

# SOULS IN DANGER OF DEATH WHILE IN SOME IRREGULARITY

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## **Introduction: the salvation of souls**

The Church in her infinite wisdom gives ample opportunities for the proper reconciliation of souls in situations of danger of death. The last canon of *the 1983 Code of Canon Law*<sup>1</sup> while specifically dealing on the need to exercise clemency in the act of transferring a pastor from the Church he has governed well for some time, remarked wonderfully that nobody should forget the salient fact that “the salvation of soul is the supreme law” (canon 1752).<sup>2</sup> This mode of often placing last the most significant word of a sentence is typical of the Latin language from which the present code is derived. Even though the fonts of canon 1752 attribute the source of this maxim to latter Christian authors of the 12<sup>th</sup> and 13<sup>th</sup> centuries A.D. like Saints Ivo of Chartres, Raymond of Peñaforte and Thomas of Aquinas, deeper historical investigation reveals that the axiom was already cited in the Twelve Tables of the Roman Law of the 5<sup>th</sup> century B.C.<sup>3</sup> In this Roman Law, Cicero posits thus: “the salvation (safety/welfare) of the people shall be the supreme law”.<sup>4</sup> At the end of it all, it is the salvation, nor damnation, of souls that

gives God the greatest glory. It would mean, ultimately, that the precious blood, suffering, crucifixion and death of Christ did not end in vain for such souls - most dear to the Incarnate Son of God. If there is a great joy among the angels over the initial repentance of a sinner, then there is undoubtedly a greater or immense joy in heaven when souls are saved.

### ***The Paradigm of the Good Thief from Scriptural Basis***

The event of the crucifixion of Christ on Calvary in between two thieves, one on his right and the other on his left (Lk 23: 32-34, 39-43), offers us a wonderful lesson in the possibility of the miraculous opportunities for souls in situations of danger of death to be reconciled to God. The bad thief crucified along with Jesus failed to utilize the grace of the moment for his salvation; but rather, remarked sarcastically: “are you not the Messiah, save yourself and save us” (v. 39). The good thief, conversely, profited from his proximity to the Saviour of humankind. This latter, having rebuked the erring bad thief while acknowledging his own faults as well, asked humanely, “Jesus remember me when you come to your kingdom” (vv. 40-42). William Barclay highlights the fact that:

Surely this story tells us above all that it is never too late to turn to Christ. There are other things of which we must say, “the time for that is past. I am grown too old now”. But we can never say that of turning to Jesus Christ. So long as a man's heart beats, the invitation of Christ still stands.<sup>5</sup>

The verdict of Jesus was instantaneous; “truly I tell you, today you will be with me in paradise” (v. 43). Commenting further on this occurrence, G. B. Caird opined succinctly that:

The one criminal, lacking any sense of guilt, was ready to blame anyone for what he regarded as a vindictive twist of fate. The other, whatever else may be said of him, at least knew that he was guilty and Jesus innocent. But did he really believe that, beyond the present travesty of justice, the future held for Jesus the royal triumph of the Messiah? If so, the approach of death must have given him an acuteness of vision denied as yet to Jesus' closest friends. Perhaps he simply wanted to be kind to this innocent enthusiast who had fallen victim to passion and intrigue, and seized upon the words of the placard over his head as a means of saying

something to offset the taunts of his companion. In this case, his was the cup of cold water that did not go without its reward. Whatever he expected, the promise of Jesus was out of all proportion to his request. Not in some far-off assize but now he is acquitted before the divine tribunal, and his reward is not in some age to come but today and in Paradise.<sup>6</sup>

Thus, the salvation of the good thief is made manifest after his sincere admittance, confession and contrition for his sins. We cannot be certain about the fate of the bad thief who wasted the golden opportunity for conversion and salvation.

The good thief is commonly believed to have stolen heaven at his final moment. He must have led a very contrary life, according to the roman-jewish expectations of the time, to the extent that he was given the maximum penalty of execution by crucifixion. Nevertheless, he won salvation in the final hour by his acceptance of the fact that he had been condemned to death justly for his deeds, unlike the innocent Christ (v. 41). The foregoing biblical incidence offers us a foundation in the understanding of the Church's insistence on the need to reconcile souls in danger of death.

### ***Faithful in situations of Danger of Death while also in Irregularity***

Ordinarily, the Church makes it very obligatory for pastors of souls not to hesitate to come to the aid of the souls in danger of death since this is of the greatest advantage for the salvation of such souls which is the supreme law. To this effect, Canonical legislation prescribes thus:

§1. The Christian faithful who are in danger of death from any cause are to be nourished by Holy Communion in the form of Viaticum.

§2. Even if they have been nourished by Holy Communion on the same day, however, those in danger of death are strongly urged to receive communion again.

