

AURICULAR CONFESSION AND THE COUNCIL OF TRENT

Renewal of the sacrament of penance is a matter of primary concern in the pastoral mission of the Church today. A call for such was issued by the Council Fathers in the *Constitution on the Sacred Liturgy*¹ and has been the subject of considerable discussion since then.² As a result, the theologian must address himself to this question because of his obligation to interpret the needs of his own age in the light of God's word as handed down by the Church.³ But there is

¹ *Sacrosanctum Concilium*, III, 72.

² Cf. J. E. Corrigan, "Penance: A Service to the Community" in *Worship in the City of Man* (Proceedings of the 27th North American Liturgical Week) 1966, 108-17. This paper was the object of some controversy. Before being published in the Proceedings, it appeared in the *Catholic Standard* (Weekly Newspaper of the Archdiocese of Washington) on September 15, 1966, p. 4. Appraisals were given by the Very Rev. Francis J. Connell, C.Ss.R., and the Rev. John P. Whalen on pages 4-5 of the same issue. Father Corrigan responded on pages 5-6, together with remarks offered by Rev. George Wilson, S.J., Rev. Robert Hunt, and Rev. Carl J. Peter. The following week the same paper published a statement of the Most Reverend Archbishop (now Cardinal) Patrick J. O'Boyle on the sacrament of penance; cf. pp. 1, 5. See also: F. J. Buckley, S.J., "Penance in the Church," in *Chicago Studies* 5 (1966) 201-6; Walter Kasper, "Confession Outside the Confessional" in *Concilium* 24 (1967) 31-43.

³ In his address (*Libentissimo sane animo*), to the International Congress on the Theology of Vatican II, Pope Paul VI dealt with the relation between theology and the Magisterium. While asserting of the latter that its function is among other things "to pass authoritative judgment on new teachings and on the considerations proposed by theology as solutions to new questions," he emphasized as well the duties of the former. "Thus sacred theology has a twofold relationship with the Church's Magisterium and with the worldwide community of Christians. . . . It earnestly seeks to discover how the Christian community might translate its faith into practice, and it tries to grasp the truths, opinions, questions, and tendencies which the Holy Spirit stirs up in the People of God ("what the Spirit says to the Churches"). Using the methods and principles proper to its field, sacred theology must evaluate the faith of God's People as actually lived, and their aims, in order to bring them into harmony with the word of God and the doctrinal heritage faithfully handed down by the Church, and in order to propose resolutions to questions which arise when this faith is compared with actual life, with history, and with human inquiry." Translation taken from *The Pope Speaks*, XI (1967) 348-55. How

another reason as well. Auricular confession provides a crucial instance in which the teaching authority of the Church comes into the closest contact with the exigencies of theology as a living scientific discipline.

The problem is clear enough. A practice that may seem to be indicated at times because of special needs as well as a growth in understanding of the communal aspect of confession is not without at least apparent conflict with doctrinal pronouncements of the highest authority. There are pastoral reasons suggesting in certain circumstances general absolution without specific confession of sins.⁴ And yet the Council of Trent anathematized those asserting that for forgiveness divine law does not require the confession of mortal sins in species and number.⁵

the rights of both are to be reconciled is one thing; it is unfair to the Holy Father to have him assert one to the total exclusion of the other or to have him tell the theologian to listen to the Magisterium and do nothing else.

⁴ According to Catholic Faith, sacramental confession is an institution divinely ordained for the salvation of mankind. Nevertheless, the judicial power of forgiveness Christ conferred on His Church has been exercised with considerable variations in the past precisely in this regard. Cf. Paul Galtier, S.J., *De Poenitentia Tractatus Dogmatico-Historicus*, Rome (1956) p. V:

Poenitentiae tamen tum explicata praedicatione, tum sacramentalis administratione, tot ac tam graves subiit, decursu temporum, mutationes ac vicissitudines ut quid habuerit semper in Ecclesia certum ac firmum haud ita pateat nec facile manifestetur.

Few concrete details concerning the manner in which this confession of sins was to take place were prescribed by the Lord. With the passage of time, pastoral practice came to be determined exclusively neither by the real/supposed needs of the penitent nor by ecclesiastical tradition in isolation from the former. By means of papal directives (e.g. that of Leo the Great), provincial councils, local episcopal instructions and the like, the hierarchical Church figured very decisively. *Lumen Gentium* III, 26, looks in the same direction today for "moderators of penitential discipline." This notwithstanding, the theologian who chooses to ignore suggestions regarding contemporary adaptation of the sacramental rite in question runs the risk of failing to be taken seriously. For better or for worse, news media have brought such ideas to the attention of too many; cf. *Newsweek* (3, 13, 1967, p. 27). The question of general absolution without specific confession of sins will not be solved by pretending it does not exist or by presuming the Church has given no authoritative guidance on the matter in the past.

