

THE BAPTISM OF UNCONSCIOUS DYING PERSONS: THE PROBLEM OF INTENTION

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IN THE hospitals of cities and towns in Christian lands, the priest, and even on the streets of non-Christian lands, the missionary, is often confronted by the problem of assisting the dying. On the one hand he realizes that he must be a "faithful dispenser" of the gifts of God and be guided in his ministry by the laws of the Church and the directives of the Roman Congregations, but on the other hand he is also acutely conscious both of the powers of salvation entrusted to him by Christ and the Church and of the lamentably grave spiritual necessities of his fellow man. Thus he gratefully recalls at the times when he is faced with these extreme cases various classical phrases such as, "sacramenta propter homines," "in extremis extrema tentanda sunt," "Deus vult omnes homines salvos fieri," and the like, which serve to encourage him in his mercifully zealous efforts. Doubts, however, frequently assail him. And his textbooks of moral theology and canon law to which he turns in quest of norms by which to guide his conduct present conflicting opinions about some of the extreme cases by which he is so frequently confronted.

Such cases are these: (1) the dying man who before he lapsed into unconsciousness manifested willingness to use the means of salvation by expressing at least imperfect contrition for his sins; (2) the dying man who before he lapsed into unconsciousness did indeed make an act of imperfect contrition but refused the sacrament of baptism; (3) the dying unconscious man who during his life never manifested a positive attitude for or against baptism but did live in good relations with the Catholic laity, priests whom he knew, and the Catholic Church; (4) the dying man who before he lapsed into unconsciousness gave no sign of even imperfect contrition but rather refused the help of the priest; (5) the dying unconscious man about whom nothing is known.

Priests in the active ministry will recognize these cases as ones which occur all too frequently in their work. Professors of theology surely will recall that knotty problem about the sufficient intention required

for valid baptism on the part of the subject and the degree of knowledge which the minister must have about that intention for the lawful conferring of the sacrament.

THE PROBLEM

To receive the sacrament of baptism validly, an adult must have the intention of receiving it. Theologians generally are willing to agree that an explicit intention to embrace the Christian religion would implicitly contain a sufficient intention for the valid reception of baptism. To receive this sacrament licitly, the adult subject must have supernatural faith and sorrow for his sins. Correlatively, to baptize licitly, the minister must have some required degree of knowledge that the subject wishes to be baptized and is disposed to receive the sacrament. The degree of knowledge required is variously described by authors. Cappello, for example, does not insist that it be moral certitude but states that it is sufficient if the minister can form a prudent judgment about the existence of the dispositions required for the valid and fruitful reception of the sacrament.¹

Canon 752, § 3 does not require more than this; for it states that if a man in danger of death cannot ask for baptism he must nevertheless be baptized conditionally if he has either before or in his present state manifested in some probable way the intention of receiving this sacrament. The obvious meaning of this paragraph is that there is required some manifestation on the part of the subject that is sufficient to serve as the foundation for a probable judgment on the part of the minister that the dying man has the intention of receiving baptism.

It is at this point that several pertinent problems must be stated. (1) What exactly do the words "a probable judgment" mean? (2) Is the manifestation on the part of the subject of a general willingness to use the means of salvation, and specifically an act of attrition or contrition, sufficient grounds to provide a foundation for a probable opinion on the part of the minister that the dying man has an intention of receiving the sacrament? (3) Are the clear and definite norms provided by canon 752, § 3, interpreted according to the meaning of the words, studied in the sources of the paragraph, explained by authors

¹ F. Cappello, *Tractatus canonico-moralis de sacramentis* 1 (4th ed.; Rome, 1945) n. 149, 1.

of recognized repute, intended to enumerate taxatively and exclusively all the cases of extreme necessity contemplated and allowed by the legislator? (4) May one safely assert that a sufficiently probable opinion in very extreme cases about the existence of an intention on the part of the subject may be founded on a fact or facts, certain or only probable, extrinsic to the spiritual faculties of the subject?

The validity, of course, of the reception of the sacrament will depend upon the fact that the intention existed. And the fruitfulness will depend upon the fact of the existence of the proper dispositions.

This article will not only discuss the lawfulness of conferring baptism upon a dying unconscious man whose only manifestation of intention was attrition or contrition, but will also attempt to show the intrinsic probability that the baptism is valid. It will then proceed to discuss grounds for the prudent and probable judgment that a dying, unconscious man about whom nothing is known has a sufficient intention of baptism so as to establish a foundation for the opinion of those authors who permit baptism in these extreme cases.

THE PROBABLE JUDGMENT

Canon 752, § 3 states that the minister must confer the sacrament of baptism on a dying, unconscious man if he can form a probable judgment that the dying man has manifested an intention. The judgment must be based on positive motives because it is a conclusion drawn from some manifestation on the part of the subject. But the minimum degree of probability which this judgment must enjoy is variously described by authors as at least "aliqua probabilitas,"² "tenuis,"³ "tenuissima,"⁴ "prudens conjectura."⁵ Ferreres-Mondria

² Prümmer, *Theologia moralis* 3 (8th ed.; Freiburg, 1936) n. 135; Payen, *Monita Nankinensia* 1 (2nd ed.; Zikawei, 1933) n. 612.

³ Noldin-Schmidt-Heinzel, *Summa theologiae moralis* 3 (31st ed.; Innsbruck, 1955) 73, 4, a; Marc-Gestermann-Raus, *Institutiones morales Alphonsianae* 2 (19th ed.; Paris, 1933) n. 1854, coll. with 1, n. 82; Varceno-Loiano, *Institutiones theologiae moralis* 4 (Turin, 1937) nn. 74 b and 278, 4, c.

⁴ Genicot-Salsmans-Gortebecke, *Institutiones theologiae moralis* 2 (17th ed.; Bruges, 1952) n. 58.

