

## Retrospectives on Benedict XIV's *Constitutio Sacramentum Pœnitentiæ* (1741)<sup>1</sup>

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**SUMMARY** 1. Lambertini: the author of *Sacramentum Pœnitentiæ*. 2. The unusually long life of *Sacramentum* in canon Law. 3. An outline of *Sacramentum Pœnitentiæ*. 4. *Sacramentum Pœnitentiæ* in codified canon Law. 5. *Sacramentum Pœnitentiæ* and modern canon Law. 6. Concluding retrospectives. Benedict XIV, *Constitutio Sacramentum Pœnitentiæ* (english translation).

**SOMMARIO** 1. Lambertini: l'autore di *Sacramentum Pœnitentiæ*. 2. La vita insolitamente lunga di *Sacramentum Pœnitentiæ* nel Diritto canonico. 3. Cenni su *Sacramentum Pœnitentiæ*. 4. *Sacramentum Pœnitentiæ* nel Diritto canonico codificato. 5. *Sacramentum Pœnitentiæ* e il Diritto canonico moderno. 6. Retrospective di conclusione. Benedetto XIV, *Constitutio Sacramentum Pœnitentiæ* (traduzione inglese).

Pope Benedict XIV (reigned 1740-1758) was neither the first roman Pontiff nor the last to confront the problem of sexual offenses committed in the context of sacramental Confession<sup>2</sup>, but his Constitution "*Sacramentum*

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1 [Il presente contributo di carattere storico viene proposto ad integrazione di quanto già pubblicato nel primo volume di quest'anno circa la tematica dei graviora Delicta (nota di redazione)].

2 For a general history of ecclesiastical Legislation against solicitation in Confession through the middle of the twentieth century, see: J. ORTEGA UHINK, *De Delicto sollicitationis*, coll. *Canon Law studies*, n. 289, Washington (DC), 1954, esp. 3-84, and 279-281. Other useful studies include L. LINAHEN, *De Absolutione complicitis in peccato turpi*, coll. *Canon Law studies*, n. 164, Washington (DC), 1942, esp. 1-34, and H. LINENBERGER, *The false denunciation of an innocent confessor*,

*Pœnitentiæ*” (1741)<sup>3</sup> was, beyond question, the single most important piece of papal Legislation ever promulgated for this difficult area<sup>4</sup>. *Sacramentum Pœnitentiæ* made new or strengthened existing canon Law in several important areas of Law besides solicitation, including: the reservation of sin, the criminalization of Absolution of accomplices, the prescription of penal actions (Statutes of limitations) for solicitation, and the evidentiary value to be accorded single witnesses in these criminal cases; moreover, by dint of an unusual drafting decision taken by Pietro Card. Gasparri during the development of the pio-benedictine Code (discussed below) and its incorporation by the Holy Office/Congregation for the Doctrine of the Faith into later special Laws, *Sacramentum Pœnitentiæ* remained in effect from its original promulgation in 1741 until 2001. This article will set out for contemporary readers the salient aspects of *Sacramentum Pœnitentiæ* and some closely related pon-

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coll. *Canon Law studies*, n. 236, Washington (DC), 1949, esp. 1-14. A *textus classicus* on sexual offenses committed in the context of Confession is A. DE SMET, *De Absolutione complicitis et sollicitatione*, 2 ed., Brugis, 1921, esp. 35-96. See also P. CERATO, *De Delicto sollicitationis*, Patavii, 1922, *passim*.

- 3 The text of Benedict XIV, const. *Sacramentum Pœnitentiæ* (1 June 1741), is available in a number of places, including: *Magnum Bullarium Romanum: Bullarum, Privilegorum ac Diplomatum romanorum Pontificum amplissima collectio*, 32 voll., Graz, 1964-1967 (Reprint originally published: Rome. H. MAINARDI, 1733-1762); L. TOMASSETTI (ed.), *Bullarum Diplomatum et Privilegorum sanctorum romanorum Pontificum*, (Taurinensis editio: collectione novissima plurium Brevium, Epistolarum, Decretorum actorumque S. Sedis a S. Leone Magno usque ad præsens) Augustæ Taurinorum, 1857-1872; BENEDICTUS PP. XIV, *Benedicti XIV. Pont. Opt. Max. opera omnia in tomos XVII distributa*, Prati, XV, Prati, 1845, 65-68 (herein: “*Benedicti XIV opera*”), but the most accessible authentic version of *Sacramentum Pœnitentiæ* is that found in the appendix to the pio-benedictine Code, to be discussed *in extenso* herein. Regarding translations of *Sacramentum Pœnitentiæ*, Lorenzo Miguélez Domínguez prepared a spanish translation of the salient parts of *Sacramentum Pœnitentiæ* for L. MIGUÉLEZ DOMÍNGUEZ - S. ALONSO MORAN - M. CABREROS DE ANTA, *Código de Derecho canónico y Legislación complementaria. Texto bilingüe y comentado por professors de la Pontificia Universidad de Salamanca*, coll. *Biblioteca de autores cristianos*, n. 7, 3 ed., Madrid, 1949, 883-884, reprinted in M. CABREROS DE ANTA - A. ALONSO LOBO - S. ALONSO MORAN, *Comentarios al Código de Derecho canónico con el texto legal latino y castellano*, coll. *Biblioteca de autores cristianos*, n. 226, IV, Madrid, 1963-1964, 607-609. To assist readers in coming to a better appreciation of *Sacramentum Pœnitentiæ*, I offer an english translation of the entire Constitution at the end of this article.
- 4 «The most drastic action to curb the vice of solicitation in the Sacrament of Penance and to enforce the obligation to denounce confessors guilty of such Crimes was taken by Pope Benedict XIV [...] in his Constitution *Sacramentum Pœnitentiæ*». H. LINENBERGER, *The false*, 7. The great Wernz called *Sacramentum Pœnitentiæ* the “most celebrated” (*celeberrima*) papal document on the matter, as did Chelodi; see: F.X. WERNZ, *Ius Decretalium ad usum prælectionum in scholis textus canonici sive Iuris Decretalium*, 2 ed., VI, Prati, 1913, 447, n. 469, and I. CHELODI, *Ius canonicum de Delictis et Pœnis et de Iudiciis criminalibus* [1920], 5 ed., (rev. by P. CIPROTTI) Vicenza, 1943, 137. Dom Augustine called *Sacramentum Pœnitentiæ* “the source *par excellence* of our Code” for the Law on solicitation, see: DOM AUGUSTINE (C. BACHOFEN), *A commentary on the new Code of canon Law*, VIII, London, 1922, 438.

tifical and dicasterial materials<sup>5</sup>, and suggest the importance of being familiar, even today, with the Norms set out in *Sacramentum Pænitentiae* for the better protection of the Sacrament of Penance in general and of the faithful in particular against importunities by priests violating ecclesiastical discipline. We begin this study with a few remarks on the author of *Sacramentum Pænitentiae*, Pope Benedict XIV.

### 1. LAMBERTINI: THE AUTHOR OF *SACRAMENTUM PÆNITENTIÆ*

After a six-month Conclave that stretched into the sweltering roman summer of 1740 (claiming, directly or indirectly, the lives of four Cardinal electors and sickening several others) Prospero Lorenzo Lambertini emerged as the 247<sup>th</sup> successor to St. Peter, taking for his regnal name Benedict XIV<sup>6</sup>. At the time of his elevation, Lambertini was widely regarded as one of the most erudite churchmen of his century, and his near-eighteen year pontificate added to his reputation by showing him to be a man who knew and respected tradition but who was also able prudently to accommodate new circumstances<sup>7</sup>. Lam-

5 As we shall see in more detail below, *Sacramentum Pænitentiae* expressly incorporated Gregory XV's Constitution "*Universi Gregis*" of 1622 (see GREGORIUS PP. XV, *Constitutio apostolica: Universi Dominici Gregis* [30 Augusti 1622], in P. GASPARRI - J. SERÉDI [eds.], *Codicis Iuris canonici Fontes*, I, Romæ, 1923, n. 201, 384-385 [herein "*CIC Fontes*"]) as well as certain dicasterial materials into the terms of *Sacramentum Pænitentiae* and to that extent preserved them, too, as Law in solicitation cases into modern times: J. ORTEGA UHINK, *De Delicto*, 133-134. I would suggest that Pius IV's Letter "*Cum sicut nuper*" of 1561 (see PIUS PP. IV, *Epistula: Cum Sicut Nuper* [16 Aprilis 1561], in *CIC Fontes*, I, n. 102, 181) (below, not to be confused with a letter of the same name and on the same topic written two years previously by Paul IV, regarding which letter see J. ORTEGA UHINK, *De Delicto*, 27-28), was, in virtue of its express incorporation into *Universi*, also preserved as Law into modern times, but the matter is moot now.

6 See generally: L. VON PASTOR, *The history of the Popes from the close of the Middle Ages*, (E. PEELER trans.) London, 1949-1950, vols. 35 *in toto* and 36: 1-142; R. NAZ, "Benôit XIV", in R. NAZ (ed.), *Dictionnaire de Droit canonique*, II, Paris, 1937, 752-761 (herein: "*DDC*"); and H. HEMMER, "Benôit XIV", in A. VACANT - E. MANGENOT - E. AMANN (dir.), *Dictionnaire de Théologie catholique contenant l'exposé des doctrines de la Théologie catholique leurs preuves et leur histoire*, II/1, Paris, 1923, 706-708.