§3. While the danger of death lasts, it is not to be delayed too long; it is recommended that Holy Communion be administered often, but on separate days.<sup>7</sup>

Unfortunate incidences, however, do occur along the line whereby souls of the faithful who are in danger of death who must be given Holy Communion without delay are also in the

category of those prohibited by canon 915: “those upon whom the penalty of excommunication or interdict has been imposed or declared, and others who obstinately persist in manifest grave sin, are not to be admitted to Holy Communion”. Accurate understanding of the foregoing canon reveals that those considered for exclusion from Holy Communion are the formally excommunicated or interdicted persons (*cf.* canons 1331 and 1332) and those who glaringly contradict in grave manner the sound practices of the Church. Persons who are divorced and remarried find themselves in this situation.<sup>8</sup>

Canonical prescriptions, under normal circumstances in the foregoing cases, recommend deferring the reception of Holy Communion in such situations in order to avoid scandal and unworthy communication that could be unfruitful to the soul of the recipient. This holds true until requisite dispositions are attained before fruitful communication can be made. Moreover, “of its very nature celebration of the Eucharist signifies the fullness of profession of faith and the fullness of ecclesial communion”.<sup>9</sup>

Laudable as the foregoing might be, the unusual occasions of danger of death and irregularity for the reception of the sacraments especially that of the Eucharist, may engender great conflict against the perennial doctrine of salvation of souls as uppermost in the Church's consideration. These may call for special application of the law and adjustments by way of dispensations in order to meet up with the supreme law of salvation of souls in the Church. The law forbidding communication of canon 915 may therefore need to be reconciled with that of the salvation of souls of canon 1752 whenever there is danger of death of canon 921. Summarily put: there is obvious conflicts between canon 915 prohibiting communication in the Eucharist for souls in some irregularity and canon 921 which encourages prompt ministrations of Holy Communion as Viaticum for souls in danger of death.

### ***Sacraments of Healing: Penance, Anointing of the Sick and the Eucharist***

There is a general relaxation of the law prohibiting reception of the last rites of penance, anointing of the sick, and the Holy Eucharist in certain situations of peril, in order to help the soul towards attainment of salvation.<sup>10</sup> The Code does not define the meaning of danger of death<sup>11</sup> and this is

therefore left to the prudential judgment of the sacred ministers. Danger of death or *periculum mortis* in Latin, maybe considered as such conditions in which the soul of an individual is relatively more prone to death than ordinarily the case. This may be the case at the advent of illnesses or severe sicknesses, accidents or during emergencies like war times. Souls are considered to be in danger of death when they are scheduled to undergo certain surgical operations, be it major or minor. Such dangers are also discernable even when they take some means of transportation like aeroplanes or vehicles in some risky terrains. In general, when there is danger of death and pending the duration of such situation of danger of death, the law is usually relaxed to allow penitential reconciliation, anointing of the sick and the reception of Holy Communion.

Due to the wide range of applications of the term 'danger of death' it has occasioned great doubts in the hearts of ministers and people alike, as to the precise manner of knowing when souls are in danger of death. The prudent judgment is left to the ministers of souls and in some cases too, to the faithful themselves, to discern when there is danger of death. The canonical understanding however recommends that in situations of doubt, in any of the cases at hand, the benefit of doubt should be given to the soul of the recipient of the sacramental grace. That is, if one entertains doubt whether there is actual situation of danger of death in a particular case, that one should, nevertheless, go on to administer the particular sacraments required, baptism, confirmation, Eucharist, confession, anointing of the sick, as long as the basic requirement of right intention is met. More good would be done than harm if one administers in error than if one abstains from acting and then later discovers that one may have jeopardized the salvation of a soul due to negligence or over-scrupulosity.

The canonical term 'danger of death' or *periculum mortis* has a very wide range of prudential or subjective applications and it is to be distinguished from the previously used term 'point of death' or *articulum mortis*. This latter term in the old legislation was required for the administration of the so called 'extreme unction'. Due to the non-repeatability of extreme unction then it was therefore highly emphasized that ministers of souls must be very certain that souls were actually at the final hour or point of death before its administration. It was then given along with the still popular

practice of *Viaticum*, otherwise known as “the last sacrament of Christian life, Holy Communion given to those at or near death”.<sup>12</sup> One may not be certain therefore that it is a viaticum until after the subsequent occurrence of death and so it is wise to simply refer to it as Holy Communion to the Sick until the advent of death thereafter. These days in the light of recent understanding, 'extreme unction' has been replaced by the new doctrinal terminology of anointing of the sick as a sacrament. No emphasis is laid anymore on 'point of death' or *articulum mortis* and the consideration is now rather given to danger of death or *periculum mortis*. While *Viaticum* remains but is generally now intended as Communion to the sick who need this all-important nourishment to sustain them in this life and in eternity. The problem with the old practice was that many incidences of deaths occurred without the administrations of the required last sacramental aids of 'extreme unction' because no one could be actually sure of when it was 'point of death' or *articulum mortis*. Even several souls at the dawn of such critical points of death could not receive the scrupulously-reserved-for-final-moment sacrament and *Viaticum*.