⁵ Busquet, *Thesaurus confessorii* (3rd ed.; Barcelona, 1902) lib. 5, n. 40; Ubach, *Compendium theologiae moralis* 2 (Freiburg, 1927) n. 488; Vermeersch, *Theologiae moralis: Principia, responsa, consilia* 3 (3rd ed.; Rome, 1937) n. 223.

explains the word "probable" as "probabilis practice aequivalet probabili conjecturae."⁶ Lehmkuhl⁷ and Payen⁸ equate "tenuis probabilitas" and "conjectura." And Ubach explains the phrase "prudens conjectura" as meaning "quae pro talibus adjunctis non videatur vana."⁹ While neither Prümmer¹⁰ nor Ubach¹¹ permits a general presumption in cases concerning unconscious pagans, Piscetta-Gennaro says "probabili vel non absurde praesumi possit,"¹² and Payen speaks of "praesumptio ex signo quasi-negativo."¹³

In order to determine the meaning of words and to prepare the ground for future discussion, some definitions must be given. A conjecture can be defined as an inference from defective or presumptive evidence. And to conjecture is to form opinions on grounds confessedly insufficient for a certain conclusion. A prudent conjecture would be an opinion inferred on grounds confessedly insufficient for a certain conclusion but still sufficient to incline the normal, trained, conscientious priest to an assent proportionate to the strength of the evidence. That assent would be probable to some degree.

A presumption is a probable conjecture about an uncertain matter. A presumption that a person has an intention of receiving baptism can only be a personal presumption. The explanation of this kind of presumption, usually given when treating about judicial trials, can be correctly applied here, although, of course, here there is no question of a judicial presumption. It is that which "juxta rerum circumstantiarumque exigentiam et varietatem ex variis verisimilibus conjecturis seu indiciis prudentis hominis . . . concipitur seu formatur," or "conjectura probabilis desumpta ex circumstantiis ejusmodi, quae probabilitatem animo generare possunt."¹⁴

From experience, observation, and training, a prudent man with good judgment can discern that certain sets of circumstances ordinarily or necessarily attend specific facts, and that conclusions therefore

⁶ *Compendium theologiae moralis* 2 (17th ed.; Barcelona, 1953) n. 311.

⁷ *Theologia moralis* 2 (8th ed.; Freiburg, 1896) n. 78.

⁸ Payen, *loc. cit.*

⁹ Ubach, *loc. cit.*

¹⁰ Prümmer, *loc. cit.*

¹¹ Ubach, *loc. cit.*

¹² Piscetta-Gennaro, *Elementa theologiae moralis* 5 (6th ed.; Turin, 1946) n. 191, 2.

¹³ *Op. cit.*, n. 614.

¹⁴ Ferraris, *Bibliotheca canonica, juridica, moralis, theologica* (Rome, 1890) s.v. "Praesumptio," nn. 7 and 25.

may prudently be deduced from them about the very existence of the fact itself.¹⁵ When the conclusion is drawn that the fact exists by way of inference from the existence of a set of circumstances usually or necessarily connected with the existence of the fact, there is a presumption. The personal presumption differs from the presumption of law inasmuch as the connection between the known circumstances and the fact inferred is supplied by one's own experience, training, observations, general knowledge, and not by the law itself.

Personal presumptions naturally vary in force, directness, and probability in so far as they depend upon the certain or probable existence of the circumstances, and the remote or proximate connection between the circumstances and the fact whose existence is inferred. Therefore they can be slight, weighty, or vehement personal presumptions. The presumption which arises from probable and fairly forcible conjectures and indications is weighty. The slight presumption arises from slight, less probable, and insufficient conjectures and indications, or from facts which can be interpreted either favorably or unfavorably. Although in judicial trials a weighty presumption is only partial (*semiplena*) proof, and a slight presumption proves nothing and is to be ignored because of the strictly required quality of judicial proof, it cannot be denied that both weighty and slight presumptions present some probability of the inferred fact even if the probability in the latter case is slight.

Now it is common doctrine that when there is some probability that the sacrament will be valid, it is lawful, if not always obligatory, to baptize conditionally a dying, unconscious man even though there is an unresolvable doubt about the presence of all the requisites for the validity of the sacrament. In cases of extreme necessity, says St. Alphonsus, one should use even "materia qualicumque dubia," i.e., that which is only slightly probable ("tenuiter probabilis"), if more probable or certain matter is not at hand. And this the minister is obliged to do because of the general rule that out of the gravely binding precept of charity he must confer baptism whenever he lawfully can do so.¹⁶

¹⁵ Doheny, *Canonical Procedure in Matrimonial Cases: Formal Procedure* (2nd ed.; Milwaukee, 1948) pp. 304, 413-14.

¹⁶ Alphonsus Maria de Liguorio, *Theologia moralis* 3 (ed. Gaudé; Rome, 1909) nn. 29 and 103.

The reasons alleged which justify the lawfulness of this practice are quite simple: (1) the sacraments are for the salvation and sanctification of men (*sacramenta propter homines*); so that (2) in extreme cases extreme means must be applied (*in extremis extrema tentanda sunt*); and (3) by conditional administration of the sacrament the minister both comes to the aid of the imperiled soul and avoids irreverence towards the sacrament, should one or other requisite for validity be absent.

These reasons need not be reserved to cover only cases where there is doubtful matter or a subject who is doubtfully capable of receiving the sacrament, i.e., doubtfully alive. If the rule can be applied for these reasons to cases where the matter or the capacity of the subject is so doubtful that the validity of the sacrament is "parum probabilis"¹⁷ or even "quotiescumque vel minima probabilitas adest,"¹⁸ it can also be used for those cases in which there is doubt about the requisite intention and dispositions of the subject. The same reasons apply.

