

THE SACRAMENT OF PENANCE: PASTORAL AND INTER-RITUAL DIFFICULTIES REGARDING RESERVED SINS AND *LATAE* *SENTENTIAE* CENSURES (PART I)

Vinson Joseph, MST*

This article is based on a research made by Fr. Vinson Joseph to identify the canonical nuances of the reserved sins, which is found, in a strict sense, only in the *CCEO*. This is compared with the parallel system, the *latae sententiae* censures especially non-declared excommunication and interdict according *CIC*. The author claims that these two systems are theoretically and legally not equal. The existence of these two types of reservations concerning the sacrament of penance creates injustices, legal confusions and illegal practices.

1. Introduction

Eucharist and Penance are two sacraments of the Catholic Church which impart grace to the faithful, enabling them to live in union with God in their daily lives. Of these two, the sacrament of penance raises certain theological and practical perplexities for various reasons. There are many issues affecting this sacrament, such as the loss of a sense of sin, increasing dislike for individual confession in recent decades, doubt concerning the faculty of the Church to forgive sins, and problems related to the compartments of the ministers of the sacrament. The modern situation of globalization, along with an overemphasis on individualism and secularism especially in the European world, have created new problems in the areas of sin,

*Vinson Joseph (Fr. Dr. Vincent Kadalikkattilputhenpura, MST) is a priest belonging to the Missionary Society of St. Thomas the Apostle and is hailing from Pala in the state of Kerala, India. He did his licentiate in Oriental Canon Law from DVK, Bangalore and completed his doctorate in 2015 from the University of Fribourg in Switzerland. At present he is the vice-rector and the teacher of Canon Law in *Ruhalaya* Major Seminary, Ujjain, India.

individual confession and the administration of sacrament of penance. Even the proposition of this study on the topic of reserved sin met with a certain amount of scepticism due to the waning interest in individual confession and other unfavourable circumstances related to the sacrament of penance in the European context.

The major aim of this research is to identify the canonical nuances of the reserved sins, which is found, in a strict sense, only in the *CCEO*. The parallel system, the *latae sententiae* censures especially non declared excommunication and interdict plays the role of reserved sins according *CIC*. A thorough study of these two systems and pastoral application of these norms have proved that these are theoretically and legally not equal. The existence of these two types of reservations concerning the sacrament of penance creates injustices, legal confusions and illegal practices. The research proves that to a certain extent the very purpose of the establishment of reservation affecting the sacrament of penance is defeated by two systems concerning the same sacrament.

Before going into details I would like to recall the norm that to be a true and valid minister of the sacrament of penance, one must have not only the power of order (*munus sacram*) but also the faculty to give absolution. This faculty is not the power to pardon sins (an integrating part of the *munus sacram* received in the sacrament of sacred ordination), but the hierarchical authorization to exercise this power.

Due to increased migration in the modern world, Eastern and Latin Christians often live together in the same ecclesiastical units. Keeping this in mind, the comparison is presented and pastoral problems are examined.

This study is also based on an empirical survey recently conducted among a selected group of priests working in Switzerland. Though this does not provide a complete model, it does give some idea about the pastoral execution of these two systems of reservations, at least in the modern Church in Europe. This article is thus an attempt to compare these two systems of reservations theoretically and pastorally in the field of the sacrament of penance and to examine its merits and demerits.

2. The System of Reserved Sins in the CCEO

According to Eastern Code, there are certain sins the absolution of which is reserved to an authority higher than an ordinary confessor with ordinary habitual faculty. Two sins, i.e. the direct violation of the confessional seal and the absolutions of an accomplice in a sin against chastity, are reserved to the Apostolic See. A single sin, i.e. abortion, is reserved to the eparchial bishop (CCEO c. 728 §§1, 2).

The following important matters are to be noted with respect to the reserved sins in the Eastern Code. The purpose of reserved sin is not to punish the sinner, but to bring the more serious sin before those best qualified to give them the guidance and prudent consideration they required. In other words, the purpose of establishing reserved sins is to bring the penitent before a superior authority for better guidance. The norms on reserved sins are added in the part of the sacrament of penance and not listed among the canonical penalties. So, in no way should the withholding of absolution be seen as a punishment for sin. Actually the sacrament of penance reconciles the sinner with God and the Church. Therefore, it is evident from the CCEO that the reservation of sin is not a canonical penalty (CCEO c. 1402).¹

Another function of reservation in the Eastern Code is disciplinary, in the sense that it safeguards the integrity of the sacrament. If some serious norms are not established, the sacrament of penance will be left open to abuse. Both of the two sins reserved to the Apostolic See concern the dignity of the sacrament of penance itself. The direct violation of the seal is considered a breach of the penitent's confidence and trust in the sacrament. The second sin is the manipulation of the authority given by God and the Church. Hence, these reservations safeguard the integrity of the sacrament itself.

Pastoral sensitivity also leads the Church to take all necessary precautions to ensure that the sacrament is truly an encounter with our Lord who pardons and reconciles and does not become an

¹Michael J. Kuchera, "Two Different Systems in Confessional Reservations: *Reservatio Ratio Censurae* and *Reservatio Rationae sui*." *Kanonika* (2013), 187-202, 195.

occasion for committing further sins.² It is up to the minister who celebrates the sacrament to ensure that these conditions are met. Speaking of abortion and the sacrament of penance, John McAreavey states that the purpose of the law on abortion is “to protect unborn life and to reconcile with God and the Church those who have had abortions.”³ Thus, the Church is also merciful towards one who has committed this serious sin by granting him or her absolution and proper guidance to help him or her out of the post-abortion trauma.

