

THE SACRAMENT OF PENANCE

Pastoral and Inter-Ritual Difficulties Regarding Reserved Sins and *latae sententiae* Censures (Part II)

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This article (parts I & II) is based on the author's research into the canonical nuances of reserved sins, which in a strict sense are found only in *CCEO*. These are compared with the parallel system of non-declared *latae sententiae* censures especially excommunication and interdict, found in *CIC*). The author claims that these systems are theoretically and legally unequal, and that having two types of reservations concerning the sacrament of penance creates injustices, legal confusions and illegal practices.

The first part of this article¹ furnished the fundamental notions regarding "reserved sins" (*CCEO*) and "*latae sententiae* censures" (*CIC*) and their various interconnected but conflicting principles. Now, utilizing the substantial juridical norms found in both codes and the author's personal empirical survey of 130 confessors, this second part presents practical pastoral difficulties and complications engendered by these systems and encountered by ministers of confession. These include: bi-ritual issues due to two different systems for the Eastern and Latin Churches; distinction between the number and kind of reservations or censures; exceptions to the reserved sins and suspension of *latae sententiae* censures; the obligation of the confessor and faithful to observe their own rights; and the illegal and unjust practices arising from ignorance of these two systems and their differences. After presenting a few concrete cases to substantiate the

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¹See, *Iustitia*, Vol. 6, n. 2, 179-200.

arguments, the article concludes with some proposals to establish a less complicated, uniform system for both Churches.

9. Eastern and Latin Inter-Ritual Problems Due to Different Systems in Reservation

A large-scale migration is occurring in the modern world. Many of the faithful from various Eastern Churches *sui iuris* live in Latin dioceses. It is usually not possible for there to be ministers for each Eastern Church *sui iuris* in a given diocese, especially when the group from that Church is relatively small. In any diocese, the diocesan bishop has an obligation to provide pastoral care for the faithful of other Churches *sui iuris* with their proper pastors. If there is no proper parish at all, the faithful of other Churches *sui iuris* should be given adequate chances to follow their rite (CCEO c. 193, CIC c. 382 §2). Before examining the pastoral problems arising from the differences between Eastern and Latin systems of reservation, certain norms on the inter-ritual administration of penance must be discussed.

9.1. The Inter-Ritual Administration of Penance

The arrival of Eastern Catholics in regions of the Latin Church often creates problems for the local Latin hierarchy. Throughout the history of the Church, interventions of the Apostolic See took place from time to time to ensure the faithful their inter-ritual rights. In the famous Apostolic Letter *Orientalium dignitas*, given on November 30, 1894,² Pope Leo XIII (1878-1903) asserted the general principle that all the faithful of the Eastern rites living outside their own patriarchate or Eastern territory must be subject to the jurisdiction of the Local Latin Ordinary.

‘The Sacred Congregation for the Doctrine of Faith’ on several occasions tried to ensure the faithful’s access to the sacrament of penance regardless of their rite.³ John J. Walsh affirms this in his study:

²Pope Leo XIII, *Litterae Apostolicae: Orientalium dignitas Ecclesiarum*, 30 November 1894, *Leonis XIII Pontificis Maximi Acta* vol. 14, Rome: Ex’ Typographia Vaticana, 1895, 358-370.

³In 1647: The CDF declared that Eastern patriarchs and bishops could not prevent Latin missionaries from administering the sacrament of penance to penitents of the Eastern rites. 1715: The Holy Office told Latin and Eastern bishops they were free to approve priests of any rite as confessors for all the faithful in their diocese. In 1838: The CDF and Eastern bishops could not prohibit their subjects from making confession to Latin missionaries.

The Holy See has never been accustomed to limit in any way the Christian's freedom in such a delicate matter as is the sacrament of penance. She has always wished that anyone be permitted to confess his sins to any approved confessor according to his preference. She has never prohibited any approved confessor from hearing in his own church the confession of any Catholic whatsoever who presented himself in the sacred tribunal.⁴

On this point there has never been any distinction of rite, since the administration of this sacrament effects no change of rite.

The 1917 Latin code of canon law, the first of its kind in the Catholic Church, explicitly approves the inter-ritual administration of the sacrament of penance. "All priests of either type of clergy in a place, whether so enabled by ordinary or delegated jurisdiction, can also validly and licitly absolve wanderers and travelers from another diocese or parish coming to them and likewise Catholics of any oriental rite" (*CIC*, 1917 c. 881 §1).⁵ Canon 872 reiterated the teaching of the Church requiring that the minister of the sacrament of penance be a validly ordained priest possessing ordinary or delegated jurisdiction over the penitent. The Church granted both the confessor and the penitent definite rights related to the inter-ritual administration of the sacrament of penance in the 1917 code.