It is surely, therefore, lawful to baptize conditionally an unconscious, dying man whenever the minister can form a reasonable conjecture or presumption based on some positive probability that the requisite intention and dispositions for the validity and fruitfulness of the sacrament are present, whether that positive probability be weighty, slight, or very slight (*tenuis, tenuissima*, to use the words of the authors). This doctrine in the light of canon 752, § 3 is certain as long as the probable opinion, conjecture, or presumption is founded on some manifestation made by the subject before he lapsed into or during his state of unconsciousness.

Whether or not such sufficient probability can arise from some manifestation or set of circumstances extrinsic to the manifestative faculties of the subject will be discussed in the final section of this paper.

MANIFESTATION OF THE GENERAL WILL TO USE THE MEANS OF SALVATION

If a dying, unconscious man, either before lapsing into or during his apparently unconscious state, has manifested in some way a general will to use the means of salvation, e.g., by showing contrition or attri-

¹⁷ Aertnys-Damen, *Theologia moralis* 2 (15th ed.; Turin, 1947) nn. 14 and 46, 2.

¹⁸ Prümmer, *op. cit.*, n. 18.

tion, a large and increasing number of authors expressly permit his conditional baptism.¹⁹ Before the Code this permissive opinion was held by not a few theologians;²⁰ and among the older theologians, John Maldonatus,²¹ Giles Coninck,²² Patrick Sporer,²³ Lacroix,²⁴ and others taught it. To be sure, the reason given by Coninck and others²⁵ for this opinion is rejected by a large number of theologians, although Vermeersch insists that the strict opinion is the more recent.²⁶ Doctrinally opposed to the more liberal opinion are, for example, de Lugo,²⁷ Merkelbach,²⁸ Umberg,²⁹ Prümmer,³⁰ Noldin-Schmidt-Hein-

¹⁹ Genicot-Salsmans-Gortebecke 2, n. 58; Cappello, *op. cit.* 1, n. 150; Regatillo-Zalba, *Theologiae moralis summa* 3 (Madrid, 1954) n. 28; Sabetti-Barrett, *Compendium theologiae moralis* (33rd ed.; New York, 1931) p. 585; Payen, *op. cit.* 1, n. 612; Vermeersch, *op. cit.* 3, n. 223, and "Practica disquisitio de sacramentis conferendis vel negandis acatholico," *Periodica* 18 (1929) 123*-148*; Piscetta-Gennaro, *op. cit.*, n. 106; Tanquerey, *Synopsis theologiae dogmaticae* 3 (24th ed.; Paris, 1938) nn. 440 and 520; Aertnys-Damen, *op. cit.*, n. 32; Jorio, *Theologia moralis* 3 (3rd ed.; Naples, 1946) nn. 35 and 64; Varceno-Loiano, *op. cit.*, n. 40; Coronata, *Institutiones iuris canonici: De sacramentis* 1 (Turin: Marietti, 1943) nn. 91 and 131; de Clercq, *Traité de droit canonique: Des sacrements* (Paris, 1948) n. 29; Ferreres-Mondria, *op. cit.*, n. 311; Busquet, *loc. cit.*; Slater, *A Manual of Moral Theology* 2 (New York, 1908) p. 43; Claeys Bouuaert-Simenon, *Manuale iuris canonici* 2 (5th ed.; Ghent, 1943) n. 34, 2, 2: "damnare practice non audemus."

²⁰ Lehmkuhl, *Theologia moralis* (8th ed.) n. 78; d'Annibale, *Summa theologiae moralis* 3 (3rd ed.; Rome, 1892) 274; Buceroni, *Institutiones theologiae moralis* 3 (6th ed.; Rome, 1915) 383; Gury, *Casus conscientiae in praecipuas quaestiones theologiae moralis* 2 (4th ed.; Paris, 1868) n. 205.

²¹ Maldonatus, *Opera varia theologica* 1: *De baptismo*, q. 4.

²² Coninck, *Commentariorum ac disputationum in universam doctrinam d. Thomae de sacramentis et censuris tomi duo* (Lyons, 1625) q. 64, a. 8, dub. 5, n. 103.

²³ Sporer, *Theologia moralis decalogalis et sacramentalis* 3 (ed. Bierbaum; 1901) tr. 7, c. 2, s. 4, n. 151.

²⁴ Lacroix, *Theologia moralis* (ed. Zacharia; 1761) lib. 6, pars 1, tr. 1, c. 2, dub. 1, q. 33, n. 168, and tr. 2, c. 1, dub. 4, Addenda, q. 50, n. 288.

²⁵ Such sorrow contains the virtual resolution to observe all the precepts which are necessary to avoid hell and to gain heaven, and one of these precepts is that of receiving baptism (Coninck, *loc. cit.*). Gobat accepts the reason and adds that on the one hand it is certain that Christ could have so instituted this very necessary sacrament in such a way that this intention would be sufficient, and on the other hand neither reason nor authority forces us to deny that He did so institute it (cf. *Operum moralium tomi tres* 1 [Venice, 1698] tr. 2, casus 10, resp. 5, n. 298).

²⁶ *Periodica* 18 (1929) 140*, note.

²⁷ De Lugo, *De sacramentis in genere* (Venice, 1751) disp. 9, c. 7, nn. 128 ff.

²⁸ Merkelbach, *Summa theologiae moralis* 3 (8th ed.; Paris, 1949) 93 B, and "De sacramentis sub conditione 'si es dispositus' non ministrandis," *Revue ecclésiastique de Liège* 5

zel,³¹ Claeys Bouuaert-Simenon.³² St. Alphonsus mentions it and accepts the opinions of Suarez and de Lugo.³³

The liberal authors cautiously qualify their doctrine as probable.³⁴ All of them, however, who admit the lawfulness of conditional baptism do so because of the general principle that in cases of extreme necessity it is lawful to confer the sacrament conditionally as long as there is some probability that the requisites for validity are present. Those authors whose manuals are current after the Code see in this opinion an application of canon 752, § 3.

Practically speaking, therefore, there is no doubt that it is lawful to baptize a dying, unconscious man who has manifested contrition or attrition either before or during his state of unconsciousness.