Another positive aim of the reservation of sins is to protect the welfare of the group, while at the same time not excluding the welfare of the individual, as observed before. Scandal is to be avoided by reproof, imploring and rebuking a sinner with the greatest patience and teaching (CCEO c. 1401). This is done in the interest both of bringing the erring sheep back to God as well as of correcting any scandal in the Christian community. The correction of the sinner is a consequence of the reservation of sins for the public good of the Church.⁴

Another factor to be noted is that the limitation of the faculty described as reservation does not inflict incapacity directly on the penitent but rather on the confessor’s power to absolve. As we compare the two systems, Latin and Eastern, it is very important to note that the restriction in the first place is a restriction on the confessor and not on the penitent. Though perhaps it is more difficult for the penitent to receive absolution, it is never impossible.

Another remarkable point is that there is no *latae sententiae* censure in the Eastern Code.⁵ In 1974, at the first preliminary meeting of the commission for the revision of the Eastern Code of Canon Law, three main principles were established for the revision of the Eastern penal laws. The first was to abolish all *latae sententiae* sanctions, rather than

²Francis J. Marini, *Comparative Sacramental Discipline in the CCEO and CIC: A Handbook for the Pastoral Care of the Members of Other Catholic Churches Sui Iuris* (Canon Law Society of America, 2003) 117.

³John McAreavey, “Abortion and the Sacrament of Penance,” *The Furrow*, Vol. 44/4 (April, 1993) 230.

⁴Michael J. Kuchera, “Two Different Systems in Confessional Reservations: *Reservatio Ratio Censurae* and *Reservatio Rationae sui*,” 195.

⁵*Nuntia* 3 (1976) 24.

simply reducing the sanctions to a minimum.⁶ During the *denua recognitio* of the 1981 Schema regarding penal sanctions in the Church, the expert study group took up the question of introducing automatic penalties notwithstanding the approved guidelines to abolish them. But after much reflection, the study group agreed not to propose to the members of the Commission a reconsideration of the decision made in 1974.⁷ During the review of the 1986 SCICO, one member of PCCICOR again proposed the introduction of *poenae latae sententiae* into the Eastern Code, but this was rejected by the Commission.⁸ For Eastern Catholics, therefore, according to the New Code, no *latae sententiae* penalties could be applied.

In the Eastern Code, the punishment is more medicinal and should be delivered only upon examining each case (*ferendae sententiae*). In an automatic punishment, the subjective and objective elements involved in the act are not examined by the judge. In the Eastern Code, the purpose of penalty is aimed more at the conversion of the offender than the reparation of the damage caused by the act. Normally, the reparation is committed also when one is converted and the medicinal penalties are fulfilled. So, the Eastern Code totally abrogated the *latae sententiae* penalties which had been applicable to Eastern Catholics in the previous legislations.

3. The System of '*ratione censurae*' Reserved Sin in the CIC

The system of reserved sin presented in CIC, 1917 is currently removed from the new Code of Canon Law. Neither reserved sin nor even the possibility of reserved sin is envisaged in CIC, 1983. The reasons behind its removal were the insignificant and inappropriate usages of this system in the pastoral life of the Latin Church. There were numerous reserved sins and much confusion due to these reservations. The strong recommendation of the Apostolic

⁶1. Nel Codice Orientale si aboliscano tutte le *latae sententiae*, perché esse non corrispondono alle genuine tradizioni orientali, sono sconosciute alle Chiese Ortodosse, e non sembrano necessarie ad un adattamento del Codice orientale alle esigenze moderne della disciplina delle Chiese Orientali Cattoliche. *Nuntia* 4 (1977), 72-78 ff.

⁷Thomas J. Green, "Penal Law in the Code of Canon Law and in the Code of Canon of the Eastern Churches: Some Comparative Reflection," *Studia Canonica* 28 (1994), 407-451, 422.

⁸*Nuntia* 28 (1989) 96-98.

Penitentiary to abrogate the institution of reserved sins was taken into consideration during the codification of the Code.⁹

The purpose of reserved sin is actually served in an indirect way by *latae sententiae* excommunications and interdicts. Since the Code commission decided to avoid the section on reserved sins, the system of reserved *latae sententiae* censures, remittance of which is reserved to higher authorities than an ordinary priest or confessor, were preserved in the Latin Code. Thus today there do exist indirect reserved sins, even though there are no norms associated with reserved sins in the Code.

The *latae sententiae* censures are included in the section on sanctions and not with the norms of the sacrament of penance. Thus it is evident that the *latae sententiae* censures are intended to put sanctions on delinquents. Indirect reservations on various sins are a secondary effect of the censures' imposition. The primary purpose of the *latae sententiae* censure is not to allow for reservations in the sacrament of penance, but to prevent grave occult offences in the Church. Someone who has committed a grave delict, attached to a *latae sententiae* censure by law, is automatically under censure by the very act itself. The censures of excommunication and interdict forbid not only the reception of sacraments but also the administration of sacraments and sacramentals, ministerial leadership in public worship, and the exercise of ecclesiastical offices, ministries, functions or acts of governance (*CIC* c. 1331 §1). The prohibition on receiving the sacrament of penance is just one of the effects of censure. Therefore, a censure cannot be seen as equal to the reserved sins in the Eastern Code.

