

“AUTHENTIC SIGNS OF THE FATHER’S MERCY” (MV 17)

Some Reflections on CCEO c. 372

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In the Bull of Indiction of the Holy Year of Mercy, Pope Francis underlined the need to put the Sacrament of Reconciliation at the centre of the Jubilee. Naturally, this draws attention to the role of the confessor. This Article examines the fundamental ordinary duties of the confessor outlined in canon 732 CCEO, comparing them to what is found in the prescriptions of canons 978-981 CIC 1983. The approach of CCEO is altogether more succinct and less concerned with practical details. Nevertheless, there is much in common between the norms of the two Codes. A reflection on these basic responsibilities will help all confessors become “*authentic signs of the Father’s mercy*” (*Misericordiae vultus* n. 17).

1. Introduction

Writing in the Bull of Indiction of the Jubilee Year of Mercy, Pope Francis states:

Let us place the Sacrament of Reconciliation at the centre once more in such a way that it will enable people to touch the grandeur of God’s mercy with their own hands. For every penitent, it will be a source of true interior peace. I will never tire of insisting that confessors be authentic signs of the Father’s mercy. We do not become good confessors automatically. We become good confessors when, above all, we allow ourselves to be penitents in search of his mercy. Let us never forget that to be confessors means to participate in the very mission of Jesus to be a concrete sign of the constancy of divine love that pardons and saves. We priests have received the gift of the Holy Spirit for the forgiveness of sins, and we are

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responsible for this. None of us wields power over this Sacrament; rather, we are faithful servants of God's mercy through it.¹

To illustrate the importance given to sacramental absolution in the context of the Year of Mercy, the Pope declared his intention to send out "*Missionaries of Mercy*":

During Lent of this Holy Year, I intend to send out *Missionaries of Mercy*. They will be a sign of the Church's maternal solicitude for the People of God, enabling them to enter the profound richness of this mystery so fundamental to the faith. There will be priests to whom I will grant the authority to pardon even those sins reserved to the Holy See, so that the breadth of their mandate as confessors will be even clearer. They will be, above all, living signs of the Father's readiness to welcome those in search of his pardon. They will be missionaries of mercy because they will be facilitators of a truly human encounter, a source of liberation, rich with responsibility for overcoming obstacles and taking up the new life of Baptism again. They will be led in their mission by the words of the Apostle: "For God has consigned all men to disobedience, that he may have mercy upon all" (Rom 11:32). Everyone, in fact, without exception, is called to embrace the call to mercy. May these Missionaries live this call with the assurance that they can fix their eyes on Jesus, 'the merciful and faithful high priest in the service of God' (Heb 2:17).²

As is clear from the text, those priests commissioned as Missionaries of Mercy were given the faculty of absolving even those sins reserved to the Holy See.³ Such a faculty is reserved usually only to the Major

¹Pope Francis, Bull of Indiction of the Extraordinary Jubilee of Mercy, *Misericordiae vultus*, 11th April 2015, n. 17.

²Pope Francis, *Misericordiae vultus* n. 18.

³The Code of Canon Law 1983 (*CIC 1983*) reserves the absolution of the *latae sententiae* penalties incurred by following delicts to the Holy See: the profanation of the sacred species of the Eucharist (c. 1367); physical assault on the person of the Roman Pontiff (c. 1370 §1); the absolution of an accomplice in a sin against the Sixth Commandment (c. 1378 §1); the consecration of a Bishop without a pontifical mandate (c. 1382); and the violation of the seal of the confessional (c. 1388 §1). The CCEO states that the perpetrators of these offences incur a "*major excommunication*" (cf. CCEO cc. 1442; 1445 §1; 1456 §1; 1457; 1459 §1); the only one of these expressly reserved to the Roman Pontiff is that of violence to the person of the same Pontiff (c. 1445 §1). It would appear that the Pope, in speaking of "*those sins reserved to the Holy See*" is, in

Penitentiary and to the Minor Penitentiaries of the Papal Basilicas.⁴ In making this concession, there is probably no suggestion that the delicts in question are so widely spread and common throughout the Church that the *Missionaries of Mercy* are going to be inundated with extraordinarily difficult cases. Rather, it is a symbolic gesture on the part of the Pope to extend to all the faithful the opportunity to seek absolution from even the most extraordinary offences, without the added difficulty and inconvenience of having to travel to Rome or having recourse in the ordinary way through their own confessor in accordance with *CIC* c. 1357. Many priests around the world offered their services as *Missionaries of Mercy*, and the response to the invitation was so great that the application process had to be terminated on 25th November 2015. What of those who were not commissioned? And what of the other confessors? What of those who regularly hear confessions and absolve penitents of sins the absolution of which is not reserved to the Holy See – the countless parish priests and curates, priests of institutes of consecrated life and societies of apostolic life, as well as diocesan clergy who minister in shrines, basilicas, cathedrals and other places of special devotion? What are their duties and responsibilities, especially during this Year of Mercy? How might they celebrate the sacrament of reconciliation in a manner that makes real the Pope's invitation?

In this brief article, I intend to reflect on *CCEO* c. 732 that regulates the exercise of the ministry of the confessor, highlighting some aspects that should be given special attention, not only during the Year of Mercy, but at all times in the light of the emphasis given to the mercy of God during the current pontificate.

2. The Sacrament of Penance in CCEO in General

Before examining the duties of the confessor, it is useful to recall some doctrinal principles governing the sacrament of penance. *CCEO* c. 718 states:

In the sacrament of penance, the Christian faithful who committed sins after baptism, internally led by the Holy Spirit, turn back to God, moved by the pain of sin, intent on entering a new life

fact, speaking of these reserved delicts and the possibility of their being absolved in the internal sacramental forum.

⁴Cf. Pope John Paul II, Apostolic Constitution, *Pastor Bonus*, 28th June 1988, Art. 118 – 119, *Acta Apostolicae Sedis* (AAS) 80 (1988), 890.

through the ministry of the priest, having themselves made a confession and accepted an appropriate penance, obtain forgiveness from God and at the same time are reconciled with the Church which they injured by sinning; by this sacrament they are brought to a greater fostering of the Christian life and are thus disposed for receiving the Divine Eucharist.

From this statement, it is possible to discern three essential moments in the celebration of the sacrament:

- the confession of sins by a penitent,
- who in turn accepts a penance,
- and thus obtains forgiveness from God and reconciliation with the Church.

All of this is effected through the ministry of the priest. These same essential moments are to be found in the formulation of *CIC* c. 959: "In the sacrament of penance the faithful who confess their sins to a legitimate minister, are sorry for them, and intend to reform themselves obtain from God through the absolution imparted by the same minister forgiveness for the sins they have committed after baptism and, at the same, time are reconciled with the Church which they have wounded by sinning."

The Catechism of the Catholic Church offers a brief compendium of the Church's teaching on the sacrament which highlights the same fundamental elements:

- "Christ instituted the sacrament of Penance for all sinful members of his Church: above all for those who, since Baptism, have fallen into grave sin, and have thus lost their baptismal grace and wounded ecclesial communion. It is to them that the sacrament of Penance offers a new possibility to convert and to recover the grace of justification...."⁵
- "Over the centuries the concrete form in which the Church has exercised this power received from the Lord has varied considerably... During the seventh century Irish missionaries, inspired by the Eastern monastic tradition, took to continental Europe the "private" practice of penance, which does not require public and prolonged completion of penitential works before reconciliation with the Church. From that time on, the sacrament has been performed in secret between penitent and priest. This new practice envisioned the possibility of repetition and so opened

⁵*Catechism of the Catholic Church* n. 1446.

the way to a regular frequenting of this sacrament. It allowed the forgiveness of grave sins and venial sins to be integrated into one sacramental celebration. In its main lines this is the form of penance that the Church has practiced down to our day."⁶

- "Beneath the changes in discipline and celebration that this sacrament has undergone over the centuries, the same fundamental structure is to be discerned. It comprises two equally essential elements: on the one hand, the acts of the man who undergoes conversion through the action of the Holy Spirit: namely, contrition, confession, and satisfaction; on the other, God's action through the intervention of the Church. The Church, who through the bishop and his priests forgives sins in the name of Jesus Christ and determines the manner of satisfaction, also prays for the sinner and does penance with him. Thus the sinner is healed and re-established in ecclesial communion."⁷

From this teaching, it is clear that, for a fruitful and valid celebration of the sacrament, there are responsibilities incumbent upon both the penitent⁸ and the confessor. While the focus of these reflections is on

⁶*Catechism of the Catholic Church* n. 1447.