The liberal opinion is that an act of supernatural contrition or attrition contains a general will of using the means of salvation which is a sufficient intention for the valid reception of baptism. Does this opinion have any intrinsic probability? De Lugo, Merkelbach, Noldin-Schmidt-Heinzel, to mention only a few authors, deny it. Pesch is perhaps closer to the truth when he says that a certain, theoretical solution of this problem can hardly be found.³⁵ Nevertheless I should like to discuss it briefly.

(1909) 145-60. A reply to this article was made by Pierre Castillon, "A propos de l'administration conditionnelle des sacrements," *Nouvelle revue théologique* 42 (1910) 257-66.

²⁹ Umberg, *Systema sacramentorum* (Innsbruck, 1930) c. 2, a. 2, nn. 64-66, and c. 3, a. 3, nn. 83-95.

³⁰ Prümmer, *op. cit.*, n. 87.

³¹ Noldin-Schmidt-Heinzel, *op. cit.*, n. 41, 5 b.

³² Claeys Bouuaert-Simenon, *loc. cit.*

³³ Alphonsus, *op. cit.*, tr. 1, c. 3, dub. 1, n. 82. Suarez does not study this precise case. Those places which are cited in support of the opinion of de Lugo and the stricter authors are a refutation of the opinion attributed to Cajetan to the effect that valid baptism does not require consent or intention on the part of the subject; it requires only that the subject does not dissent or rather remains neutral. But from his exposition of the required consent it is evident that Suarez is correctly numbered among the strict theologians. Cf. Suarez, *Opera omnia* 20 (ed. Vives; Paris, 1866) disp. 14, s. 2, n. 4, p. 267, and disp. 24, s. 1, nn. 2, 4-5, p. 408 f.

³⁴ E.g., "probabilis" (Lacroix), "merito saltem ut probabile affirmant" (Genicot-Salsmans-Gortebecke), "valde dubium" (Lehmkuhl), "valde dubitandum," but "ob extrinsecam auctoritatem, improbabilem dicere non audemus" (Cappello). But Vermeersch qualifies it as "verior" (*art. cit.*, p. 133*).

³⁵ Pesch, *Praelectiones dogmaticae* 6: *De sacramentis* (3rd ed.; Freiburg, 1908) pars 1, n. 439.

On the presumption that a dying, unconscious man has elicited an act of supernatural attrition, we must find as a basis for this act a supernatural faith in God, the punisher of evil and the rewarder of good, and some belief in a Redeemer. And in the act we must see a detestation of sin from motives known through faith, a resolve not to sin again, and a hope of forgiveness. The resolution not to sin again is equivalently one to do good, to do the will of God, to use apt means in order to be saved. But at this juncture there is only one means of salvation humanly possible: baptism in fact (*in re*).

Valid baptism requires an intention on the part of the subject. The desire contained in supernatural contrition and attrition is a *votum*. In each of these acts the *votum* as a *votum* is the same. If the subject knows about baptism and its necessity, the desire is explicit. It is implicit if he does not know about the necessity of baptism but does realize that it is necessary to embrace the Christian religion. According to the liberal authors, there is also an implicit but sufficient desire for baptism even if the subject does not know about the necessity of embracing the Christian religion. Do they therefore logically reduce the intention to the *votum*? I think they do. And it is my intention to explore the intrinsic probability of this opinion. My conclusion is that this opinion is intrinsically probable, although less probable.

To pass from the state of original sin to the state of grace, baptism in fact or *in voto* is necessary. The ultimate disposition for justice, the infusion of first grace and the remission of original and personal sins, is perfect contrition, because this is true penance proceeding from the love of God above all things with the, at least, numerically indistinct and implicit desire of doing everything else which is necessary.³⁶ The desire (or *votum*) is not the ultimate disposition, but it does provide the relation to baptism which completes charity so that perfect contrition is the ultimate disposition. Conceived as a *conditio sine qua non* or, better still, as an element necessarily contained in charity which positively conduces to justification by completing charity,³⁷ the desire is a positive will, something real that establishes the necessary relation to the sacramental means of spiritual regeneration established by Christ.

³⁶ Suarez, *op. cit.*, disp. 27, s. 2, nn. 2, 8–10.

³⁷ Lercher, *Institutiones theologiae dogmaticae* 4 (3rd ed.; Innsbruck, 1948) 2/1, n. 178; Mors, *Theologia dogmatica* 5 (2nd ed.; Buenos Aires, 1951) n. 255.

The liberal opinion must be understood as a broadening of the concept of the implicit *votum* in this instance to include all of the elements of the intention. We have seen that it is a positive act of the will which, at least implicitly, extends to the use of all that is necessary for salvation, baptism included. It is also equivalently absolute, and there is some determination of its object. The strict opinion finds these last two elements lacking in the *votum*.

I submit that it is possible to interpret the *votum* as an equivalently absolute will. The strict authors interpret the *votum* of the attrite or contrite dying man who knows nothing about the necessity of the Christian religion and baptism in this fashion: “vi contritionis vel attritionis habeo propositum servandi omnia praecepta Dei ita ut si, praevio examine facto, intelligerem me ad baptismum obligari, propositum eum recipiendi haberem.”³⁸ If the *votum* is understood in this way, it is an interpretative voluntary, an unreal conditional intention. Does not this interpretation empty the *votum* of its positive and real relation to baptism?

Therefore, with all due deference, I suggest that the *votum* can be interpreted in this way: “vi contritionis vel attritionis volo omnia praecepta Dei servare ita ut si, praevio examine facto, intelligerem me ad baptismum obligari, eum *explicite* vellem.” There is a real and absolute, although implicit, desire of baptism. The explicitness of the intention is the object of the unreal conditional element of the *votum*.