⁹Jobe Abbass, "Penance: A Comparative Study of the Eastern and Latin Codes", 299; *Comm.* XV n.1, 209: "4. Affirmetur principium reservationis peccatorum. R. Reservatio peccatorum suppressa fuit, rogante praesertim Sacra Poenitentiaria, cum minus utilis videatur et sufficiens provideri possit per censuras. Huiusmodi suppressio amplium invenit favorem in consultatione. Reservatio non debet proinde iterum introducere."

In reviewing the codification of the sacramental law of *CIC* 1983 the following sources are to be studied: the 1975 schema on sacramental law and the 1977 schema on sacred times and places of divine worship. Another important source is the 1981 *Relatio* of the Secretariat of the Code Commission, reporting on comments on the so-called 1980 schema by members of the Commission.

Among the various guiding principles, suggestions are made for a better coordination of the internal and external forums, the imposition of fewer and simpler penalties, and fewer reservations of canonical faculties.¹⁰ In this way, the Code commission totally abrogated the reserved sins and reduced the number of reserved delicts, especially those with *latae sententiae* censures.

4. Different Types of Reservations in the CIC and CCEO that Affect the Sacrament of Penance

Entirely different types of reservations given in the CCEO and CIC are found to affect the sacrament of penance. In the Eastern Code, the faculty to absolve certain sins is reserved to higher authorities. These are also known as 'directly reserved sins,' a terminology unknown to present Codes. The CIC includes no reservation of a faculty to absolve any particular sin to the higher authorities. In the Latin Code, by contrast, certain delicts are penalized automatically and the remittance of the penalties of these delicts is reserved to higher authorities. In the CIC, jurisdiction to impose any sanction on a member of the faithful or to remit such sanction is reserved to the Ordinaries. The *latae sententiae* excommunication and interdict have the effect of reserved sin, given that the excommunicated or interdicted person is prohibited from receiving all sacraments. This system was known in the old legal system as the system of 'indirect reserved sins', though the old Code does not make use of the term. Thus it is clear that the CCEO and CIC use different types of reservations that affect the sacrament of penance.

The two Codes use different terms in speaking of reservations. 'Delict' and 'sin' are two entirely different terms, both in their meaning and sense. 'Remittance' and 'absolution' are also distinguished in the modern legal system. In the Eastern Code, the faculty to absolve certain sins is reserved to higher authorities, thereby excluding the confessor with a normal faculty. In the Latin Code, however, the jurisdiction (faculty) to remit the penalty is reserved to higher authorities, and thus the ordinary priest is excluded. The significance of this fact should be emphasized: these are two juridically different systems affecting the same sacrament of

¹⁰John P. Beal, James A. Coriden and Thomas J. Green (eds.), *New Commentary on the Code of Canon Law* (New York: Canon Law Society of America, 2000) 12

penance in the same Catholic Church. It is already seen how a *latae sententiae* censure affects the sacrament of penance and how it plays the role of reserved sins. It has been observed that most priests treat the reserved censures in the new Code as if they were reserved sins, though the concept of reserved sins existed already in *CIC*, 1917. This difference has not received much attention in the Church, and the majority of the priests still think that reserved sins and reserved delicts are the same. This may bring illicit and undesired actions by a priest in the sacrament of penance, especially in the inter-ritual administration of the sacrament.

5. Legal Differences between the Two Systems

In legal language, these two systems of reservations have entirely different elements. Different terminologies are also used. In the following sections, various elements of these differences are discussed.

5.1. Faculty and Jurisdiction

‘Faculty’ is a term used in the sacramental principle to indicate the power (jurisdiction) of the priest to administer the sacrament of penance. The old Code had used the term ‘jurisdiction’ even to indicate the confessional faculty. This faculty is not the same that is used in the remission of penalty. Since penalties are given in the external forum and have their consequences in the external forum, a priest requires the jurisdiction to remit a penalty. In case of reserved *latae sententiae* censure, this jurisdiction is withheld from a confessor and one can remit such a penalty only after receiving jurisdiction from the concerned authority or, in certain cases, obliging the penitent to have recourse within one month to the concerned superior (c. 1357 §1). As it happens, in the internal forum, in case of *latae sententiae* censures, this jurisdiction is sometimes misunderstood as the faculty to administer the sacrament of penance.

5.2. *Latae sententiae* Censure and Reserved Sin

In both systems, what prevents a person from receiving the sacrament of penance is different. According to the *CIC*, it is a *latae sententiae* censure that prevents one from receiving the sacrament of penance, whereas according to the *CCEO* it is the reserved sin that prevents this. Legally, these are not the same, and their effects and

legal consequences differ likewise.¹¹ There are different types of censures and they are given to one who commits the delict. Reserved sins are sins for which the faculty to absolve them is reserved to a higher authority. The penitent is under no penalty with respect to reserved sin.

5.3. Penal Norms and Sacramental Principles

Another difference between these two systems is that one is a penal norm and the other a sacramental norm. The system of the *CIC* is purely a penal norm and its effect of reserved sin is only indirect, due to the penalty of prohibition on the reception of all the sacraments. The Eastern Code directly places this system of reservation under the sacramental principles, which has nothing to do with penalties. These are merely certain sacramental principles meant for the benefit of the sacrament itself, the society and the person himself or herself.

