

**THE IMPLEMENTATION OF THE CANONS ON MASS OFFERINGS IN  
PARTICULAR LAW AND CUSTOM WITH SPECIAL REFERENCE TO THE  
DIOCESES OF CAMEROON**

**By  
Francis Ndzegha NDEY**

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## ABSTRACT

The immemorial practice of the institute of Mass offerings and its reaffirmation in the present universal law of the Church presents several canonical problems, especially with the proper implementation and application of the canons on Mass offerings in particular law and the customs of particular Churches. This work explores the historical origins and development, the theological understanding and the practice of the Mass offering system within the Church, with the view of a proper and equitable application of the canons on Mass offerings within the customs and particular law of particular Churches in Cameroon. It develops the proper interpretation and application of the canons on Mass offerings in particular law.

The first chapter considers the historical origins and evolution of the practice of Mass offerings. The introduction of monetary transactions within Eucharistic praxis influenced the development of an economic theology of the fruits of the Mass. The pastoral practice of the limitation of the application of the fruits of the Mass to one Mass offering donor, to the exclusion of others, had the consequent theological effect of introducing the language of economics and commerce in the conceptualization of Eucharistic theology and efficacy of the Mass. The second chapter presents a systematic exposure and analysis of the scope of canonical doctrine in actual legislation governing Mass offerings, analyzed in light of the 1917 Code, the 1974 motu proprio *Firma in traditione*, and the decree *Mos iugiter* on “pluri-intentional” Masses. This chapter accentuates the right of the priest celebrant with regard to the Mass offering, a grant of

the universal law of the Church, while also underscoring the complete and total exclusion of any semblance of trafficking or commerce within the Mass offering transaction. The third chapter addresses the issue of simony and the various juridical theories devised to justify the practice of Mass offerings and the avoidance of all charges of simony. The fourth and final chapter focuses on the implementation and application of the canons on Mass offerings in particular law and customs within the dioceses of Cameroon. In light of the assessment of some questionable practices within some the dioceses in Cameroon, we have proposed a uniform praxis based on sound canonical principles that if prudently and equitably applied within the dioceses of Cameroon will eliminate questionable and unorthodox practices.

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## ABBREVIATIONS

AAS	<i>Acta Apostolica Sedis</i>
c.	canon
cc.	canons
CCEO	<i>Codex Canonum Ecclesiarum Orientalium</i>
CCLA	CAPARROS, E. et al. (eds.), <i>Code of canon Law Annotated</i>
CIC'17	<i>Codex iuris canonici, Pii X Pontificis Maximi iussu digestus</i>
CLD	<i>Canon Law Digest</i>
CIC	<i>Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus</i>
CLSA	<i>Canon Law Society of America</i>
CLSA Comm1	CORIDEN, J., T.J. GREEN, and D.E. HEINTSCHEL (eds.), <i>The Code of Canon Law: Text and Commentary</i>
CLSA Comm2	BEAL, J.P., J.A., CORIDEN, T.J. GREEN, (eds.), <i>New Commentary on the Code of Canon Law</i>
CLSANZ	<i>Canon Law Society of Australia and New Zealand</i>
CLSAP	<i>Canon Law Society of America Proceedings</i>
CLSGBI Comm	SHEEHY, G. et al. (eds.), <i>The Canon Law: Letter &amp; Spirit</i>
CCC	<i>Catechism of the Catholic Church</i>

<i>CDF</i>	<i>Congregation for the Doctrine of the Faith</i>
<i>CTAP</i>	<i>Proceedings of the Catholic Theological Society of America</i>
<i>Exegetical Comm</i>	MARZOA, A., J. MIRAS, R. RODRÍGUEZ-OCAÑA (eds.), and E. CAPARROS (gen. ed. of English translation), <i>Exegetical Commentary</i>
FLANNERY1	FLANNERY, A. (gen. ed.), Vatican Council II, vol. 1
FLANNERY2	FLANNERY, A. (gen. ed.), Vatican Council II, vol. 2
<i>GS</i>	SECOND VATICAN COUNCIL, Pastoral Constitution <i>Gaudium et spes</i>
<i>LG</i>	SECOND VATICAN COUNCIL, Dogmatic Constitution <i>Lumen gentium</i>
<i>PB</i>	JOHN PAUL II, Apostolic Constitution <i>Pastor bonus</i>