⁵ DS 1707. Subsequently Pope Innocent XI dealt with the question; cf. DS 2159. This must however be viewed in the context of the faculties granted military vicars by Pope Pius XII (Sacred Cons. Cong., Dec. 8, 1939); cf. A.A.S. XXXI, 710-2.

This study aims primarily at historical exposition of two points that are particularly relevant. First, the past few decades have seen notably different interpretations of the binding character of conciliar teaching.⁶ This is true in a special way of the Tridentine chapters and canons. It should prove useful to apply the results obtained to the cast of Trent's pronouncement regarding integral confession. To be precise, was this an elaboration of revealed truth or a disciplinary law pure and simple? Secondly, a growing amount of attention has been given to one meaning of divine law, *jus divinum*, in various contexts.⁷ The confession of post-baptismal sins is one. In its regard, Louis Monden noted that "... the expression *jure divino* had not yet (at the time of the Council of Trent) acquired the meaning we assign to it today and was often used for ecclesiastical and even for civil

⁶ Cf. Joh. B. Umberg, S.J. "Die Bewertung der Trienter Lehren durch Pius VI" in *Scholastik* 4 (1929) 402-9; Heinrich Lennerz, S.J., "Das Konzil von Trient und theologische Schulmeinungen" in *Scholastik* 4 (1929) 38-53; ———, "Notulae Tridentinae, Primum Anathema in Concilio Tridentino" in *Gregorianum* 27 (1946) 136-42; Raphael Favre, "Les condamnations avec anathème" in *Bull. de Litt. Ecclès.* 17 (1946) 226-41; 18 (1947) 31-48; Joaquín Salaverri, S.J., "Censuras de las tesis en teología" in *Estudios Ecclesiásticos* 23 (1949) 169-88; Sixtus Cartechini, S.J. De Valore Notarum Theologicarum, Rome (1951) 44-5; Piet Fransen, S.J., "Theologische Vervieuwing in de Genade-n Sacramententheologie" in *Bijdragen* 13 (1952) 286-9, esp. 287-8; ———, "Réflexions sur l'anathème au Concile de Trente" in *E.T.L.* 29 (1953) 657-72; A Lang, "Der Bedeutungswandel der Begriffe "fides" und "haeresis" und die dogmatische Wertung der Konzilsentscheidungen von Vienne und Trent" in *Münchener Theologische Zeitschrift* 4 (1953) 133-46; E. F. Latko, O.F.M., "Trent and Auricular Confession" in *Franciscan Studies* 14 (1954) 3-33; Fidel García Martínez, "Una novísima interpretación de los cánones Tridentinos" in *Rivista Española de Teología* (1955) 637-54; A. Kolping, "Qualifikationen, theol." in *L.T.K.* 8 (1963) 915-9; F. X. Lawlor, "Heresy" in *The New Catholic Encyclopedia* VI, 1062-3; P. De Letter, "Anathema" in *The New Catholic Encyclopedia* I, p. 481.

⁷ One recalls its inclusion in the conciliar discussions of Vatican II regarding collegiality. Subsequently Ed. Schillebeeckx, O.P., applied it to a concrete institution, the Synod of Bishops; cf. "The Synod of Bishops, One Form of Strict but Non-Conciliar Collegiality" in *IDO-C*, Doss. 67-9, published 3-12-67, (Eng. trans. by J. E. Gladwin). For other recent studies, see: Hubert Jedin, "Der Kampf um die bischöfliche Residenzpflicht 1562-63 in Il Concilio di Trento e la Riforma Tridentina *Atti del Convegno Storico Internazionale*, Herder, (1965) 1-26; Joh. Neumann, *Das Jus Divinum im Kirchenrecht*" in *Orientalium* 31 (1967) 5-8. Many insights of later theologians in this regard are traceable to the influence of Karl Rahner, S.J., "Über den Begriff des Jus Divinum im kathol. Verständnis" in *Schriften zur Theologie* V, 249-77.

laws."⁸ Is it really God's will or rather an ecclesiastical determination of the latter that requires man to confess his sins with specific and numerical denomination? Such questions cannot be answered without a study of the meaning of *jus divinum* at Trent and in particular in its fourteenth session.