The 1983 Code explicitly approves of the inter-ritual administration of the sacrament of penance whenever a priest legitimately enjoys the faculty to hear confession: "Every member of the Christian faithful is free to confess sins to a legitimately approved confessor of his or her choice, even to one from another rite" (*CIC* c. 991). Number 16 of the council decree *Orientalium Ecclesiarum* is the proper source of canon 991. Like all confessors, the inter-ritual confessor must possess the faculty to absolve a penitent. There is no parallel canon in *CCEO*. Additionally, both codes contain another special provision that grants *all* validly ordained priests the faculty to absolve any baptized person in danger of death (*CIC* c. 976, *CCEO* c. 725). Although the confessor's faculty may be limited for other reasons, the code in no way restricts it along ritual lines.⁶ The confessor has in a way the obligation to admit

⁴Walsh, *The Jurisdiction of the Inter-ritual Confessor in the United States and Canada*, 27.

⁵*The 1917 or Pio-Benedictine Code of Canon Law: In English Translation*.

⁶Walsh, *The Jurisdiction of the Inter-ritual Confessor in the United States and Canada*, 31.

the penitent without regard to the rite for the sacrament of penance (*CIC* c. 843 §1, *CCEO* c. 381 §2).

9.2. The Obligation of the Confessor to Follow His Own Rite

In general, a Latin minister is to follow his own rite in administering the sacraments, even to the faithful of other Churches *sui iuris*. “The minister is to celebrate the sacraments according to the minister’s own rite” (*CIC* c. 846 §2). The same principle is found in the Eastern code: “The minister should celebrate the sacraments according to the liturgical prescripts of his own Church *sui iuris*, unless the law establishes otherwise or he himself has obtained a special faculty from the Apostolic See” (*CCEO* c. 674 §2). While the minister must follow his own rite under normal conditions, permission from the Apostolic See can permit him to celebrate the sacraments according to another rite. Such permissions are usually granted wherever there is a shortage of clergy and if there is an agreement with the Local Ordinaries of both rites.⁷ If it is specifically mentioned in the letter granting permission, or if one has obtained a special faculty to follow another rite, a priest can administer the sacrament in another rite if there is a need. In general, a confessor follows the rite and norms of his own Church *sui iuris* regardless the rite of his penitent.

9.3. The Obligation of the Inter-Ritual Confessor to Know Other Rites

Confessors who serve among the faithful from different Churches *sui iuris* have the obligation to know the laws of the people whom they serve. *CCEO* c. 41 states:

The Christian faithful of any Church *sui iuris*, even the Latin Church, who by reason of their office, ministry, or function have frequent dealing with the Christian faithful of another Church *sui iuris*, are to have an accurate formation in the knowledge and practice of the rite of the same Church in keeping with the importance of the office, ministry or function they hold.

There is no parallel canon for this in the *CIC*. Since the Latin Church is specifically mentioned in it, this canon is applicable to the faithful and to ministers from both the Latin and Eastern churches. So the Eastern priests who serve among the Latin faithful and Latin priests who serve among the Eastern faithful have an obligation to learn the laws and

⁷Marzoa, *Exegetical Commentary*, vol. III, 421.

practice of other rites. In the matter of the sacrament of penance, priests from both rites should learn the different systems of reservation.

9.4. The Liberty of the Penitent

The Church grants penitents the right to choose any legitimately approved confessor.⁸ They can even choose a confessor from another rite than their own, as stated in *CIC* c. 991. This canon affords the penitent an almost unrestricted liberty in choosing their confessor. The only condition is that the confessor selected be competent according to the prescriptions of law. This liberty is given in the sacrament of penance due to its internal nature and importance in the lives of faithful.

Since the Church gives the faithful the right to confess their sins to any competent confessor of any rite, confessors act unlawfully if they refuse to hear the confessions of any of the faithful based on the simple reason that the latter belongs to a different rite.⁹ Such a refusal would be contrary to the common law of the Church as expressed in *CCEO* c. 735.