One of the chief difficulties in the liberal opinion is how to explain the *votum* in terms of sufficient determination of the object. Is the object disjunctive, i.e., either perfect contrition or baptism?³⁹ Or is it known only to God?⁴⁰ I suggest the following reply by means of an example. A man who has never heard about the Christian religion is dying. A Christian knows that he has made an act of attrition but has only time to say, “I can save you,” and to hear in reply, “do whatever you can” or “all right,” as the subject lapses into unconsciousness. On the strength of that reply the Christian baptizes the dying man conditionally. Would there not be a solid probability about the validity of the sacrament? And if so, would not the wish or desire expressed

³⁸ De Lugo, Merkelbach, Umberg.

³⁹ Merkelbach, *loc. cit.*

⁴⁰ Umberg, *loc. cit.*

by the dying man have been determined as to specific object by a circumstance extrinsic to himself, i.e., the mind of the Christian?

But what if no one speaks to him before he lapses into unconsciousness? Is it not possible that his implicit wish or desire is determined by the objective circumstances in which he finds himself, i.e., circumstances that make baptism the only way he can save his soul? An affirmative answer would be in line with the theological reason given for the necessity of having an intention, to the effect that an adult cannot attain to justification and salvation unless he positively wishes it. Can anyone say that a dying, unconscious man who has implored the mercy of God from knowledge and motives based on supernatural faith and hope and who has begun to love God has not consented to the justification he has pleaded for and is not willing to be saved?⁴¹

An undesirable consequence of this opinion, according to the stricter authors, would be that presumably one could baptize believers in non-Christian religions while they were asleep or intoxicated, provided that they were at least attrite and in good faith. Gobat⁴² and Sporer⁴³ deny this. The obligation of receiving baptism is one of divine positive law and binds *semper* but not *pro semper*, so that in the circumstances of sleep or intoxication we cannot construe the *votum* included in attrition so as to mean an intention to use a means of salvation that is not here and now necessary.

Turning now to the case of one who has a specific religion in which he sincerely and in good faith believes, we face a difficult problem. The person in question might be Jew, Mohammedan, or pagan. Some authors fear that this doctrine would have the consequence that every Jew, Mohammedan, or pagan attached to his own religion should be considered as disposed for baptism because each of these wishes to do the will of God and save his soul. Cappello, too, refers to this objection and qualifies it with the words "nec immerito."⁴⁴

There is merit to this objection. A Jew who believes in his religion and is sincerely though imperfectly contrite wishes to do the will of God. But explicitly he might intend to save his soul by following the precepts of his religion which he believes to express the will of God. This man has defined his intention of doing God's will by explicitly

⁴¹ Cf., e.g., *Sum. theol.* 3, q. 68, a. 7.

⁴³ *Theologia moralis*, n. 151, 2.

⁴² *Operum moralium tomi tres*, n. 236.

⁴⁴ *Op. cit.*, n. 153.

directing his intention to something which, in fact, is not God's will and is not a means of salvation. His explicit intention by being explicit should prevail over any implicit intention of receiving baptism which might have been contained in his general intention to do the will of God. It would seem that he does not wish to be baptized. Sporer proposed this objection to himself and tried to solve it: "Judaeus ille . . . si veram elicit attritionem supernaturalem, illa prior pessima voluntas jam cessavit et enervata est, aut certe processit ex errore invincibili, ideoque ejus ratio non est habenda."⁴⁶

I would reply by applying the doctrines of prevalent intention (although some reject its application here⁴⁶) and of invincible ignorance. The Jew, Mohammedan, or pagan has a sincere intention to do the will of God by using means and thus to save his soul. This is expressed by his contrition or attrition. But it terminates at a means which cannot be God's will. I would suggest that this one physical act morally contains two intentions. The one is the intention to do the will of God and use means, the other is the determination to do it by following the laws of Moses or some other religious leader respectively. Now, at this juncture in a man's life such a determination can only be due to ignorance here and now invincible for which he is not morally accountable. What is morally positive in his will is the desire to do the will of God and use means. This can only be that he receive baptism. This therefore prevails.

To return to the lawfulness of conferring baptism, may a Jew, Mohammedan, or pagan who is unconscious, dying, and imperfectly contrite be baptized conditionally? The answer is, yes. Aside from the fact that the minister cannot know for certain that the man dying in this state intends to persevere in his false religion, there is especially the positive fact of his attrition. That is probably sufficient for the lawful administration of conditional baptism.

As a conclusion to this section, I should like to repeat that I have tried to present the liberal opinion in terms of intrinsic probability. If I have achieved a demonstration of its probability, I must admit that I think that the contrary is more probable.⁴⁷

⁴⁶ Sporer, *loc. cit.*

⁴⁶ E.g., Noldin-Schmidt-Heinzel.

⁴⁷ Cf. Suarez, de Lugo, Umberg.

IS CANON 752, § 3 TAXATIVE AND EXCLUSIVE?

Under this heading I take up the question whether the norms in this canon exclude other cases of extreme necessity and in particular the case of the dying, unconscious man who is known to have expressed only attrition, and that of the dying, unconscious man about whom nothing is known.

As applications of the "probable or prudent conjecture" and the "presumption" which are supposed to render the baptism of the dying lawful, several cases are to be found in the authors: (1) the case of the dying man who has heard about the Christian religion and has showed some interest in it;⁴⁸ (2) the case of the dying man who refused to embrace our religion because of reasons extrinsic to it, e.g., because he would be obliged to lead a stricter life, to abandon an invalid marriage, make restitution, etc.;⁴⁹ (3) the case of the dying man who never manifested any desire for baptism;⁵⁰ (4) the case of the dying man who has positively refused to become a Christian and has given orders that a missionary should not be allowed to come near him in his last moments or has even rejected before loss of consciousness all ministrations of the priest;⁵¹ (5) the Jew or the Mohammedan in good faith who has lived piously in his religion and about whom nothing else is known;⁵² (6) the dying man about whom either it is not known or it is factually doubted whether he ever had or expressed any intention of being baptized.