The present investigation has more value than that of pure historical research. The real needs of the faithful are not always diagnosed with ease. Symptoms and their causes are readily confused. The process of differentiating between the two involves much more than a study of the patient's previous history. But the latter is often a prerequisite for successful treatment. I submit that a study of earlier dogmatic commitments made by the Church must not be brushed aside as if they were *totally* conditioned by their times. A determination of what the Magisterium intended by *divine law* in its requirement of specific confession is a dogmatic prerequisite for determining the course pastoral renewal of penance must take in the present. Consistency with and conformity with the message of Jesus regarding the sinner's access to God the Father is a condition for fruitful development of penitential doctrine and practice. If that message was not drowned out but rather continued in the ecumenical councils dealing with confession, their teaching can hardly be considered irrelevant when trying to establish what current pastoral needs really are. The Church not only can but shall use historical investigation of her *past* experience as a co-determinant of criteria for present practice in its aims and limits. When she does so, her reliance is not on a purely natural work in opposition or counterdistinction to the faith that justifies. For such research has an intrinsic connection with the mystery of grace, which it tends to illuminate.

I. ASSENT OF FAITH AND THE TRIDENTINE CANONS ON INTEGRAL CONFESSION

Long before the crucial ecumenical significance of Trent's canons on confession had been recognized, their value or binding force had been subjected to serious study by Catholic scholars. One of the earliest examples is the article of Johannes Umberg in 1929.⁹ This dis-

⁸ L. Monden, *Sin, Liberty, and Law*, (New York, 1965), pp. 47-48.

⁹ Joh. Umberg, "Die Bewertung der Tridenter Lehren durch Pius VI," *op. cit.*

tinguished editor of Denzinger's *Enchiridion* followed a procedure that was simple enough. He compared the censures Pius VI assigned to the propositions of the Jansenist Synod of Pistoia with the pronouncements of Trent on the same subjects. His purpose was to determine whether the Pope described as heretical propositions directly challenging the teaching of Trent. Finding two instances in which this was the case, he concluded that there at least Pius VI considered the respective canons of Trent as definitions of faith in the strict sense.¹⁰ He wondered, however, whether a sampling of two warranted a similar generalization with regard to the other 118 canons of Trent. A negative was forthcoming. At least in the case of the chapters or capitula of Trent, there were times when Pius VI saw them directly denied and failed to use the note *haeretica*.¹¹

It was, however, to be the achievement of Heinrich Lennerz in his historical research to focus attention directly on the Tridentine canons.¹² Are they all definitions of faith and condemnations of heresy in the strict sense? At least for the first canon, his answer was a guarded *NO*. In his opinion, the anathema affecting those rejecting the canonical Scriptures or ecclesiastical traditions stood in all likelihood for a penalty *latae sententiae*.¹³ In short, it threatened an excommunication without proposing the truth denied as being revealed by God and presented as such by the Church.

At the same time that Lennerz published his note, Raphael Favre came to a similar conclusion on a yet larger scale.¹⁴ Here was an ex-

¹⁰ *Ibid.*, p. 409. The canons are respectively the second in the thirteenth session (DS 1652), and the seventh in the sixth session (DS 1557).

¹¹ *Ibid.*, p. 405: "Obschon mithin die ganze Lehre der Pistoriensens (DS 2625) direkt gegen die Lehre des Tridentinums verstösst, wird sie von Pius VI dennoch nicht einfachhin für häretisch erklärt. Der Grund kann nur darin gesucht und gefunden werden dass die betreffenden Capita doctrinae des Konzils vom Papste nicht für eigentliche Glaubensentscheidungen ausgesehen werden. So spricht er denn auch nur von einem Gegensatz zur "doctrina" des Konzils, während er bei der Verurteilung des 23 Satzes von einem "error a Tridentino damnatus ut haereticus," beim 29 Satz von einem durch das Konzil definierten "articulus fidei," von einem "Dogma" gesprochen hatte. Das is um so mehr zu beachten, da ja ein Teil des zensurierten 25 Satzes gegen einen Canon des Konzils verstösst. . ."

¹² Heinrich Lennerz, "Notulae Tridentinae . . .," *op. cit.*

¹³ *Ibid.*, p. 142: "Unde dicendum videtur, esse summe probabile, immo forte certum, agi de poena latae sententiae."

¹⁴ Raphael Favre, "Les Condamnations avec anathème," *op. cit.*

tended study of numerous canons in Trent. He demonstrated clearly that the formula *anathema sit* in this Council was a variable. At least in one case, the necessity of confessing mortal sins prior to the reception of the Eucharist, it was not used though it had been suggested. The Acts give the reason. The Fathers could not agree whether this obligation was of divine or ecclesiastical law. Given this, they judged the note *haeretica* and the formula *anathema sit* too strong. Hence, they refrained from using it, though they did excommunicate those denying the fact of the obligation in question.¹⁵ Here (at the close of the thirteenth session), *anathema sit* was reserved for the rejection of heresy in the strict sense. But Favre asserts that such was not always the case.¹⁶ In Session 24 the Council anathematized any asserting that solemn religious profession does not dissolve a *ratum non-consummatum* marriage. But the Church, notes Favre, and not God Himself has determined what religious profession is, and *a fortiori* what solemn religious profession involves. If this was revealed in such wise that its explicitation could be proposed as a matter of faith, the same could be true of any Church law.¹⁷ The anathemas of Trent did not always condemn heresy and propose divinely revealed truth.

