

Sanctions in the Church

INTRODUCTION

The first thing that strikes us reading BOOK VI of the New Code of Canon Law while comparing it with BOOK V of the 1917 Code is its shortness: out of 220 canons the new Code contains only 89.

Another thing that is noticeable is the change of the title: not anymore *De Delictis et Poenis*, but DE SANCTIONIBUS IN ECCLESIA. This new title reflects better the contents of Book VI, because it deals not only with Delicta et Poena, but also with Penances, and so it is more appropriate the new general term: DE SANCTIONIBUS.

Following the dogmatic and pastoral principles of Vatican II this book has been simplified and rendered more pastoral. It contains two parts with 6 titles in the first part and 7 in the second.

The order of the titles and chapters follows a better order: penal law and penal precept, subject, kinds of penalties, application of penalties, cessation, penalties for particular offenses.¹

¹ OUTLINE OF BOOK VI cc. 1311-1399

Part I Offenses and Punishments in General cc. 1311-1363

Title I The Punishment of offenses in general

Title II Penal Law and Penal Precept

Title III Those subject to Penal sanctions

I. GUIDING PRINCIPLES

Following the Documents and spirit of Vatican II the Synod of Bishops — 1967 — approved 10 *guiding principles* for those working on the renewal of the Code of Canon Law.

These principles have been incorporated in the Preface of the new Code.²

Some of them have inspired and guided — in a particular manner — the renewal of penal laws. They will help us in understanding the spirit of the new canons.

1. *Better coordination between the two FORI*

This is the second guiding principle of 1967.³ It asked for a better coordination between the two fori — internal and external — in order to avoid or minimize the existing conflicts.

The Schema of 1973 sent for consultation had limited *all penal laws* to the external forum, and in order to better distinguish the two fori they proposed to abolish the prohibitions or receiving the sacramental absolution of sins (proper of the excommunication and interdict of the 1917 Code). The norms forbidding the reception of sacramentals were also omitted.

In the actual text and in the 1980 Schema, the excommunicated and also the interdict cannot receive the Sacraments of Penance,

Title IV Penalties and other Punishments

Chapter 1 Censures

Chapter 2 Expiatory Penalties

Chapter 3 Other Punishments

Title V The Application of Penalties

Title VI The Cessation of Penalties

Part II Penalties for Specific Offenses cc. 1364-1399

Title I Offenses against Religion and against Unity of the Church

Title II Offenses against Ecclesiastical Authority and against the Freedom of the Church.

Title III The Illegal Seizure of Ecclesiastical Functions and offenses in Exercising such Functions

Title IV The offense of Deception

Title V Offenses against Particular obligations

Title VI Offenses against Human Life and Freedom

Title VII General Norm

² Praefatio, pp. XXI-XXIII.

³ Praefatio, p. XXI, n°. 2: "Inter forum externum et forum internum, quod Ecclesiae proprium est et per saecula viguit, existat, coordinatio, ita ut conflictus inter utrumque vitetur".

Eucharist and Anointing of the Sick, he must be absolved from the censure if he wants to receive those sacraments.

The distinction of the two *fori* has not been applied as it was planned. Nevertheless he who incurs in censures may receive the sacramentals (cc. 1331, 1332), participate in the indulgences, suffrages and public prayers of the Church.⁴

However the integrity of the internal forum is safeguarded because when a censure forbids the celebration of the sacraments or to put an act of governance, the prohibition is suspended any time that it is necessary for the good of the faithful in danger of death. And also when it is a *censure latae sententiae not yet declared*, a faithful — for any just reason — can ask a sacrament, sacramental or an act of governance (c. 1335).

2. *Pastorality*

According to this principle,⁵ the new Code must respect, not only, justice, but also a sound equity which is fruit of goodness and charity. Consequently the canonical norms should not impose penalties were instructions, exhortations, suggestions and other helps seem sufficient to obtain the end of the Church.

The new canons not only do not contradict any document of Vatican II, but they express faithfully the pastoral principles of the same council.

There is a great space for mercy: pastoral reasons have been encouraged; the dignity of the person and its own rights have been safeguarded. Because of this the Code does not talk anymore of *poenae vindicativae*, but *poenae expiatoriae* following St. Augustine (21 De Civ. Dei, 13). It also does not talk anymore of *criminal process*, but of *penal process*. Before the imposition of a penalty all pastoral procedures should be exhausted (c. 1341); and by particular law or particular precept grave penalties cannot be imposed, like expulsion from the clerical state (c. 1317).⁶

⁴ Which was forbidden in c. 2262 of CIC 1917.

⁵ Praefatio, p. XXI, n°. 3: "Ad curam pastorem animarum quam maxime fovendam, in novo iure, praeter virtutem iustitiae, ratio habeatur etiam caritatis, temperantiae, humanitatis, moderationis, quibus equitati studeatur non solum in applicatione legum ab animarum pastoribus facienda, sed in ipsa legislatione, ac proinde normae nimis rigidae seponantur, immo ad exhortationes et suasiones potius recurratur, ubi non adsit necessitas stricti iuris servandi propter bonum publicum et disciplinam ecclesiasticam generalem".