9.5. The Right and Obligation of the Faithful to Observe One's Own Rite

Every faithful of a Church *sui iuris* has an obligation to follow and appreciate his or her own rite. *CCEO* c. 40 §3 states: "Also, the other Christian faithful are to foster the knowledge and appreciation of their own rite and are bound to observe it everywhere unless an exception is provided by the law." This puts an obligation on the faithful to follow their rite. At the same time, the Christian faithful have the right to follow their own rite. *CIC* c. 214 stipulates: "The Christian faithful have the right to worship God according to the prescriptions of their own rite approved by the legitimate pastors of the Church and to follow their own form of spiritual life so long as it is consonant with the doctrine of the Church." The parallel *CCEO* c. 17 accords the same right to the Christian faithful. So, the faithful can also appeal to their

⁸Bruno C. O. Gonçalves, "Le Confesseur et le Pénitent dans la législation Canonique Latine Actuelle, Faire Pénitence." in *Faire pénitence se Laisser Réconcilier*, 136.

⁹Walsh, *The Jurisdiction of the Inter-ritual Confessor in the United States and Canada*, 34.

right whenever they are not allowed to follow the liturgy and spirituality of their own Church *sui iuris*. Consequently, the penitent has the right and obligation to follow his or her own rite and the norms of his or her own Church *sui iuris*.

10. Differences in Number and Kind Cause Pastoral Difficulties

The difference in the number of reservations between the Eastern Churches and Latin Church creates problems in inter-ritual situations. The number of reservations *rationae censurae* is higher than that of reserved sins (see below): there are only three reserved sins, whereas there are fourteen sins indirectly reserved by the *latae sententiae censuras*. This is in no way an equivalent legal system and indeed not even comparable. A pastoral problem thus arises that affects only the sacrament of penance. In a way, it could be said that there is some legal partiality based on the rite. In principle, a judge should apply the same law in the same court of justice for the same type of cases. But the existence of two types of reservation put this principle in danger. In the confessional, a confessor cannot see the penitent differently based only on his or her rite. For him, it is very difficult to judge the same matter differently based on the rite.

The differences can be better understood by considering the following list of reserved cases:

Latae sententiae excommunication reserved to the Apostolic See:

1. Desecration of the Sacred Species (*CIC* c. 1367)
2. Physically assaulting the Pope (*CIC* c. 1370 §1)
3. Absolution of an accomplice (*CIC* c. 1378 §1)
4. Unlawful consecration of a bishop and reception of such an ordination (*CIC* c. 1382)
5. Direct violation of the sacramental seal (*CIC* c. 1388 §1)
6. Attempt to confer sacred ordination on a woman or the reception of such an attempted ordination.

Latae sententiae excommunications without reservation:

1. Apostasy, Heresy and Schism (*CIC* c. 1364 §1)
2. Abortion (*CIC* c. 1398).
3. Recording and publishing in the public media whatever is said by a confessor or a penitent.

Latae sententiae interdicts:

1. Using physical force against a bishop (*CIC* c. 1370)

2. Attempting to preside at a Eucharistic celebration (*CIC* c. 1378 § 2, 1°)
3. Attempting to give absolution or hearing confessions (*CIC* c.1378 §2, 2°)
4. False denunciation of solicitation (*CIC* c. 1390 §1)
5. Attempted marriage by a perpetually professed religious who is not a priest (*CIC* c.1394).

Reserved sins (*CCEO* c. 728 §§ 1, 2):

1. Direct violation of sacramental seal (Apostolic See)
2. Absolution of an accomplice (Apostolic See)
3. Abortion (Bishop).

It is evident that the number of delicts with *latae sententiae* censures and the reserved sins are not equal. It is unclear, however, why the code commissions allowed this discrepancy, which introduces a certain amount of confusion and illegal practices into the penitential field. Of course, it is not legality which is most important, but rather conversion.

11. Different Exceptions to the Reservations Raise Pastoral Problems

CCEO admits certain exceptions to the reservation of sins. In c. 729, the code provides that any reservation of sacramental absolution lacks all force in the following situations: 1) when a sick person who cannot leave the house confesses; 2) when a person confesses in order to celebrate marriage; and 3) if the confessor cannot obtain the faculty to remit the sin without grave inconvenience to the penitent. The reservation lacks force also when there is a danger that the sacramental seal will be violated. It must be also remembered that, according to *CCEO* c. 730, the reservation of the faculty to absolve a sin of absolution of an accomplice lacks force in danger-of-death cases.