In favor of the lawfulness of conferring baptism in this last case are a large number of authors of good authority.⁵³ But there are also

⁴⁸ Busquet, *op. cit.*, n. 40, 2; Ubach, *Compendium theologiae moralis*, n. 488.

⁴⁹ Busquet, *ibid.*; Ubach, *ibid.*; Lehmkühl, *op. cit.*, 2, n. 78.

⁵⁰ Davis, *Moral and Pastoral Theology* 3 (5th ed.; New York, 1946) 54.

⁵¹ Davis, *ibid.*; Vermeersch, *Theologia moralis*, n. 223; but Payen, *Monita Nankinensia* 1, n. 614, expressly rejects this case.

⁵² Ubach, *loc. cit.*

⁵³ Genicot-Salsmans-Gortebecke, *op. cit.*, n. 58; Busquet, *op. cit.*, n. 40, 2; Piscetta-Gennaro, *op. cit.*, n. 192; Jorio, *op. cit.*, n. 64, as long as there is no certain evidence of a contrary will; Cappello, *op. cit.*, n. 153: "vere probabilis," with a suggested reservation about Jews; Ferreres-Mondria, *op. cit.*, n. 312, and his *Casus conscientiae* 2 (5th ed.) n. 239, 1: "absque temeritate teneri potest," unless a Jew, shortly before his death, inveighed against the Catholic religion; Payen, *loc. cit.*: "probabilis," with the same reservations as Jorio, and in his *Casus de baptismo* (Zikawei, 1920) n. 142, 4, if for one or other probable motive such a person can be presumed to have had the intention of receiving baptism at

many who deny it.⁵⁴ As a summary of the extremely liberal views expressed by those authors who permit baptism in this last and the preceding five cases, the words of Vermeersch are apposite: "Quare attenta summa baptismi necessitate, nullus videtur esse moribundus sensibus destitutus, sive in regione fideli, sive in regione infideli, quin, praeciso scandalo, sub conditione baptizari possit."⁵⁵

Liberal authors maintain that their opinion and practice is explicitly forbidden in no document emanating from the Holy Office, although they do admit that the contrary is more in conformity with the norms given by the Sacred Congregation. Is this doctrine and practice forbidden? A careful scrutiny of the sources of canon 752 reveals that only one document, which incorporates references to four other replies, really touches upon the problem under discussion. It is the response of the Holy Office dated March 30, 1898:

Utrum missionarius conferre possit Baptismum in articulo mortis mahumedano adulto, qui in suis erroribus supponitur in bona fide:

1. Si habeat adhuc plenam advertentiam, tantum illum adhortando ad dolorem et ad confidentiam, minime loquendo de nostris mysteriis:
2. Quamcumque habeat advertentiam, nihil ei dicendo, cum ex una parte supponitur illi non deesse contritionem, ex alia vero prudens non esse loqui cum eo de nostris mysteriis.
3. Si jam advertentiam amiserit, nihil prorsus ei dicendo.

least in danger of death; Ubach, *op. cit.*, n. 488: "in nosocomiis nostrarum regionum," i.e., in Latin America; Sabetti-Barrett, *op. cit.*, p. 585: "apud nos," i.e., in the United States of America. Gury, *Casus conscientiae* 2, n. 205, seems first to have proposed this case. The case as he gave it is repeated by Ferreres as above; Sica, *Casus conscientiae* (Zikawei, 1895) discusses this case and asserts that he is moved more by the authority of Gury than by his reasons; Cance, *Le code de droit canonique* 2 (7th ed.; Paris, 1946) n. 132, 3 b; Coronata, *De sacramentis* 1, n. 131; de Clercq, *Des sacrements*, n. 29; Vermeersch, *Theologia moralis*, n. 223, and *Periodica* 18 (1929) 123* ff.

⁵⁴ Merkelbach, *op. cit.* 3, n. 145; Prümmer, *op. cit.* 3, n. 87, who, however, cites the opinion of Vermeersch and Cappello; Ubach, *op. cit.*, n. 488, and Varceno-Loiano, *Institutiones theologiae moralis* 4, n. 75, would not allow a general presumption independent of the circumstances, but an example of a justifying circumstance is given by Ubach, i.e., occurrence of the case in Latin America, as I noted above; Sica, *loc. cit.*, objects to indiscriminate baptizing but would judge each case according to the circumstances; Lehmkühl, *op. cit.*, *Casus conscientiae* 2, pp. 28 ff., rejects this case unless the missionary has some positive sign or motive upon which to base a positive and prudent conjecture; Bucceroni, *op. cit.*, n. 462, demands some positive sign, e.g., the abandonment of idolatry; cf. the reply of the Holy Office, Dec. 11, 1850, ad 2, in Gasparri, *Codicis iuris canonici fontes* 4 (Rome, 1926) 188 (n. 913).

⁵⁵ *Theologia moralis* 3, n. 223.

R. Ad 1. et 2. Negative, i.e. non licere hujusmodi mahumedanis, de quibus in primo et secundo quaesito agitur, sive absolute sive conditionate administrare baptismum; et dentur decreta S.O. ad Episcopum Quebecensem sub die 25 Januarii et 10 Maii 1703, et Instructio S. Officii sub die 6 Junii 1860 ad Vicarium Apostolicum Tche-Kiang.

Ad 3. De mahumedanis moribundis et sensibus jam destitutis respondendum ut in decr. S. Officii 18 Septembris 1850 ad Episc. Perthensem; idest: "Si antea dederint signa velle baptizari, vel in praesenti statu aut nutu aut alio modo eandem dispositionem ostenderint, baptizari posse sub conditione, quatenus tamen missionarius, cunctis rerum adjunctis inspectis, ita prudenter judicaverit." —SSmus adprobavit.⁶⁶

The inquiry referred to three states of the subject: full consciousness, partial consciousness, and unconsciousness. The answer of the Holy Office to the first two inquiries does not concern us here. It is the third reply that we must scrutinize. When this inquiry and response is examined and compared with canon 752, § 3, there are indications that the Sacred Congregation intended to give norms of action without forbidding greater liberality in conferring the sacrament of baptism upon the dying and unconscious subject in certain circumstances.