⁶ To inflict those penalties there is to be followed a real process (cc. 1717-1731).

3. *Subsidiarity*

This principle presupposes legislative unity: the general principles of law should be the same for all.⁷ Canon law should be the same for the whole Church in the general principles, in the fundamental institutions. But it demands a greater independence and autonomy in the particular legislations.

Regarding the general norms about delicts and penalties in genere and the penalties in particular, they are very general and can be complemented by penal laws promulgated by other ecclesiastical legislators. Nevertheless the general principles should be kept by all local churches and each one cannot create a penal law completely new. At the same time many things are left — in the new Code — to particular legislators regarding penalties on particular delicts. The new Code — in Book VI — says 22 times when speaking of certain crimes, *iusta poena puniatur*, instead of establishing the penalty.

4. *Reduction of the number of Penalties*

It is a consequence of the previous principle.⁸ If the local churches and the Superiors can give general norms and general precepts — in a more ordinary way — it is logical that the penalties in the common law should be reduced. The principle is clear: the number of penalties should be reduced, and Superiors should seldom use them.

Penalties —generally— should be *ferendae sententiae* and imposed only in foro externo. Penalties *latae sententiae* should be reduced to few cases, and for the most grave crimes.

Nevertheless there is the possibility on the part of the Superior of inflicting other penalties —besides the cases stated in the Code or in other laws— but only:

⁷ Praefatio, p. XXII, n^o. 5: "... Hoc principio, dum unitas legislativa et ius universale et generale servantur, convenientia etiam et necessitas propugnantur providendi utilitati praesertim singulorum institutorum per iura particularia et per sanam autonomiam potestatis executivae particularis illis agnitam..."

⁸ Praefatio, p. XXIII, n^o. 9: "Circa ius coactivum, cui Ecclesia tamquam societas externa, visibilis et independens renuntiare nequit, poenae sint generatim ferendae sententiae, et in solo foro externo irrogentur et remittantur. Poenae latae sententiae ad paucos casus reducantur, tantum contra gravissima delicta irrogandae".

- when there is a particular seriousness of the violation, and
- there is an urgent need to preclude or repair scandal (c. 1399).

II. PART I. OFFENSES AND PUNISHMENTS IN GENERAL

This first part: Offenses and Punishments in general, is very much reduced. Definitions have been eliminated; there is no notion of any kind of censure, the canons specify immediately the effects they produce in those who incur in them.

Title I. THE PUNISHMENT OF OFFENSES IN GENERAL

There are only two canons in this title.

In the first canon it is enunciated the principle which affirms the right of the Church “*nativum et proprium*” to coerce Christian offenders by means of penal sanctions (c. 1311). While canon 1312 enumerates the penal sanctions in the Church:

- medicinal penalties or censures,
- expiatory penalties,
- penal remedies and penances.

Title II. PENAL LAW AND PENAL PRECEPT

Penalties are ordinarily *ferendae sententiae*; *latae sententiae* only when the law or precept state it *expresse* (c. 1314).

Canon 1316 is a precise application of the principle of Subsidiarity. Local legislators can establish their own penal laws. However, as far as possible, there is suppose to be uniformity in the same city or in the same region. But they should do it only when it is necessary “to provide suitably for ecclesiastical discipline. Dismissal from the clerical state, however, cannot be established by particular law” (c. 1317).

Nevertheless “a legislator should not threaten *poenae latae sententiae* unless perhaps against certain particular and treacherous offenses which can result in rather serious scandal and cannot be effectively punished by means of *poenae ferendae sententiae*”

(c. 1318) We can see how the legislator tries all means and ways to avoid the imposition of *poenae latae sententiae*. He wants to use first all other means, and he wants to instill the same mentality on the inferior legislators.

The legislator wants to help the delinquent and so "if a law is changed after an offense has been committed, the law which is more favorable to the accused is to be applied". And "if the second law repeals the first law or at least repeals its penalty, the penalty immediately ceases" (c. 1313).

The new Code has given more precise norms regarding *penal precepts*. Canon 1319, 1 tells us that through a penal precept penalties can be threatened: "To the extent that one can impose precepts in the external forum by virtue of the power of governance, to that same extent one can also threaten through a precept determinate penalties". With the exception of:

- perpetual expiatory penalties (c. 1319,1),
- dismissal from the ecclesiastical state (c. 1317),
- indeterminate penalties (c. 1319,1).

Penal precept is different from *penal decree*, which is the act of declaring or inflicting a penalty outside of a judicial process (c. 1342).

We have to apply here to penal precepts also what we have said about penal laws: Recourse to penal precepts should be made only after mature consideration and when necessary.