5.4. Internal and External Matters

According to Canon Law all penal laws concern the external forum, whereas the sacrament of penance concerns purely in the internal forum. There is thus a difference between these *fora*. The censures have a relation with the internal forum only when they relate to the sacrament of penance. Otherwise they remain purely an external forum matter. Reserved sins strictly concern the internal forum and can in no way be in the external forum.

5.5. Remission and Absolution

These two terminologies have different senses in the legal realm. The removal of any penalty is known as 'remission', while the sacramental removal of sins is known as 'absolution'. Yet the term absolution is used at times in the same context and in the same sense, especially in the old law. The present Codes and legal writings clearly distinguish these two terms. In case of censure, what a confessor does in the confessional is remit the censure. The *CIC* c. 1357, which provides for this, uses the term 'remission' and not 'absolution.' The form of this remission may be different from that of

¹¹Philippe Toxè, "Approche canonique de cas de conscience particuliers et traitement des délits au for interne sacramentel," in *Faire pénitence, se laisser réconcilier*. Hélène Bricout and Patrick Prétot (eds.), Paris: Cerf, 2013, 52-154.

sacramental absolution or else the same sacramental absolution with the intention of removing the censure.¹² The reserved sins can be absolved only with the sacramental absolution, but censures may be remitted in the external forum as well.

5.6. Delict (Offence) and Sin

‘Delict’¹³ and ‘sin’ are different terminologies found in the two systems. Censures are applied to the one who has committed a delict and their remittance, in certain cases, is reserved to higher authorities. It is the ecclesiastical authority who has the jurisdiction to remove the penalty. Sin is an act against God and the punishment for sin and its removal is completely the act of God. It is believed that, even though a confessor is active in the sacrament of penance, the real absolution is given by Jesus Himself. The priest acts *in persona Christi* in the sacrament. So, a delict and a sin are different both in their sense and in the manner of their removal.

5.7. Non-Eligibility of the Priest and Non-Eligibility of the Penitent

According to the system of the *CIC*, the priest is eligible or has the faculty to absolve all sins, but the penitent is rendered ineligible to receive the sacrament of penance by censure (*CIC* c. 1331 §1, 2°). In other words, priests have the confessional faculty with all sinners and all sins. It is the non-eligibility of the penitent that prevents him from administering the sacrament. According to the *CCEO*, a penitent with a reserved sin is eligible to receive the sacrament of penance. But not all priests have the faculty to absolve all sins (*CCEO* cc. 727, 728). The faculty to absolve certain sins is withheld from them. Thus, the absence of the faculty in the confessor prevents the penitent from receiving absolution even if there is no direct prohibition on his or her receiving the sacrament of penance.

5.8. Two Different Means of Receiving the Confessional Faculty

When the types of reservation in the Latin and Eastern Codes are examined, it is evident that the faculty in relation to the sacrament of

¹²Philippe Toxè, “Approche Canonique De cas de Conscience Particuliers et Traitement des Délits au for Interne Sacramentel,” 165-166.

¹³Latin *dēlictum*, a fault, noun use of the neuter of *dēlictus* (past participle of *dēlinquere*, to do wrong). A wrongful act for which the person injured is entitled to a civil remedy; *CIC* c. 1321 §1.

penance is different. According to the Eastern system, the faculty is reserved in that ordinary confessors do not have the faculty to give absolution of the reserved sin. The penitent is not prevented from receiving sacrament of penance and is not under excommunication until he has been punished with a judgment or a special decree. In the case that a penitent with a reserved sin approaches the ordinary confessor, therefore, the confessor must receive the faculty to absolve that sin from the legitimate superior who can do so. In this case, the priest is delegated the faculty to absolve the reserved sin from the proper superior.

In the Latin Code, there is no reservation of the faculty to absolve certain sins to the higher authority. As was seen above, the confessor has the faculty with regard to all penitents and all sins. However, delicts that are punished with *latae sententiae* excommunication or interdict prohibit the person who comes with such delicts from receiving the sacrament. Once the faithful is automatically excommunicated by the very act itself, according to the law, he cannot receive any sacrament. Nor can any priest allow any excommunicated person to receive any sacrament in a normal situation. In this case, strictly speaking, the penitent has no right even to approach for the sacrament of penance since he is under punishment, even if the penitent is not aware of this. In other words, according to the *CIC*, the penalty renders the penitent incapable of receiving absolution. In the case of *latae sententiae* censures in the context of the sacrament of penance, therefore, the priest must first remit the penalty so that the person becomes eligible to receive the sacrament.

Although all priests have the faculty to absolve any sin according to the *CIC*, they have no habitual faculty to remit a penalty. Remission of penalties normally belongs to the authority who has imposed it or to the superior authority, as per the law (*CIC* cc. 1354-1357). In the Church, an Ordinary is the lowest authority that can give and remit penalties. So the ordinary priests do not have the faculty (jurisdiction) to remit a penalty already imposed. Thus, the priest should receive the faculty to remit a penalty from the concerned superior. With this delegated power, a priest remits the penalty and makes the person eligible to receive the sacrament of penance. An exception is given in the sacramental forum for undeclared *latae sententiae* excommunications and interdicts, which may be remitted by a confessor (*CIC* c. 1357). According to this provision, the

confessor must oblige the penitent to have recourse within a month to the competent superior, or else the confessor himself may have such recourse.