7 The esteem that Lambertini enjoyed among catholic and non-catholic intelligentsia throughout his life is undisputed (R. NAZ, "Benôit XIV", 755, and H. HEMMER, "Benôit XIV", *passim*) but it prompts a question raised at least as early as Pastor: given the importance of Benedict XIV's reign and the enormous amount of material available on his life, why are biographies of Lambertini/Benedict XIV so few? See: L. VON PASTOR, *The history*, XXXVI, 142, fn. 3, asking the question (though simultaneously expressing relief that Thayer—whom Pastor considered gravely biased—despite his access to copious Lambertiniana, had *not* written a life!) or R. HAYNES, *Philosopher king. The humanist Pope Benedict XIV*, London, 1970, 1, asking the same question some fifty years after Pastor (her own work being too narrowly focused on Benedict's analysis of the paranormal to serve as an adequate biography of the man as a whole.) R. WOOD, *The beautiful light*, Centennial (CO), 2005, is a step

bertini's renown, built on native acumen shaped by rigorous academic training (he earned doctorates in Theology and in *utroque Iure* at "La Sapienza"<sup>8</sup> before turning twenty)<sup>9</sup>, and on many decades of experience applying scholarly concepts to real life, was well deserved<sup>10</sup>. Among *canonist*-Popes, Lambertini has no equal after Innocent IV (reigned 1243-1254)<sup>11</sup>; among *scholar*-Popes, Benedict XIV's prodigious output was not approached until Karol Wojtyła and Joseph Ratzinger assumed their pontificates in the late twentieth and early twenty-first centuries<sup>12</sup>.

Less than one year into his reign<sup>13</sup>, Benedict XIV, though already vexed by the incessant political intrigues of various European powers, promulgated strict measures against priests who would abuse the Sacrament of Confession

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toward a broader biography, but does not provide critical or academic analysis. The earliest life of Lambertini/Benedict XIV is L.A. CARACCIOLI, *La vie du Pape Benoît XIV Prosper Lambertini, avec des notes instructives et son portrait*, Paris, 1783 and the scholar-Pope figures in several nationalistic (mostly Italian) biographical dictionaries. See generally R. HAYNES, *Philosopher*, 233-236.

- 8 Roman University founded in 1303 by Pope Boniface VIII as the "*Studium Urbis*" was and remains the quintessential University of Rome, in 1870 became *statal*.
- 9 See L. VON PASTOR, *The history*, XXXV, 24, and R. HAYNES, *Philosopher*, 24.
- 10 For twenty years prior to his appointment to Bologna, Lambertini had labored within the Roman Curia as, among other things, *Promoter Fidei* for the Congregation for Causes of Saints, amassing thereby a wide knowledge of canonical Procedure, spirituality, and the physical Sciences, all of which he poured into his classic treatise "*De servorum Dei beatificatione et beatorum canonizatione*" (1734-1738). For nearly fifteen years following his Roman curial service, Lambertini governed first the Diocese of Ancona and then the Archdiocese of Bologna, summarizing the practical wisdom he gained over those years in his famous "*De synodo diocesana*" (1748). Both of these works dominated their disciplines for centuries and reward consultation to this day (see R. NAZ, "Benôit XIV", 756-757).
- 11 See generally J. CANTINI - C. LEFEBVRE, *Sinibalde dei Fieschi (Innocent IV)*, in *DDC*, VII, Paris, 1965, 1029-1062, and D. HOGAN, *Pope Benedict XIV and canon Law*, in *Canon Law Society of Great Britain & Ireland Newsletter*, XXXVII (2005), n. 142, 13-20. There have been notably few canonist-Popes since Benedict XIV, and those that have appeared (say Benedict XV or Pius XII), have not left a significant personal stamp on canonistics. On the other hand, even though he was not a canonist, the incomparable John Paul II did leave a deep mark on canon Law. See generally E. PETERS, *The canonical achievements of Pope John Paul II*, in *Ave Maria Law review*, V (2007), 1-33.
- 12 The most recent edition of the collected works of Lambertini/Benedict XIV is the *Benedicti XIV opera* cited in fn. 3, above, but even this invaluable resource does not contain several volumes worth of important personal correspondence generated both before and after Benedict XIV's ascension to the papal throne. See R. HAYNES, *Philosopher*, 233-236. All of the encyclical letters of Benedict XIV, who is generally recognized as the Pope who revived the ancient practice of papal Encyclicals, are available in English translation. See C. CARLEN (ed.), *The papal Encyclicals*, I, Ypsilanti (MI), 1981, 3-107.
- 13 The first year of Benedict's reign saw other examples of prompt action on the Pontiff's part to improve ecclesiastical, specifically clerical, discipline. See L. VON PASTOR, *The history*, XXXV, 294-295, referring to, among other things, Benedict's establishment of a "Particular Congregation" to improve the Process for selecting Arch/Bishops, that is, to BENEDICTUS PP. XIV, *Constitutio apostolica: Ad Apostolicæ Servitutis Onus* (17 Octobris 1740), in *Benedicti XIV opera*, XV, 152-154. See also R. WOOD, *The beautiful*, 40.

by sins against chastity in his Constitution *Sacramentum Pænitentiaë*, which document became part of the mass of Decretal and post-tridentine Legislation that was canon Law until the codification project of the early 20<sup>th</sup> century<sup>14</sup>. Unlike the vast majority of Decretal Legislation, however, *Sacramentum Pænitentiaë* was not, as we shall presently explain, abrogated by the 1917 Code.

## 2. THE UNUSUALLY LONG LIFE OF *SACRAMENTUM PÆNITENTIÆ* IN CANON LAW

In developing what would eventually become the pio-benedictine Code of canon Law<sup>15</sup>, Pietro Cardinal Gasparri (italian Prelate, 1852-1934) distilled nearly 6,500 ecclesiastical documents (running in length from a few lines to many thousands of words) into just 2,414 Canons<sup>16</sup>. Having performed this enormous task of canonical condensation, however, Gasparri appended to the Church's first universal codification eight "*Documenta*" indistinguishable in style and format from thousands of other documents that he had recast into concise juridic Norms<sup>17</sup>. Why the great canonist did this

14 Benedict XIV intended the incorporation of his Legislation into the *Corpus Iuris canonici*, though his humility before the memory of the likes of Gregory IX led him to defer making too-express a claim in this regard. See BENEDICTUS PP. XIV, *Doctoribus et scholaribus universis Bononiæ commorantibus, et Iuri canonico et civili studentibus*, in *Benedicti XIV opera*, XV, Prati, 1845, VII-X ["*Iam fere sextus annus*", "*Nobis profecto*"]. By Benedict's own reckoning, *Sacramentum Pænitentiaë* fit most topically under *Liber V*, t. 38, *De Pænitentiis et remissionibus* of Gregory's Decretals. See *Benedicti XIV opera*, XV, 662. Most of the great Decretalists (e.g., Schmalzgrueber, Pihring, and Reiffenstuel) were dead before *Sacramentum Pænitentiaë* appeared, however, so there is rather less contemporaneous commentary on the Constitution than one might otherwise expect. A good and relatively accessible pre-codification of discussion of *Sacramentum Pænitentiaë* is to be found in L. FERRARIS, *Confessarius*, in L. FERRARIS, *Prompta bibliotheca canonica, iuridica, moralis, theologica, nec non ascetica, polemica, rubricistica, historica*, editio novissima, II, Montis Casini, 1844, 479-532, esp. Art. V, "*Confessarius quoad ea, quæ concernunt sollicitationem*", at 521-532, to be read with, F. LUCII FERRARIS, *Sollicitatio ad turpia*, in *ivi*, VII, 267-276, itself offering primarily basic texts. See also briefly "Sollicitation", in E. TAUNTON, *The Law of the Church. A encyclopedia of canon Law for english-speaking Countries*, London, 1906, 594-596.

15 BENEDICTUS PP. XV, *Codex Iuris canonici, Pii X Pontificis Maximi iussu digestus Benedicti Papæ XV auctoritate promulgatus*, in AAS, IX (1917), II, 3-521; english trans. E. PETERS, *The 1917 or pio-benedictine Code of canon Law in english translation with extensive scholarly apparatus*, San Francisco (CA), 2001, 777 pp.

16 The 6,464 ecclesiastical documents that Gasparri actually *used* for the 1917 Code (God knoweth how many other documents Gasparri and his small staff had *examined*) fill more than 7,700 pages (see P. GASPARRI - J. SERÉDI [eds.], *Codicis Iuris canonici Fontes*, I-IX, Romæ, 1923-1949). As sources for the 1917 Code, these collected documents are consulted along with thousands of individual texts taken from the *Corpus Iuris canonici* (*CIC Fontes*, IX, 13-118) and from scores of Canons and Decrees of the Council of Trent (*CIC Fontes*, IX, 120-135).

17 Those eight appendix documents were: I. Pius PP. X, *Constitutio apostolica: Vacante Sede Apostolica*,

at all, and why he did so only in regard to *these* eight documents, remains a mystery to this day<sup>18</sup>.

In any event, of the original eight appendix documents, three regulating papal Conclaves – “*Vacante Sede Apostolica*”, “*Commissum Nobis*”, and “*Prædecessores Nostrî*” – lack all force of Law today<sup>19</sup>, while another – Bene-

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in AAS, IX (1917), II, 457-484; II. PIUS PP. X, Constitutio apostolica: *Commissum Nobis*, in AAS, IX (1917), II, 484-485; III. LEO PP. XIII; Constitutio apostolica, cum adiecta Instructione: *Prædecessores Nostrî* (24 Maii 1882), in AAS, IX (1917), II, 485-495; IV. BENEDICTUS PP. XIV, Constitutio apostolica: *Cum Illud* (14 Decembris 1742), in AAS, IX (1917), II, 495-505; V. BENEDICTUS PP. XIV, Constitutio apostolica: *Sacramentum Pœnitentiæ* (1 Iunii 1741), in AAS, IX (1917), II, 505-508, the focus of this article; VI. PAULUS PP. III, Constitutio apostolica (extractum): *Altitudo* (1 Iunii 1537), in AAS, IX (1917), II, 509; VII. PIUS PP. X, Constitutio apostolica: *Romani Pontificis* (2 Augusti 1571), in AAS, IX (1917), II, 509; and VIII. GREGORIUS PP. XIII, Constitutio apostolica: *Populis* (25 Ianuarii 1585), in AAS, IX (1917), II, 510. Some of these appendix documents were supplemented and/or replaced during the enforcement period of the pio-benedictine Code, resulting in occasional renumberings of the *Documenta*. *Sacramentum Pœnitentiæ* was Doc. V in versions of the 1917 Code printed before 1945, but Doc. III in versions printed afterward. These numbering variations have no significance for our discussion of Benedict XIV's Constitution *Sacramentum Pœnitentiæ*. Finally, note that the eight appendix documents are typically distinguished from four works that preceded the presentation of canonical Norms, namely, Gasparri's famous *Præfatio* (cfr. BENEDICTUS PP. XV, *Codex Iuris canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papæ XV auctoritate promulgatus. Præfatione, Fontium annotatione et Indice analytico-alphabetico ab E. mo Petro Card. Gasparri auctus*, Romæ, 1918), Benedict XV's apostolic Constitution “*Providentissima Mater*” (cfr. PIUS PP. X, Constitutio apostolica: *Providentissima Mater*, in AAS, IX [1917], II, 5-8) promulgating the Code, his *motu proprio* “*Cum Iuris canonici*” (cfr. BENEDICTUS PP. XV, *Litteræ apostolicæ motu proprio datæ quibus Commissio instituitur ad Codicis Canones authenticæ interpretandos: Cum Iuris canonici*, in AAS, IX [1917], I, 483-484) establishing a system for its authentic interpretation, anticipated by 1917 CIC, Can. 17 §1, and the *Professio catholicæ fidei* (cfr. *Professio catholicæ fidei*, in AAS, IX [1917], II, 9-10) assumed by 1917 CIC, Can. 1406 §1.