Title III. THOSE SUBJECT TO PENAL SANCTIONS

1. *Imputability*

"No one is punished unless the external violation of a law or a precept committed by the person is seriously attributed to that person by reason of malice or culpability" (c. 1321). However "unless a law or a precept provides otherwise, a person who has violated that law or that precept through a lack of necessary diligence is not punished" (c. 1321,2).⁹ Nevertheless the imputability

⁹ Canon 1389,2 is an exception: "a person who through culpable negligence illegitimately places or omits an act of ecclesiastical power, ministry or duty which damages another person should be punished with a just penalty".

is presumed whenever an external violation has occurred (c. 1321, 3.).

2. *Circumstances*

In this title the legislator shows a lot of understanding towards the delinquent. Included in this title are many subjective circumstances that may affect the responsibility of the subject and so *exempt* him from the penalty or the legislator should *temper* the penalty or *substitute* it with a penance.¹⁰

(a) "Considered *incapable* of committing a crime are those *habitualiter* deprived of the use of reason, even if they have violated a law or precept while appearing to be sane" (c. 1322).

(b) The following are *exempted* from penalties although they have violated a law or precept:

- 1) a person who is not sixteen years of age;¹¹
- 2) a person who without any fault of his or her own was unaware that he or she violated a law or precept; inadvertence and error are here equivalent to ignorance;¹²
- 3) a person who acted out of physical force in virtue of a mere accident which could neither be foreseen nor prevented;¹³
- 4) a person who violated the law or precept out of grave fear, even if only relatively grave, or out of necessity or out of serious inconvenience unless the offense is intrinsically evil or brings serious harm to souls;¹⁴

¹⁰ Even the 1917 Code had provisions in this regard: "Penalties should be decreed with due proportion to the crime, taking into account imputability, scandal, and damage; hence not only the object and gravity of the law should be considered, but also the age, knowledge, education, sex, condition, and state of mind of the delinquent, the dignity of the person offended or of the delinquent himself, the end intended, the place and time of the crime, whether the delinquent acted under the influence of passion or grave fear, whether he repented of the crime and tried to avoid its evil consequences and other such considerations" (c. 2218, 1).

¹¹ Before according to c. 2230 of the 1917 Code only impuberes were exempted: men below 14, women below 12. Now the law is the same for all.

¹² The canon does not mention that ignorance should be *inculpabilis* to be exempted.

¹³ *Vis physica* is also more general, the new Code does not have the words: *quae omnem adimit agendi facultatem*.

¹⁴ Even if the crime committed out of grave fear is done against *ecclesiastical authority* the penalty is not incurred.

- 5) a person who for the sake of legitimate self protection or protection of another has acted against an unjust aggressor with due moderation;¹⁵
- 6) a person who lacked the use of reason with due regard for canons 1324,1,2° and 1325;
- 7) a person who without any personal fault felt that the circumstances in 4 or 5 were verified.

(c) The penalty established by law *temperari debet* or instead of the penalty *a penance should be applied* in the following cases (c. 1324) when the offense was committed:

- 1) by a person with the imperfect use of reason;
- 2) by a person who lacked the use of reason due to drunkenness or another mental disturbance which was culpable;
- 3) in the serious heat of passion, which does not precede and impede all deliberation of mind and consent of will and provided the passion itself had not been voluntarily stirred up or fostered;
- 4) by a minor who had reached sixteen years of age;¹⁶
- 5) by a person who was forced through serious fear, even if only relatively serious, or through necessity or serious disadvantage, if the offense was intrinsically evil or brought about public harm of souls;
- 6) by a person who for the sake of legitimate self protection or protection of another has acted against an unjust aggressor but without due moderation;
- 7) against one gravely and unjustly provoking it;
- 8) by one who erroneously yet culpably thought one of the circumstances in c. 1323, nn. 4 and 5 was verified;
- 9) by one who without any fault or his/her own was unaware that a penalty was attached to the law or precept;
- 10) by one who otherwise acted without full imputability as long as there was grave imputability.

¹⁵ The tutela includes not only self-defense, but also the defense of another person

¹⁶ A person who has completed his *eighteenth year* of age is considered to be a *major*; below this age, he is a *minor*. (c. 97, 1)

3. Power of the Judge

The judge can:

(a) *diminish* the penalty *latae sententiae* "if any other circumstance exists — apart from those mentioned in c. 1324,1 — which would be such as to lessen the seriousness of the offense;" (c. 1234,2),

(b) *increase* the penalty — *in ferendae sententiae* penalties — in the following cases:

- 1) to a person who after condemnation or after a declaration of a penalty still commits an offense so that he is prudently presumed to be in continuing bad will in light of the circumstances;
- 2) to a person who has some established rank or who has abused authority or office in order to commit the offense;
- 3) to an accused who, although a penalty has been established against a culpable offense, had foreseen what was to happen and in no way took the cautions which any diligent person would have employed to avoid what was to happen (c. 1326,1),

c) *add another penalty or penance*, if the penalty is *latae sententiae*, only in the cases mentioned in c. 1236,1.