### ***A Relaxation of the Law in Danger of Death***

Canon 844 § 4 actually prescribes that:

If there is a danger of death or if, in the judgment of the diocesan Bishop or of the Bishops' Conference, there is some grave danger and pressing need, Catholic ministers may lawfully administer these same sacraments [of penance, anointing of the sick and the Eucharist] to other Christians not in full communion with the Catholic Church, who cannot approach a minister of their own community and who spontaneously ask for them, provided that they demonstrate the Catholic faith in respect to these sacraments and are properly disposed.<sup>13</sup>

The foregoing section of the canon is intended for other Christians mainly of the western extraction such as the protestants who do have the required Catholic faith regarding the recommended sacraments who in danger of death, in the absence of their own minister, have spontaneously asked them for them and are well disposed.<sup>14</sup> If these sacraments of

healing could be administered to non-Catholics, how much more should they be given to repentant Catholics in danger of death even though they have being in some irregularity such as, those living in concubinage, mere customary or civil marriages, and the divorced and remarried. At least, it is recommended that “sacramental absolution is not to be denied to those who, repentant after having gravely sinned against conjugal chastity, demonstrate the desire to strive from sinning again, notwithstanding relapses”.<sup>15</sup> This latter recommendation is irrespective of whether there is danger of death or not; it regards ordinary daily practice of giving room to these Christians in suchlike irregularities. Wider margin for reconciliation through the reception of the sacraments of penance, anointing and the Eucharist is given to the faithful when there is danger of death.

By Christ's faithful or *Christifideles*, it is meant those who have been incorporated through Baptism into the Church, or those formally received into the Church with valid Baptism of other ecclesial bodies, and who have not by a formal act of the will separated themselves (*cf.* canon 1117) and who have not incurred the maximum sanction of excommunication officially declared or irrogated by the competent ecclesiastical authority (*cf.* canon 96). While the Holy Mother Church hardly inflicts officially the maximum penalty of Excommunication but if done, separates one from the communion of the faithful until remission of it is received (*cf.* canon 1331). The sole actual known case to me of a faithful who has been officially excommunicated from the Church is Archbishop Milingo, former Archbishop of Lusaka in Zambia.

Moreover, canon 915 states categorically that, “those upon whom the penalty of excommunication or interdict has been imposed or declared, and others who obstinately persist in manifest grave sin, are not to be admitted to Holy Communion”. The reason for such restriction is obvious, since worthy external communication at the Eucharist can only be fruitful if the inner channel of grace has not been ruptured in the soul. It would therefore amount to an absolute contradiction to feign external communion through participation at the Eucharist when such act harms the soul internally due to non-disposition for worthy reception. Therefore, let everyone examines his conscience thoroughly before partaking of the Body of Christ, lest he eats damnation unto himself (1 Cor 11:27-29).

However, according to canon 1352 § 1,  
 if a penalty prohibits the reception of the  
 sacraments or sacramentals, the prohibition is  
 suspended for as long as the offender is in danger  
 of death.

Thus, in danger of death, there is a general suspension of the law in order to minister sacramentally to the souls of the faithful irrespective of their spiritual condition in the preservation of the obligation of communion: of the bond of faith, sacraments and ecclesiastically discipline (*cf.* canon 205). In danger of death, a baptised person who in whatever irregularity: be it concubinage, polygamy, occultism, censures, lapsed practise of the faith or even notorious abandonment of the faith, is allowed, as long as the danger lasts and as long as such soul is willing to embrace the part of reconciliation, to the sacramental life of Confession, Anointing of the Sick and even Communion. The reason given such relaxation of law is understandable since the supreme law of the Church is the salvation of souls (*cf.* canon 1752) and the purpose of penalties or disciplinary restrictions is to reform the offender and to repair the damages done by the scandal caused, the law therefore wisely foresees some circumstances like during danger of death in which a suspension or relaxation of the law becomes preferable in order to guarantee the ultimate end of the Church for salvation.<sup>16</sup> However, due caution is to be observed to avoid putting in jeopardy the veritable beliefs of the faithful and as such the admittance to sacramental life while the danger of death lasts is to be done discretely and most probably in private.

### **Specific Dispensations for sacramental reconciliations during danger of death**

#### ***Admittance to the Sacrament of Reconciliation in Danger of Death***

Any of Christ's faithful can be fully reconciled sacramentally when and as long as there is danger of death by any priest even though officially excommunicated. This canonical regulation shows the largesse of ecclesiastical practice at the service of the supreme law of salvation of souls. In this regard, canon 976 emphatically and extensively declares that

any priest, even though he lacks the faculty to hear confessions, can validly absolve any penitents who are in danger of death, from any censures and sins, even if an approved priest is present.