Analysis shows, first, that the inquiry and response are explicitly about a Mohammedan in supposed good faith, to whom the missionary said nothing, i.e., about sorrow, trust, or our mysteries. When applying this reply to another case, one would have to follow the general rule to the effect that application has to be made to an exactly similar case. Authors continually remind us that apparent unconsciousness does not always exclude all awareness of events and words spoken in the presence of a dying man. Second, the response is given in a positive form which declares conditions in which, when verified, the subject may be baptized ("baptizari posse"). If the Sacred Congregation had intended to exclude cases other than this kind, would it not have been opportune to reply in the negative, as was done in the reply to the first and second inquiry? Furthermore, the sentence quoted by the Holy Office from the decree of September 18, 1850, was an answer to an inquiry about an adult savage "in articulo mortis" whom the missionary had not been able to help either by instructing him or by leading him to sorrow for his sins.⁶⁷ Finally, although canon 752, § 3 reads

⁶⁶ Gasparri, *Fontes* 4, n. 1197, pp. 499–500.

⁶⁷ *Ibid.*, n. 912, pp. 187–88.

quite similarly to this response, there is a noteworthy change in the form of the verb. Whereas in the reply lawfulness of the baptism is implied by the words "baptizari posse," obligation of baptizing is to be inferred from the "baptizandus est" of the canon. It would be rash to judge that the legislator made this change of wording without reason.

The remark of Jorio is pertinent here. The phrase "baptizandus est" in the canon implies two others, i.e., "baptizari potest" and "baptizandus non est." In par. 3 the Code tells us when the subject must be baptized. In par. 1 it tells us when he must not be baptized. The whole canon gives us norms by which to judge when the subject may be baptized, without excluding other cases not indicated in the canon.⁵⁸ Should we not therefore draw the conclusion that the law of the Code is not exclusive?⁵⁹

I think it is not temerarious to say that the Sacred Congregation by answering a particular case intended to give a norm of action without excluding more extreme cases which could be safely left to the prudent judgment of the missionary enlightened by this norm. The Code itself by saying when baptism must not be given and when it must be given does not exclude more extreme cases in which it may be given.

Should we not admire here the prudence and charity of the Church? She prudently words her decrees so as to protect the sacraments from sacrilege and she charitably takes care not to exclude many worthy souls from their beneficent effects. In reference to another matter, the Sacred Congregation for the Propagation of the Faith cited a sentence from St. Augustine that may be quoted here: "ipsaque [concilia] plenaria saepe priora posterioribus emendari; cum aliquo experimento rerum aperitur quod clausum erat, et cognoscitur quod latebat."⁶⁰

Can we therefore advance a step and safely assert that a prudently probable judgment or a prudently probable conjecture or presumption that a subject has an intention of being baptized may be based on a fact or facts extrinsic to any personal manifestation made by him? In the remaining part of this article I shall propose a tentative explanatory suggestion in an attempt to show that we can.

⁵⁸ *Op. cit.*, n. 64.

⁵⁹ De Clercq, *op. cit.*, n. 29.

⁶⁰ Instruction of the Sacred Congregation for the Propagation of the Faith, June 23, 1830, in Seredi, *Codicis iuris canonici fontes* (Rome, 1935) n. 4749, p. 275.

PROBABLE INFERENCE OF SUFFICIENT INTENTION FROM
EXTRINSIC FACTS

I do not think that a general presumption that every man has probably the intention to receive baptism is justified. Therefore it would be illicit for an individual to baptize all unconscious, dying people on the basis of such a presumption alone. But if one takes into consideration circumstances apart from the manifestation of the dying, unconscious man, may it not be said that the opinion of the liberal authors cited above to the effect that one who baptizes such people is not to be reprehended may safely and lawfully be applied in practice?

We know that for the valid reception of baptism it is not the manifestation but the reality of the intention that is required. We also know that canon 752, § 3 does not taxatively and exclusively describe all the cases in which one may lawfully baptize conditionally. If, then, there are circumstances from which one may infer with probability that the individual has an intention of receiving baptism, he will not be acting merely on the strength of a general presumption and he may surely baptize the subject conditionally.

Are there such circumstances? I think there are. In all the world the Catholic Church, today as never before, is a living witness to the things of God. She is visibly present everywhere in her churches, chapels, and charitable institutions such as hospitals, clinics, orphanages, nurseries, homes for the aged and mentally handicapped. Her press and the utterances of the hierarchy penetrate to the farthest recesses of the earth. Children of all religions and of no specific religion throng to her schools. Her feasts are observed in civil society and the vocabulary of her mysteries is current in the languages of those vast countries which are considered pagan lands. She is made known by the preaching and presence of her ministers, her nuns, and her brothers. By their customs, language, and beliefs, men of trade and commerce and even armies have contributed to making her known. Travelers, students returned from Christian countries have spread the knowledge of Christianity in their writings and memoirs. The hostility of persecutors and the criticism of her tenets spread abroad by every means of communication have made men everywhere conscious of her most essential teachings. So the Church and her basic teachings cannot be said to be unknown.