The legislator accepts the possibility (c. 1327) of a *particular law* establishing other circumstances *exempting from, mitigating or increasing* imputability above and beyond those in canons 1323-1326, either by way of a *general norm* or for *individual offenses*. The same thing can be done in a *precept* for a *poena praecepto constituta*.

4. *Conatus delicti*

In comparison with the old canons 2212, 2213, the new norms regarding *conatus delicti* are so mild that in reality the actor can remain immune from any penalty, and be punished only with *penances* or *penal remedies*. "A person who has done or omitted something in order to commit an offense but has not completed it for reasons beyond his or her control is not bound by the penalty stated for a completed offense unless the law or precept provides otherwise" (c. 1328,1).

5. *Delictum frustratum*

If a person omits or does something when those acts or omissions are of their own nature conducive towards the execution of an offense,

- a) if the delinquent spontaneously ceases from the execution of the offense he does not incur in any penalty;
- b) if he does not cease: a penal remedy or a penance can be imposed;
- c) if however, scandal or some serious injury or danger has occurred the delinquent can be punished with a just penalty, but it is to be lighter than that which is established for a completed offense (c. 1328,2).

6. *Complicity*

Complicity could be physical or moral; the old canon 2209,1 had a variety of degrees of complicity and consequently of penalties. The new canon 1329 does not make any difference between physical or moral complicity. It has two parts. If the penalties established against the principal author are:

- a) *ferendae sententiae*: those who concur through common conspiracy to commit an offense and who are not expressly named in a law or a precept are subject to the *same penalties*, to *other penalties of the same type*, or to *penalties of lesser severity*;
- b) *latae sententiae*: accomplices who are not named in a law or in a precept incur an automatic penalty attached to an offense when the offense would not have been committed without their efforts, and the penalty is of such nature that it can be inflicted upon them; otherwise they can be punished with *ferendae sententiae penalties*.

The last canon of this title — c. 1330 — is new and states that if the crime consists in “some declaration or of some other manifestation of will, teaching or knowledge is not considered completed if no one perceives such a declaration or manifestation”.

Title IV PENALTIES AND OTHER PUNISHMENTS

This title has three chapters each one dealing with a different kind of penalties: 1. Censures

2. Expiatory penalties
3. Other Punishments

1. *Censures*¹⁷

Only 5 canons take the place of 31 canons of the 1917 Code. There are three kinds of censures — the same as before —: excommunication, interdict, suspension.

a) *Excommunication*.¹⁸ Canon 1331 enumerates what is forbidden to an excommunicated:

1. to have any ministerial participation in celebrations of the Eucharistic Sacrifice or in any other ceremonies whatsoever of public worship;
2. to celebrate the sacraments and sacramentals, and to receive the sacraments;
3. to discharge any ecclesiastical offices, ministries, or duties whatsoever, or to place acts of governance.

There is not anymore the distinction between *excommunicatus vitandus* and *tolerandus*.¹⁹ The excommunication does not impede a person to receive the *sacramentals*. The prohibitions of the old canon 2262,1 by which the excommunicated is excluded from *suffrages* and *indulgences* do not exist anymore.

However if the excommunication has been an *imposed* or *declared* one: (c. 1331,2)

1. if the accused wishes to act against the prescriptions of paragraph 1,1 he or she is to be prevented from doing so or the liturgical action is to stop unless a serious cause intervenes;

¹⁷ Canon 2241,1 of the 1917 Code gives the meaning of censure: "est poena qua homo baptizatus, delinquens et contumax, quibusdam bonis spiritualibus vel spiritualibus adnexis privatur, donec, a contumacia redeens, absolvatur".

¹⁸ "Excommunicatio est censura quae quis excluditur a communione fidelium" c. 2257,1 — 1917 Code —

¹⁹ 1917 Code, c. 2258, 1.

2. the accused invalidly places acts of governance which are only illicit in accord with the norms of paragraph 1, n°3;
3. the accused is forbidden to enjoy privileges formerly granted;
4. the accused cannot validly acquire a dignity, office, or other duty in the Church;
5. the accused cannot make his or her own the revenues from any dignity, office, duty, or pension which he or she may have in the Church.

b) *Interdict*.²⁰ Only personal interdict exists; *general* and *local* interdict have been abolished. An interdict person is forbidden: (c. 1332)

1. to have any ministerial participation in celebrations of the Eucharistic Sacrifice or in any other ceremonies whatsoever of public worship;
2. to celebrate the sacraments and sacramentals, and to receive the sacraments.

But if the interdict has been *imposed* or *declared*: if the accused wishes to participate in the Eucharistic Sacrifice he or she is to be prevented from doing so or the liturgical action is to stop unless a serious cause intervenes. He is not deprived of the sacramentals and of ecclesiastical burial.

c) *Suspension*.²¹ It affects only clerics and forbids: (c. 1333,1)

1. either all or some acts of the power of orders;
2. either all or some acts of the power of governance;
3. the exercise of either all or some rights or duties which are attached to an office.