⁷*Catechism of the Catholic Church* n. 1448.

⁸According to the *Catechism of the Catholic Church*, on the part of the penitent, there are three essential features of his or her participation in the sacrament:

i) *Contrition: "Among the penitent's acts contrition occupies first place. Contrition is sorrow of the soul and detestation for the sin committed, together with the resolution not to sin again"* (n. 1451).

ii) *Confession: "The confession ... of sins, even from a simply human point of view, frees us and facilitates our reconciliation with others. Through such an admission man looks squarely at the sins he is guilty of, takes responsibility for them, and thereby opens himself again to God and to the communion of the Church in order to make a new future possible"* (n. 1455). *"Confession to a priest is an essential part of the sacrament of Penance: All mortal sins of which penitents after a diligent self-examination are conscious must be recounted by them in confession, even if they are most secret and have been committed against the last two precepts of the Decalogue... When Christ's faithful strive to confess all the sins that they can remember, they undoubtedly place all of them before the divine mercy for pardon..."* (n. 1456).

iii) *Satisfaction: "Many sins wrong our neighbour. One must do what is possible in order to repair the harm (e.g., return stolen goods, restore the reputation of someone slandered, pay compensation for injuries). Simple justice requires as much. But sin also injures and weakens the sinner himself, as well as his relationships with God and neighbour. Absolution takes away sin, but it does not remedy all the disorders sin has caused. Raised up from sin, the sinner must still recover his full*

the duties of the confessor, these must always take into account the responsibilities of the penitent.

It is interesting to note that, whereas *CIC 1983* deals with the sacrament of penance in four chapters consisting of 39 canons, *CCEO* deals with it in only 19 canons within a single chapter. The *CIC 1983* follows the treatment given to the subject in *CIC 1917*. In the Pio-Benedictine Code, the Sacraments were dealt with in the first part of Book III *De rebus*, Title IV *de poenitentia*, containing 67 canons arranged into five chapters:

Caput I: *De ministro poenitentiae* (cc. 871-892);

Caput II: *De reservatione peccatorum* (cc. 893-900);

Caput III: *De subiecto sacramenti poenitentiae* (cc. 901-907);

Caput IV: *De loco ad confessiones excipiendas* (cc. 908-910);

Caput V: *De indulgentiis* (cc. 911-936).

CIC 1983 treats of the sacraments in the first part of Book III: The sanctifying office of the Church. In Title IV, On the Sacrament of Penance, after an initial doctrinal statement in canon 959, there are four chapters:

Caput I: The Celebration of the Sacrament (cc. 960-964);

Caput II: The Minister of the Sacrament of Penance (cc. 965-986);

Caput III: The Penitent (cc. 987-991);

Caput IV: Indulgences (cc. 992-997).

As already indicated *CCEO* offers a radically different approach. The Sacrament of Penance is dealt with in a total of 19 canons located in Chapter IV (on the Sacrament of Penance) of Title XVI (*De Cultu Divino et praesertim de Sacramentis*)⁹:

*spiritual health by doing something more to make amends for the sin: he must "make satisfaction for" or "expiate" his sins. This satisfaction is also called **penance** (n. 1459). "The penance the confessor imposes must take into account the penitent's personal situation and must seek his spiritual good. It must correspond as far as possible with the gravity and nature of the sins committed. It can consist of prayer, an offering, works of mercy, service of neighbour, voluntary self-denial, sacrifices, and above all the patient acceptance of the cross we must bear. Such penances help configure us to Christ, who alone expiated our sins once for all. ..."* (n. 1460).

⁹A *motu proprio* on the Sacraments had been prepared for the Eastern Churches before Vatican II but was never promulgated (cf. J. Abbass, "Penance: A Comparative Study of the Eastern and Latin Codes," *Studia Canonica* 45 (2011), 294. The texts have been published in *Nuntia* 6 (1978) 66-76.

- Canon 718: the doctrine of the Sacrament;
- Canon 719: the necessity of the Sacrament in the life of the faithful;
- Canons 720 – 722: norms for individual and communal celebrations of the Sacrament;
- Canons 723 – 727: prerequisites for the Minister of the Sacrament (i.e. priesthood and faculties);
- Canons 728 – 729: reservation of absolution;
- Canon 730: absolution of an accomplice in a sin against chastity;
- Canon 731: false denunciation;
- Canon 732: the general duties and responsibilities of the confessor;
- Canons 733 – 734: the seal of the confessional and associated issues;
- Canon 735: the obligation to provide confessors for the faithful;
- Canon 736: the place of the celebration of the Sacrament.

Within all of these canons, only a few of them deal specifically with the ordinary responsibilities of the confessor. While *CIC 1917* devoted three canons to this theme¹⁰, and *CIC 1983* dedicates four canons,¹¹ *CCEO* has only a single canon that treats of the ordinary duties of the confessor. In the comments that follow, the prerequisites for the exercise of the ministry of confessor, i.e. sacerdotal ordination and faculties, are presumed, as are the other norms governing the sacramental seal, the obligation of ecclesiastical authority to provide

¹⁰The canons of *CIC 1917* are:

Can. 886: *Si confessarius dubitare nequeat de poenitentis dispositionibus et hic absolutionem petat, absolutio nec deneganda, nec differenda est.*

Can. 887: *Pro qualitate et numero peccatorum et conditione poenitentis salutare et convenientes satisfactiones confessarius iniungat; quas poenitens volenti animo excipere atque ipse per se debet implere.*

Can. 888 §1: *Meminerit sacerdos in audiendis confessionibus se iudicis pariter et medici personam sustinere ac divinae iustitiae simul et misericordiae ministrum a Deo constitutum esse ut honori divino et animarum saluti consulat.*

§2: *Caveat omnino ne complicitatis nomen inquirat, ne curiosis aut inutilibus quaestionibus, maxime circa sextum Decalogi praeceptum, quemquam detineat, et praesertim ne iuniores de iis quae ignorant imprudenter interroget.*

¹¹That is, *CIC* cc. 978-981.

for sufficient confessors, and the appropriate place for the celebration of the sacrament.

3. The Contents of Canon 732: Minister of Divine Justice and Mercy

Canon 732 states:

§1. The confessor is to offer a fitting cure for the illness by imposing appropriate works of penance in keeping with the quality, seriousness and number of the sins, and considering the condition of the penitent as well as his or her disposition for conversion.

§2. The priest is to remember that he is placed by God as a minister of divine justice and mercy; as a spiritual father he should also offer appropriate counsel so that the penitent might progress in his or her vocation to sanctity.

The canon sets out the fundamental duty of the confessor in §1 and then, in §2, gives an exhortation to the confessor to remember the multifaceted role that he must play in the celebration and administration of the sacrament, adding yet another particular duty. According to the text of the canon, there is a single fundamental duty and a subsequent or consequent secondary duty: First and foremost, the confessor has the duty of offering a fitting cure for the penitent's illness by imposing appropriate works of penance. The imposition of appropriate works of penance is not seen as the act by which the penitent is forgiven: it is God who forgives, not the confessor. Nevertheless, the confessor needs to address the underlying problem or, as the canon puts it, "*the illness*." From the text of the canon, it is clear that it is not at all sufficient simply to impose a "standard" penance: the canon provides three criteria for deciding which work of penance is "fitting:"

- a) the confessor should do so taking into account first of all the nature of the sin involved, along with its gravity and the frequency with which the penitent has committed it;
- b) the confessor should also bear in mind the condition of the penitent, i.e. his or her age, personal status, health, natural and other obligations, etc.:
- c) the confessor should also take into account the penitent's disposition for conversion.