- 18 Neither Benedict XV's *Providentissima Mater* nor Gasparri's *Præfatio* makes any reference, explanatory or otherwise, to the *Documenta*. Among major commentators, the great majority of those I consulted (including Abbo-Hannan, Dom Augustine, Beste, Cance, Cappello, Michiels, Regatillo, Stickler, Van Hove, and Woywod) simply noted the presence of the *Documenta* and acknowledge their efficacy as Law, but did not try to explain why a document form was used instead of the codification approach that was used elsewhere. Only Cicognani speculated that «perhaps because they are minute or have the nature of statutes for a particular business, [they] were not redacted in the form of Canons». A. CICOGNANI, *Canon Law*, (trans. by J. O'HARA - F. BRENNAN) Philadelphia (PA), 1934, 425. Such an explanation is wanting, of course, in that 'minuteness' of provisions or their character as 'statutes for particular business' could be said of hundreds of other ecclesiastical documents that were nevertheless recast as individual Canons by Gasparri.
- 19 Papal Conclaves are today largely regulated by IOANNES PAULUS PP. II, Constitutio apostolica: *Universi Dominici Gregis*, in AAS, LXXXVIII (1996), 305-343, english trans. in *Origins*, XXV (1996), n. 37 at 617, 619-630, by which Constitution were abrogated “all Constitutions and orders [previously] issued in this regard by the roman Pontiffs”. In acting as he did there, John Paul was simply following in the footsteps of his predecessors. Paul VI, in his apostolic Constitution *Romano Pontifici Eligendo* (see PAULUS PP. VI, Constitutio apostolica de Sede Apostolica vacante deque electione romani Pontificis: *Romano Pontifici Eligendo*, in AAS, LXVII [1975], 609-645), had abrogated the Conclave Norms promulgated by John XXIII in 1962 (see IOANNES PP. XXIII, *Litteræ apostolicæ motu proprio datæ, quædam præcipiuntur vacante Sede apostolica valitura: Summi Pontificis Electio*, in AAS, LIV [1962], 632-640), which Norms had in their turn impacted those of Pius XII, and so on back to the original *Documenta* of the 1917 Code.

dict XIV's "*Cum Illud*"— dealing with a special method for determining a priest's suitability for assignment to a given pastorate (the *Concursus*) has fallen into desuetude<sup>20</sup>. On the other hand, the provisions of three other papal documents — "*Altitudo*", "*Romani Pontificis*", and "*Populis*"— dealing with various "favor of the faith" Marriage questions have been basically preserved by the johanno-pauline Code and retain interpretative value to this day<sup>21</sup>. But between these two extremes of abrogation or desuetude on the one hand and effective retention in modern Law on the other there is, I suggest, a middle position, one occupied by what Gasparri designated as Document V of the pio-benedictine Code, namely, Benedict XIV's Constitution *Sacramentum Pænitentiae*<sup>22</sup>. Before turning to a discussion of that point, though, we should set out in more detail what *Sacramentum Pænitentiae* actually held.

### 3. AN OUTLINE OF *SACRAMENTUM PÆNITENTIÆ*

The apostolic Constitution is divided into eight sections (§) preceded by a brief preamble. The first four numbered sections of the Constitution are the most important<sup>23</sup>, dealing, as they do, with related but distinct *substantive* mat-

20 The "*Concursus*" was a kind of formalized examination by which priests competed with one another for appointments to office, usually pastorates. The institution, which dated to the Council of Trent, was never universally observed, and it steadily eroded during the 20<sup>th</sup> century. See generally: J. ABBO - J. HANNAN, *The sacred Canons. A concise presentation of the current disciplinary Norms of the Church*, II, London, 1952, 452-455; S. WOYWOOD, *A practical commentary on the Code of canon Law* [1925], (rev. by C. SMITH) I, New York, 1957, 188-189; and DOM AUGUSTINE, *A commentary*, II, 527-533. The Second Vatican Council, in its Decree on Bishops *Christus Dominus* 31 (see CONCILIIUM ŒCUMENICUM VATICANUM II, Decretum de pastorali Episcoporum munere in Ecclesia: *Christus Dominus*, in AAS, LVIII [1966], 673-701), called for the suppression of *Concursus* wherever it still was observed. See G. READ, "Commentary on Canon 521", in AA.VV., *Canon Law. Letter and spirit. A Practical Guide to the Code of canon Law*, 289 [herein: "*GB & I Comm.*"]. The johanno-pauline Code makes no reference to *Concursus* by name, but 1983 CIC, Can. 521 §3 still acknowledges "examination" as one way for Bishops to assess a priest's suitability for pastoral assignments, which exam, however, should not be "competitive". See G. READ, "Commentary on Canon 521", in *GB & I Comm.*, 289.

21 That "*Altitudo*", "*Romani Pontificis*", and "*Populis*" provide the basis for the modern Law on certain "favor of the faith" cases (see esp. 1983 CIC, Cann. 1148-1149) is certain. See, e.g., J.P. BEAL, "Commentary on Canons 1148-1149", in C.L.S.A., *New Commentary on the Code of canon Law*, Mahwah (NJ), 2000, 1370-1371 [herein "*CLSA New Comm.*"], and D. KELLY, "Commentary on Canons 1148-1149", in *GB & I Comm.*, 646-648.

22 The version of *Sacramentum Pænitentiae* published among the "*Documenta*" of the pio-benedictine Code is identical (but for modernized spelling and punctuation) to those versions found in the *Bullarium Magnum romanum* and *Benedicti XIV opera* as cited in fn. 3. As a font for certain Canons of the pio-benedictine Code, *Sacramentum Pænitentiae* was designated as n. 309 in *CIC Fontes*, IX, Romæ, 1939, 150.

23 See S. CONGREGATIO SANCTI OFFICII, *Instructio: Quæ Supremus Pontifex* (20 Februarii 1866), in *CIC*

ters: (1) solicitation in Confession; (2) denunciation of solicitation; (3) false denunciation; and (4) the distinct offense of Absolution of accomplices. The remaining four sections of *Sacramentum Pœnitentiæ* deal with *procedural* matters. The eight sections may be summarized as follows:

- §1. Solicitation in Confession. Identifies and re-promulgates a number of earlier papal and dicasterial measures against solicitation in Confession, defines more widely the act of solicitation, and confirms the appropriateness of proceeding against an accused with but a single witness.
- §2. Denunciation of soliciting priests. Requires that confessors strictly admonish penitents whom they know to have been solicited to denounce soliciting confessors, extends the scope of the offense of solicitation to include, for example, priests who lack faculties for hearing Confessions or those who solicit on behalf of another person, and effectively waives any statutes of limitation for prosecutions of allegations.
- §3. False denunciation of innocent confessors. Reserves Absolution from the sin of false denunciation of confessors to the roman Pontiff.
- §4. Absolution of an accomplice in a sin against chastity. Deprives all priests of any faculties (outside of the penitent's danger of death) by which they might attempt to hear the Confessions of those with whom they have been complicit in a sin against chastity, and excommunicates confessors who attempt to so absolve.
- §5. Excludes any conceivable sort of authorization for hearing Confessions against the terms of *Sacramentum Pœnitentiæ*.
- §6. Directs Ordinaries to make sure that confessors are well familiar with the terms of *Sacramentum Pœnitentiæ* and are otherwise impressed with the gravity of their sacred ministry.
- §7. Gives directions for publishing *Sacramentum Pœnitentiæ*.
- §8. Warns against those who might try to blunt the impact of *Sacramentum Pœnitentiæ* and effects promulgation of the Constitution.

We may now turn to a closer examination of the impact of *Sacramentum Pœnitentiæ* on codified canon Law.

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*Fontes*, IV, 267-272, n. 990, wherein: «*quæ supremus Pontifex gl[oriosæ] mem[oria] Bened[ictus] XIV in Constitutione die 1 Iunii anno 1741 edita cuius initium est: Sacramentum Pœnitentiæ, confirmavit ac decrevit, ea ad hæc quattor maxime capita reduncuntur*» which observation leads into a summation of the first four sections of *Sacramentum Pœnitentiæ*.



#### 4. *SACRAMENTUM PÆNITENTIÆ* IN CODIFIED CANON LAW

Besides being retained *in toto* as an appendix to the pio-benedictine Code, *Sacramentum Pænitentiae* directly influenced seven pio-benedictine Canons, some by their expressly invoking Benedict XIV's Constitution, others by their citing it as a source<sup>24</sup>. In turn, some of these pio-benedictine Norms were carried into the johanno-pauline Code<sup>25</sup>. Because *Sacramentum Pænitentiae* makes no appearances in the 1983 Code that cannot first be identified in the 1917 Code, this part of our study of Benedict XIV's Constitution in codified Law is organized around its use in the 1917 Code.