However if the censure forbids the celebration of the sacraments and sacramentals or the placing of an act of governance the prohibition is suspended:

1. whenever it is necessary to look after the faithful who are in danger of death;

²⁰ "Interdictum est censura qua fideles, in communione Ecclesiae permanentes, prohibentur..." (Code of 1917, c. 2268, 1).

²¹ "Suspensio est censura qua clericus officio vel beneficio vel utroque prohibetur" (Code of 1917, c. 2278, 1).

2. and if the *latae sententiae* censure is not a declared one, the prohibition is also suspended whenever a member of the faithful requests a sacrament, a sacramental, or an act of governance; this can be done for any just cause whatsoever (c. 1335).

It can be stated in a law or a precept that a suspended cleric cannot validly place acts of governance after a condemnatory or declaratory sentence. Nevertheless a prohibition never affects:

1. the office or the power of governance which are not subject to the power of the superior who establishes the penalty;
2. the right of a dwelling place if the accused has this right by reason of his office;
3. if the penalty is *latae sententiae*, the right to administer goods which perhaps pertain to the office of the suspended cleric himself.

And a suspension which forbids the collection of revenues, a stipend, pensions, or any other such thing carries with it the obligation to make restitution for anything illegitimately collected, even if such was done in good faith (c. 1333,4).

2. *Expiatory Penalties*²²

As we have already mentioned, the new name reflects better the nature of these penalties. Only *three canons* deal with expiatory penalties instead of the 20 of the previous code. There is not anymore the distinction between:

- common vindictive penalties (Code of 1917, cc. 2291-2297), and
- vindictive penalties peculiar to clerics (Code of 1917, cc. 2298-2305).

The new Code has only the expiatory penalties mentioned in canon 1336 and they will be applied according to the condition of the delinquent.

²² "Poenae vindicativae illae sunt, quas directe ad delicti expiationem tendunt ita ut earum remissio e cessatione contumaciae delinquentis non pendeat" (Code of 1917, c. 2286).

The expiatory penalties — by common law — are enumerated taxative, and are the following: (c. 1336,1)

1. a prohibition against living or an order to live in a certain place or territory;
2. deprivation of power, office, duty, right, privilege, faculty, favor, title or insignia even honorary;
3. a prohibition against exercising what is enumerated under n^o 2, or a prohibition against exercising them in a certain place or outside a certain place; which prohibitions are never under pain of nullity;
4. a penal transfer to another office;
5. dismissal from the clerical state.

Nevertheless faculty is given to particular legislators to establish other expiatory penalties which may be more in accordance with local circumstances of particular regions (c. 1336,1).

Following the principle of diminishing the *poenae latae sententiae* canon 1336,2 establishes which penalties can be *latae sententiae*, and are:

1. prohibition to exercise the power, office, duty, right, privilege, faculty, favor, title or insignia even honorary;
2. prohibition against exercising them in a certain place or outside a certain place.

There is no such penalty as deprivation of power of order, but only the prohibition against exercising the order or against exercising some acts of order. There is likewise no such penalty as a deprivation of academic degrees (c. 1338,2). Also among the expiatory penalties are not mentioned anymore the suspension and interdict, so it means they are only censures (c. 1336). Infamy and the privation of ecclesiastical burial are abolished as expiatory penalties. The penal transfer of the episcopal see or of a parish has also been abolished. It has also abolished the penalty of privation of sacramentals.

3. Other Penalties

There are only *two canons* instead of the previous eight. The first canon (c. 1339) deals with the *penal remedies* which are only:

admonishment and *rebuke* (*monitio et correptio*), and not anymore precept and vigilance.

Canon 1340 explains what kind of *penance* can be imposed to the transgressor — in *foro externo* —: some work of religion piety, or charity.

Title V THE APPLICATION OF PENALTIES

1. *General principle*

The first canon (c. 1341) of this title gives a general principle: to apply the penalties when all other means have failed:²³

“Only after he has ascertained that scandal cannot be sufficiently repaired, that justice cannot be sufficiently restored, and that the accused cannot sufficiently be reformed by fraternal correction, rebuke and other ways of pastoral care, should the Ordinary then provide for a judicial or administrative procedure to impose or to declare penalties”.

It shows the maternal care of the Church in the application of penalties. The legislator wants the conversion of the sinner and delinquent; the penalties are only means to reach that end, to re-establish justice and repair scandal.

All means should be exhausted not only before inflicting the penalty but also before proceeding judicially or administratively for the infliction or declaration of the penalty. The means are: fraternal correction, rebuke, or other pastoral ways.

2. *Application*

The general norm is that *penalties* should be imposed or declared following a judicial or administrative procedure (c. 1341). *Penal remedies* and *penances*, however, can be applied by a decree in any case whatsoever (c. 1342,1).

Canon 1342 allows the judge to inflict the penalty per *decretum extra iudicium*, via extra-judicial-administrative, when the normal

²³ There is a relation with c. 1954 of the 1917 Code.

process cannot be followed. However there are certain clear limitations: Perpetual penalties cannot be imposed or declared by a decree. Neither can penalties be so applied when the law or the precept which establishes them forbids their application by a decree (c. 1342,2).