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## GENERAL INTRODUCTION

The institute of Mass offering has a very long history in the life of the Church. The good of the Church and support of the clergy have always been the principal purposes for which the custom of Mass offerings was carried out. The present Code of Canon Law explicitly affirms the centuries-old custom of the Mass offering and its purpose. Thus c. 945, §1 maintains that: “In accord with the *approved practice* of the Church, any priest celebrating or concelebrating is permitted to receive an offering to apply the Mass for a specific intention.” This prescript is followed by the statement that: “The Christian faithful who give an offering to apply the Mass for their intention *contribute to the good of the Church* and by that offering share its concern to *support its ministers and works*” (c. 946). These statements concerning the practice of the Mass offering and its primary purpose are followed by a very strict principle: “Separate Masses are to be applied for the intentions of those for whom a single offering, although small, has been given and accepted” (c. 948). This was also the principle expressed in c. 828 of the 1917 Code of Canon Law.

This ancient practice of the Church and its reaffirmation in the present universal law of the Church is not without its problems. There are a number of issues that have proven to be problematic for theologians, canonists, and for some particular Churches, especially regarding the proper implementation of the canons on Mass offerings in particular law and custom. First of all, there is the problem of the juridic nature of Mass offerings. What is the juridic nature of the relationship between the donor and the priest celebrant? Furthermore, there are parishes around the world where the parish priest is responsible for several Masses especially over the weekend. At each Mass he offers an

intention. If he were to offer one Mass for each of the intentions he receives, he would not be able to satisfy all obligations of the requested Masses within the time period stipulated by law for their celebration. Often people requesting Masses for their loved ones prefer to have the Mass celebrated in their own parish so that they could be present at that Mass. Is it possible for such a parish priest to cumulate several intentions into one Mass so that Masses requested by the parishioners may be offered in the parish itself within the allotted time period? What if the parishioners who give Mass stipends insist on individual Masses being offered for their intentions? How many Mass intentions can a priest cumulate in one Mass? Thus, some priests may be inclined to cumulate several Mass intentions into one celebration, contrary to the wishes of the donors and the dispositions of the Code of Canon Law.

These and other similar situations lead the Christian faithful to question the legitimacy of the very practice of Mass offerings. Is the practice of giving Mass offerings still relevant today? Should this practice be suppressed? Is it possible to reform the practice in such a way that the Church's "approved practice" would still retain its significance and purpose? Some have even argued for the total abolition of money from the practice of Mass offerings since it smacks of casuistry and simony. Is it a gift to the priest or does the Mass offering create contractual obligations between the priest and the donor so that the non-fulfilment of this duty has some legal and canonical considerations? What is the source of the strict obligations of satisfying the Mass intention? What do the canons say about the practice/custom of offering Mass offerings? How this "approved practice" should be properly regulated in particular law and custom through canonical precepts? Whose competence is it to regulate the practice of Mass offerings?