In the same way, canon 977 asserts that “the absolution of a partner in a sin against the sixth commandment of the Decalogue is invalid, except in danger of death”. Previously, in the old legal disposition of canon 882 of the 1917 *Code of Canon Law* allowance was given for the valid absolution of all sins and censures when there was danger of death except for the absolution of one's partner in the sin against the sixth commandment of the Decalogue which was still retained as illicit under some circumstances (canon 2367 of the *CIC/17*). Unlike the code of the old dispensation, canon 976 of the new code places no restrictions on the confessor or on the penitent and so any priest may absolve, validly and licitly, of any sin or censure, of any penitent in danger of death even if such is an accomplice in a sin against the sixth commandment.<sup>17</sup> However, the obligation remains to make recourse within one month of recovery from danger of death to the competent if one had been absolved from officially declared censures reserved to the Holy See according to canon 1357.<sup>18</sup>

Moreover, the faculty to hear confession is usually restrictive but “in danger of death, every priest is obliged” (canon 986 § 2) to hear the confession of Christ's faithful. This includes priests who may be under the sanction of excommunication since the urgency of the salvation of soul relapses such extant prohibition (*cf.* 1352 § 1). Ordinarily, “for valid absolution of sins, it is required that in addition to the power of order, the minister has the faculty to exercise that power in respect of the faithful to whom he gives absolution” (canon 966). Though integral and individual confession of one's sins is obviously the norm, in situation of death, general absolution may be carried out in so far the penitents are recommended to first make an act of contrition as long as time permits (canon 962). The individual confession and integral confession of sins constitute the only ordinary way for the reconciliation of the faithful but when the conditions required by canonical discipline of grave necessity occurs such as danger of death the extraordinary form of general confession and absolution is allowed.<sup>19</sup>

### ***Anointing of the Sick in Danger of Death***

The sacrament of the anointing of the sick is properly meant for those in danger death due to illness. So it not presupposed general cases of danger of death but only for the sick, and especially those sick and in danger of death. Thus canon 998 declares that

The Anointing of the Sick, by which the Church commends to the suffering and glorified Lord the faithful who are dangerously ill so that he may support and save them, is conferred by anointing them with oil and pronouncing the words prescribed in the liturgical books.

Even in the event of doubt as to whether the sick person has the use of reason or is dead, the sacrament is still to be administered (canon 1005). However, there is a particular prohibition which deviates from the general suspension of the law in danger of death since “the anointing of the sick is not to be conferred upon those who obstinately persist in a manifestly grave sin” (canon 1007). Thus the anointing of the sick requires a disposition of conversion which may be guaranteed if the sick person is penitent and accepts first to undergo confession of sins with perfect contrition and sincere resolution for amendment henceforth.

### ***Admittance to the Holy Eucharist as Viaticum in Danger of Death***

Canon 921 states succinctly and has been elucidated on earlier that,

Christ's faithful who are in danger of death, from whatever cause, are to be strengthened by Holy Communion as Viaticum (§1).

While the danger of death persists, it is recommended that Holy Communion be administered a number of times, but on separate days (§3).

The ordinary ministers of Viaticum, that is, Holy Communion to the sick is the parish priests, assistant parish priests and the superiors of a clerical religious community with regard to those who are members therein (canon 911 §1). However, in case of necessity, that is, there is need to give Holy Communion to a sick member of the faithful, the permission

of the proper parish priest, assistant parish priest or religious superior of such faithful is presumed as long as one is able to notify any of them of the occurred act (canon 911 §2).

Ordinarily, Holy Communion is administered to children who have reached the age of reason, have sufficient knowledge, have been carefully prepared and do have the requisite faith and devotion to participate worthily therein (canon 913 §1). However, canonical prescription allows that infants in danger of death, having earlier received baptism may be admitted to Holy Communion as long as they can distinguish it from ordinary food (canon 913 §2).

### ***Confirmation in Danger of Death***

Ordinarily, unless there is a grave reason to the contrary, an adult who is baptised is to be confirmed immediately after baptism and is to participate in the Eucharistic celebration also by receiving Holy Communion (canon 866). This is the standard practice of the Church as regard full Christian initiation. The legitimate age for the reception of the sacrament of confirmation therefore is from when persons have reached the age of discretion, otherwise known as the age of reason, which is presumed at the attainment of seven years of age, having first received baptism, suitable instruction and being properly disposed. Dispensation may be given for the use of reason, proper instruction and renewal of baptismal promises in the event of danger of death (*cf.* canon 889 § 2). The Bishop's Conference may decide on a different age for the reception of the sacrament of confirmation.