Albert Lang, a colleague of Hubert Jedin, agreed.¹⁸ Having begun his research with a study of the wide variety of meanings accorded to *haeresis* and *fides* by Melchior Cano, he proceeded to consider the same two terms in Vienne and Trent itself. *Anathema sit*, he concluded is not enough to warrant the assertion that the error thus rejected is heresy with its contradictory faith in the strict sense. When revealed truth was under consideration, other expressions were used to designate it; for example, it was referred to as the teaching of Christ, or of the Holy Scripture, or as a divine institution.¹⁹

No consideration of attempts to evaluate the dogmatic force of the

¹⁵ *Ibid.*, p. 233.

¹⁶ Was the procedure just described the rule at Trent? Favre replies: "*Nous ne le pensons pas.*" *Ibid.*, p. 233. He then offers an impressive list of canons to prove his point; cf. 234-9.

¹⁷ *Ibid.*, p. 234-5.

¹⁸ A. Lang, "Die Bedeutungswandel . . .," *op. cit.*

¹⁹ *Ibid.*, p. 146: "*Das theologische Urteil wird, das sei abschliessend nachdrücklich betont, für sehr viele Entscheidungen des Tridentinum auf "veritas divina et catholica" lauten, aber nicht schon deswegen, weil die Konzilsväter sie zur "fides" gerechnet oder über ihre Negierung das Anathema oder das Verdikt des Häresie ausgesprochen haben—diese Ausdrücke hatten damals noch eine*

Tridentine chapters and canons would be complete without due recognition paid to Piet Fransen. The latter became interested in this question because of his study of the famous canon dealing with divorce.²⁰ It is his contention that one can easily misunderstand the canons of Trent. To avoid this, it is important to keep in mind the fact that *faith* and *heresy* had broader meanings there than divinely revealed truth and its denial. The former stood for everything connected with salvation, all that is contained in the Scriptures and proposed universally by the church.²¹ This included ecclesiastical laws if strictly universal and not merely local.²² An *anathema* meant a major excommunication, as canonists have remembered better than theologians.²³ *Heresy*, by the same token, involved disobedience to the religious leaders Christ left to guide us to salvation.²⁴ It is imperative to recall that at times the real issue between Trent and the Reformers was the power of the Church to legislate in such a way as to bind in conscience. A particular canon might anathematize those rejecting a certain law or custom or practice and do so not to proclaim the latter as divinely established but rather to defend the authority of the Church in directing man to eternal life.²⁵

This interpretation of the pronouncements of Trent has been ac-

grossere Reichweite—, sondern weil sich aus dem Inhalt der Entscheidungen ergibt, dass sie als "Lehre Christi oder der Hl. Schrift" zu gelten haben oder eine "institutio divina" betreffen."

²⁰ P. Fransen, "Die Formel "Si quis dixerit Ecclesiam errare" auf der 24 Sitzung des Trienter Konzils" in *Scholastik* 25 (1950) 492-517; 26 (1951) 191-221.

²¹ P. Fransen, "Réflexions sur L'Anathème au Concile de Trente," *op. cit.*, p. 659: "La foi était tout ce qui se rapporte au salut, tout ce qui est contenu dans l'Écriture et est proposé universellement par l'Église."

²² *Ibid.*, p. 662: "On distinguait parmi les lois ecclésiastiques celles qui étaient absolument universelles, et celles qui étaient locales. D'après la terminologie du temps et du Concile, seules les premières appartiennent aux "dogmata fidei."

²³ *Ibid.*, p. 664.

²⁴ *Ibid.*, p. 660.

²⁵ *Ibid.*, p. 658, note 5: *Évidemment la négation générale du droit que possède l'Église de promulguer des lois ecclésiastiques obligeant en conscience, forme un des points essentiels dans l'attitude des Réformateurs.*" Cf. also: 667-8. On the latter one reads: "Il faut toujours se rappeler qu'un des principaux points de litige entre Wittenberg et Rome était le pouvoir de l'Église. Les Luthériens, quand ils lui reconnaissaient encore un certain pouvoir, prétendaient que celui-ci ne pouvait s'exercer que dans l'application pure et simple de l'Évangile."

cepted by others as well.²⁶ The one argument brought to bear against it has been the contrary practice of the theological manuals.²⁷ To be consistent, I think those taking this position would have to consider variations in subsequent editions of Denzinger's *Enchiridion* something of a scandal. And yet such is not the case.²⁸ Consequently, in the light of the foregoing, I take it for granted that not all the canons of Trent reject heresy in the strict sense of the term. But what of those dealing with auricular confession and its integrity?