The word used is *decretum* and not *praeceptum*, to designate the act by which penalties are inflicted or decreed outside the judicial process.

3. Powers of the Judge

The law gives certain discretionary powers to the judge but they are limited by the circumstances of the guilty person and the gravity of the crime.

The judge can according to his conscience and prudence:

- a) *temper* the penalty or *impose in its place a penance*, if a law or a precept leaves to the judge the power to apply or not to apply a penalty (c. 1343);
- b) and even if a law may employ words which are preceptive, the judge can:
 1. *postpone* to a more opportune time the infliction of a penalty if it is foreseen that greater evils will occur from a hasty punishment of the accused; (c. 1344,1)
 2. *refrain* from imposing the penalty, *impose a lighter penalty*, or *employ a penance* if the accused has reformed and scandal has been repaired, or if the accused has been or will be sufficiently punished by civil authority (c. 1344,2);
 3. *suspend* the obligation to observe an expiatory penalty if it was the person's first offense after having led a praiseworthy life and if the need to repair scandal is not a pressing concern. In such a situation, however, it is understood that if the accused should again commit an offense within the time period set by the judge, the person should pay the penalty required for both offenses unless, in the interim, time had run out for initiating a penal action for the first offense (c. 1344,3);

- c) *use other punishments* when the delinquent was not in the perfect use of his mental faculties due to fear, need, passion, etc. (c. 1345) ;
- d) *abstain from inflicting any penalty* if the rehabilitation of the offender can be better provided for otherwise (c. 1345) ;
- e) *diminish the poenae ferendae sententiae* when the delinquent has committed several crimes and the penalties would be too many (c. 1346).

4. *Limitations*

The following limitations are all in favor of the delinquent:

- a) a censure cannot be inflicted validly unless the delinquent has been admonished and given a certain time to repent (c. 1347) ;
- b) in the case the penalty is *indeterminata*, the judge cannot impose perpetual penalties; and also he should not impose grave penalties — censures — unless for serious reasons (c. 1349) ;
- c) if a cleric is punished he should not be deprived of his means of living unless he is dismissed from the clerical state, and even in that case the Ordinary should help him (c. 1350).

5. *Suspension of the Penalty*

A penalty binds the accused everywhere — c. 1351 —, however sometimes the same delinquent can consider himself not obliged to observe the poena. This may happen in two cases:

- a) should a penalty prohibit the reception of the sacraments or sacramentals, the prohibition is suspended as long as the accused is in danger of death (c. 1352,1) ;
- b) the obligation to observe a poena latae sententiae which has not been declared and which is not notorious in the place where the offender is living is totally or partially suspended in as much as the person cannot observe it without danger of serious scandal or infamy (c. 1352,2).

Finally the appeal or recourse from judicial sentences or from decrees which impose or declare any penalty has a *suspensive effect* (c. 1353).

Title VI THE CESSATION OF PENALTIES

The norms are very much simplified. Abolished are the censures reserved to the Ordinary, and to the Holy See *speciali* and *specialissimo modo*.²⁴

In the common law only *five* penalties are reserved to the Holy See; the reservation is to be interpreted strictly (c. 1354,3).

1. *Competent authority*

The competent authority to absolve from penalties is:

a) if the penalty is an inflicted — *ferendae sententiae* — or declared one, the following can remit the penalty established by law, as long as it is not reserved to the Apostolic See:

1. the Ordinary who set in motion the trial in order to impose or declare the penalty or who has imposed or declared it by decree personally or through another;
2. the Ordinary of the place where the offender lives, after consulting with the Ordinary mentioned above, unless this is impossible due to extraordinary circumstances (c. 1355,1).

b) if it is a *poena latae sententiae* established by law but not declared (and not reserved to the Apostolic See), can be remitted by:

1. the local Ordinary: — for his own subjects,
 — for those who are living in his
 territory,
 — for those who committed the offense
 there;
2. any Bishop in the act of sacramental confession (c. 1355,2).

²⁴ Cfr. c. 2245 of 1917 Code.

c) The following can remit an inflicted — *ferendae sententiae* — or automatic — *latae sententiae* — penalty which was established by a precept not issued by the Holy See:

1. the Ordinary of the place in which the offender is living;
2. the Ordinary who set in motion the trial for the purpose of imposing or declaring the penalty; or
3. the Ordinary who imposed or declared it by decree personally or through another (c. 1356,1).

d) The *excommunication* and *interdict latae sententiae* which have not been declared can be remitted by any confessor but:

- only in the internal sacramental forum; and
- if it would be hard on the penitent to remain in a state of serious sin during the time necessary to recur to the competent superior (c. 1357,1).²⁵

e) *Undeclared censures latae sententiae* not reserved to the Holy See can be remitted by:

1. the canon penitentiary, both of a cathedral church or a collegial church;
2. the priest appointed by the Bishop where there is no chapter.