##### 4.1. *Express incorporations*

*Sacramentum Pænitentiae* was expressly incorporated into two Canons of the pio-benedictine Code. First, 1917 CIC 884 stated:

«the Absolution of an accomplice in a sin of turpitude is invalid, except in danger of death; even in case of danger of death, outside of case of necessity, it is illicit on the part of the confessor according to the norm of the apostolic Constitutions, specifically the Constitution of [Pope] Benedict XIV *Sacramentum Pænitentiae* of 1 Jun. 1741»<sup>26</sup>.

Canon 884 of the pio-benedictine Code was directly derived from *Sacramentum Pænitentiae* §3<sup>27</sup>, though here *Sacramentum Pænitentiae* was dealing not with solicitation in Confession, but rather, with a priest's attempt to abuse

24 See *CIC Fontes*, IX, 150. To the degree a given pio-benedictine Norm reflects provisions of *Sacramentum Pænitentiae*, to that degree must the canonicity of *Sacramentum Pænitentiae* be considered in assessing codified Law. As Jone observed: «*quia expresse allegantur Constitutiones apostolicæ sub priore Iure editæ, in interpretatione præsertim huius Canonis recurrendum est ad Ius antiquum et proinde ad eius apud probatos auctores receptas interpretationes (cfr. Can. 6)*». H. JONE, *Commentarium in Codicem Iuris canonici*, II, Paderborn, 1954, 124. See also 1917 CIC, Can. 6, nn. 2<sup>o</sup>-4<sup>o</sup>.

25 JOANNES PAULUS PP. II, *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus*, in *AAS*, LXXV (1983), II, 1-320; english trans. CANON LAW SOCIETY OF AMERICA, *Code of canon Law, latin-english edition*, (new english translation) Washington (DC), 1999.

26 1917 CIC, Can. 884 «*Absolutio complicitis in peccato turpi invalida est, præterquam in mortis periculo; et etiam in periculo mortis, extra casum necessitatis, est ex parte confessarii illicita ad normam Constitutionum apostolicarum et nominatim Constitutionis Benedicti XIV Sacramentum Pænitentiae, 1 Iun. 1741*».

27 See L. LINAHEN, *De Absolutione*, 60, and J. McAREAVEY, "Commenting on Canon 977", in *GB & I Comm.*, 533.

the Sacrament of Confession by offering Absolution to his accomplice in a sin against chastity (whether the sin was committed within Confession or not). Woywod summarized well the Church's concern for this evil action:

«the Church fears that a priest whose faith is weakening and who no longer struggles with all his might against the common enemy of mankind, carnal lust, may abuse the priesthood which gives him influence over others, and, instead of helping a soul in its struggle against sin, drive it deeper into sin under the pretext that he can absolve the person who consents to sin with him»<sup>28</sup>.

Interestingly, however, this was an area in which *Sacramentum Pœnitentiæ* itself had made not just new Law, but dramatically new Law. As Chelodi observes:

«even though up to the middle of the seventeenth century all theologians taught that the Absolution of an accomplice, assuming correct intention, was *valid and licit*, Benedict XIV in his const. *Sacramentum Pœnitentiæ* of 1 June 1741, to which he added two others (*Apostolici Muneris* in 1745 and *Inter Præteritos* in 1749) deprived [complicit] confessors of jurisdiction [over such cases] and established the species of this Delict»<sup>29</sup>.

Canon 884 of the 1917 Code has survived virtually intact into the johan-no-pauline Code as Canon 977<sup>30</sup>, which means that *Sacramentum Pœnitentiæ*, in this respect, has survived virtually intact into the current Law<sup>31</sup>, with the only observable difference being that the revised Law no longer expressly scores as “*illicit*” a priest's hearing of the Confession of his partner in solicitation in danger of death if another confessor were available<sup>32</sup>.

Perhaps here is a good place to observe that, except in regard to victims of the Crime of solicitation in Confession, discussed below, there is no general

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28 S. WOYWOD, *A practical*, I, 494. See also F. LOZA, “Commentary on Can. 977”, in A. MARZOA - J. MIRAS - R. RODRIGUEZ-OCAÑA (eds.), *Exegetical Commentary on the Code of canon Law*, III/1, Chicago (IL), 2004, 798 [herein: “*Exegetical Comm.*”].

29 «*Dum usque ad medium sæc. XVII omnes theologi docebant Absolutionem complicis, supposita recta dispositione, et validam et licitam esse, Ben. XIV const. Sacramentum Pœnitentiæ, 1 iun. 1741, cui duas alias (Apostolici Muneris 1745 et Inter Præteritos 1749) subnexuit, iurisdictionem confessarii sustulit et speciem huius Delicti efformavit*». I. CHELODI, *Ius canonicum*, 135 citations omitted, my emphasis. None of the sources listed by Gasparri for Canon 884 predate *Sacramentum Pœnitentiæ*.

30 1983 CIC, Can. 977: «*Absolutio complicis in peccato contra sextum Decalogi præceptum invalida est, præterquam in periculo mortis*». (English trans. «the Absolution of an accomplice in a sin against the sixth commandment of the Decalogue is invalid except in danger of death»).

31 See J. McAREAVEY, “Commenting”, 533.

32 See FR. McMANUS, “Commentary on Canon 977”, in *CLSA New Comm.*, 1160.

canonical obligation to denounce a priest guilty of various sins against chastity committed with another. That said, however, a priest guilty of attempting to *absolve* an accomplice in a sin against chastity incurred *latæ sententiæ* Excommunication reserved to the Apostolic See *specialissimo modo* per 1917 CIC 2367 §1<sup>33</sup>. Plainly, this penal consequence for attempting to absolve an accomplice is but a development of the norm first set down in *Sacramentum Pænitentiae* §4<sup>34</sup>. Thus the Excommunication levied in this regard under *Sacramentum Pænitentiae* and the reservation of its remission to the Apostolic See remains in effect in virtue of Canon 1378 §1<sup>35</sup>.

The second pio-benedictine Canon that expressly incorporated *Sacramentum Pænitentiae* in its terms was 1917 CIC 904<sup>36</sup>, which stated:

«in accord with the norm of the apostolic Constitutions and specifically the Constitution of [Pope] Benedict XIV *Sacramentum Pænitentiae* of 1 Jun. 1741, a penitent must within one month denounce to the local Ordinary or to the Sacred Congregation of the H. Office a priest [accused] of the Delict of solicitation in Confession; the confessor must, under grave obligation of his conscience, advise the penitent of this duty»<sup>37</sup>.

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- 33 1917 CIC, Can. 2367: «§1. *Absolvens vel fingens absolvere complicem in peccato turpi incurrit ipso facto in Excommunicationem specialissimo modo Sedi Apostolicæ reservatam; idque etiam in mortis articulo, si alius sacerdos, licet non approbatus ad Confessiones, sine gravi aliqua exortitura infamia et scandalo, possit excipere morientis Confessionem, excepto casu quo moribundus recuset alii confiteri*». (English trans. «1. One absolving or pretending to absolve an accomplice in a sin of turpitude incurs by that fact Excommunication most specially reserved to the Apostolic See; likewise, [he incurs this penalty] even [acting] in danger of death, if there is another priest, even though not approved for Confessions, who could, without grave danger or infamy or scandal arising, take the Confession of the dying one, except in the case where the one dying refuses to be confessed by the other»).
- 34 See S. WOYWOD, *A practical*, I, 494 and II, 555-556; DOM AUGUSTINE, *A commentary*, VIII, 434-437; and J. ARIAS, «Commentary on 1983 CIC, Can. 1387», in E. CAPARROS - H. AUBE - M. THERIAULT (eds.), *Code of canon Law annotated*, 2 ed., Montréal, 2004, 1077. The pio-benedictine designation of the penalty as *Excommunicatio specialissimo modo Sedi Apostolicæ reservata* is, however, an augmentation of the sanction beyond that set out in *Apostolicæ Sedis*, §IV, n. 4, which Legislation had not reserved the Excommunication penalty, see: PIUS PP. IX, *Constitutio apostolica qua Censuræ latæ sententiæ limitantur: Apostolicæ Sedis Moderationi*, (12 Octobris 1869), in *CIC Fontes*, III, Romæ, 1925, n. 552, 24-31.
- 35 1983 CIC, Can. 1378: «§1. *Sacerdos qui contra præscriptum Can. 977 agit, in Excommunicationem latæ sententiæ Sedi Apostolicæ reservatam incurrit*» (English trans. «a priest who acts against the prescript of Can. 977 incurs a *latæ sententiæ* Excommunication reserved to the Apostolic See»).
- 36 «The Legislation of [*Sacramentum Pænitentiae*] is in force today, for not only [does Canon] 904 [...] refer to it by name, but it is also appended as Document V in the Code». H. LINENBERGER, *The false*, 7. The same observation was obviously also true for 1917 CIC, Can. 884.
- 37 1917 CIC, Can. 904: «*ad normam Constitutionum apostolicarum et nominatim Constitutionis Benedicti XIV Sacramentum Pænitentiae, 1 Iun. 1741, debet pænitens sacerdotem, reum Delicti sollicitationis in Confessione, intra mensem denunciare loci Ordinario, vel Sacræ Congregationi S. Officii; et confessarius debet, graviter onerata eius conscientia, de hoc onere pænitentem monere*».

Again, we speak here not of solicitation in Confession, but rather, of the obligation of denouncing a priest who solicits in Confession.

Canon 904 of the pio-benedictine Code was derived in part from *Sacramentum Pœnitentiæ* §2. Like Canon 904, *Sacramentum Pœnitentiæ* had imposed, under pain of withholding Absolution from a penitent, a positive obligation on the one suffering solicitation to denounce the solicitous priest. But Canon 904 went considerably beyond Benedict XIV's provisions by setting a time limit for such denunciations to be made, namely, one month from the time of solicitation. Moreover, 1917 CIC 2368 §2 levied a *latæ sententiæ* Excommunication on one failing to make such denunciation within the prescribed time period<sup>38</sup>. These requirements and consequences are, quite obviously, gravely burdensome on penitents, that is, on persons who might already have been unjustly traumatized, or at least embarrassed, by the solicitation in the first place, and who then must make plans for denunciation of the deed under penalty of Law. Gasparri's fonts do not list *Sacramentum Pœnitentiæ* as a source for the *penal* aspects of this Norm, and rightly so; both the time limit for making denunciations and the penalty on the penitent for failing to make same are inventions of later Law<sup>39</sup>. Both Canon 904 and 2368 §2 have disappeared from the revised Law<sup>40</sup>.