Furthermore, among any large number of non-Christian people I am sure that the fact can be verified that some, and therefore probably any one of them, have been in one or more of the following circumstances. (1) They have been at least for a time in a Catholic or a non-Catholic Christian school where all have received at least basic instructions. (2) They have been catechumens at least in the wide sense, and of these at least a few fully intended to become Christians but were impeded for various causes extrinsic to our religion, e.g., opposition of the family, commitments for marriage, etc. (3) They have wished to join the body of Christians but did not know how to go about entering the Church. (4) They have regretted the sins and evil deeds of their lives, have prayed for forgiveness, and have resolved to do better. (5) They have known something of the Church and her teachings, especially about God and heaven and hell. The very existence of a church building or a school or a clinic, the presence of a priest or nun or catechist, Christians celebrating a feast provoke endless discussion among pagans of cities, towns, and villages. (6) They have, unknown to the priest and bystanders at the place of death, at one time or another expressed the intention to enter the Christian Church at an opportune time.⁶¹

The doctrine of the salvific will of God gives direction and finality to these circumstances. The doctrine that Almighty God wishes, even supposing original sin, the salvation of all men is at least *fidei proxima*.

Theologians so describe this salvific will as to say that it is antecedent and conditioned (however the term of the will is explained). But it is truly sincere and operative in the sense that it moves Him to provide sufficient and abundant means for all. Thus He mercifully gives or at least offers even to those non-Christians known as negative infidels grace at least remotely sufficient for salvation. To these men at the opportune time and place (not at every moment, but at those times and in those places where external graces are at hand, e.g., preaching of the word of God, examples of saints and persecuted Christians, events that cause fear, sufferings, and especially when it is most necessary to do penance, as at the hour of death) God offers or gives that sufficient grace by which they can dispose themselves for that faith which is necessary for salvation.

⁶¹ These are facts which the writer has personally encountered as a priest in the missions.

How such provision is made for infidels is an extremely intricate and much discussed problem. Some of them, perhaps, might be considered as moral infants so that for these the problem is considerably simplified. Others may arrive at salvific faith in other ways. Regarding these we can cite the words of Lercher:

Non opus est, ut perspiciamus, *quomodo singuli* salvari possint. Satis est ut sciamus Deum omnium salutem serio velle et viam salutis ordinariam omnibusque divinitus praescriptam non eo sensu a fontibus revelationis doceri unicam, ut Deo denegaretur potestas eos, qui inculpabiliter hanc viam ignorant, aliis modis salvandi.—Ecclesia in hac re rejicit tam Rigorismum quam Laxismum. Ceterum “quid cum singulis agatur, Deus, qui agit, atque ipsi, cum quibus agitur, sciunt.”⁶²

This statement should not be turned against the opinion being defended here. One should not, therefore, conclude that there is no need for baptism in these cases. Almighty God, sincerely and operatively desiring the salvation of all men, gives or offers sufficient grace for this end. But even many Christians do not necessarily arrive at the perfection of charity but are content with attaining to justification through the sacraments, for which they dispose themselves by attrition alone. By an evident a fortiori it can be assumed that many pagans attain only attrition. For them, baptism is absolutely necessary.

Would it therefore be temerarious to assert that the circumstances of frequent occurrence which I have described above and the presence of a minister able and willing to baptize in the extreme case of an unknown, dying, and unconscious man are effects of that provident, salvific will of God who wishes the salvation of all men? And would it not be safe to say that of the many men in whom those circumstances have been verified, at least some have probably the intention either explicit or implicit of receiving baptism?

With all this in mind, I offer a suggestion of a way to arrive at sufficient probability of an intention on the part of the dying, unknown, and unconscious man. It is mentioned in Gury's case book.⁶³ It is not too much to say that probably at least one man out of a hundred or even out of a thousand has been in the circumstances I have described

⁶² Lercher, *Institutiones theologiae dogmaticae* 4 (4th ed.; Barcelona, 1948) 1, n. 378, pp. 401-2.

⁶³ N. 205.

and has elicited therefrom a sufficient intention. If this is so, there is no reason to say that the dying, unknown, unconscious individual of this case is not that one man. Ninety-nine to one, or nine hundred and ninety-nine to one, if such be the case, reduce the degree of probability but do not eliminate the slight probability that this man is the one. Furthermore, who will say that this individual is not actually a catechumen, or a Protestant who is invalidly baptized, or a non-baptized adherent of a Christian sect?

This practice would be permissible only in extreme cases and then only when all danger of contempt for the Christian religion and scandal is absent or has been removed. The priest will do all in his power to assist the dying man to elicit a certain intention.

No injury is done to the sacrament, because baptism is conferred conditionally. No harm can come to religion and the bystanders, because scandal must be absent or removed. The Church has not forbidden the conferring of baptism in this kind of case. The practice is reasonable because the priest is presumed to be prudent, and he simply does not know that the man is indisposed, but he does have some probability, however slight, that he is disposed. It is hardly proper to quote canon 752 when a human soul in peril of eternal damnation is in a set of circumstances at least probably not envisaged by the canon.

Vermeersch declares that there is an obligation to baptize in this case. To assert such an obligation from which one would surely be excused should a proportionate inconvenience arise is not unreasonable. The general principles concerning the conferring of the sacraments conditionally in cases of extreme necessity even when in doubt about the presence of all the requirements for validity are broad enough to embrace this case.

SUMMARY

- 1) Conjectures and presumptions present some probability, although sometimes a slight probability, of the existence of an intention to receive baptism.
- 2) It is extrinsically probable that attrition contains a sufficient, implicit intention to receive baptism. I suggest that there is also some intrinsic probability in this opinion of Coninck, Lacroix, and others.
- 3) Neither the Code of Canon Law nor earlier documents of the Holy

Office have taxatively and exclusively defined all the cases in which one may licitly confer the sacrament of baptism conditionally. Specifically, the baptism of the dying, unconscious man about whom nothing is known has not been clearly excluded.

4) The practice of baptizing all dying, unknown, and unconscious men cannot be justified on the basis of a general assumption that all men have a sufficient intention for baptism. It can be justified, however, when one prudently takes into consideration the additional facts of the widespread knowledge of the Church, the probable dispositions of many non-Christians, and the dispositions of many invalidly baptized or non-baptized Christians, and the sincere, operative, salvific will of God.