According to the *CCEO*, abortion is reserved to the eparchial bishop (c. 728 §2). The canon does not make use of the term Local Hierarchy. So in this case, the priests should receive the faculty directly from the eparchial bishop. According to the *CIC*, remission of the censure caused by the delict of abortion is the right of the Ordinary (*CIC* c. 1356). The Ordinary need not be the diocesan bishop. Thus, in the case of abortion, the Eastern Code holds that the diocesan bishop gives the faculty, while the Latin Code holds that any Ordinary (who need not be the bishop in person) can grant the faculty to remit the censure.

Certain priests, orders or congregations possess the faculty to remit the penalty by a special grant given by the Apostolic See. Even now, many priests, both Latin and Eastern, do not understand the difference in these two types of faculties and think that they too have the special faculty to absolve reserved sin. It is a question to be raised how these priests get the faculty to absolve the reserved sin by the mere fact that they are given special concession to the general law of the remission of penalties. Since there is no reserved sin according to the Code of Canon Law (*CIC*), it is meaningless to grant a faculty not envisaged in the law. Therefore, the Latin Ordinaries reasonably do not give the faculty to absolve a reserved sin to a Latin rite priest.

Indeed, the ways and means of receiving the faculty to absolve a reserved sin may be different from the ways and means of remitting a *latae sententiae* censure, reserved or non-reserved.

5.9. Theoretical Problems of Two Systems

Theoretically speaking, a penalty is not identical with a reserved sin. The absolution of sin is purely a spiritual matter, while penal sanctions are purely external matters. Penalties usually put some ban on the delinquent or makes compensation for the damage done. But how can a purely spiritual matter be regarded as equivalent to an external matter? Theoretically it is impossible to see these two systems as equal even though certain of their effects are the same.

Even in the Code, reserved sin is a wholly sacramental principle, while the *latae sententiae* censures are wholly a penal principle. Sin and its punishment are purely theological in nature, as sin is an act

against the will of God and the punishment is totally dependent on God. Grace and mercy are at work in the forgiveness of sin. This raises the problem of how these two sacramental and penal principles are seen equally and treated in the pastoral field without their theoretical differences being considered.

5.10. Different Subjective Disposition Could Be Possible in These Two Systems

With regard to remission, it is to be considered that in order to remit validly from a censure, it is not required that the delinquent have the same subjective disposition as would be necessary to validly absolve him or her from sin. For sacramental absolution from sin, at least supernatural attrition is necessary. But, for remission from censure, all that is required is that the delinquent recede from his contumacy and repair or at least promise to repair the injury and scandal caused by the delict. Even if this disposition of the delinquent is prompted by merely natural motives, the remission from censure would still be valid. So, absolution from sin and remission from censure are to be distinguished, as the same conditions are not necessary to absolve validly from censure as to absolve validly from sin. It is quite possible, therefore, to absolve one from censure without absolving one from the connected sin.

5.11. Absolution of Sins Is Integral and Remission of Censure Need Not Be Integral

Another important distinction between the absolution of sin and remission of censure is that no mortal sin can be forgiven independently of others, because forgiveness of sin is affected by the infusion of Sanctifying Grace, which will not take place so long as a single mortal sin remains on the soul. But it is possible for one censure to be remitted even when others may still bind the delinquent, so it is not necessary to remit all in order to remit one.¹⁴

6. The New Reservation to the CDF and the Sacrament of Penance

In the apostolic letter *Sacramentorum Sanctitatis Tutela*,¹⁵ promulgated by Pope John Paul II on 30 April 2001, the norms for addressing cases of *gravioribus delictis* (grave crimes) are outlined and certain

¹⁴Edward Vincent Dargin, *Reserved Cases according to the Code of Canon Law*, (Catholic University of America, 1924) 58.

¹⁵AAS 93 (2001) 737-739.

grave delicts are reserved to the Congregation for the Doctrine of Faith.¹⁶ This document concerns mainly delicts committed in the celebration of the sacraments and delicts against faith and morals. Nine years after the promulgation of *Motu Proprio Sacramentorum Sanctitatis Tutela*, the Congregation for the Doctrine of the Faith found it necessary to proceed with a reform of the document without changing it in its entirety, but only in certain areas, so as to render the text more useful. The text of the *Normae de Gravioribus Delictis*,¹⁷ was revised by Pope Benedict XVI on 21 May 2010, containing modifications to both the substantial and the procedural norms found in the original text of *Sacramentorum Sanctitatis Tutela*.

The text of *Sacramentorum Sanctitatis Tutela* with its modification of the reservation in certain cases to the CDF needs to be considered in connection with the topic under discussion here. For both the Eastern Churches and the Latin Church are affected by the decree. The cases are reserved in the external forum alone and do not directly affect the internal forum. The delicts reserved to the CDF can be judged only according to procedural norms set forth in the document, and these cases are reserved *ipso iure* to the jurisdiction of the Congregation for the Doctrine of Faith.

The following delicts are reserved to the Congregation for the Doctrine of Faith. In case of delicts against faith, including heresy, apostasy and schism, the competency to undertake judicial trial in the first instance or issue an extrajudicial decree or remit the penalty falls to Ordinary or Hierarch. But the Congregation becomes competent in the case of an appeal or recourse in these delicts (SST art. 2 §2).