There are some exceptions to the delicts with *latae sententiae* censures.¹⁰ According to the *CIC*, ten circumstances exempt a guilty party from *latae sententiae* penalties (c. 1324 §3) and require the mitigation of other

¹⁰(1) The imperfect use of reason, (2) a lack of use of reason for culpable drunkenness, etc., (3) the heat of passion, (4) if one is under eighteen, (5) fear, necessity, grave inconvenience where the crime was intrinsically evil, etc., (6) lawful defence exceeding due moderation, (7) provocation, (8) culpable error due to presence of fear, necessity, lawful defence, (9) inculpable ignorance that there was a penalty attached to a law or precept, (10) a lack of full imputability.

penalties (c. 1324 §1). Additionally, canon 1323 identifies seven given circumstances in which a delinquent is exempted from all penalties. However, these are beyond the focus of this study, which has specifically focused on exceptions to a *latae sententiae* censure.¹¹

Circumstances that occasion exception to *latae sententiae* excommunication and to interdict differ from those that exempt in the case of reserved sins. This difference prevents the *latae sententiae* censure from serving the purpose of a reserved sin. The direct violation of the confessional secret provides one example.

Suppose that a priest whose life is under threat reveals the confessional secret in an occult manner. When this priest confesses the sin to a Latin confessor, the confessor must judge the priest to be exempted from sanction because he committed it due to a life-threatening compulsion. Although the penitent did commit a grave delict sanctioned with a *latae sententiae* excommunication reserved to the Apostolic See, he committed it without full consent. According to the *CIC*, an ordinary priest can absolve the penitent without difficulty. But the same is not true of an Eastern priest, who lacks the capacity to absolve the sin itself. It is said that even if someone tries to kill a priest, he may not reveal the confessional secret; even in the midst of force, he must preserve the confessional seal. The person might feel guilty of it and he may confess. [this sentence's relation to the previous/following ?] Thus the sin remains and it cannot be absolved by an ordinary priest, since absolution of a direct violation of the confessional seal is reserved to the Apostolic See. Hence, the different exempting laws on reserved sins and *latae sententiae* censure make things complicated in the sacrament of penance.

Still another example, that of a minor who has procured an abortion, may be considered. As per the law, those under eighteen cannot incur a *latae sententiae* excommunication (*CIC* c. 1324 §1, 4^o, °3)¹² even if they procure several abortions before the age of eighteen. Though such excommunication is attached to the delict of completed abortion, the disqualifying age of the penitent prevents the censure. Therefore, a Latin priest without any special faculty can absolve a penitent under these circumstances. But in the Eastern law, the sin of a completed

¹¹Toxè, "Approche canonique de cas de conscience particuliers et traitement des délits au for interne sacramental," 157.

¹²Toxè, "Approche canonique de cas de conscience particuliers et traitement des délits au for interne sacramental," 158.

abortion is treated as a reserved sin, the absolution of which is reserved to the bishop. Since the Eastern Code affords no age-based exception to this reserved sin, an ordinary Eastern priest cannot absolve even a person under eighteen without first acquiring the faculty to do so.

The same case can be considered in light of an exception *CCEO* gives for the reserved sins. When an adult who has committed the delict of abortion confesses this sin in view of getting married, the sin of abortion can be absolved without getting any special faculty from the bishop. The *CCEO* c. 729, 1° gives exemption to the reserved sins on such occasions. But it is not the same case in the Latin Code, because such an exemption is not given in case of the violation of a delict with *latae sententiae* excommunication. So even if such a person confesses in view of the marriage, the Latin priest cannot absolve the penitent since he or she is under the censure of excommunication. So, the priest has to acquire the special faculty to remit the censure or else apply the law concerning the remission of censure on the occasion of confession.¹³

12. The Provision of Suspension of *Latae sententiae* Penalties (CIC c. 1352) Creates Other Confusions

In the *CIC*, *latae sententiae* penalties can be partially or totally suspended. The canon on suspension (*CIC* c. 1352 §2) poses the problem of equalizing the *latae sententiae* censure with reserved sin: "The obligation of observing a *latae sententiae* penalty which has not been declared and is not notorious in the place where the offender actually is, is suspended either in whole or in part to the extent that the offender cannot observe it without the danger of grave scandal or loss of good name." Suspension of penalty means suspension of its effects or, more precisely, suspension of the obligation of the penalty in all its effects or only in part according to the provisions of the penal law, given that the causes established by the law still exist.¹⁴ The second paragraph of the canon provides for a suspension of the obligation to observe the penalties, either of some part of the obligation that causes a loss of reputation and a scandalous situation, or else the whole obligation. If the penalty is suspended, the ordinary confessor gains the faculty to absolve the sin connected to the delict with which he could be penalized. In that case, the confessor need not get the

¹³*CIC* c. 1329 specifies co-delinquency in *latae sententiae*.