In session fourteen, three canons were drawn up dealing with this question.²⁹ Each of them was complex, involving in the prodisa a number of very distinct considerations. This is important because those different members of one and the same canon vary notably from a theological point of view. The first of the three (canon 6, DS 1706) juxtaposes two ideas: the necessity of sacramental confession and the compatibility of private confession with the command and institution of Christ. If one inquires relative to the revealed character of both, the difference is obvious. To put it another way, the latter is more remote in terms of the biblical message than is the former. But one and the same anathema is directed against those denying either.

Similarly, the second of the three, (canon 7, DS 1707) envisions a number of things. These include the divinely-established necessity of integrity in the confession of sins as well as the existence and purpose of such integrity in the past. A clear, unambiguous admission of guilt is required and when found in previous centuries aimed at more than

²⁶ P. De Letter, "Anathema," *op. cit.*; F. X. Lawlor, "Heresy," *op. cit.*

²⁷ Fidel García Martínez, "Una novísima interpretación . . . , *op. cit.*

²⁸ Joaquin Salaverri, "Censuras de las tesis en teología," *op. cit.* Twenty-two Catholic theologians are named to corroborate the assertion that there is "unanimous" agreement regarding the presence of "solemn definitions" in the chapters as well as the canons of Trent; cf. p. 181. The reevaluation of the binding force of some Tridentine canons is not considered. However a significant fact is reported: Henricus Denzinger noted in the Prologue to his *Enchiridion Symbolorum* (the first nine editions: 1854-1907) that expositions of conciliar canons (Trent's chapters given as an example), are not definitions. But, Salaverri continues, C. Banwart observed in the tenth edition that the example chosen was a poor one. (Cf. p. 180). Did this not involve a previous presentation and subsequent one at odds relative to the defined character of Tridentine capitula?

²⁹ They were drawn up as a result of three propositions of the Reformers that were presented to the theologians at Trent on October 15, 1551. Cf. *Concilii Tridentini Actorum Partis Quartae Volumen Prius*, Tomus VII (Ed. Soc. Goerresiana: F. Brisgoviae, 1961), pp. 234-6.

providing the information needed to impose canonical penances. One anathema affects those denying either despite the fact that this involves balancing an historical ecclesiastical practice with what is proposed as a requirement of the divine law: namely, integrity.

The last of the three (canon 8, DS 1708) is something else again. The integrity required in confession is proposed as possible and more than a human invention. But the same canon anathematizes those asserting that the law of Lateran IV regarding yearly confession does not bind all adults and that as a consequence the faithful should be urged not to confess during Lent. It is very hard to see how anyone could maintain that as it stands in all its parts this rejects heresy in the strict sense. In conclusion, each of the Tridentine canons dealing with confession and its integrity embraces as well a number of practices of the Church dealing with the sacrament of penance. There is no indication whatsoever from the Acts that the Fathers meant to propose these practices as either immediately instituted by Christ (e.g. Lenten confession and the decree *Omnis Utriusque Sexus* of Lateran IV) or as the only way his command to confess sins can be executed (e.g. confession made to a priest *privately*). The canons in question deal with the gospel message concerning repentance, the consequences of that message and as well certain practices of the Church called into question by the Reformers. One and the same anathema rejected a number of considerations that are differently related to the object of divine faith. Hence the canons in question corroborate the evidence given by the authors cited above. Condemnation by means of an anathema at Trent did not signify without further ado that the truth opposed to that condemned was dogma in the restricted sense the term later acquired.

But I reject the assertion that as a result the integrity of confession is a purely disciplinary law. The Acts of the Council do not permit this interpretation. The theologians and Fathers were clear enough. To confess one's sins not merely to God privately but to the hierarchical Church and to do so clearly and unambiguously, these are not matters or obligations of purely ecclesiastical origin but rather of divine institution.³⁰ The Scriptures bear witness to this.³¹ Over

³⁰ *Concilii Tridentini . . .*, *op. cit.*, pp. 241-340. Both the theologians and the Fathers discussed the same propositions. Each group was asked whether the latter ought to be censured. On November 15th, the Cardinal Legate noted

all these things the Church, of course, has certain powers. Thus she can determine the concrete manner of making the confession (whether private or public), and can specify the obligation in terms of time or even with reference to conditions excusing from integrity.³² But as to the basic, hard fact of integral confession, that comes from God. At least for the Fathers at Trent, integrity was not one of those elements arising solely from the Church's determination of the sacrament; it was contained in or followed from Christ's institution. Concretely they differentiated between it and other prescriptions. It alone was necessary because of divine law.