1. Apostasy, Heresy and Schism (art. 2 §1), (*CIC* c. 1364 §1, *CCEO* cc. 1436, 1437).
2. Desecration of the Sacred Species (art. 3 §1, 1°), (*CIC* c. 1367; *CCEO* c. 1442).
3. An attempt to preside at a Eucharistic celebration by someone not in Holy Orders (art. 3 §1, 2°), (*CIC* c. 1378 §2, 1°).

¹⁶Charles J. Scicluna, "The Procedure and Praxis of the Congregation for the Doctrine of the Faith Regarding *Graviora Delicta*," *Apostolica*, 10-16.

¹⁷AAS 102 (2010), 419-431.

4. Simulation of the administration of Eucharist (art. 3 §1, 3°), (CIC c. 1379; CCEO c. 1443).
5. Con-celebration of the Eucharistic Sacrifice when this is prohibited by law (art. 3 §1, 4°), (CIC cc. 908, 1365; CCEO cc. 702, 1440).
6. Consecration for a sacrilegious purpose of one matter without the other, or even of both, either within or outside of the Eucharistic celebration (art. 3 §2).
7. Absolution of an accomplice (art. 4 §1, 1°), (CIC c. 1378, §1; CCEO c. 1457).
8. Attempted sacramental absolution or hearing the confessions (art. 4 §1, 2°), (CIC c. 1378 §2, 2°).
9. Simulation of sacramental absolution (art. 4 §1, 3°), (CIC c. 1379; CCEO c. 1443)
10. Solicitation to a sin against the sixth commandment in the act, on the occasion or under the pretext of confession (art. 4 §1, 4°), (CIC c. 1387; CCEO c. 1458).
11. Direct or indirect violation of sacramental seal (art. 4 §1, 5°), (CIC c. 1388 §1; CCEO c. 1456 §1).
12. Recording and publishing in the public media whatever is said by a confessor or a penitent (art. 4 §2).
13. Attempted sacred ordination of a woman or reception of sacred ordination by a woman (art. 5, 1°), (CIC c. 1378; CCEO c. 1443).
14. Clerical paedophilia with a minor below the age of eighteen or with one who lacks the use of reason (art. 6 §1, 1°).
15. The acquisition, possession or distribution of pornographic images of minors under the age of fourteen by a cleric (art. 6 §1, 2°).

Among the fifteen delicts reserved to the CDF, only eight are under the *latae sententiae* censures and only two are reserved sins. It is very evident that the cases reserved to the CDF are in the external forum for the judgement of the delict. So these reservations have nothing to do with the sacrament of penance. Only the eight cases reserved to the CDF have an indirect connection to the sacrament of penance as they are attached to either *latae sententiae* censures or reserved sins. Some priests, and even canonists, sometimes get confused and

consider all fifteen delicts reserved to the CDF as reserved sins.¹⁸ Actually, reservation to the CDF has nothing to do with the sacrament of penance. In the internal forum, it is the Sacred Penitentiary who has the authority to give the faculty. The confusion is created by the co-existence of certain delicts attached to *latae sententiae* censures and reserved sins.

7. New *Latae sententiae* Censures, after the Promulgation of the Codes, Do Not Affect the Eastern Churches

After the promulgation of the two Codes, the *CIC* and *CCEO*, two more additions were made to the *Latae sententiae* censures of excommunication. One relates to the indirect violation of the confessional seal by recording and publishing what is shared between the penitent and confessor in the public media; the second is the attempted sacred ordination of women or reception of sacred ordination by a woman. These two are not *latae sententiae* for the Eastern Churches. This is clear from the recent promulgation of *latae sententiae* for the Latin Church, which excludes the Eastern Churches. Even in the document published concerning the 'gravioribus delictis' in 2010, the faithful of the Eastern Churches were exempted from the *latae sententiae* censure. Art. 5, 2^o states:

If the one attempting to confer sacred ordination, or the women who attempts to receive sacred ordination, is a member of the Christian faithful subject to the Code of Canons of the Eastern Churches, with due regard for canon 1443 of that Code, he or she is to be punished by major excommunication reserved to the Apostolic See.

Thus, for the same delict, the Latin faithful receive *latae sententiae* excommunication and Easterners, *ferendae sententiae* excommunication. Thus, the new *latae sententiae* censures after the promulgation of the Codes do not affect the Eastern Church because it is against their common law.

One can understand this difference by considering the example of an Eastern bishop who ordains a woman in secret. The Eastern bishop incurs no excommunication until this becomes known and the Apostolic See imposes the sanction of excommunication through a

¹⁸Michael J. Kuchera, "Two Different Systems in Confessional Reservations *Reservatio Ratio Censurae* and *Reservatio Rationae sui*," 202.

decree. If the bishop confesses before it is declared, the confessor has the faculty to give him absolution. But it is not the case with Latin bishop who commits the same delict, because he is automatically excommunicated by the act itself. In this case, if the bishop confesses before the declaration, the confessor cannot give absolution because the penitent is under censure of excommunication. If the pastoral situation calls for it, the confessor must absolve the bishop and oblige him to have recourse to the Apostolic See for remittance of the penalty. For the Eastern bishop, if he is not sanctioned with a formal excommunication, there is no difficulty in his receiving absolution because it is neither a reserved sin nor a *delict* attached to a *latae sententiae* censure.