38 1917 CIC, Can. 2368: «§2. *Fidelis vero, qui scienter omiserit eum, a quo sollicitatus fuerit, intra mensem denuntiare contra præscriptum Can. 904, incurrit in Excommunicationem latæ sententiæ nemini reservatam, non absolvendus nisi postquam obligationi satisfecerit aut se satisfacturum serio promiserit*» (English trans. «§2. But the faithful who knowingly omit to denounce him by whom they were solicited within one month against the prescription of Canon 904, incur automatic Excommunication reserved to no one, and shall not be absolved until after satisfying the obligation or seriously promising to satisfy it»).

39 See PIUS PP. IX, *Apostolicæ Sedis Moderationi*, 28. A careful reading of *Universi* §7 suggests that the indeterminate penalty associated with failure to report soliciting priests fell not on penitents, but rather, on those advising penitents that they were under no duties to report solicitation. Note that by a Decree dated 10 March 1677, the Holy Office had imposed a *latæ sententiæ* Excommunication on persons failing to denounce within one month priests committing solicitation in Confession (see H. LINENBERGER, *Solicitation* 9, with text available in J. ORTEGA UHINK, *De Delicto*, 76) but *Sacramentum Pœnitentiæ* did not re-enact this penal provision, though according to Linenberger many authors held that the penalty was nevertheless in force. See H. LINENBERGER, *Solicitation* 9. At the least, Woywod should be read narrowly when he says «the Code does not enact a new Law in this matter, but embodies the former Laws of the Holy See on solicitation and especially the above-mentioned Constitution of Pope Benedict XIV». S. WOYWOD, *A practical*, I, 511. See likewise: J. ABBO - J. HANNAN, *The sacred*, II, 30. The obligation to make a denunciation certainly was imposed by *Sacramentum Pœnitentiæ*, but the time limit for making a denunciation, and the penalty for failing to do so, did not come from *Sacramentum Pœnitentiæ*. Eventually, the reiteration in codified Law of an Excommunication penalty for failing to report, within one month, soliciting priests as set out in *Apostolicæ Sedis* §IV. n. 4, made moot this debate.

40 See "Table of Corresponding Canons: 1917 Code with 1983 Code" in *CLSA Comm.*, 1079 and 1092, and TH.J. GREEN, "Commentary on Canon 1387", in *CLSA New Comm.*, 1591. One may view with mixed emotions the elimination of these two Norms, or at least of Canon 904, from modern

4.2. *Express references*

*Sacramentum Pœnitentiæ* was expressly referenced as a font for four pio-benedictine Canons; we begin with 1917 CIC 894, which stated: «the only sin reserved to the Holy See by reason of being what it is, is false denunciation by which an innocent priest is accused of the Crime of solicitation before ecclesiastical Judges»<sup>41</sup>. Yet again, notice that the offense in question here is not solicitation in Confession, but rather, the false denunciation of a priest for solicitation in Confession. Canon 894 is derived from *Sacramentum Pœnitentiæ* §3, which had made new Law<sup>42</sup>.

The false denunciation of an innocent confessor is a very serious perturbation of ecclesiastical order: among other things, it gravely damages the good name of a priest, it has a chilling effect on the willingness of the faithful to approach the sacramental forum for fear that they might be solicited, and it occasions the commitment of scarce ecclesiastical resources to investigating the claim<sup>43</sup>. Accusations of solicitation are particularly hard to defend against in that there would likely be only one witness to the alleged solicitation –the victim of such– and because the obligation of the seal restricts the confessor's ability to comment upon what, if anything, actually transpired<sup>44</sup>.

Canon 894 of the pio-benedictine Code reserved Absolution from the *sin* of false denunciation –as distinct from the *Crime* of false denunciation<sup>45</sup>– to

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canon Law. On the one hand, the burden of reporting *oneself* as the victim of a Crime (as opposed to reporting on behalf of another for whom one might have charge) should not be casually imposed; certainly, a drastic penalty for declining to report oneself as a victim should not be imposed; on the other hand, however, to the extent that Canon 904 served as an ecclesiastical mandatory reporting statute against a grave and otherwise-hard-to-detect Crime, its elimination makes harder the combating of such abuse. The reconciliation of the competing values of personal privacy and of good public order might be, as a legal matter, impossible.

- 41 1917 CIC, Can. 894: «*Unicum peccatum ratione sui reservatum Sanctæ Sedi est falsa delatio, qua sacerdos innocens accusatur de Crimine sollicitationis apud Iudices ecclesiasticos*» (*english trans.* «the only sin reserved to the Holy See by reason of being what it is, is false denunciation by which an innocent priest is accused of the Crime of solicitation before ecclesiastical Judges»).
- 42 «The first Legislation that strove to protect the reputation of innocent confessors and to penalize persons who attempted to defame them by imputing to them the Crime of solicitation was enacted by Benedict XIV in his Constitution *Sacramentum Pœnitentiæ*». H. LINENBERGER, *The false*, 15, and likewise at 61. Gasparri lists no source for Canon 894 prior to *Sacramentum Pœnitentiæ*. In this light, Naz misspeaks when he writes that *Sacramentum Pœnitentiæ* «renouvelle les sanctions déjà existantes contre les confesseurs sollicitantes ad turpia, et contra ceux qui calomnient leurs confesseurs dans le même ordre de péchés». R. NAZ, “Benoit”, 761. Only Benedict's scoring of solicitation by confessors, not his penalties against false denunciation by penitents, can be said to be a “renewal” of earlier (universal) Legislation.
- 43 See generally, e.g., S. WOYWOD, *A practical*, I, 500, and R. NAZ, “Dénunciation calomnieuse du confesseur”, in *DDC*, IV, Paris, 1949, 1127.
- 44 See, e.g., TH.J. GREEN, “Commentary on Canon 1387”, in *CLSA New Comm.*, 1591-1592.
- 45 The *Crime* of false denunciation of an innocent confessor was punishable under Canon 2363 of the

the Holy See. The reservation of the *sin* served an important purpose: even if one committing false denunciation escaped *criminal* liability on any number of grounds, one still had to undertake a burdensome resort to the Apostolic See (specifically, the Sacred Penitentiary)<sup>46</sup> to receive Absolution from the *sin* of false denunciation<sup>47</sup>. Whether concerns about having to undertake such a lengthy Process for Absolution actually discouraged any faithful from making spurious claims against confessors, or whether it served more *ad fidelium terrorem*, is something that cannot be determined in this life. In any case, the reservation of the *sin* of false denunciation first set out in *Sacramentum Pœnitentiæ* and carried into the pio-benedictine Code has not survived into current canon Law<sup>48</sup>.

Two pio-benedictine Canons dealing with penal procedural Law claim *Sacramentum Pœnitentiæ* as a source, namely 1917 CIC 1935 §2<sup>49</sup>, by which an obligation to denounce delictual behavior in general was codified, and 1917 CIC 1944 §1<sup>50</sup>, which recognized the general Authority of investigators to interrogate persons about alleged Delicts under oath and to bind them to observe secrecy. In my opinion, however, neither Canon can really look to *Sacramentum Pœnitentiæ* as an original source (indeed, for both provisions Gasparri proposes older *fontes* reaching back to Gratian and Gregory IX respectively); at best, *Sacramentum Pœnitentiæ* provided *examples* of an obligation under Law to denounce certain Crimes or of an ecclesiastical authorization to inquire secretly into alleged Delicts, but neither Canon can be truly said to have

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pio-benedictine Code. False denunciation, while objectively sinful, was not a Crime under *Sacramentum Pœnitentiæ*, and Gasparri does not suggest otherwise. Indeed, Gasparri suggests no precodification sources for 1917 CIC, Can. 2363. Although Linenberger generally respects the distinction between sin and Crime, at times he refers to the reservation of Absolution for false denunciation set out in *Sacramentum Pœnitentiæ* as a “penalty”. See H. LINENBERGER, *The false*, at, e.g., 16; 34; 44-45; 178.

46 See *ivi*, 136.

47 See e.g. S. WOYWOD, *A practical*, I, 500, and DOM AUGUSTINE, *A commentary*, IV, 319.

48 1983 CIC, Can. 982 requires retraction of the false denunciation and willingness to repair the damages arising from the offense, but Absolution from the sin is not reserved.

49 1917 CIC, Can. 1935: «§2. *Imo obligatio denuntiationis urget quotiescunque ad id quis adigitur sive Lege vel peculiari legitimo præcepto, sive ex ipsa naturali Lege ob fidei vel religionis periculum vel aliud imminens publicum malum*» (English trans. «§2. Indeed, the obligation of denunciation binds anyone to whom such things apply under Law or particular precept, or by natural Law itself [they are bound] when there is danger to faith or religion or some other imminent public evil [is present]»).

50 1917 CIC, Can. 1944: «§1. *Ad finem suum assequendum potest inquisitor aliquos, quos de re edoctos censeat, ad se accire et interrogare sub iureiurando veritatis dicendæ et secreti servandi*» (English trans. «§1. In the pursuit of his purpose the investigator can call others whom he feels are knowledgeable about the matter and interrogate them under oath of saying the truth and of preserving secrecy»).

been derived directly or principally from Benedict XIV's Constitution<sup>51</sup>. In any event, as both Norms disappeared from codified Law, we need spend no more time on them<sup>52</sup>.

The last pio-benedictine Canon to claim *Sacramentum Pænitentiae* as a source was 1917 CIC 2368 §1<sup>53</sup> which specified the penalties to be imposed *ferendæ sententiæ* on one guilty of solicitation. Gasparri proposed *Sacramentum Pænitentiae* §1 as a source for Canon 2368 §1, but only after he called attention to two earlier papal enactments in this area, namely Pius IV's letter "*Cum Sicut Nuper*" (1561) and Gregory XV's Constitution "*Universi Gregis*" (1622). Respectively, these papal documents first directed local Ordinaries in Spain to punish the solicitation of women when committed in Confession, and then extended universally the Spanish directive, at the same time broadening the offense to include the solicitation of males, expanding the concept of Confession to include times immediately before or after the celebration of the Sacrament itself, and allowing for the testimony of a single witness to be persuasive in solicitation cases<sup>54</sup>. Benedict XIV's *Sacramentum Pænitentiae*, as far as solicitation is concerned, is scarcely distinguishable from Gregory XV's *Universi Gregis*, and it is easy to see why *Sacramentum Pænitentiae* expressly incorporated *Universi Gregis* and in turn why all three documents would be considered as sources for 1917 CIC 2368 §1<sup>55</sup>.