¹⁴Marzoa, *Exegetical Commentary*, vol. IV, 395.

required jurisdiction (faculty) to remit a penalty because the penitent is eligible to receive sacraments. According to the *CIC*, there are no directly reserved sins and confessors have the faculty to absolve all sins.

Regarding censures, it must be noted that *ex parte paenitentis*, a penalty, like excommunication or interdict, which prohibits reception of the sacraments is *suspended* for as long as the person is in danger of death (c. 1352 §1). The suspension of penalties thus enables a confessor to impart absolution without granting remission of the censure.¹⁵ If the penitent recovers, the effects of the censure return until the competent authority remits it. On the contrary, reserved sins absolved in danger of death are absolved forever; there is no suspension, only the exception. Exceptions from a penalty and the suspension of its effects are not the same.

In effect, the same sin can be dealt with in two ways by a confessor in the Eastern Churches and the Latin Church. For example, a sacristan who has physically attacked a bishop in an occult manner is under interdict and therefore ineligible to receive the sacraments. Because the case is occult, if the sacristan wants to make confession and receive communion in order to avoid scandal, the *latae sententiae* could be suspended and he could receive the sacrament of penance, without any recourse to the superior authority. The confessor can give absolution without hesitation since this is a suspension of penalty, based on *CIC* c. 1352 §2. Reserved sins, however, have no provision for suspension, which has consequences only in the internal forum. But as an exception, a confessor could absolve the penitent without the required faculty when requesting it would either cause the penitent serious inconvenience or would endanger the integrity of sacramental seal (*CCEO* c. 729, 2°). On such occasions, *ipso iure*, the confessor has the faculty to absolve.

13. The Lack of Knowledge of Priests Regarding the Different Reservations

Based on the survey conducted, it is evident that the priests are unaware that two different systems of reservation exist. They do not mind the reservation as such for various reasons. First, they have not been adequately informed about the differences between the two systems during their formation. Secondly, they give little importance

¹⁵Stenson, "Penalties in the New Code: The Role of the Confessor," 412.

to ritual differences. Thirdly, these are considered rare cases as those who commit these sins may not be practising Christians. Because catechism is often minimal and very little is taught about the differences between Churches *sui iuris*, the faithful are likewise unaware of these types of reserved cases or sins.

In the survey of priests working in Switzerland, 83 of the total responses wrongly stated that there are reserved sins in the Latin Code. Twenty six replied that they are not sure about it and eight of them did not answer. Only seven confirmed that there are no reserved sins in Latin Code. *CIC* completely avoids reserved sins and even the possibility of any further reserved sins;¹⁶ however, many priests confuse reserved censures with reserved sins. The question about the presence of reserved sins in the Eastern law demonstrated a similar ignorance in this area: seventy-five respondents were unsure, eleven did not answer, and three said there are none. Only thirty-five answered correctly.

All priests should be clear that there are no *latae sententiae* penalties in Eastern Canon Law. The answers to the above question show that the priests surveyed lack important knowledge about the Church's norms on reservations. Thirty two percent think that *latae sententiae* penalties always affect the Eastern faithful. Only thirteen percent answered correctly that *latae sententiae* penalties categorically do not exist in the Eastern Law. All others either have a wrong conception or do not know the norms at all. Again this shows that the priests need further formation in the norms concerning the sacrament of penance in order to deal justly and correctly with penitents in the confessional.

The new code states that the confessor must always remember that he is both judge and physician, a dispenser of God's justice and mercy (*CIC* c. 978 §1 = *CIC*, 1917 c. 888 §1). To carry out this ministry effectively, it is imperative that he has, among other qualities, a sufficient knowledge of the norms concerning the sacrament. Unfortunately, the above responses show that priests need further formation in the norms on the sacrament of penance to deal justly and correctly with penitents.

¹⁶*Comm.* 10 (1978), 45-71.