There is still another way of determining the binding force of the Tridentine canons dealing with integral confession. That is to consult the proximate context of the session dealing with the sacrament of

(pp. 321-2), that the Fathers were divided among themselves concerning the divine law and the private or public character of confession. But they were in agreement that confession itself was required: ". . . cum omnes concordent, confessionem esse de jure divino." The same had been the case with the theologians; cf. p. 292. The commission of Fathers selected to draw up the canons actually strengthened the manner in which integrity was proposed as mandatory. The latter was referred to as necessary *jure divino* (p. 326), and approved in this form (p. 358), whereas the original proposition that was judged heretical simply denied it was required for forgiveness (p. 235). This addition most likely arose from a desire to assert an obligation in the same terms the Reformers were understood as denying it; cf. pp. 234-6 with special attention to Melancthon and Calvin.

³¹ The texts most frequently invoked were: John 20: 21-3; Mt. 18: 17-18; 16: 17-9; James 5: 16. Confession was said to have been instituted (James Laynes, *Concilii Tridentini . . . op. cit.*, p. 242) or insinuated as necessary (Ruard Tapper, *ibid.*, p. 249), by Christ. Integrity was proposed as included in this or its condition (*ibid.*).

³² Among the Council Fathers, cf. Clodiensis, *op. cit.*, p. 308: ". . . 4 articulus haereticus est, quia confessio est de jure divino. Quo vero ad modum faciendae confessionis, non est de jure divino, sed relictum juri naturae et ecclesiae. . . ." For similar views, see: Legionensis, p. 313; Siracusanus, p. 304. Relative to the yearly confession, cf. Ruard Tapper in his written votum: *Monumentorum ad historiam Concilii Tridentini . . . amplissima collectio*, ed. J. Le Plat, Louvain (1784) IV, 291: ". . . expedit populo Christiano quod praecepti divini de confitendo fiat determinatio ad tempus. . . ." Relative to the circumstances excusing from integrity, cf. J. Laynes, *Concilii Tridentini . . . op. cit.*, p. 244: ". . . ecclesia ea peccata praecipit confiteri, quorum quis memoriam habet. Alias autem Christus impossibilia praecepisset, non ecclesia. . . ." Similarly Tapper, *ibid.*, p. 250; Peter Malavenda, *ibid.*, p. 251: ". . . ecclesiam non exigere a peccatore impossibile, sed quod faciat, quantum in se est, praevia matura discussione et ea quorum recordatur."

penance. Interestingly enough, the previous session had dealt with the necessity of absolution from mortal sins as a disposition for the reception of the Eucharist. Luther was understood as having challenged this by opting for the sufficiency of faith.³³ Here one finds a classical example of how earlier theological history influenced the Council. Cajetan had definitely denied that the obligation of confessing mortal sins prior to Communion arose from divine law.³⁴ It was one thing to assert that more than faith was necessary; here Tridentine theologians and Fathers were agreed among themselves against Luther. But to say that the further element required for the Eucharist was such confession was another matter. To condemn with an anathema any denying this would involve the Council in solving theological disputes among the Scholastics. A difference of opinion relative to procedure resulted. Basically no consensus could be reached as to whether God's law required confession in the case in question or not. As a result, it was decided not to use the formula *anathema sit* or to censure as heretical those denying the need of such confession even in conditions when it was possible. The Council could and did excommunicate those denying the existence of any such obligation at all. But an anathema in this case was too severe and unjustified. The reason was simple. There was disagreement as to whether the obligation under consideration arose from the divine law or that of the Church. The Scriptures were adduced in favor of the former but were not considered conclusive.³⁵

In short, session thirteen on October 11, 1551, reserved its anathema for a denial of what was divinely revealed or of divine law.³⁶ Nine

³³ *Concilii Tridentini . . .*, *op. cit.* 111-229.

³⁴ *Ibid.*, p. 114.