8. Survey Made among the Priests to Evaluate Pastoral Difficulties

The laws on reserved sin are meant to be applied in the day-to-day pastoral life of the Church. Considering the differences between these norms, it is understood that some pastoral difficulties arise due to different laws on reservation in the sacrament of mercy. Therefore, as part of the present study, a simple investigation has been made among priests working in Switzerland to identify the difficulties in its pastoral application. It is appropriate that Switzerland should be taken as the sample in the present study since this research was conducted in Switzerland and it is a country where there are faithful from different continents and, significantly, from various Eastern Churches.¹⁹ In reviewing these two legal systems, it was necessary to make an empirical study to know how these laws are put into practice and evaluate their pastoral significance.

A questionnaire was prepared under the guidance of sociologists and canonists. This questionnaire was distributed among the priests selected at random from across the country, belonging to different dioceses and religious congregations. Three hundred and twenty five questionnaires were distributed and one hundred and thirty replies were received. In reviewing the results of the survey, large variations were observed, in part due to the very weak reception of the questionnaire by the priests. Among the hundred and thirty

¹⁹The Migration department of the Bishop's conference of Switzerland works for the following migrant groups: Albanian, Italian, Korean, Chinese, Croatian, Philippine, Polish, Portuguese, Slovakian, Slovenian, Spanish, Tamilian, Tcheque Republican, Hungarian, Vietnamese, Eritrean and Ethiopian, Greek Catholics, Syro-Malabar Catholics, Malankara Catholics.

questionnaire received, six answered only by giving their opinions on the subject without responding to the questionnaire. The other one hundred and twenty four completed questionnaires were evaluated, and the results of this are analysed in this study in order to clarify certain pastoral and inter-ritual problems.

The reality of today's Church in Switzerland should be taken into consideration, since it is taken here as the sample. Practicing Catholics are fewer in number and the number of those individually receiving the sacrament of penance has radically fallen in recent decades. The Church in Switzerland introduced a general absolution after the Second Vatican Council, but the Swiss Catholic Bishops Conference forbid this practice in 2009.²⁰

The basic purposes of the survey was to determine 1) whether the Latin priests know that there are reserved sins in the Eastern Churches, 2) whether they are aware of the absence of *latae sententiae* (automatic) penalties in Eastern Churches, 3) whether the priests working in Switzerland are aware of the differences in the reservation, 4) how the Latin confessor deals with Eastern faithful in case of *latae sententiae* censures, 5) how the Eastern priest working for the Latin faithful deals with such cases, 6) whether there are any illegal practices in the pastoral field in relation to the reserved sins and *latae sententiae* censures, 7) whether the confessors correctly follow the laws on reservation in practise and 8) the practicability and utility of having two different systems in the reservation.

9. Pastoral Difficulties Due to Reservations

In the pastoral field, a certain amount of confusion exists in relation to reserved sins and reserved or non-reserved *latae sententiae* censures. For a confessor, it is difficult to judge a sin and the delict attached to it since he judges it in the internal forum. The confessor

²⁰En date du 15 mars 1989, la Conférence des évêques suisses a promulgué des normes particulières se référant au c. 961 *CIC*.

The system of the collective penitential service still continues and in a very few parishes collective absolution is still practiced. This is either because of negligence or due to the needs of the hour. In the present scenario, a large number of the faithful find meaning neither in individual confession nor in collective penitential service and absolution. Still, a small group does regularly seek individual confession and try to find meaning in it. This particular situation should be taken into account in evaluating the survey.

must always verify whether there are any elements preventing him from granting absolution. If there is a reserved delict or a sin, he has to check the exceptions related to its effectiveness, then evaluate its gravity by assessing the willingness and knowledge of the doer. This perhaps puts an unnecessary burden on the confessor. For the person who comes with adequate repentance, it is an added burden when a priest denies absolution or obliges him to go to a superior for the absolution or remission. On many occasions, the penitent may not be able to come for a second time to the same priest for confession, especially in pilgrim centres and other big churches.

Secondly, priests of different rites are not fully aware of the particular laws proper to every individual Church. For priests, it is not feasible to know the reserved sins in all other Churches *sui iuris*. Normally the confessor applies the laws of one's own Church *sui iuris* to the penitent without considering the personal laws of the penitent.

Usually during the confession, confessors are not interested to know about the rite of the penitent, and a penitent rarely announces his rite. So a confessor may not know to which Church *sui iuris* the penitent belongs, whether the Eastern or the Latin Church. But for him to apply the laws of his own Church to a person from another Church *sui iuris* is a case of legal impropriety, especially in multi-jurisdictional territory. This causes pastoral complexities in the field of the sacrament of penance which will be dealt in detail in the coming pages.

Normally in the pastoral field, if someone approaches a confessor for the sacrament of penance, the confessor has an obligation to impart it. The obliging canon is found in the *CIC*, which has no parallel canon in the *CCEO*. "If the confessor has no doubt about the disposition of the penitent, and the penitent seeks absolution, absolution is to be neither refused nor deferred" (*CIC* c. 980). At the same time, if there is a reserved sin or a reserved delict, the confessor is prohibited from giving absolution to the person even though he could absolve other sins. The principle of the integrity of the sacrament of penance must be kept. The absolution in the confessional takes away all the sins of a penitent sinner and not merely a portion of sins. The confessor cannot absolve the rest of the sin, then send the penitent to another authorized confessor for absolution of the reserved sin or delict.