Secondly, the confessor has the duty to offer appropriate counsel to the penitent and the purpose of such advice is to assist the penitent on his or her progress towards holiness. No criteria are offered here. Nonetheless, the same three criteria seem more than applicable. The

words of the confessor are intended to help each individual penitent and ought not be idle chit chat or a ready-made formula.

Only two duties are stated explicitly in the canon. However, when these are read in text and context, it is clear that there are many others implied. A helpful way to understand the duties of the confessor and how he is to carry out these duties is to consider the roles which are attributed to him in this canon: he is described as "*a minister of divine justice and mercy*" and a "*a spiritual father.*"

Responding to the criticism of the Reformers, the Council of Trent affirmed:

From the institution of the sacrament of penance ..., the Church has always understood that the complete confession of sins was instituted by the Lord and is by divine law necessary for all who have fallen after baptism. For, when he was about to ascend from earth to heaven, our Lord Jesus Christ left priests to represent him as presiding judges to whom all mortal sins into which the faithful of Christ would have fallen should be brought that they, in virtue of the power of the keys, might pronounce the sentence of remission or retention of sins. For it is clear that without knowledge of the case priests could not exercise this judgement, nor could they observe equity in the imposition of penances if the penitents declared their sins only in general and not specifically and in particular.¹²

In this conciliar teaching, the sacrament is presented clearly in terms of a judgement. The same theme is underlined elsewhere: "*it is in the nature and meaning of a judgement that the sentence be pronounced only over one's subjects. Hence the Church of God has always been convinced, and this council confirms as fully true, that absolution is of no value if it is pronounced by a priest on one over whom he has neither ordinary nor delegated jurisdiction.*"¹³ When speaking of the necessity of satisfaction, the Council goes on: "*For the early Fathers ... believe and teach that the keys of the priests are given not only to loose but also to bind. They did not for*

¹²Council of Trent, Session XIV, 25th November 1551, *Doctrine on the Sacrament of Penance*, chapter 5, "confession," in *Compendium of Creeds, Definitions, and Declarations on Matters of Faith and Morals*, ed. H. Denzinger, P. Hünermann, Forty Third Edition, San Francisco 2012 (henceforth *Denzinger-Hünermann*), n. 1679, pp. 402-403.

¹³Council of Trent, Session XIV, 25th November 1551, *Doctrine on the Sacrament of Penance*, chapter 7, "Jurisdiction and reservation of cases," *Denzinger-Hünermann*, n. 1686, p. 405.

that reason consider the sacrament of penance as a tribunal of wrath and punishment ...”¹⁴ Finally, canon 9 dealing with the sacrament states clearly: “If anyone says that the sacramental absolution of the priest is not a judicial act but a mere ministry of pronouncing and declaring to him who confesses that his sins are forgiven, provided only that he believes himself absolved,... let him be anathema.”¹⁵ Not surprisingly, the sacrament came to be known as “the tribunal of penance” because it had all the elements of a judicial process: an accuser, an accused, and witness (all in the person of the penitent), along with a judge (in the person of the confessor) who pronounces judgement and passes sentence (imposing the penance). This conception of the sacrament influenced the doctrine and practice of the subsequent centuries. The profound influence of the Council of Trent is evident in the text of Canon 888 §1 *CIC 1917*: “In hearing confessions the priest is to remember that he is at once both judge and healer (**medicus**), and that he is constituted by God as a minister of both divine justice and divine mercy, so that he may contribute to the honour of God and the salvation of souls.”

Here the role of the priest as judge so clearly emphasised by the Council of Trent is tempered with the need to remember that he is also constituted by God in the sacrament as a physician (*medicus*). The reference to his role as a minister of divine justice might well inspire fear and terror in the penitent, but this is complemented by the explicit reference to his role as minister of divine mercy. *CIC c. 978 §1* repeats this norm to the letter. The aspects of divine justice and divine mercy, while certainly distinct, are not to be separated; the use of the word “*simul*” in the Latin text makes this abundantly clear.

Writing just over a year after the *CIC 1983* came into force, St. John Paul II stated:

According to the most ancient traditional idea, the sacrament is a kind of judicial action; but this takes place before a tribunal of mercy rather than of strict and rigorous justice, which is comparable to human tribunals only by analogy namely insofar as sinners reveal their sins and their condition as creatures subject to sin; they commit themselves to renouncing and combating sin;

¹⁴Council of Trent, Session XIV, 25th November 1551, *Doctrine on the Sacrament of Penance*, chapter 8, “Necessity and Fruit of Satisfaction,” Denzinger-Hünemann, n. 1692, pp. 407.

¹⁵Council of Trent, Session XIV, 25th November 1551, *Canons on the Sacrament of Penance*, canon 9, Denzinger-Hünemann, n. 1709, pp. 411-412.

accept the punishment (sacramental penance) which the confessor imposes on them and receive absolution from him. But as it reflects on the function of this sacrament, the church's consciousness discerns in it, over and above the character of judgment in the sense just mentioned, a healing of a medicinal character. And this is linked to the fact that the Gospel frequently presents Christ as healer, while his redemptive work is often called, from Christian antiquity, *medicina salutis*. "I wish to heal, not accuse," St. Augustine said, referring to the exercise of the pastoral activity regarding penance, and it is thanks to the medicine of confession that the experience of sin does not degenerate into despair. The Rite of Penance alludes to this healing aspect of the sacrament, to which modern man is perhaps more sensitive, seeing as he does in sin the element of error but even more the element of weakness and human frailty. Whether as a tribunal of mercy or a place of spiritual healing, under both aspects the sacrament requires a knowledge of the sinner's heart in order to be able to judge and absolve, to cure and heal. Precisely for this reason the sacrament involves on the part of the penitent a sincere and complete confession of sins. This therefore has a *raison d'être* not only inspired by ascetical purposes (as an exercise of humility and mortification), but one that is inherent in the very nature of the sacrament.¹⁶

Interpreting the canon as referring equally and simultaneously to divine justice and divine mercy in this way is wholly consistent with Pope Francis' understanding of the sacrament as set forth in *Misericordiae vultus*:

It would not be out of place at this point to recall the relationship between justice and mercy. These are not two contradictory realities, but two dimensions of a single reality that unfolds progressively until it culminates in the fullness of love.... Mercy is not opposed to justice but rather expresses God's way of reaching out to the sinner, offering him a new chance to look at himself, convert, and believe.... If God limited himself to only justice, he would cease to be God, and would instead be like human beings who ask merely that the law be respected. But mere justice is not enough. Experience shows that an appeal to justice alone will result

¹⁶Pope John Paul II, Apostolic Exhortation, *Reconciliatio et Paenitentia*, 2nd December 1984, n. 31, II, AAS 77 (1985), 258-259.

in its destruction. This is why God goes beyond justice with his mercy and forgiveness.¹⁷

Nevertheless, the issue of justice cannot be forgotten or overlooked, as Pope Francis makes clear:

This does not mean that justice should be devalued or rendered superfluous. On the contrary: anyone who makes a mistake must pay the price. However, this is just the beginning of conversion, not its end, because one begins to feel the tenderness and mercy of God. God does not deny justice. He rather envelopes it and surpasses it with an even greater event in which we experience love as the foundation of true justice. God's justice is his mercy given to everyone as a grace that flows from the death and resurrection of Jesus Christ. Thus the Cross of Christ is God's judgement on all of us and on the whole world, because through it he offers us the certitude of love and new life.¹⁸

For Pope Francis, clearly, as for Pope St John Paul II, although they are distinct, mercy and justice are not to be separated; nor are they to be confused. In fact, according to him, divine mercy is a deeper manifestation of divine justice. For the Pope, divine mercy is nothing less than a manifestation of the very identity of God.¹⁹ Commentators on *CIC 1983* have followed a similar line of thought, noting the need for the confessor to exercise both roles simultaneously and remembering that the goal is two-fold: "*the honour of God and the salvation of souls.*"²⁰

CCEO c. 732 §2 makes no explicit reference to the priest as judge and physician. Yet it is not at all difficult to see an implicit reference to both roles in the text: in §1, the reference to offering "*a fitting cure*" clearly implies the role of the confessor as physician or healer,²¹ while the

¹⁷Pope Francis, *Misericordiae Vultus*, n. 20; n. 21.