14. Legal Confusions Caused by the Two Systems

Much legal confusion seems to have arisen from the existence of two systems of reservation in the Church. This confusion is more prevalent in places where people from different rites live together. As the survey found, many priests are confused as to which law applies to the penitent and do not take these laws into consideration. As a result, illegal practices continue. Although Eastern faithful cannot incur *latae sententiae* censures, some Latin priests apply these laws to Eastern penitents. Priests are bound to observe their rite; however, the faithful have the right to be dealt with according to the laws that govern them. Despite the 1983 Latin code's suppression of reserved sins, it is clear from the survey that some priests remain unaware of this change. Thus, results show the danger of creating two types of reservations that affect the sacrament of penance, for illegal and even invalid practices would seem to be common, at least on certain occasions. The existence of two legal systems pertaining to confession can create confusion and lead to unintended violations of the law. An Eastern priest, who never remits a censure among his faithful, has no idea about the remission of censure of a Latin penitent. For an Eastern priest to absolve a Latin penitent of a sin not reserved according to Eastern norms, but for which the penitent incurred a *latae sententiae* censure, could be regarded as an illegal or even an invalid act. The survey conducted shows that most of the priests surveyed face some confusion in the inter-ritual celebration of the sacrament due to the existence of two different systems of reservation.

15. Injustice to the Faithful

When priests lack due knowledge, injustice to the faithful can result. If a Latin priest denies an Eastern penitent absolution because the priest lacks the faculty to remit a *latae sententiae* excommunication reserved to the Apostolic See, injustice is done to the penitent. As a result, the penitent unlawfully suffers the consequences of excommunication without actually being excommunicated, i.e., the denial of the sacrament of confession and the obligation to seek the censure's remittal. In such a case, the Eastern penitent is unjustly treated and subjected to a law not applicable to him.

It is an injustice to an Eastern penitent if a Latin priest deals with his case in the same way that he treats the case of *latae sententiae* censures. However, of the priests surveyed, fifty-two percent responded that they would treat an Eastern penitent in the same way they would a

Latin. If any of these priests concluded that an Eastern penitent is under censure and demands that he has to make recourse to the Apostolic See to remit the penalty, it is a serious fault on the part of the confessor. The penitent is neither under the censure of excommunication nor any interdict. The norms on penalties especially should be interpreted strictly. CCEO c. 1423 §2 states; "Every reservation is to be interpreted strictly" (see, CIC c. 18 also).

A majority of the priests provide the same answer regarding abortion. An Eastern penitent is in no way under censure of excommunication and does not require a remission of penalty. The faculty given by a Latin Local Ordinary to remit a censure of excommunication does not confer the ability to absolve from this reserved sin. Since the Latin code does not acknowledge reserved sins, Latin bishops do not give a faculty to absolve from the sin but to remit the censure, which then enables the priest to absolve the penitent.

16. Internal and External Forum Conflicts

While reserved sins and their absolution purely concern the internal forum, the reservation of the penalty affects the external forum as well. The censures of excommunication or interdict have many consequences in the external forum. A person under censure, declared or not, is prohibited from receiving not only penance but all other sacraments as well. When a confessor deals with a reserved delict in the sacrament of penance, it mixes the external and internal forums. Confessors who act purely in the internal forum also take away all the consequences of the penalties in the external forum. Thus there can be an overlapping of faculties in the external and internal forums and a certain conflict and irregularity between the two.

A key issue in penal reform is the relationship between the two *fora*. There seems to be a growing consensus that the application and remission of penalties should take place in the external forum, since there are significant penal prohibitions and legal restrictions there. These penalties usually become insignificant upon recourse to a confessor in the internal forum, as the confessor is often unwilling to confront the penitent with the implications of ecclesiastical penalties.

The character of penalties in a public forum seems to imply that only those with public power in the external forum can or ought to determine penalties. The effects of penalties are to remain only within the external forum. Thus, there will be a clear distinction between *fora*

and penalties implemented in a more humane way.¹⁷ But the system of remission in the internal forum, prior to the remission of a penalty in the public forum, is to be abolished or at least modified to avoid conflicts between the external and internal forums.

17. Illegal Practice by the Priests

Regarding the sacrament of penance, a delict is specified in the penal section. Attempting to impart sacramental absolution or hearing a sacramental confession when one cannot do so validly is penalized (CIC c. 1378 §2, 2°). To absolve validly, a confessor needs the power of orders and the faculty to do so: “The valid absolution of sins requires that the minister have, in addition to the power of orders, the faculty of exercising it for the faithful to whom he imparts absolution” (CIC c. 966 §1). The same norm is found in the Eastern Code, which stipulates: “However, for presbyters to act validly, they must also have the faculty to administer the sacrament of penance” (CCEO c. 722 §3). The reservation of sin is a restriction on granting absolution. Consequently, when a Latin penitent confesses a reserved sin to an Eastern confessor, he cannot validly absolve the penitent without a faculty to do so. In such instances, the faculty is reserved and the ordinary priest has to receive it from the concerned superior. Yet there are cases where priests absolve without having the proper legal faculty.