51 Among authors discussing penal procedure, Dom Augustine, Beste, Jone, Regatillo, and Woywod do not suggest any special relevance for 1917 CIC, Can. 1935 or 1944 arising from *Sacramentum Pænitentiae*.

52 See "*Table of Corresponding Canons: 1917 Code with 1983 Code*" in *CLSA Comm.*, 1089. This is not to suggest, however, that these or other omitted obligations formerly legislated in the 1917 Code, but grounded in sources other than it or *Sacramentum Pænitentiae* (say, in natural Law), are not still operative in other respects (especially moral and pastoral), just that they are not part of *canonistics* anymore.

53 1917 CIC, Can. 2368: «§1. *Qui sollicitationis Crimen de quo in Can. 904, commiserit, suspendatur a celebratione Missæ et ab audiendis Sacramentalibus Confessionibus vel etiam pro Delicti gravitate inhabilis ad ipsas excipiendas declaretur, privetur omnibus beneficiis, dignitatibus, voce activa et passiva, et inhabilis ad ea omnia declaretur, et in casibus gravioribus degradationi quoque subiiciatur*» (*English trans.* «§1. Whoever commits the Crime of solicitation mentioned in Canon 904 is suspended from the celebration of Mass and from hearing sacramental Confessions and even, for the gravity of the Delict, is declared incapable of taking them, [and] is deprived of all benefices, dignities, active and passive voice, and is for all of these declared incapable, and in more serious cases is also subject to degradation»).

54 The provision for accepting the testimony of a single witness (against the long-accepted principle of *Testis unus, Testis nullus*), was, as far as I can determine, a procedural innovation with *Universi* §5. Though the possibility of attaching probative value to the testimony of a single witness was not carried into the 1917 Code (see 1917 CIC, Can. 1791 §1, *pace* 1917 CIC, Can. 800), it has reappeared in the 1983 Code in Canon 1573.

55 See I. CHELODI, *Ius canonicum*, 137.

Canon 2368 §1 of the pio-benedictine Code is cited as the sole source of Canon 1387 of the johanno-pauline Code<sup>56</sup>. Now Benedict XIV called for the application of “condign penalties” along the lines indicated by Gregory XV’s Constitution on priests guilty of solicitation (this by a *ferendæ sententiæ* Process)<sup>57</sup>, but Canon 1387 somewhat more resembles Gregory XV’s *Universi Gregis* by actually specifying penalties running from Suspension and the perhaps permanent loss of Faculties for Confession up to Degradation (dismissal from the clerical state).

We may now turn to an examination of how *Sacramentum Pœnitentiæ* survived in canon Law into the 21<sup>st</sup> century, that is, even past the replacement of the pio-benedictine Code with the johanno-pauline Code in 1983.

##### 5. SACRAMENTUM PŒNITENTIÆ AND MODERN CANON LAW

It is tempting to point to Canon 6 of the johanno-pauline Code and conclude that *Sacramentum Pœnitentiæ*, whether as part of the pio-benedictine Code (for purposes of 1983 CIC 6 §1, 1°) or as a piece of universal penal Legislation (for purposes of 1983 CIC 6 §1, 3°), was abrogated by the 1983 Code. Tempting, that conclusion, but misleading. First, such a stance obscures recognition of the fact that the *Documenta* appended to the pio-benedictine Code were, as noted above, promulgated anew as part of the 1917 Code itself, eliminating outright the possibility that *Sacramentum Pœnitentiæ* was abrogated by 1983 CIC 6 §1, 3°. Moreover, the re-promulgation of *Sacramentum Pœnitentiæ* in 1917, because it was done with very few amendments to its 1741 text, meant that most of the Jurisprudence developed in regard to *Sacramentum Pœnitentiæ* and its related pio-benedictine provisions remained viable at least until the advent of the johanno-pauline Code in 1983<sup>58</sup>, making it much

56 1983 CIC, Can. 1387: «*Sacerdos, qui in actu vel occasione vel prætextu Confessionis pœnitentem ad peccatum contra sextum Decalogi præceptum sollicitat, pro Delicti gravitate, Suspensione, Prohibitionibus, Privationibus puniatur, et in casibus gravioribus dimittatur e statu clericali*» (English trans. «a priest who in the act, on the occasion, or under the pretext of Confession solicits a penitent to sin against the sixth commandment of the Decalogue is to be punished, according to the gravity of the Delict, by Suspension, Prohibitions, and Privations; in graver cases he is to be dismissed from the clerical state»).

57 Penalties here are facultative and all penalties are to be applied in accord with Law which permits refraining from application in a number of circumstances. See V. DE PAOLIS, “Commentary on Canon 1387”, in *Exegetical Comm.*, IV/1, 523; J. MARTIN, “Commentary on Canon 1387”, in *GB & I Comm.* 798-799, and TH.J. GREEN, “Commentary on Canon 1387”, in *CLSA New Comm.*, 1591-1592.

58 As did Jone (see fn. 24), a number of commentators made this point in regard to specific provisions



easier to call upon that Jurisprudence for assistance in applying the modern Law on solicitation in Confession particularly where the current Code takes its substance directly from the prior (CIC 1917 Can. 23, CIC 1983 Can. 6 §2). These hermeneutical principles are well known by canonists. But another line of analysis, one implying an even longer life for *Sacramentum Pænitentiae* in canon Law than might otherwise have been recognized for it, suggests itself. I refer to the special penal procedural Law that has been developed for application in solicitation cases.

During the *Ius vigens* period of the pio-benedictine Code, two sets of procedural Instructions for hearing solicitation cases were developed. The first set of Instructions was issued in 1922 by the then Holy Office<sup>59</sup>, while the second, and more widely known, set of Instructions, "*Crimen sollicitationis*", replacing those issued in 1922, was released in 1962<sup>60</sup>. Both sets of Instructions, though especially that issued in 1962, have occasioned widespread misunderstandings, at least some of which can be attributed to incompetent treatment of the Instructions by the secular media<sup>61</sup>. Our focus, however, is not on ana-

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of the pio-benedictine Code being simply codifications of *Sacramentum Pænitentiae* and recommend consultation with pre-codification canonistics for guidance in the proper application of the Law. See, e.g., S. WOYWOD, *A practical*, I, 494 (in regard to 1917 CIC, Can. 884) and II, 557 (in regard to 1917 CIC, Can. 2368), or J. ARIAS, "Commentary", 1077 in regard to 1983 CIC, Can. 1387. One may wonder, however, about the strength with which Velasio de Paolis insists that *Sacramentum Pænitentiae* is no longer itself Law. See, e.g., V. DE PAOLIS, "Commentary on Canon 1387", in *Exegetical Comm.*, IV/1, 497 where, in commenting on 1983 CIC, Can. 1378, he writes «there is no longer any reference to the Constitution of Benedict XIV, which is not appended to the Code and therefore no longer has any normative value», and likewise in *Exegetical Comm.*, IV/1, 523, where, in commenting on 1983 CIC, Can. 1387, he writes «the present-day Code does not refer to Benedict's Constitution. Its silence should be interpreted under C. 6 §1, 3°, Cc. 17 and 18, and C. 1313». But, no one is arguing that *Sacramentum Pænitentiae* has "normative" value today, only that it retains interpretative value (per 1983 CIC, Can. 6 §2); nor is the 1983 Code's stance in regard to *Sacramentum Pænitentiae* notably different from its stance in regard to any other pre-codification Law. Besides, as we shall see shortly, *Sacramentum Pænitentiae* is, in fact, expressly cited in what clearly qualifies as current canon Law.

- 59 See F.X. WERNZ - P. VIDAL, *Ius canonicum ad Codicis normam exactum. VII. Ius pænale ecclesiasticum*, Romæ, 1937, 570, and J. ORTEGA UHINK, *De Delicto*. 281. Even before the 20<sup>th</sup> century, however, specific Instructions for hearing solicitation cases were in place. Per H. JONE, *Commentarium*, II, 148, prominent among these Instructions would have been: S. CONGREGATIO SANCTI OFFICII, Instructio: *Quæ Supremus Pontifex* (20 feb. 1866), in *CIC Fontes*, IV, n. 990, 267-272; S. CONGREGATIO SANCTI OFFICII, Instructio: *Non Raro* (20 Iulii 1890), in *CIC Fontes*, IV, Romæ, 1926, n. 1123, 450-452; and S. CONGREGATIO SANCTI OFFICII, Instructio: *Instructionis Sanctæ Romanæ* (6 Augusti 1897), in *CIC Fontes*, IV, n. 1190, 495-496.
- 60 SUPREMA S. CONGREGATIO SANCTI OFFICII, Instructio de modo procedendi in Causis sollicitationis: *Crimen Sollicitationis*, Città del Vaticano, 1962. The text of the 16-03-1962 version of "*Crimen*" is available on-line at URL: < [http://www.vatican.va/resources/resources\\_crimen-sollicitationis-1962\\_en.html](http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html) > al 26-03-2012.
- 61 See, e.g., E. PETERS, *Smearing the Pope: the BBC and Benedict XVI*, in *Catholic world report*, XVI (2006), December, 40-43.

lyzing the Instructions themselves<sup>62</sup>, but rather, on the role these Instructions played in extending the life of *Sacramentum Pœnitentiæ* into the 21<sup>st</sup> century. This conclusion is supported as follows. First, *Sacramentum Pœnitentiæ* was expressly cited by *Crimen* (1962) three times, in regard to the basic definition of solicitation (*Sacramentum Pœnitentiæ* n. 1), in a reiteration of the canonical obligation denounce soliciting confessors (*Sacramentum Pœnitentiæ* n. 16), and in an admonition concerning the invalidity of any Absolution of accomplices that might be attempted by soliciting confessors (*Sacramentum Pœnitentiæ* n. 64e). Then, as part of a new (and still current) set of procedural Instructions for dealing with “more grave” Delicts (18 mai 2001)<sup>63</sup>, *Crimen* (1962) was described as having remained in effect beyond the promulgation of the johanno-pauline Code confirming thereby the active influence of *Sacramentum Pœnitentiæ* in canon Law until the 21<sup>st</sup> century<sup>64</sup>.