¹⁸Pope Francis, *Misericordiae Vultus*, n. 21.

¹⁹"... *Why does God never tire of forgiving us? Because he is God, because he is mercy, and because mercy is the first attribute of God. Mercy is the name of God*" (Pope Francis, *The Name of God is Mercy*, Città del Vaticano 2016, p. 81).

²⁰For example, J. McAreavey, in AA.VV., *The Canon Law: Letter and Spirit*, Dublin 1995, n. 1915, p. 534; F. McManus in AA.VV., *New Commentary on the Code of Canon Law*, New York – Mahwah 2000, p. 1160; F. Loza, in *Comentario Exégetico al Código de Derecho Canónico*, Pamplona 1997, Vol. III/1, p. 803.

²¹Cf. F. Loza, in *Comentario Exégetico al Código de Derecho Canónico*, p. 804. The *Catechism of the Catholic Church* also highlights the healing aspect of the sacrament: "*The Lord Jesus Christ, physician of our souls and bodies, who forgave*

explicit reference to his role as "*minister of divine justice and mercy*" is a connection via canon 888 §1 *CIC 1917* to the teaching of the Council of Trent and the subsequent concept of the sacrament as a "tribunal." Unique to the legislation of the Eastern Churches is the explicit reference in canon 732 §2 to the confessor's role as "*spiritual father*." This dimension of the confessor is absent from the text of *CIC 1917* and *CIC 1983*, although it is to be found in some of the commentaries on both Codes.²² This fatherly dimension of the confessor's role is outlined in the *Praenotanda* of the Rite of Penance promulgated in 1973: "By receiving the repentant sinner and leading him to the light of the truth the confessor fulfils a paternal function: he reveals the heart of the Father and shows the image of Christ the Good Shepherd. He should keep in mind that he has been entrusted with the ministry of Christ, who mercifully accomplished the saving work of man's redemption and who is present by his power in the sacraments."²³

Although clearly not written for such a purpose, the words of Pope Francis in the Bull of Indiction of the Year of Mercy provide a sort of commentary on this aspect of the role of the confessor:

Every confessor must accept the faithful as the father in the parable of the prodigal son: a father who runs out to meet his son despite the fact that he has squandered away his inheritance. Confessors are called to embrace the repentant son who comes back home and to express the joy of having him back again. Let us never tire of also going out to the other son who stands outside, incapable of

the sins of the paralytic and restored him to bodily health, has willed that his Church continue, in the power of the Holy Spirit, his work of healing and salvation, even among her own members...." (n. 1421); "*Individual, integral confession and absolution remain the only ordinary way for the faithful to reconcile themselves with God and the Church, unless physical or moral impossibility excuses from this kind of confession (Rite of Penance n. 31). There are profound reasons for this. Christ is at work in each of the sacraments. He personally addresses every sinner: "My son, your sins are forgiven." He is the physician tending each one of the sick who need him to cure them. He raises them up and reintegrates them into fraternal communion. Personal confession is thus the form most expressive of reconciliation with God and with the Church"* (n. 1484).

²²For example, F. X. Wernz, P. Vidal, *Ius Canonicum* tomus IV, *De rebus* Vol. I, Romae 1934, n. 134, p. 158, commenting on canon 888 §1 of *CIC 1917*; L. Chiappetta, *Il Codice di Diritto Canonico: Commento giuridico-pastorale*, Napoli 1988, Vol. II, n. 3356, p. 112, commenting on *CIC c. 978 §1*.

²³Sacred Congregation for Divine Worship, *Rite of Penance*, 2nd December 1973, n. 10 c.

rejoicing, in order to explain to him that his judgement is severe and unjust and meaningless in light of the father's boundless mercy.²⁴ Another difference from the Latin legislation to be noted in the text of CCEO c. 732 §2 is that the purpose of the ministry is not described in general and abstract terms such as "*the honour of God*" or "*the salvation of souls*" found in CIC c. 978 §1 and canon 888 §1 CIC 1917, but rather the concern that the individual penitent make progress in his or her vocation to holiness. This is much more concrete and much more clearly order to the benefit of each individual penitent. It reflects an understanding of the sacrament in which the person of the individual penitent is placed at the centre of attention. This is a faithful reflection of the teaching of the Second Vatican Council on the universal call to holiness: "Therefore all the faithful are invited and obliged to holiness and the perfection of their own state of life."²⁵ Such a reading is also consistent with the fundamental right and obligation expressed in CCEO c. 13: "All the Christian faithful must make an effort, in accord with each one's own condition, to live a holy life and to promote the growth of the Church and its continual sanctification."

Not explicitly found in the text of CCEO c. 732 is the dimension of the confessor enunciated in CIC c. 978 §2: "In administering the sacrament, the confessor, as a minister of the Church, is to adhere faithfully to the teaching of the magisterium and to the norms laid down by the competent authority." In their commentaries on CIC 1917, some authors had noted that the confessor is also obliged at times to act in the capacity of teacher, making sure that the penitent understood what was necessary for a worthy celebration of the sacrament, and that the confessor was able to provide what was needed by the penitent in the way of instruction, counsel or exhortation.²⁶

²⁴Pope Francis, *Misericordiae vultus* n. 17. This echoes the teaching found in the *Catechism of the Catholic Church*: "When he celebrates the sacrament of Penance, the priest is fulfilling the ministry of the Good Shepherd who seeks the lost sheep, of the Good Samaritan who binds up wounds, of the Father who awaits the prodigal son and welcomes him on his return, and of the just and impartial judge whose judgment is both just and merciful. The priest is the sign and the instrument of God's merciful love for the sinner" (n. 1465).

²⁵Vatican II, *Lumen Gentium* n. 42.

²⁶For example, M. Conte A Coronata, *Institutiones Iuris Canonici ad usum utriusque cleri et scholarum: De Sacramentis Tractatus Canonici* Vol. I, Torino 1951, n. 375, p. 392, states that before the promulgation of CIC 1917 authors

Whereas in the first paragraph of *CIC* c. 978, the confessor is spoken of in terms of being a minister of divine justice and mercy, in this second paragraph, he is described as a "*minister of the Church*," a reminder that he is present not in a purely personal capacity, nor yet in a private capacity, but as one who has been ordained for the care and service of the People of God. As such, the confessor is not permitted to allow his own personal opinions or prejudices to shape his reception and treatment of the penitent. The *Praenotanda* of the Rite of Penance states: "*In order to fulfil his ministry properly and faithfully the confessor should understand the disorders of souls and apply the appropriate remedies to them. He should fulfil his office of judge wisely and should acquire the knowledge and prudence necessary for this task by serious study, guided by the teaching authority of the Church and especially by fervent prayer to God...*"²⁷

According to one commentator, "(t)he magisterium referred to is presumed to be the official or episcopal magisterium, as exercised by the pope and the other bishops, singly or together, in ordinary or more solemn mode."²⁸ The teaching of the magisterium to which the canon refers clearly includes certain major interventions on the part of the supreme authority of the Church, e.g. the Encyclical of Pope Paul VI, *Humanae vitae*, on the regulation of birth;²⁹ the Apostolic Exhortation of Pope John Paul II, *Familiaris Consortio*;³⁰ and the most recent Exhortation of Pope Francis, *Amoris Laetitia*.³¹ A comprehensive

had identified the roles of the confessor as that of healer (*medicus*), judge, teacher, and father. However, in his opinion, all can be reduced to a twofold role: that of judge and that of healer; the roles of teacher and father are subsumed within that of healer. Indeed, in his treatment of the confessor as healer, he stresses the need for the confessor to give proper advice and counsel to the penitent as a good teacher and father (cfr. *Ibid.*, n. 378, pp. 395-397).