Whenever there is a danger of death, confirmation may be conferred according to the prudent judgment of the minister to those about the age of discretion (canon 891) who have not previously been confirmed. Canon 883 outlines those having the faculty to confirm: 1° the diocesan Bishop and his equivalents within the confines of their jurisdiction; 2° the priest by virtue of his office or mandate may do so too when he baptises one who is no longer an infant or admits a person already baptised into full communion with the catholic Church; and 3° “in respect of those in danger of death, the parish priest or indeed any priest”. Consequently confirmation can be administered to the baptised (faithful) who are in danger of death by any priest (canon 883 n 3°). Be that as it may it remains the special function of the parish

priest to administer the sacrament of confirmation to those who are in danger of death (canon 530 n. 2°).

Apart from the foregoing considerations made for the faithful in danger of death while also in some situations of irregularity, the Church is also desirous of the proper incorporation or integration of the non-baptised persons and catechumens. This latter category could be similarly helped in order to facilitate the salvation of soul. Special consideration is given to the non-baptised who is also in some form of polygamous relation.

***Dispensation from Ecclesiastical Impediments and Form to Celebrate Marriage in Danger of Death***

There are two basic ways regarding dispensations of matrimonial impediments of ecclesiastical origin and of canonical form during danger of death: through the official process of the local ordinary, parish priest, or confessor (canon 1079 §§ 1, 2, or 3); and secondly through the sworn declaration of couples that they have no impediments (canon 1068). Canon 1079 § 1 states categorically that, “when danger of death threatens, the local Ordinary can dispense his own subjects, wherever they are residing, and all who are actually present in his territory, both from the form to be observed in the celebration of marriage, and from each and every impediment of ecclesiastical law, whether public or occult, with the exception of the impediment arising from the sacred order of priesthood”. The same faculty of dispensation in similar circumstances as the foregoing is given to parish priest, a properly delegated sacred minister, or any available priest or deacon even though may not possess the relevant faculty through delegation (canons 1079 § 2 and 1116 § 2). The dispensing power of confessors within or outside the internal-sacramental forum in the said circumstances regards only occult impediments (canon 1079 § 3). The second mode of personal dispensation concerns where there is “danger of death and if other proofs cannot be obtained, the affirmation of the contracting parties, even sworn if the case warrants it, that they are baptised and are not prevented by no impediment is sufficient unless there are indications to the contrary (canon 1068).

The canonical form that is being referred to here is, the requirement by ecclesiastical law that valid marriages can only be contracted by the catholic faithful when done in the presence of the local Ordinary or parish priest or the priest or

the deacon delegated by either the first two (that is, local Ordinary or parish priest) as official representative in the name of the Church who ask the parties to manifest their consent, and in the presence also of two witnesses (canon 1108 §§ 1 & 2).

Furthermore, such marriages have to be celebrated in the parish which either parties has a domicile or quasi-domicile or a month's residence or, if there is a question of *vagi* (or nomads), in the parish in which they are actually residing (canon 1115). Thus with the permission of the local Ordinary or the parish priest, marriages may be celebrated elsewhere within or outside territory (canon 1115). Canonical form is therefore dispensable in some circumstances and danger of death by the competent authority so that undue delay will not be caused by the inability of the official representative of the Church of the sacred orders to be reached.

When dispensation is granted, the marriage may be celebrated without observing the usual canonical form of an official assistant in the name of the Church, or of domiciliary (canon 1118 §§ 1, 2 & 3) or the use of rites of the liturgical books (canon 1119). Canon 1116 § 1 which concerns extraordinary form of celebration of marriage still retains the aspects of two or common witnesses even when the competent or official assistant, domiciliary forum and liturgical rites are dispensed with. Thus, "as far as the two common witnesses are concerned, nothing specific is established for them ... any person (laypersons, clerics or religious; baptized or not, blood relations, *et cetera*) may undertake this commitment, provided that they have use of reason and can give witness to the celebration of marriage".<sup>20</sup> Mere civil, customary, or similar marriages within the expected canonical framework of any two witnesses who have the use of reason to testify about its occurrence become valid and *ipso facto* it is sacramental according to the norm of canon 1055 § 2.

### ***Reserved Dispensation of Impediment of Holy Orders to Apostolic See even in Danger of Death***

Canonical regulations allow for wide dispensations by the local ordinary of sins, censures and impediments, including that of the perpetual vow of chastity in religious institute of pontifical right and that of crime, whenever there is danger of death in order to coherently uphold the axiom of the supreme law of salvation of souls in the Church. Nevertheless, the

impediment of Holy Orders remains reserved to the Holy See. This means that even if the subject concerned is reconciled temporarily during danger of death and given useful sacraments penance, anointing of the sick and the Eucharist, there still cannot be the granting of dispensation from the vow of celibacy by the local ordinary thereby allowing him valid celebration of matrimony but strictly reserved to Holy See. Thus, those who are bound by the vow of sacred orders invalidly contracts marriage, be it civil or otherwise (canon 1087).

On this margin of dispensability of impediments during danger of death by the local ordinary, canon 1078 elucidates the following facts that

§ 1 The Local Ordinary can dispense his own subjects wherever they are residing, and all who are actually present in his territory, from all impediments of ecclesiastical law, except for those whose dispensation is reserved to the Apostolic See.