They can do it only:

- in the sacramental forum,
- to members of the diocese even outside the territory,
- to outsiders within the diocese.

This faculty cannot be delegated to another (c. 508).

f) *All censures*, even those reserved to the Holy See, can be remitted — in danger of death — by any priest (c. 976).

However, after they recovered, those absolved in accord with canon 976 from an inflicted or declared censure or

²⁵ There is not anymore the extraordinary case of the old canon 2254, 3 in which if the recourse to be superior be morally impossible the confessor can absolve without imposing the obligation to recur to the superior.

one reserved to the Holy, are bound to make recourse to the superior (c. 1357,3).

2. *Conditions*

The remission of a censure cannot be granted unless the offender has withdrawn from contumacy (c. 1347,2); and at the same time it cannot be denied to a person who withdraws from contumacy (c. 1358,1). But the remission of a penalty will be invalid if it was extorted through grave fear (c. 1360).

3. *Manner*

A remission *in the external forum* should be given in *writing*, unless a serious cause persuades otherwise. Care should be taken that a petition for remission or the remission itself not be made public, unless in a situation in which it would be advantageous to protect the reputation of the accused or it would be necessary to repair scandal or damage (c. 1361,2,3).

4. *Prescription*

The possibility of criminal action is extinguished by a temporal prescription of *three years*, unless it is a question of:

- a) offenses reserved to the Sacred Congregation for the Doctrine of Faith; or
- b) offenses mentioned in canons:
 - c. 1394: marriage of a cleric or religious of perpetual vows;
 - c. 1395: clericus concubinarius...
 - c. 1397: qui homicidium patrat...
 - c. 1398: qui abortum procurat...

which have a prescription of *five years*. (c. 1362)

Temporal prescription starts on the day the offense was committed or, if the offense is a continuous or habitual one, on the day when it ceased (c. 1362,2).

An action to execute a penalty is extinguished through temporal prescription, if the person accused had not been notified of

the judge's executive decree mentioned in canon 1651, within the time limits mentioned in c. 1362, computed from the day on which the condemnatory sentence passed into closed judgment. The same norms are valid — *servatis servandis* — when the penalty was imposed through an extra-judicial decree (c. 1363).

III. PART II. PENALTIES FOR SPECIFIC OFFENSES

This second part has only seven Titles. Here we are able to see that penalties have been reduced to the minimum, especially the *poenae latae sententiae*.

The distinction between *poenae latae sententiae* reserved to the Holy See *speciali modo*, or *specialissimo modo* has been abolished. The new Code mentions only penalties *reserved to the Holy See* and consequently only the Holy See — or those with special faculties — can absolve from them.²⁶

The canons of this second part are only 35 instead of 102 of the 1917 Code.

Of the crimes enumerated in this Book VI, 22 are punished with *iusta poena*, which means indeterminate; regarding other crimes the code says that the delinquent *puniri potest*.

1. *Excommunications latae sententiae reserved to the Holy See*

- a) One who throws away the Sacred Species, or for any evil purpose steals them or keeps them (c. 1367).
- b) Anyone who lays violent hands on the Roman Pontiff (c. 1370; c. 1397).
- c) One who absolves or pretends to absolve his accomplice in a sin of impurity (c. 1378).
- d) A Bishop who consecrates anyone as Bishop without an Apostolic mandate, and the one who is consecrated (c. 1382).
- e) A confessor who violates directly the seal of confession (c. 1388,1).

²⁶ There are no more *latae sententiae* penalties reserved to the Ordinaries. In the 1917 Code there were several excommunications reserved to the Ordinary: canons 2319, 2323, 2343, 2350, 2385, 2388.

2. *The following are the interdict latae sententiae*

- a) One who lays violent hands on a Bishop (c. 1370,2; c. 1397).
- b) One who has not been raised to the order of priesthood if he pretends:
 - to celebrate the Eucharistic Sacrifice,
 - to hear sacramental confession (c. 1378,2).
- c) Anyone who falsely makes to superiors a juridical accusation of solicitation against a confessor (c. 1390,1).
- d) A religious perpetually professed, not a cleric, who attempt to contract marriage even if only civilly (c. 1394).

3. *Suspensions latae sententiae — for clerics —*

- a) Anyone who lays violent hands on a Bishop (c. 1370,2; c. 1397).
- b) One who has not been raised to the order of priesthood attempts to celebrate the Eucharistic liturgy (c. 1378,2, n° 1).
- c) One who cannot give a valid absolution, attempts to do so, or hears confessions (c. 1378,2).
- d) One who receives ordination from one who is not his Bishop without dimissorial letters incurs ipso facto in suspension from the order received (c. 1383).
- e) Anyone — cleric — who falsely makes to ecclesiastical superiors accusation of solicitation (c. 1390,1).
- f) A cleric who attempts to contract marriage even if only civilly (c. 1394,1).