²⁷Sacred Congregation for Divine Worship, *Rite of Penance*, 2nd December 1973, n. 10 a.

²⁸F. McManus, in AA.VV., *New Commentary on the Code of Canon Law*, p. 1161. Cf. J. McAreavey, in AA.VV., *The Canon Law: Letter and Spirit*, n. 1916, p. 234; F. Loza, in *Comentario Exégetico al Código de Derecho Canónico*, p. 804.

²⁹Pope Paul VI, Encyclical Letter, *Humanae vitae*, 25th July 1968, AAS 60 (1968), 481-503.

³⁰Pope John Paul II, Apostolic Exhortation, *Familiaris consortio*, 22nd November 1981, AAS 74 (1982), 81-191.

³¹Pope Francis, Apostolic Exhortation, *Amoris Laetitia*, 19th March 2016.

compendium of relevant materials in the area of married life was issued by the Pontifical Council for the Family in 1998.³²

It would be foolish, of course, to suppose that the only area in which Church teaching is brought into play in the confessional is that of sexuality and marriage. Confessors should be up to date with all aspects of the moral life, especially, for example, with the teaching of the Second Vatican Council concerning “intrinsic evil”:

Whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia or wilful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where men are treated as mere tools for profit, rather than as free and responsible persons; all these things and others of their like are infamies indeed. They poison human society, but they do more harm to those who practice them than those who suffer from the injury. Moreover, they are supreme dishonour to the Creator.³³

With reference to this teaching, Pope John Paul stated:

Reason attests that there are objects of the human act which are by their nature ‘incapable of being ordered’ to God, because they radically contradict the good of the person made in his image. These are the acts which, in the Church’s moral tradition, have been termed ‘intrinsically evil’ (*intrinsece malum*): they are such always and per se, in other words, on account of their very object, and quite apart from the ulterior intentions of the one acting and the circumstances. Consequently, without in the least denying the influence on morality exercised by circumstances and especially by intentions, the Church teaches that ‘there exist acts which per se and in themselves, independently of circumstances, are always seriously wrong by reason of their object’ (Reconciliatio et paenitentia n. 17).³⁴

³²Pontifical Council for the Family, *Vademecum for confessors concerning some aspects of the morality of conjugal life*, 12th February 1997.

³³Vatican II, *Gaudium et Spes*, n. 27.

³⁴Pope John Paul II, Encyclical Letter, *Veritatis splendor*, 6th August 1993, n. 80, AAS 85 (1993), 1197.

Confessors need to be aware that the concept of intrinsic evil is not confined to sins against the Sixth Commandment: when faced with sins against chastity, some confessors feel obliged to exercise their role as ministers of justice; but when faced with other sins in which intrinsic evil is involved, e.g., lying, the same confessors have no difficulty in exercising the role of minister of mercy.

One particular area in which the confessor needs to be well versed in the teaching of the Church, as well as its canon law, is that of the situation of those Catholics who are separated from their spouses, divorced and civilly remarried or perhaps cohabiting. When dealing with persons who find themselves in such situations, great care and prudence is needed if the confessor is not to be guilty of provoking scandal by adopting either an excessively “liberal” point of view or an excessively “traditionalist” standpoint. The principles of the Church concerning the indissolubility of marriage are clear and the confessor, as a minister of the Church is obliged to present them with clarity and accuracy. However, the circumstances of each individual penitent are to be explored before any kind of decision can be given within the forum of the confessional.³⁵

³⁵This matter was debated in the two sessions of the Synod of Bishops in 2014 and 2015. The complex and delicate nature of the issue is highlighted in the Final Report of the Synod: “*The Church as a sure teacher and caring mother acknowledges that, for those who are baptized, a sacramental marriage is the only marriage bond which exists and any rupture of that bond is against the will of God. At the same time, she is also aware of the fragility of many of her children who struggle along the path of faith. “Without detracting from the evangelical ideal, they [the lay faithful] need to accompany with mercy and patience the eventual stages of personal growth as these progressively occur [...] A small step, in the midst of great human limitations, can be more pleasing to God than a life which appears outwardly in order but moves through the day without confronting great difficulties. Everyone needs to be touched by the comfort and attraction of God’s saving love, which is mysteriously at work in each person, above and beyond their faults and failings” (Evangelii Gaudium, 44). This truth and beauty is to be safeguarded. When faced with difficult situations and wounded families, people need to recall this general principle: “Pastors must know that, for the sake of truth, they are obliged to exercise careful discernment of situations” (Familiaris Consortio, 84). The degree of responsibility is not equal in all cases and factors may exist which limit the ability to make a decision. Therefore, while clearly expressing doctrine, pastors are to avoid judgments which do not take into account the complexity of various situations and they are to be attentive, by necessity, to how people live and endure distress because of their condition” (Synod of Bishops, XIV Ordinary General Assembly: The*

In this regard, it is useful to bear in mind some words of Pope Francis about confession in general and the response of the confessor to the penitent when he finds himself faced with what might be an impossible situation:

Mostly, people are looking for someone to listen to them. Someone willing to grant them time, to listen to their dramas and difficulties. This is what I call the ‘apostolate of the ear’, and it is important. Very important. I feel compelled to say to confessors: talk, listen with patience, and above all tell people that God loves them. And if the confessor cannot absolve a person, he needs to explain why, he needs to give them a blessing, even without the holy sacrament. The love of God exists even for those who are not disposed to receive it: that man, that woman, that boy or that girl – they are all loved by God, they are sought out by God, they are in need of blessing. Be tender with these people. Do not push them away. People are suffering. It is a huge responsibility to be a confessor. Confessors have before them the lost sheep that God loves so much; if we don’t show them the love and mercy of God, we push them away and perhaps they will never come back. So embrace them and be compassionate, even if you can’t absolve them. Give them a blessing anyway.³⁶

*vocation and mission of the family in the Church and in the contemporary world: The Final Report of the Synod of Bishops to the Holy Father, Pope Francis, 24th October 2015, n. 51). In his Post-Synodal Apostolic Exhortation, *Amoris Laetitia*, Pope Francis dedicates the eighth chapter to “*accompanying, discerning and integrating weakness*” (nn. 291-312) to the exceptionally delicate and complex pastoral issues surrounding the presence within the Church of men and women who have divorced and remarried, and those who find themselves in other “*anomalous*” situations. A careful and attentive reading of this chapter shows that there is no easy solution to many of these situations. The Pope requires dedication, commitment and hard work of pastors and confessors who seek to assist the faithful who find themselves in these often complex situations. Elsewhere he has shared an example of this complexity from his own personal experience: “*I have a niece who was married to a man in a civil wedding he received the annulment of his previous marriage. They wanted to get married, they loved each other, they wanted children, and they had three. The judge even awarded him custody of the children from his first marriage. This man was so religious that every Sunday, when he went to Mass, he went to the confessional and said to the priest: ‘I know that you can’t absolve me but I have sinned by doing this and doing that, please give me a blessing.’ This is a religiously mature man*” (Pope Francis, *The Name of God is Mercy*, Città del Vaticano 2016, p. 16).*

³⁶Pope Francis, *The Name of God Is Mercy*, Città del Vaticano 2016, pp. 15-16.