CIC c. 843 §1 states: “Sacred ministers cannot deny the sacraments to those who seek them at appropriate times, are properly disposed, and are not prohibited by law from receiving them.” The clause in this canon, namely ‘those who are not prohibited by law from receiving them,’ should be taken into account by Latin confessors. The penitent who has incurred a *latae sententiae* excommunication or interdict is prohibited from receiving all sacraments. If the confessor gives absolution without first resolving the prohibition on the penitent, he acts illegally.

Latae sententiae censures prohibit those who incur them from receiving the sacraments but do not prevent their valid reception. If a Latin penitent confesses sins not reserved in the Eastern law but connected with these censures, the Eastern confessor can validly but illicitly absolve him. The confession would be illicit if it is indirectly prohibited by the Latin Code and the same is not concerned with

¹⁷Thomas J. Green, “The Future of Penal Law in the Church,” *Jurist*, (1971) 222.

Eastern Catholics.¹⁸ In his response to the survey, one priest stated that he always absolves in virtue of *CIC* c. 980 "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." While this general rule holds true, the minister has to observe various disciplines and the norms issued by the competent authority. *CIC* c. 978 §2 states this clearly: "In administering the sacrament, the confessor as a minister of the Church is to adhere faithfully to the doctrine of the magisterium and the norms issued by competent authority." Canon 980 does not permit a confessor to disregard the norms of the Church. Confessors who lack the necessary faculty must obtain it or, if the penitent is prohibited from receiving the sacrament, acquire the faculty to remit the penalty. Those who do not follow these norms act illegally. This would not invalidate the absolution given, but would constitute an illegal act by the confessor nevertheless.

18. The Reservation Is Made Ineffective

It is also possible to treat all the norms on reservation as ineffective and useless. The two systems give opportunity for the faithful to seek absolution reserved *ratione sui* or *ratione censurae* in one's own Church *sui iuris* from a priest of another Church. The priest who is unaware of the difference makes use of the law of his Church to absolve. As a result, the desired effect of the reservation is lost.

The pastoral situation always demands the immediate reconciliation of a penitent who approaches the sacrament of penance with a proper disposition. According to *CIC* c. 980, the confessor must give absolution if the penitent asks for it with a proper disposition. By law, he cannot deny or postpone it. The confessor, showing the mercy of God, gives absolution by observing the norms. Of the two aspects of confession, mercy always has priority over discipline. So normally, the reservation exhibits no difference in its administration. Furthermore, exceptions to the laws of reservation tend to make the reservation practically useless.

Many in the pastoral field have stated that the norms on reservations are generally irrelevant. In the survey, twenty five percent responded that these norms have no relevance in their pastoral ministry. Eighteen percent stated that they are impractical and thirty percent answered

¹⁸Peter Erdo, *Periodica* 90 (2001), 446-449.

that they are of very little use. This result shows that the majority have little confidence in the value of reserved sins in the modern world.

If remittance in the internal forum can take away the effects of all penalties, there is no use in creating *latae sententiae* censures. According to the Latin system, the *latae sententiae* censure is rendered ineffective by the confessor's ability to remit a non-declared censure (though the confessor must oblige the person to have recourse to the concerned authority). In effect, an undeclared *latae sententiae* censure has no practical use as a penalty. So it is better to retain the penalties solely in the *fora externa* and the reserved sins in the *fora interna*.

Public delicts can be punished with *ferendae sententiae* penalties following a proper investigation. If a person accepts a grave sin in the internal forum, let it remain occult and be treated in an occult manner, as in the case of reserved sins. The medicinal nature of penalties demands that the Church use it as a last resort when all other pastoral remedies have failed. With *latae sententiae* censures, there is no possibility of correcting the person or using pastoral remedies before executing the punishment attached to the delict.