In the same way, a valid confession cannot be divided: that is, one is supposed to tell all his sins to the same priest.²¹ The penitent cannot hide any sin that is either reserved or puts him under censures and merely confess all other sins to get an absolution, thinking that he can get absolution for the particular, reserved sin later on from the competent authority. One must consider how reservation to the higher authorities and the 'integrity' of the sacrament of penance are to be observed. Practically, this issue makes the reservation pastorally useless, as it is the same priest who grants absolution after obtaining the delegated faculty. In actual practice, nobody goes directly to the higher authority to get the absolution. Normally, it is the confessor who seeks out the faculty to absolve a reserved sin and, in the case of a non-declared censure, it is the confessor who makes a recourse within a month to the higher authority after the remission of censure and absolution.

The existence of reserved sins and reserved censures makes the sacrament of penance more legalistic.²² It is a sacrament of mercy and pardon; the Church should not make the sacrament so legalistic. One reason for the weak response to the survey conducted as a part of this research is presumably the reaction of priests who think the sacrament of penance has been made more complicated and legalistic by reservations. In the survey, many priests expressed dislike for the confessional being made legalistic. For a pastor, it is painful to be hard in the confessional with legal measures and send the penitent back in despair, without absolution and reconciliation with the Church. In short, the strict application of the Church's discipline tends to render the sacrament odious for penitents and confessors alike.²³

Another pastoral problem is the crisis in the very use of the sacrament of penance. According to the exegetical commentary, there are three points of doctrinal confusion at the root of this crisis.

First, there is confusion about what sin is, especially mortal sin that, following the teaching of the Council of Trent, must be forgiven after baptism, in the sacrament of penance. Second, there

²¹Thomas N. Tentler, *Sin and Confession on the Eve of Reformation*, (Princeton University Press, 1977) 304.

²²Thomas N. Tentler, *Sin and Confession on the Eve of Reformation*, 305.

²³Cf. McAreavey, "Abortion and the Sacrament of Penance," 230-235.

is confusion about the essence of the sacrament, particularly the nature of the sacramental sign. And lastly, there is a false tension between reconciliation with God and with Church with an emphasis on the communitarian aspect of the celebration of the sacrament.²⁴

Given such theoretical confusion, the use of reservation is more complicated in the pastoral field.

10. Conclusion

The sacrament of penance is a sacrament of mercy and is administered throughout the whole Catholic Church in almost the same manner. The law regarding reserved sins, however, makes the administration of it rather complicated and legalistic. The existence of differing systems of reservation gives rise to inter-ritual and pastoral problems. Today, with the large-scale globalization and the rapid migration of people, the existence of two systems can even produce certain illegal practices and pastoral discomforts for both the penitent and confessor, causing injustice. The responses and reactions of a large majority of priests, in the survey conducted, give evidence of this. They suggested for having the same norms for the entire Catholic Church in this regard.

There are various ways to attain the goal of having the same norms on this matter, e.g., to keep equal the number of reserved sins in both *CIC* and *CCEO* and completely abolish the *latae sententiae* censures; to have the same norm by maintaining a few *latae sententiae* censures in both Codes and eliminate reserved sins; to make equal the number of reserved sins and *latae sententiae* penalties in both Codes, that is, introducing both systems in both Codes.

There can be an objection here on the part of Eastern Canon lawyers, namely that *latae sententiae* is unknown in the Eastern tradition, though reserved sins exist in both legal systems. The medicinal character of the Eastern tradition has led it to use no *latae sententiae*, i.e., no automatic sentences without a judge, but rather only imposed *ferendae sententiae* in the external forum. In other words, the judge, who is a type of doctor, must first diagnose the illness and only then

²⁴Angel Marzoa, *Exegetical Commentary*, vol. IV, 749.

apply the medicine.²⁵ Therefore, making the two systems equal in number in both codes would be a difficult task.

It is our contention that the best way to enact equal norms for the entire Catholic Church, would be to maintain a very few reserved sins in both Churches and completely abolish the *latae sententiae* censures affecting the sacrament of penance. Reserved sins are enough to put a check and control over sins committed in secret. Reserved sins have existed in the Latin Church for centuries and were codified officially in *CIC* 1917. So there is no difficulty in adding reserved sins to the *CIC*. To introduce *latae sententiae* into the Eastern Code would be challenging, as it is foreign to the Eastern tradition. Automatic penalties have never been appreciated in the Church; they are judgements without a judge. Further studies and research may have to be conducted to determine the best way to establish the same norms for the Catholic Church.

The biblical theme of the year of mercy is: “Be merciful, just as your Father is merciful.” Pope Francis, here, emphasized that this admonition applies especially to confessors. The greater the sin of a person may be, the greater the love and compassion called for on the part of the confessor. If the penitent approaches the sacrament with profound repentance and an ardent desire for conversion, the special opportunity to experience God’s grace through the sacraments of penance should not be denied or postponed based on the person’s rite or even the seriousness of the sin. This study suggests certain changes to be made with regard to the norms on reservation affecting the sacrament of penance; changes that would help confessors to deal with such cases with more compassion. Pope Francis has sent forth what he has called ‘Missionaries of Mercy’, i.e. priests to whom he will grant the authority to pardon even those sins reserved to the Apostolic See. This study proposes that the same law on reserved sins be enacted for the entire Catholic Church in order to make the administration of the sacrament of penance easier and more compassionate, not only at the time of Jubilee, but at all times.

²⁵Michael J. Kuchera, “Two Different Systems in Confessional Reservations Reservatio *Ratio Censurae* and *Reservatio Rationae sui*,” 193.