While there is no explicit reference to the teaching dimension of the role of the confessor in *CCEO* c. 732, it is certainly implied in the fact that the canon highlights the duty of the confessor to "offer appropriate spiritual counsel." As a minister of the Church, acting *in persona Christi et in nomine Ecclesiae*, the confessor has an obligation to make sure that any advice he gives is wholly consistent with the teaching of the Church. For this reason, the comments made on *CIC* c. 978 provide helpful guidelines for the confessor.

4. The Relationship between the Confessor and the Penitent

As has been noted, the fulfilment of the two fundamental duties outlined in *CCEO* c. 732 implies others. Of these, the most important, clearly, is the duty to establish a relationship with the penitent. In accordance with the teaching of the Council of Trent, the relationship between the penitent and confessor is expressed in three distinct moments: confession, the imposition of a penance, and the imparting of absolution. In the exercise of his role of judge, physician, teacher and father, the confessor cannot rely solely on fixed formulae. There must be some kind of human interaction. If he is to judge, he must be able to clarify whatever it is that is not clear; if he is a physician, he needs to know more precisely what the nature of the ailment is; if he is to be a teacher, he needs to know something of the level of ignorance of the penitent; if he is to be a true father, he needs to know something of the needs of the son or daughter in the confessional. Inevitably, this means that the confessor may find himself having to ask questions.

In this context, it should be noted that Canon 888 §2 of *CIC* 1917 provided a norm that had been originally introduced to correct certain abuses: "Let the priest completely beware of enquiring about the name of an accomplice; and let him not detain anyone with curious or useless questions, above all about the Sixth Commandment, and let him be especially careful not to question young people imprudently about those matters about which they are ignorant." The reprehensible practice whereby confessors asked the penitent for the name of accomplices was condemned by Pope Benedict XIV on no less than four occasions.³⁷ Commentators on this canon underlined the inherent

³⁷These are: Pope Benedict XIV, Encyclical Letter, *Suprema*, 7th July 1745 (*Fontes Codicis Iuris Canonici* Vol. I, n. 360); Apostolic Constitution, *Ubi primum*, 2nd June 1746 (*Fontes* Vol. II, n. 370); Apostolic Constitution, *Ad*

dangers of such a line of questioning, for example, the inadvertent breach of the seal of the confessional when the confessor might have to deal with or act in relation to the accomplice.³⁸

The canon of *CIC 1917* takes the matter even further and urges great caution and prudence in questioning the penitent at all. According to the canon, the confessor is to avoid all curious or useless questioning, most particularly with regard to the Sixth Commandment. Commentators pointed out that such lines of questioning posed grave dangers not just for the penitent but also for the confessor himself. The celebration of the sacrament was not to become a proximate occasion of mortal sin – that would be a complete perversion of the sacrament and what it was intended for.³⁹ The last part of the paragraph contains a particular warning against questioning young people about things they did not know: such activity on the part of the confessor risked creating a dangerous curiosity in the young penitent that might well lead him or her into serious sin. In 1943, the Holy Office issued an Instruction in which it recommended that, in some cases, the confessor should avoid asking questions altogether.⁴⁰ In making this clarification, the Congregation showed that discretion sometimes needs to triumph over the need to ensure that a penitent makes an integral confession.⁴¹

CIC c. 979 addresses the same aspect of the relationship between the confessor and the penitent: “In asking questions the priest is to act with prudence and discretion, taking into account the condition and the age of the penitent, and he is to refrain from enquiring the name of a partner in sin.” The tone of this canon is much less negative than its predecessor. Rather than prohibiting something in the first place, the canon establishes a positive general principle, indicating that the

eradicandum, 28th September 1746 (*Fontes* Vol. II, n. 373); Apostolic Constitution, *Apostolici ministerii*, 9th December 1749 (*Fontes* Vol. II, n. 405).

³⁸For example, M. Conte A Coronata, *Institutiones Iuris Canonici...*, n. 379, pp. 398-399.

³⁹For example, M. Conte A Coronata, *Institutiones Iuris Canonici...*, n. 380, p. 400.

⁴⁰Supreme Sacred Congregation of the Holy Office, Instruction and Norms concerning the prudence of confessors in asking questions concerning the sixth commandment and their dealing with women penitents, *Ecclesia numquam*, 16th May 1943, *Canon Law Digest* vol. 3, 379-381; *Leges Ecclesiae* vol. II, n. 1749, coll. 2174-2176.

⁴¹Cf. J. McAreavey, in *The Canon Law: Letter and Spirit*, n. 1917, p. 534.

confessor must always act with prudence and discretion when asking questions. The canon takes for granted that some questions may need to be asked. Yet it must be pointed out that asking questions must serve a purpose: in the context of the confessional, the confessor may need to ask questions to ascertain the integrity of the confession (i.e. that all serious sins have been confessed in number and kind), the sincerity of the penitent's contrition and firm purpose of amendment, or a fuller understanding of a person's circumstances in order to help the penitent make progress in his or her vocation to holiness. Questions related to any other matters are simply to be avoided since they do not serve any useful purpose within the context of the sacrament. Even where the questions might be permitted, they should only be asked in the first place if the relevant issues are not actually clear. The canon ends with a clear reference to the prohibition contained in canon 888 §2 of *CIC 1917* about not asking about the name of an accomplice. This does not affect the duty of a confessor to seek to ascertain the condition of an accomplice when, for example, it might affect the judgement of the confessor concerning the gravity of the sin: the fact that an accomplice is single or married, a religious or a cleric, an employer or an employee will certainly colour the admonition or advice that a prudent confessor will want to give a penitent.⁴²

In the Bull of Indiction for the Holy Year of Mercy, Pope Francis offers some words of advice that can be read as a comment on this canon: "*May confessors not ask useless questions, but like the father in the parable, interrupt the speech prepared ahead of time by the prodigal son, so that confessors will learn to accept the plea for help and mercy pouring from the heart of every penitent. In short, confessors are called to be a sign of the primacy of mercy always, everywhere, and in every situation, no matter what.*"⁴³ By all means, a confessor should ask those questions that are necessary but, as soon as he has obtained the minimum information that is needed, he should desist. Pope Francis has also stated that the confessional should not be a "*torture chamber*"⁴⁴ and he explains:

⁴²Cf. F. Loza, in *Comentario Exegético*, Vol. III/1, p. 808.

⁴³Pope Francis, *Misericordiae vultus* n. 17.

⁴⁴"*I want to remind priests that the confessional must not be a torture chamber, but rather an encounter with the Lord's mercy*" (Pope Francis, Apostolic Exhortation *Evangelii Gaudium*, 24th November 2013, n. 44 (AAS 105 (2013), 1038).

Those words were directed more to priests, to confessors. And they referred to the fact that some confessors can be excessively curious; their curiosity can be a little unhealthy.... There can be an excess of curiosity, especially in sexual matters. Or an insistence for people to be explicit about details that are not necessary. Anyone who confesses does well to feel shame for his sins: shame is a gift of grace we ask for; it is good, positive because it makes us humble. But in dialogue with a confessor we need to be listened to, not interrogated. Then the confessor says whatever he needs to and offers advice delicately. This is what I meant when I said that confessionals should never be torture chambers.⁴⁵

CCEO has no corresponding canon that deals expressly with these aspects of the relationship between the penitent and the confessor. Rather than focusing on questioning and interrogation, and thus strengthening the quasi-judicial nature of the sacrament, *CCEO* tends to focus more on the aspect of the confessor as teacher, father and physician, one who offers counsel and advice so that the penitent might grow in his or her vocation to holiness. It could be argued that the omission from *CCEO* of explicit references to the practice outlined in this canon of questioning the penitent indicates a very different view not only of the sacrament of penance but of the Christian life itself: it is viewed not so much in terms of a constant struggle against sin, but rather as a quest for ever greater holiness. This, of course, does not mean that asking questions is in any way forbidden under the regulations of *CCEO*. Indeed, it is difficult to see how a confessor might impose fitting penances or offer appropriate counsel tailored to the needs of the individual penitent without first coming to some knowledge of the penitent. The norms contained in *CIC 1983*, although not repeated in *CCEO*, offer clear guidelines to the confessor, as do the comments made by canonists on these same canons.