³⁵ Thomas de Vio Cajatanus, *Summa de peccatis et novi testamenti ientacula*, Rome (1525) fol. 24: "*Sine confessione autem, si rationabilis subest causa non confitendi, excusatur communicans, quia praeceptum de confessione praemittenda communioni non est de jure divino nec jure positivo, quum nullibi inveniat, nisi semel in anno.*"

³⁶ The opinion of Francis de Toro will illustrate the point. Cf. *Concilii Tridentini . . .*, *op. cit.*, p. 130: "*10^o (articuli) prima pars de sola fide haeretica est, secunda de confessione non, quia potest esse, quod quis aliquo alio modo sit in gratia, quando accedit ad sacramentum hoc et tunc non indigeret confessione, ut puta, cum quis est vere contritus. Et probatio, quam requirit Paulus (I Cor. 11:28) potest alio modo fieri, quam per confessionem.*" For the opposite interpretation, cf. Francis de Heredia, *Ibid.*, p. 134.

days later the Council took up the sacrament of penance and on the 25th of November approved canons anathematizing those denying that integral confession of sins was required by divine law. There is an antecedent probability that *divine law* and *anathema* were used in the same sense with regard to confession in sessions 13 and 14. The Acts of session 14 bear this out. The requirement of confession and indeed of clear and unambiguous confession is therefore more than a disciplinary law of the Church as far as the Fathers of Trent were concerned. They saw it connected necessarily with Christ's revelation concerning the sinner's return to the Father.³⁷

But what does this mean? To connect integrity with the law of God is to establish it as a definite value and obligation. But given the mysterious character of the divine will even after its revelation, questions cannot but arise concerning it.

II. DIVINE LAW AND INTEGRITY OF CONFESSION AT TRENT

Monden rightly observed that the term *jus divinum* had a great variety of meanings even as late as Trent.³⁸ If one accepted as true that "He who hears you hears Me," (Luke 13:16) then ecclesiastical law was also somehow at least remotely divine law.³⁹ In asserting that integral confession was necessary *jure divino*, did Trent mean only that God's Church required it? I submit that it meant more.

To understand this, however, one must recall that neither the theologians nor the Fathers of this Council aimed at writing tractates. No effort was made to treat all aspects, even the important ones, of a particular doctrine, penance included. Those points that were taken up were concretely determined by the positions of the Reformers. But what of the tenets held in common by the Reformers and the Fa-

³⁷ The synonymous meaning of both is brought out by the votum of Melchior Cano, *ibid.*, p. 126: "*Non videtur igitur iste articulus damnandus ut haereticus; alias omnes supradicti doctores etiam ut haeretici damnarentur, licet ipse dictum Cajatani opinionem non teneat, quia quod quis ante sumptionem Eucharistiae debeat confiteri, id habetur ex traditione ecclesiae.*" For a summary of three different opinions held by the theologians at Trent on this matter, cf. *Ibid.*, p. 143.

³⁸ See Note 8.

³⁹ Cf. Walter Ullmann, *Medieval Papalism*, London, 1949; esp. p. 42 for Huguccio's identification of canon law with divine law.

thers at Trent? Conciliar operating procedure did not provide for extended treatment of such, however important they might be.

Furthermore, both the Reformers and the Fathers at Trent were dealing with something very concrete, namely the penitential rite as it existed in the Church at their time. And both groups were dissatisfied with that reality. Of the Reformers this is obvious. Of the Tridentine Fathers, the same is true. They recognized abuses in the administration of the sacrament.⁴⁰ If they asserted that integral auricular confession was required by divine law, they surely did not mean there was complete identity between what went by that name in the Church of their day and the will of God. Their dogmatic decree on penance was joined to a decree of reformation directed to improving the morals of those administering the sacrament.

If the Reformers and the Fathers at Trent directed their attention to the same penitential rite and saw abuses there, a difference in point of view nevertheless did exist between them. At least the Fathers were convinced there was one and to inquire whether this was in fact the case is beyond the scope of the present paper. What was that difference?

The Reformers were interpreted as seeing in private confession a restriction of human liberty. What Christ had not commanded, the Church had in Lateran IV.⁴¹ Furthermore striving for integrity in such confession seemed to place too much emphasis on human endeavor and leave nothing to the divine mercy.⁴² Despite abuses, the Fathers at Trent saw in that concrete institution (which was associated with a medieval Council and in practice with the season of lent and Easter), elements God himself intended. Hence they asserted it was of divine law. But what did that mean in context?

First of all, it meant that integrity is more than something the Church alone established as necessary. The Council Fathers differentiated between the circumstances of time (e.g. lent) and mode of confessing (private or public) on the one hand and the obligation to con-

⁴⁰ At Bologna the Council discussed provisions concerning abuses in the administration of penance. The matter of cautioning confessors not to make unnecessary inquiries into sins confessed (esp. regarding chastity) was explicitly considered. Cf. *Concilii Tridentini . . . , op. cit.*, Tomus VI, Vol. I, p. 407.

⁴¹ *Ibid.*, Tomus VIII, 234-6.