19. Certain Examples of Complications in Eastern-Latin Confessions

It will be easier to clarify the Eastern-Latin confusions and problems in the sacrament of penance by considering the example of one particular sin. The question arises of which law should be applicable when an Eastern penitent confesses the sin of abortion to a Latin priest. Being Eastern, he or she ordinarily would not know of *latae sententiae* censures. The Latin priest, however, has the faculty to absolve a completed abortion but ordinarily lacks the faculty of remission of censure. For him, the sin is only indirectly reserved due to the *latae sententiae* excommunication. Therefore, in absolving Latin penitents, he must first remove the penalty of automatic excommunication in order to give the penitent sacramental absolution. In this case, while giving the absolution, the confessor has to oblige to the penitent to seek the remission of the censure within one month. This law, however, does not apply and is totally unknown to an Eastern penitent. This, while two systems of penal law exist, the confessor's liturgical obligation to follow his own rite creates confusion in an inter-ritual confession. Such problems admittedly will rarely arise since many bishops have delegated the faculty to remit this censure to all priests or at least all parish priests.

Now, consider the other way around, where the priest comes to know that the penitent is from the Eastern Churches and applies the law of reserved sins. If the law of the penitent is applied, the priest has to follow the law of reserved sin and so the sin of completed abortion would be reserved to the bishop. In that case, the confessor must get the relevant faculty from his bishop, who belongs to the Latin rite. Since Latin law never reserves the faculty to absolve a sin to the bishop, it is outside of the bishop's power to grant it. Since the rite of the penitent is often not recognized by the confessor, there is still more chance for injustice to the faithful, especially when people from different rites live in the same area.

The desecration of the Sacred Species provides another example to explain the confusion. If a Latin priest hears this sin confessed by an Eastern faithful, he will regard the penitent as excommunicated and obliged to have recourse to the Apostolic See. However, the penitent is not actually excommunicated because he belongs to an Eastern Church. Consequently, if he obliges the penitent to have recourse to the Apostolic See by himself or through the confessor, there occurs a clear instance of injustice to the penitent and another example of irregularities arising from coexistence of two different systems.

The case of the desecration of the Sacred Species by a Latin penitent may also be considered. If the penitent goes to an Eastern Confessor for absolution, the confessor thinks he give absolution without difficulty because it not a reserved sin in his Church. The confessor thus has the faculty to give absolution; however, in reality, the Latin penitent is under the *latae sententiae* censure of excommunication established in the Latin code. This fact would not be known to the confessor unless the person mentions his rite in the confession, which is rare. Thus, the confessor follows the rite and norms of his Church and gives absolution. In this case too, an illegal practice occurs not due to negligence but due to the existence of two systems of reservations in relation to the sacrament of penance in the same Catholic Church.

Conclusion

The sacrament of penance is a sacrament of mercy and administered throughout the whole Catholic Church in almost the same manner. But the law regarding reserved sins makes the administration of the sacrament 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 priests in the survey conducted give evidence of this. A majority of priests who answered the survey suggested that Catholic Church have uniform norms regarding the sacrament of penance.

There are various ways to attain this goal. One of the methods would be to keep equal the number of reserved sins in both the Eastern and Latin law and to completely abolish the *latae sententiae* censures. It is also possible to have the same norms by maintaining a few *latae sententiae* censures in both codes and eliminating reserved sins.

Another way to equalize norms is to make equal the number of reserved sins and *latae sententiae* penalties in both codes. This would mean introducing both systems in both codes. Here, Eastern canon lawyers may object that, even though reserved sins exist in both legal systems, *latae sententiae* are unknown in the Eastern tradition. The medicinal character of the Eastern tradition has led it to use no *latae sententiae* penalties, i.e. automatic sentences imposed without a judge, but rather only imposed *ferendae sententiae* in the external forum. In other words, as a type of physician, the judge must first diagnose the illness and only then apply the medicine.¹⁹ Therefore, making the two systems equal in number in both codes would be a difficult task.

It is our own 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 should be no difficulty in reintroducing reserved sins to the *CIC*. To introduce *latae sententiae* into the Eastern Code would be more 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 uniform norms for the Catholic Church.

¹⁹Michael Kuchera, "Two Different Systems in Confessional Reservati-ons Reservatio *Ratio Censurae* and *Reservatio Rationae sui*," 193.

The biblical theme of the year of mercy is: "Be merciful, just as your Father is merciful." In his declaration of this theme, Pope Francis emphasized that this admonition applies especially to confessors. The greater the sin of a person, 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.

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 has suggested certain changes to the norms on reservation that would help confessors deal with such cases more compassionately. Applying the same law on reserved sins to the entire Catholic Church will make the administration of the sacrament of penance easier and more compassionate not only during this time of jubilee, but at all times.