The relationship between confessor and penitent reaches a new level when it comes to the granting of absolution. Referring to this relationship, the major commentators on *CIC 1917* spoke of it as a quasi-contract: thus, if the penitent fulfilled his or her part, i.e. confession and contrition, then the confessor was obliged to give absolution.⁴⁶ It is not difficult to see how this approach was deduced from the wording of canon 886 *CIC 1917*: “*If the confessor has no doubt*

⁴⁵Pope Francis, *The Name of God is Mercy*, pp. 24-25.

⁴⁶For example, F. X. Wernz, P. Vidal, *Ius Canonicum* tomus IV..., n. 132, p. 158; M. Conte A Coronata, *Institutiones Iuris Canonici...*, n. 367, p. 377.

about the disposition of the penitent and the penitent asks for absolution, absolution is not to be denied or deferred." It is not for the confessor to be the sole arbiter of whether to concede, deny or defer absolution.⁴⁷ As minister of the sacrament, and not its master, the confessor has an obligation to impart absolution if the minimum requirements for a valid and integral confession have been satisfied on the part of the penitent. Such a view is wholly consistent with the Catechism of the Catholic Church: "*The confessor is not the master of God's forgiveness, but its servant.*"⁴⁸

The same injunction in slightly different terms is repeated in CIC c. 980: "*If the confessor is in no doubt about the penitent's disposition and the penitent asks for absolution, it is not to be denied or delayed.*" In this norm, the sacrament is shown to have a form that, for all its similarities so highlighted by the Council of Trent, is radically different from that of a tribunal in which the judge has a wide latitude for determining when and how to act. According to this norm of the law, the confessor has an obligation to absolve, here and now, unless he has some lingering doubts concerning the disposition of the penitent. Even if he has such doubts, as the commentators on CIC 1917 pointed out, the confessor has the obligation of resolving those doubts: he cannot simply – *tout court* – either defer or deny absolution. To do so would be tantamount to a dereliction of his duty. The norms concerning prudent and discreet questioning make sense at this point: by means of such a gentle form of interrogation, the confessor must seek to establish whether or not the penitent has sufficient disposition for the reception of absolution. Again, the sacrament of penance is shown to have a different character from that of the tribunal. In the latter, a judge may pronounce a sentence in favour of the plea only when he has attained moral certainty which, according to the famous intervention of Pope Pius XII,

⁴⁷Cf. F. X. Wernz, P. Vidal, *Ius Canonicum* tomus IV..., n. 132, pp. 157-158.

⁴⁸*Catechism of the Catholic Church* n. 1466. Pope Francis writes in a similar vein about the proper behaviour of the confessor: "*I will never tire of insisting that confessors be authentic signs of the Father's mercy. We do not become good confessors automatically. We become good confessors when, above all, we allow ourselves to be penitents in search of his mercy. Let us never forget that to be confessors means to participate in the very mission of Jesus to be a concrete sign of the constancy of divine love that pardons and saves. We priests have received the gift of the Holy Spirit for the forgiveness of sins, and we are responsible for this. None of us wields power over this Sacrament; rather, we are faithful servants of God's mercy through it*" (*Misericordiae vultus* n. 17).

... is characterised on the positive side by the exclusion of well-founded or reasonable doubt, and in this respect it is essentially distinguished from the quasi-certainty which has been mentioned; on the negative side, it does admit the absolute possibility of the contrary, and in this it differs from absolute certainty. The certainty of which we are now speaking is necessary and sufficient for the rendering of a judgement ... Only thus is it possible to have a regular and orderly administration of justice, going forward without useless delays and without laying of excessive burdens on the tribunal as well as on the parties.⁴⁹

Commentators on CIC 1917 were quick to point out that such a level of certainty is an excessive requirement within the context of the confessional: for them, the level of certainty required to be able to impart absolution was not mathematical certainty, nor yet even the moral certainty that excludes a well-founded or reasonable doubt, but moral certainty understood in the broadest sense which is sufficient for the formation of a prudent judgement.⁵⁰ This is wholly in conformity with a fundamental presumption indicated by St Thomas Aquinas: "In the confessional a person is to be believed both when accusing himself or herself and when defending himself or herself."⁵¹ Canonically speaking, "a presumption is a probable conjecture about something which is uncertain"⁵² and "the judge is not to make presumptions which are not stated in the law, other than on the basis of a certain and determinate fact directly connected to the matter in dispute."⁵³ Thus there is no need within the forum of the confessional for the confessor to seek "indications and supportive elements"⁵⁴ before arriving at a conclusion: the confessor can begin safely with the presumption that the penitent is telling the truth. Perhaps in the context of contemporary society in which the frequency and quality of religious practice has declined dramatically in many places, the confessor might do well to presume the proper disposition in anyone who has the courage to present himself or herself in the confessional to celebrate the sacrament!

⁴⁹Pope Pius XII, Allocution to the Roman Rota, October 1, 1942, W. Woestman (ed.), *Papal Allocutions*, 18-19.

⁵⁰Cf. for example, M. Conte A Coronata, *Institutiones Iuris Canonici...*, n. 367, p. 378.

⁵¹"... unde in foro confessionis creditur homini et pro se et contra se" (St. Thomas Aquinas, *Scriptum super libros Sententiarum*, In IV, D. 17 q. 3, a. 3, q. 5).

⁵²CIC c. 1584.

⁵³CIC c. 1586.

⁵⁴CIC c. 1679.

Speaking on this point, Pope Francis observes:

... We stand before a God who knows our sins, our betrayals, our denials, our wretchedness. And yet he is there waiting for us, ready to give himself completely to us, to lift us up ... Not only in the legal maxim of in dubio pro reo – which says that when in doubt, decisions should be made in favour of the person being judged – still pertinent, there is also the importance of the gesture. The very fact that someone goes to the confessional indicates an initiation of repentance, even if it is not conscious. Without that initial impulse, the person would not be there. His being there is testimony to the desire for change. Words are important, but the gesture is explicit. And the gesture itself is important; sometimes the awkward and humble presence of a penitent who has difficulty expressing himself is worth more than another person's wordy account of their repentance.⁵⁵

Referring again to the concept of the confessor as "judge", it is useful to bear in mind what the object of his judgement is meant to be: it is not the person of the penitent, but rather the integrity of the confession, the proper disposition of the penitent, and where necessary also the gravity of the sin confessed. Unless the confessor has good reason to believe that there are serious deficiencies in the disposition of the penitent and/or the integrity of the confession, he has no option but to absolve the penitent at once. Commentators on canon 886 of *CIC* 1917 explained that the confessor was bound to do so as a matter of justice.⁵⁶ They indicate clearly that absolution is to be refused only to those who show no sign whatsoever that they are sorry for their sins, or who refuse to abandon hatred or enmity, or to restore what they have taken, or who obstinately refuse to remove themselves from the proximate occasion of sin or to change their way of life, or who have publicly provoked scandal until they have repaired it.⁵⁷ The commentators also indicated the circumstances in which absolution may be deferred but stressed that one of the duties of the confessor is to prepare the penitent for the reception of the sacrament; indeed, the task of the confessor is not only to give, deny or defer absolution, but

⁵⁵Pope Francis, *The Name of God is Mercy*, p. 32.

⁵⁶Cf. For example, M. Conte A Coronata, *Institutiones Iuris Canonici...*, n. 367, p. 377.