## 6. CONCLUDING RETROSPECTIVES

Few Laws are self-enforcing, and the unique circumstances under which the canonical Crime of solicitation in Confession occurs makes it an especially hard Crime to prosecute. Moreover, the repellant nature of the offense makes it one that few people are inclined to discuss casually or in the abstract. As a result, public awareness of the possibility of solicitation being committed in Confession and of the availability of Procedures for initiating and pursuing canonical consequences for such behavior are reduced. These very factors, however, make the reporting of alleged solicitation in Confession an even more urgent duty for the faithful and the prudent investigation of such allegations as might be received an even more pressing duty of ecclesiastical administrators. While the mandatory reporting of such offenses –an obligation that,

62 An excellent study of the 1962 version of *Crimen* as a whole is J.P. BEAL, *The 1962 Instruction Crimen sollicitationis: caught red-handed or handed a red herring?*, in *Studia canonica*, XLI (2007), 199-236.

63 See CONGREGATIO PRO DOCTRINA FIDEI, *Epistula ad totius Catholicæ Ecclesiæ Episcopos aliosque Ordinarios et Hierarchas interesse habentes de Delictis gravioribus eidem Congregationi pro Doctrina Fidei reservatis: Ad Exsequendam*, in *AAS*, XCIII (2001), 785-788. This letter is meant to operate in support of IOANNES PAULUS PP. II, *Litteræ apostolicæ motu proprio datæ quibus Normæ de gravioribus Delictis Congregationi pro Doctrina Fidei reservatis promulgantur: Sacramentorum Sanctitatis Tutela*, in *AAS*, XCIII (2001), 737-739 and has undergone some revisions since its original promulgation.

64 Figuring from *Sacramentum*'s promulgation date of 1 June 1741 to its final abrogation on 30 April 2001 by *Sacramentorum Sanctitatis Tutela*, one can recognize an effective canonical lifespan for *Sacramentum Pœnitentiæ* of just one month shy of 260 years.

virtually by definition, fell solely upon victims of solicitation— is no longer in force, natural Law itself and a concern for the common good make reporting, investigating, and where necessary punishing, acts of solicitation in Confession important<sup>65</sup>. Benedict XIV's remarkable Constitution *Sacramentum Pænitentiae* and the impressive canonical commentary that grew up around it are important resources for those charged with care for Church governance to this day.

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Benedictus PP. XIV, Constitutio: *Sacramentum Pænitentiae* (1 Iunii 1741)

The Sacrament of Penance has been aptly called by the holy Fathers a “second plank” after the shipwreck of squandered grace<sup>66</sup>, and We who, though unworthy, have been called by heavenly direction to the care of the universal flock of the Lord, must apply every care and pastoral solicitude to that Sacrament lest, although a rescue from the loss of innocence after Baptism has been offered by divine kindness, grievous destruction instead greets wretched and suffering sinners through the fraud of demons and the malice of men of God who use perversely the gifts of the Lord, and that what has been instituted by God, who is rich in mercy, for the welfare and cure of souls, instead, by the detestable wickedness of certain infamous priests, be turned into spiritual disaster and destruction.

§1. Not so long ago, Pope Gregory XV Our Predecessor of happy memory, by his letters in the form of Briefs dated 30 August 1622<sup>67</sup>, given at Rome at St. Mary Major, in the second year of his pontificate, wisely made provision

65 See, e.g., H. JONE, *Commentarium*, II, 144, wherein: «*obligari etiam [qui notitiam de sollicitatione certam habent] possunt ad denuntiationem faciendam ob bonum commune*». See also: F.M. CAPPELLO, *Tractatus canonico-moralis de Sacramentis iuxta Codicem Iuris canonici*, II, Romæ, 1944, 421-422, esp. «*unde practice, etiam deficiente obligatione ex Lege Ecclesiae positiva, datur obligatio ex Lege naturali denuntiandi sacerdotes sollicitantes, quoties grave damnum commune timetur, etiam cum gravi incommodo pænitentis seu personæ sollicitatæ aut illius qui factum criminosum cognoscit illudque denuntiat*» (original emphasis).

66 Benedict XIV employs here a *locus communis* dating to Jerome and Tertullian. See Council of Trent, Decree on Justification, chap. 14, wherein the Sacrament of Penance is described «*quam secundam post naufragium deperditæ gratiæ tabulam sancti patres apte nuncuparunt*» and references are offered to several patristic texts, echoed in the classic *Summa casuum [de pænitentia] S. Raymundi de Peniafort* [c. 1244] (Avenione: MALLARD et AL., 1715) at 1, wherein: «*quoniam (ut ait Hieronymus) secunda post naufragium tabula est culpam simpliciter confiteri*». R. DE PENNAFORTE, *Summa de Pænitentia*, (X. OCHOA - A. DIEZ, CURT.) I/B, Roma, 1976, Prooemium, 1.

67 See fn. 5.

against any priests whomsoever authorized for hearing Confessions soliciting [penitents] to turpitude and shamefulness; and then at subsequent times, for the interpretation and expounding of these letters, there subsequently came decrees from the Our Venerable Cardinal Brothers of the Holy roman Church in the Congregation of the general Inquisition [later the Holy Office, now the Congregation for the Doctrine of the Faith] against heretical depravity on 11 February in the Year of the Lord 1661<sup>68</sup>, and from Pope Alexander VII of happy memory, likewise Our predecessor in the General Congregation of the Universal roman Church, in a session held in his presence on 24 September 1665<sup>69</sup>, [wherein] among other teachings dissonant with evangelical truth and the propositions of the holy Fathers, numbers six and seven of which were rejected, condemned, and prohibited. We therefore maturely weighing of what great importance it is for the eternal welfare of souls that these things be everywhere exactly observed and how much it would advance the care of infirm sheep and the preservation of the uprightness of the holy Church of God to prevent any priest from nefariously abusing the Sacrament of Penance, giving to penitents a wound for a cure, a stone for bread, a serpent for a fish, or poison for medicine, but [wanting] instead that they recall themselves as presiding by Christ the Lord as constituted Judges of souls and administer the venerable Sacrament with that sanctity which becomes such sublime and worthy duty; Moved on our own, and from certain knowledge and with Our mature deliberation, We approve and confirm by the tenor of these presents with Apostolic Authority the existing letters of this sort, and all and every aforesaid decree issued for their interpretation and exposition, and we strengthen with inviolable apostolic firmness and moreover, as required, we once again commit and order all Inquisitors of depraved heresy and Ordinaries of places in all Kingdoms, Provinces, Cities, Dominions, and other places in the christian world in their respective Dioceses, diligently setting aside every human respect, that they investigate and proceed against each and every priest, whether secular or regular, no matter how exempt and immediately subject to the Apostolic

68 There is no dispute about the existence of these 16 propositions, but there is some dispute as to their exact wording. A convenient version is found in J. ORTEGA UHINK, *De Delicto*, 54-57.

69 See S. CONGREGATIO SANCTI OFFICII, Decretum: *In Congregatione Generali* (24 Septembris 1665), in *CIC Fontes*, IV, n. 734, 17, condemning two propositions, as follows: «6. A confessor who, in sacramental Confession, gives to a penitent a writing to be read later, in which he incites to sexual acts, is not considered to have solicited in Confession, and therefore need not be denounced. 7. One way of avoiding the obligation of denunciation is, if the one solicited confesses to the one soliciting, then this one can absolve him without the obligation of denouncing» (my translation). The meaning of condemned prop. no. 7 is not immediately clear as it seems hardly distinguishable from the Crime in question. DOM AUGUSTINE, *A commentary*, IV, 293, n. 15, says of this text that it is «a very criminal yet curious proposition».

See, of whatever Order, Institute, Society, or Congregation, and of whatever dignity and preeminence or other privilege or marked by indult, who in regard to any sort of penitent, either in the act of sacramental Confession or before or immediately after Confession or on the occasion or the pretext of Confession or even outside the occasion of Confession in the Confessional whether in another place set aside for hearing Confessions or chosen with the pretext of hearing Confession there, solicits to turpitude or shameful deeds, or attempts to provoke by words or signs or nods or touch or by a writing to be read then or later or with them brazenly dares to have illicit or dishonest words or writings<sup>70</sup>; and those whom they find guilty of nefarious excesses of this sort, against them according to the quality of the Crime and circumstances, let them severely apply condign penalties according to the referenced Constitution of Gregory Our predecessor which we desire to have inserted here word for word<sup>71</sup>, giving [them] also in so far as necessary and again granting the faculty, lest such a terrible Delict so injurious to the Church of God remain, from a lack of evidence, unpunished, of proceeding even with a single witnesses as is already given by the aforesaid Constitution, provided presumptions and indications and other factors support it<sup>72</sup>.

§2. Moreover, let all and every priest authorized for the hearing of Confessions consider themselves bound and required to admonish carefully their penitents whom they know to have been solicited by others as above, according the circumstances of cases as they arise, about the obligation of denouncing to Inquisitors or to the aforementioned Ordinaries of places, any person who committed solicitation<sup>73</sup>, even if it were a priest who lacked jurisdiction for the valid conferral of Absolution, or the solicitation was mutual between confessor and penitent, or the penitent consented to the solicitation, or slightly consented, or a long period of time has passed since the solicitation<sup>74</sup>, or the solicitation was committed by the confessor not for himself but for another<sup>75</sup>.

70 See 1983 CIC, Can. 1387, *olim* 1917 CIC, Can. 2368 §1. Benedict XIV recognized the appropriateness of having particular Legislation arrayed against solicitation in Confession in his *De Synodo Diocesana*, lib. 9, cap. 6, n. 7 (see *Benedicti XIV opera*, XI, 307) where he lists *sollicitatio ad turpia* as the sixth (of 12) offenses for which clerical degradation might be ordered at the diocesan level.