§ 2 The impediments whose dispensation is reserved to the Apostolic See are:

1° the impediment arising from sacred orders or from a public perpetual vow of chastity in a religious institute of pontifical right;

2° the impediment of crime mentioned in cann. 1090.

The impediment of public perpetual vow of chastity in a religious institute of pontifical right is ordinarily not dispensable by the local ordinary as attested to by subsection one of section two of the foregoing canon. But when there is danger of death according to the proceeding canon 1079 § 1, the ordinary can dispense from all impediments in order for to allow proper celebration of marriage except from the impediment Holy Orders which therefore remains reserved. The foregoing canon gives the local ordinary who may not necessary be of Episcopal character the faculty to dispense from the impediments even of public perpetual vows of religious institutes of pontifical right given the temporary incidence of danger of death in the life of such religious in order to have valid matrimony. If the religious institute is of diocesan right, the local ordinary can dispense from perpetual vow anytime even when there is no danger of death. This impediment requiring dispensation does not in any way bind

anybody, be it of society of apostolic life or secular institute who is under private vow. The local Ordinary therefore can dispense from all impediments of ecclesiastical law, except only that arising from the priesthood.<sup>21</sup>

Equally, the impediment of crime as defined by canon 1090 § 1 is the intentional killing of one's partner in marriage or that of another in order to contract marriage thereof with the intended spouse is not dispensable according to the norm of canon 1078 § 2 n° 2. Dispensation from the foregoing impediment of crime is under normal circumstances reserved to the Holy See. Be that as it may, a dispensation could be given by the local ordinary under situation of danger of death in order to validly contract a marriage. Nevertheless, care should be taken to exercise refrain where the murder is publicly known or likely to be known since it borders now on civil law or a criminal case. In suchlike situations, simple reconciliation, where possible, of the faithful in danger of death while also in irregularity could be given thereby allowing the three sacraments of penance, anointing of the sick and the Viaticum.

### ***Indispensable Impediments of Divine or Natural Law even in Danger of Death***

There are no dispensations for impediments of divine or natural order. The impediment of age of sixteen for males and fourteen for females in order to contract marriage being a human law allows for the possibility of dispensation, usually not more than one year (canon 1083 § 1). In fact, higher age of eighteen for either sex in order to contract matrimony validly is in force according to the canonization of civil prescription in Nigeria. Canon law gives this counsel to national Episcopal conferences to establish the required age for matrimony as it discourages except in necessity and with the permission of the local ordinary any marriage that cannot be recognized by civil law of the place of celebration (canon 1071 n. 2°).

Impotency, be it of natural or accidental cause, cannot be dispensed with in order to have legitimate validation of marriage (canon 1083 § 1). Antecedent and perpetual impotence contradict the very essence of the end of marriage. With impotency, a ratified marriage cannot be consummated. The Roman Pontiff using his petrine privilege or vicarious power can thus dispense with a ratified but not consummated matrimony due to the foregoing or any other cause (*cf.* canon

1142). This is not so with sterility which does not invalidate marriage (canon 1083 § 3).

Impediment of a previous bond of marriage, that is, a ratified and consummated marriage being of a divine law cannot be dispensed by any human power (canon 1085 § 1). This fact is true even if the marriage was only ratified and not consummated. Dissolution of a previous bond of marriage can only be by death (canon 1141), or must be subjected to the decision of the ecclesiastical tribunal to resolve when suspected of nullity and no presumption is to be taken by anyone in this regard (canon 1085 § 2). Divine law is very lucid on especially from the teaching of Jesus Christ Himself that from the beginning God made them male and female and so man leaves his father and mother and becomes joined to his wife; thus what God has joined together no one must divide (Mt 19:6).

It is not quite clear whether the impediment of consanguinity be considered of natural law but with more of human specification. The impediment is certainly of natural divine law when it is of the direct line, that is between parents and children and similarly likely to be so between brothers and sisters. So canonical regulation declares the impediment of consanguinity not dispensable in all degrees of the direct lines; though it considers marriage invalid in the collateral line up to the fourth degree, it is never dispensable in the second degree collateral (canon 1091 §§ 1, 2, 3 and 4). Thus, canon 1079 § 3 highlights the fact that “a dispensation is never given from the impediment of consanguinity in the direct line or in the second degree of the collateral line”.

Generally, those who lack good use of reason (*usus rationis*) are unable to carry out any juridical act acceptable as valid by the law (canons 99, 124 § 1, 97 § 2). So insanity is an irregularity for the receptions of sacred orders (1041 n. 1°) while it is also incapability for the contracting of marriage (canon 1095). The impediment of insanity cannot be dispensed.