⁵⁷Cf. For example, M. Conte A Coronata, *Institutiones Iuris Canonici...*, n. 368, p. 379.

also to dispose the penitent to receive absolution.⁵⁸ The only valid reason for deferring absolution is to make sure that the penitent is properly disposed; for that same reason, deferral could only be for a short period.⁵⁹

While CCEO does not contain a norm similar to CIC c. 980, it must be acknowledged that the whole thrust of this chapter of the Code demonstrates that the confessor is obliged make a judgement concerning the disposition of the penitent, the integrity of the confession, and the gravity of the sins before imparting absolution – clearly implied is the obligation to do so, unless the confessor has good reason to do otherwise. The fundamental importance of absolution cannot be underestimated or understated, as Pope John Paul II has made clear:

*The other essential stage of the sacrament of penance ... belongs to the confessor as judge and healer, a figure of God the Father welcoming and forgiving the one who returns: This is the absolution. The words which express it and the gestures that accompany it in the old and in the new Rite of Penance are significantly simple in their-grandeur. The sacramental formula 'I absolve you' and the imposition of the hand and the Sign of the Cross made over the penitent show that at this moment the contrite and converted sinner comes into contact with the power and mercy of God. It is the moment at which, in response to the penitent, the Trinity becomes present in order to blot out sin and restore innocence.*⁶⁰

Before absolving the penitent, the confessor will have imposed a suitable penance. From the text of CCEO c. 732 §1, it is clear that he will first have considered the quality, gravity and number of the sins confessed, the disposition of the penitent for conversion, and the condition of his or her life. CIC c. 981 contains a more explicit norm: *"The confessor is to impose salutary and appropriate penances, in proportion to the kind and number of sins confessed, taking into account, however, the condition of the penitent. The penitent is bound personally to fulfil these penances."* This follows almost word for word the norm of canon 887

⁵⁸"*Confessarii enim munus non est solum absolutionem dare, negare aut differre, sed etiam poenitentes ad absolutionem disponere*" (M. Conte A Coronata, *Institutiones Iuris Canonici...*, n. 368, p. 379).

⁵⁹Cf. For example, M. Conte A Coronata, *Institutiones Iuris Canonici...*, n. 369, p. 380.

⁶⁰Pope John Paul II, *Reconciliatio et Paenitentia*, 31/III, AAS 77 (1985), 262-263.

CIC 1917.⁶¹ Commentators on CIC 1983 have tended to consider this canon, not among the duties of the confessors as canons 978-980, but as among the responsibilities of the penitent – however, the name of Chapter II of this Title of the Code is "*The Minister of the Sacrament of Penance*" and that of Chapter III is "*The Penitent*." Obviously, there is an obligation on the penitent to fulfil the penances imposed, but the more fundamental point of the norm is that the confessor has the duty to impose them and the canon offers some useful general criteria for so doing.

The commentaries on CIC 1917 are illuminating with regard to what was and perhaps still is considered as "*salutary and appropriate penances*." Generally speaking, these came in the form of some work freely accepted by the penitent in the sacrament: either some kind of prayer, or fasting, or almsgiving, depending on the nature of the sins confessed, the condition of the person, and what the confessor judged to be their disposition and purpose of amendment.⁶² The value of the

⁶¹"*Pro qualitate et numero peccatorum et conditione poenitentis salutare et convenientes satisfactiones confessarius iniungat; quas poenitens volenti animo excipere atque ipse per se debet implere.*"

⁶²Cf. For example, M. Conte A Coronata, *Institutiones Iuris Canonici...*, n. 370, pp. 382-384. Pope John Paul II explicitly touched on the theme of the satisfaction to be made by the penitent, and the penance to be imposed by the confessor: "*Satisfaction is the final act which crowns the sacramental sign of penance. In some countries the act which the forgiven and absolved penitent agrees to perform after receiving absolution is called precisely the penance. What is the meaning of this satisfaction that one makes or the penance that one performs? Certainly it is not a price that one pays for the sin absolved and for the forgiveness obtained: No human price can match what is obtained, which is the fruit of Christ's precious blood. Acts of satisfaction-which, while remaining simple and humble, should be made to express more clearly all that they signify-mean a number of valuable things: They are the sign of the personal commitment that the Christian has made to God in the sacrament to begin a new life (and therefore they should not be reduced to mere formulas to be recited, but should consist of acts of worship, charity, mercy or reparation). They include the idea that the pardoned sinner is able to join his own physical and spiritual mortification-which has been sought after or at least accepted-to the passion of Jesus, who has obtained the forgiveness for him. They remind us that even after absolution there remains in the Christian a dark area due to the wound of sin, to the imperfection of love in repentance, to the weakening of the spiritual faculties. It is an area in which there still operates an infectious source of sin which must always be fought with mortification and penance. This is the meaning of the humble but sincere act of satisfaction*" (Pope John Paul II, *Reconciliatio et Paenitentia*, 31/III, AAS 77 (1985), 263-264).

norm, whether in its expression in *CCEO* c. 732 §1 or that of *CIC* c. 981, is that it demonstrates the need for the confessor to arrive at as much knowledge as he can in the little time available within the celebration of the sacrament in order to be able to respond to the needs of the particular penitent. A truly salutary and appropriate penance can only be imposed – for the wellbeing of the penitent if, with the help of discreet and prudent questioning and, perhaps more importantly, by means of attentive and careful listening, the confessor comes to know something of the condition and circumstances of the individual penitent, something of his or her disposition towards conversion. The penances imposed must be tailored to the real needs and the real situation of the penitent: they should not be excessively onerous, but neither should they be too light since this risks giving the wrong impression to the penitent.⁶³

5. Conclusion

Although it may well be observed that nothing written in this article is actually new, it is striking to notice how differently *CCEO* approaches the theme of the ordinary duties of the confessor from what is found in the Latin Code. The four canons of *CIC* 1983 are heavily reliant on the corresponding canons of *CIC* 1917, and deal with very much the same kind of issues, providing quite detailed and specific guidelines for the confessor, albeit in the light of a renewed understanding of the Sacrament of Reconciliation in the decades after the Second Vatican Council. This approach stands in contrast to the much simpler approach found in *CCEO* c. 732. As has been noted, there are clear points of convergence with the Latin discipline, but the overall thrust of the text is consistent with the doctrinal description of the sacrament contained in canon 718: here the emphasis is clearly on the purifying and healing presence of the Holy Spirit who leads the Christian faithful by means of the sacrament to “new life,” which involves reconciliation with God and with the Church, and which finds expression in their proper disposition for receiving the Holy Eucharist. The fundamental duty of the confessor is to help the Christian in their journey towards holiness.

If confessors reflect on *CCEO* c. 732 and bear in mind what has been said about *CIC* cc. 978-981, they will be truly attentive to their

⁶³Cf. V. De Paolis, “Il Sacramento della Penitenza,” AA.VV. *I Sacramenti della Chiesa*, Bologna 1989, pp. 218-219.

responsibilities of offering a "*fitting cure*" to their penitents by imposing "*appropriate works of penance*," and of offering "*appropriate counsel*" to them in order to assist them in making progress in their vocation to holiness. Indeed, through reflection on their own experience of seeking and receiving God's mercy as penitents themselves, confessors can also do their best to ensure that God's people can touch the grandeur of God's mercy with their own hands, and can experience the celebration as a source of true interior peace. Such considerations should help all confessors remember that, by their ordination, they have received the gift of the Holy Spirit for the forgiveness of sins – so no one who comes to them should ever go away without having known at first hand the mercy of God. In this way, they can respond with enthusiasm and clarity to the manifold challenge presented to them by Pope Francis in this Jubilee Year of Mercy, namely: to be faithful servants of God's mercy; to be living signs of the Father's readiness to welcome those in search of his pardon; in short, to be authentic signs of the Father's mercy.