesiasticis*, n. 361. Cappello (*Summa Iuris Canonici*, I, n. 320) states: "Singulae Congregationes pollent vera potestate iurisdictionis, ita ut non solum *praecepta* aliaque *mandata* ferre valeant, sed *poenas* quoque irrogare possint." And again, in referring to the opinion of Chelodi, he states: "Quod verum non est; nam, etsi decreta generalia edere nequeant nisi post approbationem R. Pontificis..., particularia tamen decreta ferre eaque censuris munire valent."—*De Censuris*, n. 11, nota 7.

APPENDIX

Letters Addressed to the Congregation

Anyone is able to communicate directly with any department of the Roman Curia either in person or through the medium of a procurator fortified with a legitimate mandate. However, the customary and more proper method of corresponding with the various Congregations when there is question of matters of the external forum is to proceed through the intervention of the Ordinary or the chancery office.

The Latin language is preferred. French and Italian are permitted, however, and German, English, Spanish and Portuguese are not rejected.¹

The present address of the Sacred Congregation of the Sacraments is:

Palazzo delle Congregazioni
Piazza S. Maria in Trastevere
Roma, Italia

It should be noted, however, that this in no way affects the customary salutation, "Beatissime Pater" (i.e., the Pope) of the letter or petition directed to the Sacred Congregation.

¹ **Coronata**, *Institutiones iuris Canonici*, I, n. 336.

CONCLUSIONS

I. There was without doubt a very close relationship between the gradual development of the Roman Curia and the various advancements introduced by the Pontiffs in the exercise of their dispensatory power. With each major step in the more liberal use of this power there was likewise a major development within the organization of the Roman Curia. (Pages 11, 21)

II. Despite the numerous advancements made throughout the course of the centuries, not until the time of Pope Pius X was the thorn (cumulative jurisdiction) in the side of the Roman Curia eliminated. (Pages 22, 23) Moreover, even though questions pertaining to the discipline of the sacraments have always provided a major portion of the business handled by the papal curia, it was not until Pope Pius X reorganized the curia in the year 1908 that a specific and separate department was established and given exclusive jurisdiction over these matters. (Page 24)

III. Special emphasis must be placed on the *discipline* of the sacraments in the determination of the proper competence of the Sacred Congregation of the Sacraments. Many matters, even though they may be concerned with the sacraments, fall within the jurisdiction of one of the other Congregations or Tribunals. (Pages 34, 35 if.)

IV. The competence of each Congregation, Tribunal and Office of the Roman Curia has been established and determined by law; nevertheless, it is certainly within the power of the Supreme Pontiff to enlarge or to restrict the power of any one of them at any time. (Pages 24, 45)

V. The solution of all matrimonial cases involving a non-Catholic, whether petitioner or respondent, brought in any way before the Holy See, belongs exclusively to the Holy Office. (Pages 38-39)

VI. The Sacred Congregation of the Sacraments is absolutely incompetent in matters touching upon any of the

Oriental rites or members thereof, even if such matters be of a mixed nature. (Page 57)

VII. The Sacred Congregation for the Propagation of the Faith and the Sacred Congregation for the Oriental Church are competent to exercise their authority, within certain defined territories, over all matters reserved to the Sacred Congregation of the Sacraments for the rest of the world, with the exception of questions relating to matrimony. The competence of the latter is not in any way whatsoever restricted by territorial limitations in matters pertaining to matrimony. (Pages 60, 62-63)

VIII. The Instructions of the Sacred Congregation of the Sacraments do not inherently (*per se*) and indiscriminately (*generatim*) have the force of universal law, but they rather offer simple declarative norms, "*cuius directio servanda, est potius quam urgenda eius litteralis obligation*" (Pages 121-122)

IX. The Sacred Congregation of the Sacraments cannot employ coercive measures with universal binding force unless the approbation of the Holy Father has been previously obtained. Most authors agree, however, that the S. Congregations have the authority, and this without any special approval, to attach penalties to their particular decrees and precepts. (Pages 124-126)

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Abbreviations

AAS—*Acta Apostolicae Sedis*.

AIP—*Analecta Iuris Pontificii*.

ASS—*Acta Sanctae Sedis*.

Bull. Rom.—*Bullarum Diplomatum... Tauriensis Editio*.

Coetus S. R. E. Card.—The special commission of cardinals mentioned in canon 245.

Const.—Constitution.

Digest—*The Canon Law Digest*.

Fontes—*Codicis Iuris Canonici Fontes cura... Gasparri editi*.

Instr.—Instruction.

Instructio—The Instruction of the S. Congregation of the Sacraments, October 1, 1949, on domestic oratories, portable altars, the celebration of Mass *sine ministro*, and the reservation of the Blessed Sacrament in private chapels.

Normae Communes—*Ordo servandus in Sacris Congregationibus, Tribunalibus, Officii Romanae Curiae, Pars Prima, Normae Communes*.

Normae Peculiares—*Ordo servandus... Pars Altera, Normae Peculiares*.

Pont. Comm.—Pontifical Commission for the Authentic Interpretation of the Code.

S. C. C.—Sacra Congregatio Concilii.

S. C. Consist.—Sacra Congregatio Consistorialis.

S. C. Or.—Sacra Congregatio pro Ecclesia Orientali.

S. C. Sacr.—Sacra Congregatio de Sacramentis.

S. C. S. Off.—Suprema Congregatio Sancti Officii.

S. R. C.—Sacrorum Rituum Congregatio.

BIOGRAPHICAL NOTE

Robert Francis Sheehy was born on November 11, 1922, at Hastings, Nebraska. He received his elementary and high school education at St. Cecilia's Parochial School in Hastings. In the fall of 1941 he entered St. John's Home Missions Seminary, Little Rock, Arkansas, where he received his Bachelor of Arts degree in June of 1945. He received his theological training at St. Francis Major Seminary, Milwaukee, Wisconsin. He was ordained to the sacred priesthood at St. Cecilia's Church, Hastings, Nebraska, on May 6, 1948. After having served one year as assistant pastor at St. Mary's Parish, David City, Nebraska, he was enrolled in the School of Canon Law at the Catholic University of America. He received the Baccalaureate Degree in Canon Law in June, 1950, and the Degree of Licentiate of Canon Law in June, 1951.

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