4. *Excommunications latae sententiae*

- a) An apostate from the faith, a heretic, or a schismatic (c. 1364,1).
- b) A person who procures a successful abortion (c. 1398).

5. *Crimes that demand a poena ferendae sententiae — iusta poena —*

a) Offenses against Religion and against Unity of the Church:

1. Those guilty of prohibited participation in sacred rites — *communicatio in sacris* — (c. 1365).
2. Parents or those who substitute for parents who hand their children over to be baptized or educated in a non-catholic religion (c. 1366).
3. A person who commits perjury while asserting something or promising something before an ecclesiastical authority (c. 1368).
4. Those who through writings, or other media of social communications seriously attack good morals, blaspheme.... stir up hatred or contempt against the Church (c. 1369).

b) Offenses against Ecclesiastical Authority and against the Freedom of the Church:

1. A person who brings physical force against a cleric or religious out of contempt for the faith, the Church, ecclesiastical power, or ecclesiastical ministry (c. 1370,3).
2. A person who teaches a doctrine condemned by a Roman Pontiff or by an Ecumenical Council...; and a person who does not comply with the legitimate precepts or prohibitions of the Apostolic See, of the Ordinary, or of the Moderator and who, after a warning persists in disobedience (c. 1371).
4. A person who publicly either stirs up hostilities or hatred among subjects against the Apostolic See or against an Ordinary... (c. 1373).
5. A person who joins an association which plots against the Church (c. 1374).
6. The person who profanes a movable or immovable sacred thing (c. 1376).
7. Whoever alienates ecclesiastical goods without the proper permission (c. 1377).

c) The Illegal Seizure of Ecclesiastical Functions and Offenses in Exercising such Functions:

1. A person who — outside the cases mentioned in c. 1378 — pretends to administer a sacrament (c. 1379).
2. Whoever illegally seizes an ecclesiastical office (c. 1381,1).
3. A person who illegitimately makes a profit from a Mass stipend (c. 1385).
4. A person who gives or promises something so that someone who exercises a function in the Church should illegitimately do or omit something; likewise, the person who accepts such gifts or promises (c. 1386).
5. An interpreter — or the other persons mentioned in c. 983,2 — who violate the secrecy of confession (c. 1388,2).
6. A person who through culpable negligence illegitimately places or omits an act of ecclesiastical power, ministry, or duty which damages another person (c. 1389,2).

d) Offenses ——— against Particular Obligations:

1. A cleric who has committed an offense against the sixth commandment of the Decalogue and when such an offense is committed with force or threats or publicly or with a minor below the age of sixteen (c. 1395,2).
2. Whoever seriously violates the obligation of residence which is attached to an ecclesiastical office (c. 1396).

6. *Crimes that may be punished*

1. Persons who impede the freedom of ecclesiastical ministry, election, or power, or who impede the legitimate use of sacred goods or of other ecclesiastical goods, or who grossly intimidate an elector, the elected, or the person who exercises ecclesiastical ministry or power (c. 1375).

2. Outside the cases mentioned in canons 1378-1383, a person who illegitimately carries out a priestly function or another sacred ministry (c. 1384).
3. A person who furnishes an ecclesiastical superior with another caluminous denunciation of an offense or who otherwise injures the good reputation of another (c. 1390,1).
4. — A person who fabricates a false document, changes, destroys, or conceals an authentic document, or uses a false or changed document;
— a person who uses another false or changed document in an ecclesiastical matter;
— a person who states a falsehood in a public ecclesiastical document (c. 1391).
5. Clerics or religious who practice trade or business against the prescriptions of the canons (c. 1392).
6. A person who violates the obligations imposed on him by a penalty (c. 1393).

CONCLUSION

We have seen in a general way this Book VI. As we have stated at the beginning, the Church has tried to manifest — in a special way in this Book VI — her maternal care for the good of her children.

Penalties — in the mind of the legislator — should be the last resource to bring back the delinquent.

I would like to end with the words of canon 2214,2 of our actual Code — 1917 —. This canon is not anymore in our new Code, but its spirit is permeating the new canons of Book VI, and so Superiors and Bishops should keep these words always in mind:

"Bishops and other Ordinaries should remember that they are shepherds and not slave-drivers, and that they must rule over their subjects as not to domineer over them but to love them as sons and brothers; they should endeavor by exhortation and admonition to deter them from wrongdoing lest they be obliged to administer due punishment after faults have been committed. Yet if through human frailty their subject do wrong, they must observe the precept of the Apostles, and reprove, entreat, rebuke them in all patience and doctrine; for sympathy is often more effective for correction than severity, exhortation better than threats of punishments, kindness better than insistence on authority. If in view of the seriousness of a crime there be need of punishment, then they must combine authority with leniency, judgment with mercy, severity with moderation, to the end that discipline, so salutary and essential to public order, be maintained without asperity, and that those who have been punished may amend their ways, or if they refuse to do so, that others may be deterred from wrongdoing by the salutary example of their punishment".

Jose Luis Bernacer, SDB