### **The Baptism of the Non-Baptised and the Catechumen**

In danger of death, the conditions required for the baptism of the non-baptised adults are: if such persons have some knowledge of the principal truths of the faith together with the manifestation, in some manner, of the intention to receive baptism (canon 865 § 2). A catechumen obviously qualify to be baptised *ipso facto* since the preparation for baptism

already begun is an eloquent testimony of the manifest intention to be baptised. The principal truths of the faith are such general doctrinal knowledge of the trinity, the forgiveness of sins, eternal life and so on.

Most people living in Christian environments may be presumed to have some basic awareness of such truths. Even in doubt, that is, if the minister has no certainty of the contrary being the case, the soul in danger may be given baptism. Accurate documentations of the event are to be forwarded to the parish records where the candidate is domiciled. In the event of recovery from the situation of the danger of death, the candidate should be encouraged to undergo further instructions and be admitted fully to the sacramental life of the Eucharist and the other sacraments.

Infants, that is, children below the age of reason of seven years, are usually baptised through the consent of their parents or guardian within the first few weeks of birth (canon 867 § 1). If infants are in danger of death, the code prescribes that they should be baptised without any delay (867 § 2). The reason for the foregoing prescription is based on the supreme law of the salvation of soul which supersedes any legal barriers in such situations of emergencies. In fact, “an infant of catholic parents, indeed even of non-catholic parents, is lawfully baptised in danger of death, even if the parents are opposed to it” (canon 868 § 2). The law of due process in such situation is *ipso facto* dispensed by the superior need of salvation in the mind of the Church.

Similarly, “an abandoned infant or a foundling is to be baptised unless diligent inquiry establishes that it has already been baptised” (canon 870). Moreover, “aborted foetuses, if they are alive, are to be baptised, in so far as this is possible” (canon 871). Holy Communion is usually allowed to baptised children who have been formally admitted to it having reached the age of reason. Canon 913 § 2 states that “the Blessed Eucharist may, however, be administered to children in danger of death if they can distinguish the Body of Christ from ordinary food and receive Communion with reverence”. The foregoing presupposes baptised children.

It is a Christian obligation to ensure that souls in danger of death are duly baptised if need be but, in emergency or “in case of necessity, any person can baptise provided that he has the intention of doing that which the Church does and provided that he pours water on the candidate's head while saying: 'I baptise you in the name of the Father, and of the Son,

and of the Holy Spirit” (CCC, 1284). Due record of event should always be made in each case and forwarded to the relevant parish of the candidate.

If the non-baptised in danger of death is in an irregular union of concubinage or polygamy, he or she is still to be baptised as long as he or she, along with the basic demands already mentioned previously, accepts to regularize invalid unions as soon as possible. This is the case if such souls are conscious and are able to respond; otherwise, they are given baptism in hope of their reconciliation when recovered. If the non-baptised candidates along with the non-baptised spouse(s) accept to ratify their invalid unions then they can thus be allowed to the sacraments of full Christian initiation of Baptism, Confirmation and the Holy Eucharist. However, in the case of polygamy, he or she may retain one of them while the extra spouses are to be sent away (canon 1148 § 1) except if the permission of the local ordinary is given for the extra spouses to live together as 'brother and sister' under the same roof.

## **Conclusion**

Indeed, the salvation of souls is the supreme law of the Church (cf. canon 1752). To re-echo Christ, the Son of Man is Lord even of the Sabbath. What the Lord wants is the merciful application of the law. That is, it should be done with a human face. Nevertheless, this is not an invitation to lawlessness, liberalism or anarchy. It only calls for a matured Christian obedience to the Law since the Son of Man has not come to abolish the law and the prophets but to fulfil them. And so every dot of the law needs respect and compliance within the limits of human possibility.

Any subscription to the law that leads to the destruction of the soul of man is meaningless and futile. Law is indeed supposed to be a guide to human development, freedom and salvation. Thus, God is maximally glorified over the salvation of a soul, for whom His precious Son, Jesus Christ, became incarnated in the human flesh, suffered severely the ignominious passion, crucified with great outpouring of blood, died forsaken on the shameful Cross, rose again to sit at the right hand of the Father in the glory of heaven, and poured forth graciously on the Church the living spring of His life giving Holy Spirit.