71 See 1983 CIC, Can. 1387, *olim* 1917 CIC, Can. 2368 §1.

72 See 1983 CIC, Can. 1573, *olim sed contrarie* 1917 CIC, Can. 1791 §1.

73 See 1917 CIC, Can. 904 and 2368 §2.

74 See 1983 CIC, Can. 1362 §1, *olim pola cum modificatione* 1917 CIC, Can. 1703, 2240.

75 Note that solicitation can be considered to have occurred even upon the rendering of poor pastoral advice on sexual matters. See, e.g., H.A. AYRINHAC, *Penal Legislation in the new Code of canon Law* [1920], (rev. by P. LYDON) New York (NY), 1944, 274, wherein «it is indifferent whether the solicitation [...] was to be committed with the confessor or a third party. For instance, if the confessor told

Let confessors moreover be diligent lest they impart sacramental Absolution to penitents, whom they know to have been solicited by another, until first the aforesaid denunciation take place, indicating the offender to the competent Judge, or at least they have stated and promised to report them promptly<sup>76</sup>.

§3. And because indeed wicked men will be found who, moved by hatred, or anger, or other unworthy cause, or incited by impious persuasions of others, or by promises, flattery, threats, or something else of this sort, and dismissing the terrible judgment of God, and with contempt for the authority of the Church, make false accusations against innocent priests before ecclesiastical Judges, that, therefore such a despicable audacity and detestable outrage might be curbed by the fear of a great penalty, any person whosoever, who stains himself with this sort of execrable outrage, either by impiously calumniating innocent confessors himself, or by wickedly bringing it about that it be done by others, shall perpetually be deprived of the hope of obtaining, except at the end of life and at the point of death, Absolution from any priest besides Us and Our Successors, no matter what Privilege, Authority, or responsibility [such a priest] might enjoy, and which [Absolution] we thus reserve to Ourselves and Our aforementioned Successors<sup>77</sup>.

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a penitent that contraception is Lawful». Or consider Abbo-Hannan's observation that the Delict of solicitation is committed «by word, sign, or touch, or by sinful conversation, or by missives to be read even after departure from the place where they were given. The resistance of the penitent is immaterial; so also the fact that a third person is solicited through the penitent as agent. Indeed, the Delict is committed even by wrong advice as to the sinfulness of evil thoughts». J. ABBO - J. HANNAN, *The sacred*, II, 30. Again, «if a priest in Confession or on its occasion solicits or induces another person, whether man or woman, to commit a grave sin of unchastity with himself or with a third party or alone, he is to be denounced to the Holy Office or to the local Ordinary [...]. It is not necessary that the penitent yield to the suggestion. Solicitation exists if the confessor sinfully suggests that the person commit impure acts alone or with others, for example, counsels the use of contraceptives, etc.» P.J. LYDON, *Ready answers in canon Law. A practical summary of the Code for the parish clergy*, New York-Cincinnati-Chicago-San Francisco, 1934, 482-484, at 483 (*Solicitation [Canons 904, 2368]*). Or again, «if a confessor teaches a penitent that masturbation or fornication is not a grave sin, he is considered to have committed the Delict of solicitation, because it can be presumed that he desires to lead the penitent toward sins of this sort». F. CAPPELLO, *Tractatus*, II, 434, n. 436, wherein «*si confessor docet poenitentem non esse grave peccatum pollutionem aut fornicationem, censetur haberi sollicitationis Delictum, quia praesumitur velle poenitentem ad huiusmodi peccata inducere*». Indeed, the specific line of thought reflected in Cappello goes back at least to the early 20<sup>th</sup> century, when the Sacred Penitentiary found solicitation to exist when confessors advised wives that certain forms of masturbation might not be sinful. See, e.g. E. REGATILLO, *Ius sacramentarium*, 4 ed., Santander, 1964, 389, n. 676. Interestingly, however, *Sacramentorum Sancitatis Tutela* (Art. III, n. 2), does not reserve to the *Congregatio pro Doctrina Fidei* adjudication of these sort of "bad advice" offenses.

76 See 1917 CIC, Can. 904.

77 See 1983 CIC, Can. 982 *olim* 1917 CIC, Can. 894 *et in mea aestimatione quoque* 1917 CIC, Can. 2363.

§4. Finally, greatly desiring to remove to afar every occasion of turpitude from the sanctity of the priestly Judge and the sacred Tribunal, and contempt for the Sacraments, and injury to the Church, and to eliminate thoroughly such terrible evils of this sort, and insofar as we can in the Lord prevent dangers to souls, which, certain sacrilegious ones as ministers of the demon instead of God, instead of reconciling [penitents] through the Sacrament to his Creator and ours, burden them by a greater heap of sins, and wickedly plunge them into the deep abyss of iniquity, and upon moreover the advice of some of Our Venerable Brothers, Cardinals of the roman Church, and of other Teachers in Theology, and acceding also to the repeated requests of many Bishops, and as we know many Bishops have already done by synodal Constitutions, by this Our sanction to be valid in perpetuity, toward each and every priest, whether a secular or a regular of any sort of Order, or Dignity, even if otherwise approved for the receiving of Confessions, and of any sort of Privilege and Indult, even of special and most special expression and suffused by worthy mention, by apostolic Authority and the fullness of Our power, we interdict and prohibit lest anyone of them, outside of the case of extreme necessity, by which is understood the very point of death, and then only if another priest who could fulfill the role of confessor is lacking, dare to take the sacramental Confession of a person complicit in a sin of turpitude and disgrace committed against the sixth commandment of the Decalogue<sup>78</sup>, every authority and jurisdiction being removed from him by Law for the absolving of a person from this sort of fault; indeed, such Absolution, if he might impart same, is entirely null and invalid, as if it had been imparted by a priest who was deprived of the jurisdiction and faculty necessary for validly absolving, of which we intend to deprive him by these Our presents; and if nevertheless any confessor dare to act otherwise, he shall by that fact incur the penalty of major Excommunication, the power of absolving from which we here reserve to Us alone and to Our Successors<sup>79</sup>.

§5. Declaring also and determining that not even in virtue of any Jubilee whatsoever or even of that Bull which is called of the Holy Cross<sup>80</sup>, or of any other sort of indult, is any [priest] able to receive the Confession of the afore-said kind of accomplice and bestow sacramental Absolution on same; wherefore toward this effect and in this case, according to what has been laid out, no

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78 See 1983 CIC, Can. 977, *olim* 1917 CIC, Can. 882, 884, and 2367.

79 See 1983 CIC, Can. 1378 §1, *olim* 1917 CIC, Can. 2367 §1.

80 The "*Bulla Cruciatæ*" were special grants of faculties and Privileges to the Church in Spain. They far antedate and postdate *Sacramentum Pænitentiæ*. See generally M. BALDWIN, *Bulla Cruciatæ*, in *New catholic encyclopedia*, II, New York (NY), 1967, 881-882.

confessor—insofar as he lacks jurisdiction over this sort of sin and this sort of penitent, and as he stands deprived by Us of the faculty of absolving— shall be considered legitimate and approved for Confession. Notwithstanding Constitutions and Apostolic Orderings, especially those which are called of the Holy Cross, or of a universal and plenary Jubilee, and notwithstanding any statutes of Churches, or Monasteries, or Orders of any kind, in which these priests might be, even if they are sworn, with apostolic confirmation, or strengthened by another sort of endorsement, and customs, as well as Privileges, and Indults, and apostolic Letters under any sort of tenor or form, or with any sort of clausula, and Decrees, even *motu proprio*, or any sort of concession, even repeatedly approved and renewed, for all those, considering their tenor by these presents as included, to that extent we here especially and expressly derogate, other things to the contrary notwithstanding.

§6. Finally, we wish and order that all Ordinaries of places, both those in office now and those assuming duties in the future, in the approval of confessors, take care that the aforesaid Constitution of [Our] Predecessor Gregory, and this Our document, be carefully read and accurately observed by all priests needing such approval, and warn and exhort them in the Lord that they might fulfill the sacred ministry entrusted to them with great innocence of soul, purity of morals, and integrity of judgment, and show themselves to be ministers of Christ and dispensers of the mysteries of God. Moreover let them remember that they hold the place and fill the role of the great and eternal priest, who is holy, innocent, unstained, who brings himself immaculate to God through the Holy Spirit, that he might cleanse our conscience from the works of death and serve the living God. Therefore let them carefully strive and diligently beware lest heaven be closed to those seeking and knocking thereat through their fault, lest lost sheep hurrying to return to the sheepfold suffer betrayal and by their hands be handed over to the jaws of savagery; lest prodigal and needy wounded children returning to the celestial abode of the Fathers, be struck down while they are yet on the road with even graver wounds by such wicked imprudence.

§7. That therefore these Letters might more easily come to the notice of all, and that no one should be able to allege ignorance of them, we desire that they, by copies, in the usual way, be affixed to and published at the doors of the Lateran Church, and the Basilica of the Price of the Apostles, as well as the Apostolic Chancery, and the General Curia in Monte Citatorio, and in the Corner of the Field of Flora of the City. Once so published and posted, they reach and bind each and every person to whom they pertain just as if they had



expressly received personal notice thereof. Also worthy of credit, both in and out of court, are renderings or exemplars of these present Letters, even printed versions, signed by the hand of some Notary public, and bearing the seal of some person constituted in an ecclesiastical dignity, such that these may be used everywhere as these present documents would be used if they had been shown or displayed.

§8. Therefore to no one whomsoever is it permitted to infringe on this document expressive of Our will, sanction, precept, mandate, and modification, or brazenly dare to contradict it. If anyone should presume to attempt this, let him know that he will incur the anger of Almighty God and of his blessed Apostles Peter and Paul. Given at Rome, at St. Mary Major in the one-thousand seven-hundred forty-first year of the Incarnation of Lord, on the Calends of June, in the first year of our Pontificate.

Pro. D. Card. Passioneo  
Cajetan Amatus