⁴² *Ibid.*, p. 235.

fess all one's serious sins clearly. The former came from the Church; the latter from God.⁴³ But an obligation can come from God because at a particular period of history its object is necessary for man if he is to attain salvation. In that period God really expects of those concerned the fulfillment of what is necessary, and the latter is of divine law. Thus though the final draft of their decree omitted the term, the Fathers at Trent required that bishops reside in their sees and spoke of this as of divine law.⁴⁴ Similarly, divine law was adduced in discussion of clandestine marriage, fasting, and celibacy. In such contexts divine law meant an obligation in conscience, one arising from God's salvific will as realized in certain concrete circumstances without implying that those circumstances had always existed (e.g. the division of the Church into dioceses, which is a prerequisite for residence of bishops). But integrity of confession was of divine law, as the Fathers of Trent saw it, in an even more definite way.

Recall their willingness to consider integrity a requirement of divine law though confession of serious sins before communion was not. *Jus divinum* in this context meant something revealed or insinuated (to use Ruard Tapper's phrase), by Christ. Integrity here meant something not only willed by God but somehow indicated or established as such in his revelation through Christ to the Apostles.⁴⁵ To refuse to admit that this was the mind of Trent is hard to reconcile historically with the Acts. But if integrity is divinely willed, how absolute a value does that make it?

III. INTEGRAL CONFESSION AND OTHER RELIGIOUS VALUES

Trent recognized clear and unambiguous confession of sin as a value. In a day when the social consequences of sin are emphasized, there is less tendency to see repentance as exercised in the depths of one's heart independently of any visible connection with God's People and its leaders. What the Council in question equivalently asserted is that God expects as a remedy for sin conduct correspond-

⁴³ See Notes 30-32.

⁴⁴ Hubert Jedin, "Der Kampf . . .," *op. cit.*

⁴⁵ The way of expressing this in the general congregations dealing with penance was to say confession was required "*de jure divino tum quoad praeceptum tum quoad institutionem.*"

ing to its social nature, therefore ecclesial and hierarchical. He established integral confession as a value and called it to man's attention.

But like other values, it can be considered in a number of ways. The first takes it in abstraction from the conditions in which it is concretely realized. The second sees it in connection with its human subject with all his complexities of personal background and environment. Trent did not present integral confession as the supreme value. Thus the good name of one's neighbor excludes a public confession when integrity would involve defamation.⁴⁶ Similarly salvation itself is more important than the integral confession leading to it. Not only does contrition with the desire of confession at times suffice, but integrity is not expected when it is for one or another reason impossible.⁴⁷

This is not situation ethics. It does, however, mean that Trent admitted, to use the traditional terminology of the moralists, exceptions to the obligation of integrity. What is more, it made absolutely no effort to determine taxatively what they are. This reticence is easily understood when one recalls that the Reformers took the fact for granted. It is bad history and worse theological method to look at Trent, fail to find a certain circumstance mentioned as excusing from integrity, and therefore conclude that the circumstance in question is insufficient.

One may object to the foregoing and assert that it comes to saying Trent required only formal integrity. The latter expression, however, does not, as I see it, convey much information. It seems to mean that the penitent is bound to confess only what, all things considered, God expects of him here and now. Whereas this is true, it does not tell us much more than that God expects what God expects. Trent avoided such terminology and in my opinion wisely.

It asserted integrity as a value, recognized that the latter exists concretely in the midst of other values that taken together form a hierarchy. Sometimes those other values take precedence; sometimes they do not. Which ones do and which ones do not? To make Trent decide that is to do violence to its teaching. To assert that integral confession is required by a purely disciplinary law is the other ex-

⁴⁶ Cf. Melchior Cano, "Concilii Tridentini . . .," *op. cit.*, p. 263.

⁴⁷ See Note 32.

treme and no less prejudicial. If divine revelation points out a religious value as obligatory, let us not pretend the case is otherwise. If it recognizes that value as coexistent with others, let us not make that value obligatory in all circumstances or absolute without any further consideration. Neither procedure lets God's Word judge us as it should. Finally, if the Church at Trent in teaching of that value (integrity), did not enumerate all other significant values to which the former is related, it is no service to the authority of the Church to act as if it did.

Let us take, in conclusion, a concrete example. The acts of confessor and penitent are intended to worship God no less than save man. The same Lord wills both; they cannot be incompatible without his acting inconsistently, whereas he is the Faithful One par excellence. This liturgical aspect has not been completely absent from confession in the past. Still it can and I think should be brought out more clearly and forcefully. It has been suggested that this might conceivably be achieved in a ceremony involving only generic confession and communal absolution coupled with the obligation of confessing specifically within a definite period of time. To judge the practical merits or demerits of this proposal is beyond my competency. I do not, however, think the Council of Trent can be invoked as an authority to exclude it. But lest I be misunderstood, I am most definitely opposed to its introduction against the will of the divinely-established "Moderators of the penitential discipline," the Bishops and their head, the Roman Pontiff.

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