## ENDNOTES

- <sup>1.</sup> Pope John Paul II, *The Code of Canon Law*, New revised English Translation, Theological Publication in India, Bangalore, 1983.
- <sup>2.</sup> Cf. Eduardo Labandeira, “commentary on canon 1752” in *Code of Canon Law Annotated* edited by Ernest Caparros, Michael Theriault and Jean Thorn, second edition revised and updated of the 6<sup>th</sup> Spanish language edition, Wilson & Lafleur Limitée, Montréal (Canada), 2004, p. 1374: “In order to bring the *CIC/83* to a close, nothing is more appropriate than to remember that canonical equity the spirit of the Gospel in dealing with particular subjective situations can and should be applied in harmony with the supreme law of the Church which is the salvation of souls”.
- <sup>3.</sup> J. P. Beal, James A. Coriden and Thomas J. Green (eds.), *New Commentary on the Code of Canon Law* commissioned by Canon Law Society of America, Paulist Press, New York, 2000, p. 1847.
- <sup>4.</sup> Cicero, *De Legalibus* 3.3.8: *salus populi suprema lex esto*, cf. Loeb Classical Library, 1977, pp. 466-467. Cf. also B. Nicholas, *An Introduction to Roman Law*, Clarendon, Oxford, 1962, p. 15.
- <sup>5.</sup> William Barclay, *the Gospel of Luke*, Revised Edition, The Daily Study Bible Series, The Westminster Press, Philadelphia (USA), p. 287.
- <sup>6.</sup> G. B. Caird, *Saint Luke*, the Pelican New Testament Commentaries, Penguin Books, London, 1963, pp. 251-252.
- <sup>7.</sup> Pope John Paul II, *The Code of Canon Law*, op. cit., canon 921.
- <sup>8.</sup> Cf. Committee on the revision of the Code of Canon Law, *Communicationes* 15 (1983) 194 at canon 867, Vatican City, 1969-.
- <sup>9.</sup> Secretariat for Promoting Christian Unity, Instruction “In quibus rerum circumstantiis” IV 1 in *Acta Apostolicae Sedis* 64 (1972) 518-525 [cf. Austin Flannery (ed.), *Vatican Council II*, vol. I, Revised Edition, Dublin, 1988, p. 557].
- <sup>10.</sup> Cf. Ecumenical Second Vatican Council, Constitution on the Sacred Liturgy *Sacrosanctum concilium*, n. 74.
- <sup>11.</sup> J. P. Beal et alii (eds.), *New Commentary on the Code of Canon Law*, op. cit., p. 1115.
- <sup>12.</sup> *Ibid.*
- <sup>13.</sup> Cf. Pope John II, *The Catechism of the Catholic Church*, Paulines, Nairobi (Kenya), 1994, no. 1401: “When, in the Ordinary’s judgment, a grave necessity arises, Catholic ministers may give the sacraments of Eucharist, Penance, and Anointing of the Sick to other Christians not in full communion with the Catholic Church, who ask for them of their own will, provided they give evidence of holding the Catholic faith regarding these sacraments, and possess the required dispositions.
- <sup>14.</sup> Cf. Pope John Paul, Encyclical Letter *Ecclesia de Eucharistia*, Libreria Editrice Vaticana, Vatican City, no. 46: “these conditions from which no dispensation can be given, must be carefully respected, even though they deal with specific individual cases, because the denial of one or more truths of the faith regarding these sacraments and, among these, the truth regarding the need of the ministerial priesthood for their validity, renders the person asking improperly disposed to legitimately receive them”.
- <sup>15.</sup> Pontifical Council for the Family, *The Pastoral Care of the Divorced and Remarried and Vademecum for Confessors concerning some aspects of the Moral Conjugal Life*, Pauline Books & Media, Boston

(U.S.A.), 1997, n. 11.

16. Cf. “commentary on canon 1352 § 1” in Gerard Sheehy et alii (eds.), *The Canon Law Letter & Spirit A Practical Guide to the Code of Canon Law*, Geoffrey Chapman, London, 1995, p. 776.
17. Tomás Rincón, “commentary on canon 976” in *Code of Canon Law Annotated* edited by Ernest Caparros et alii (eds.), *op. cit.*, p. 753.
18. Pope John Paul II, *The Code of Canon Law, op. cit.*, canon 1357: “§ 1 Without prejudice to the provisions of cann. 508 and 976, a confessor can in the internal sacramental forum remit latae sententiae censure of excommunication or interdict which has not been declared, if it is difficult for the penitent to remain in a state of grave sin for the time necessary for the competent superior to provide. § 2 In granting the remission, the confessor is to impose upon the penitent, under pain of again incurring the censure, the obligation to have recourse within one month to the competent superior or to a priest having the requisite faculty, and to abide by his instructions. In the meantime, the confessor is to impose an appropriate penance and, to the extent demanded, require reparation of scandal and damage. The recourse, however, may be made even through the confessor without mention of a name. § 3 The same duty of recourse, when they have recovered, binds those who in accordance with can. 976 have had remitted an imposed or declared censure or one reserved to the Apostolic See”.
19. Pope John Paul II, Post-Synodal Apostolic Exhortation on Reconciliation and Penance in the Mission of the Church Today *Reconciliatio et Paenitentia*, Pauline Boods & Media, Boston (U.S.A.), 2 December 1984, no. 33.
20. Rafael Navarro Valls, “commentary on canon 1116” in *Code of Canon Law Annotated* edited by Ernest Caparros et alii (eds.), *op. cit.*, p. 872.
21. “Commentary on canon 1079 § 1” in Gerard Sheehy et alii (eds.), *The Canon Law Letter & Spirit, op. cit.*, p. 594.