In some dioceses in Cameroon, one notices either the lack of due canonical precepts in particular law regulating the practice of Mass offerings or insufficient precepts. As a result, some unorthodox practices have developed. Some of these practices have been in place in some of these dioceses for a long time. According to one such practice in the Ecclesiastical Province of Bamenda, for example, the celebrant of a Mass for which an intention is given by the people is not allowed to retain the offering for himself. The offering received by the parish is divided as follows: Of the sum given for the Mass, eighty percent (80%) is retained by the parish and the remaining twenty percent (20%) is submitted to the diocese. Thus eighty percent (80%) of what is received by the parish as offering for a Mass is surrendered to the parish as the income of the parish, and the remaining twenty percent (20%) sent to the diocesan office to be used towards the upkeep of the diocesan office expenses and a small portion of it, namely five percent (5%), is set aside for the *Opus securitatis*, that is, for the retirement fund for diocesan priests. Furthermore, the offerings for Mass intentions received from abroad are retained by the diocesan office in their entirety and not given to the priests as required by the universal law of the Church. Canon 135, §2 says a law which is contrary to a higher law cannot be validly enacted by a lower level legislator. Thus, a diocesan bishop is restricted by a law enacted by the Roman Pontiff as is the case with the law on Mass offerings. The decree *Mos iugiter* of 22 February 1991, issued by the Congregation for the Clergy, affirms the law on a single offering for a single Mass but allows “pluri-intentional” Masses under certain conditions.

In light of the above practices and the guidelines provided by the Congregation for the Clergy, we ask the following questions: What do the canons on Mass offerings

stipulate? What is the juridic nature of the Mass offering? What are the rights and obligations of the priest celebrant with respect to Mass offerings in light of the 1983 Code of Canon Law? How should particular law and custom regulate the institute of Mass offerings? Whose competence is it to regulate the practice of Mass offerings? What could be done to right some of the questionable praxis presently prevailing in some of the dioceses in Cameroon? We will attempt to answer these questions in four chapters.

In the first chapter we will examine the historical origins and the theological considerations of the practice of the Mass offering in the Church. In fact, this practice has a long and complex history. The historical context of the Mass offering is intended for the purpose of clarifying the present legislation on the practice.

Chapter two will be dedicated to a systematic exposure and analysis of the scope of canonical doctrine in actual legislation governing Mass offerings. A special emphasis will be laid on the rights and obligations of the priest celebrant vis-à-vis the Mass offerings and the body/organ whose competence it is to determine and regulate in particular law the practice and the amount of the Mass offering. The canons of the present Code will be analysed in light of the 1917 Code, the 1974 motu proprio *Firma in traditione*, and the decree *Mos iugiter* on “pluri-intentional” Masses. Although our project is directed primarily toward the legislation and the praxis of the Latin Church, the relevant canons (cc. 715-717) of the *Code of Canons of the Eastern Churches* will be cited for comparison between the two traditions.

Chapter three will expose some theories put forward by canonists over time regarding the juridic nature of the Mass offerings, as a way of avoiding the appearance of

simony in the Mass offering transaction. This will lead us up to the shift in focus and the terminological approach of the 1983 code.

The fourth chapter will focus on the implementation of the canons on Mass offerings in particular law and custom in the dioceses of Cameroon. In order to achieve this objective, a scientific survey has been conducted in the Dioceses of Cameroon with regard to the implementation of the canons on Mass offerings in particular law and custom. Based on this survey, we have been able to assess some of these practices in light of the canonical principles and praxis. The principal goal of our thesis is to propose a uniform practice based on sound canonical principles that can be prudently and equitably applied within the five ecclesiastical provinces that make up the National Episcopal Conference of Cameroon.

## CHAPTER ONE

### HISTORY AND THEOLOGY OF MASS STIPENDS

#### Introduction

The present pious and laudable custom,<sup>1</sup> whereby the faithful make a modest donation, usually of money and, in some rare cases, material gifts and food stuff to a priest, so that he may apply the Mass for the special intention of the donor(s), has a long, complex, and often problematic history within the life of the Church, despite being a practice that is defended, accepted and also sanctioned in canon law. Such a custom traces its origin to the primitive communal offertory processions with oblations of the faithful of bread and wine during the Apostolic era<sup>2</sup> whereby the faithful, who took part during the celebration of the Lord's supper, made provision of the material elements that were used for the celebration of the Eucharist.<sup>3</sup> This custom will take root and evolve around the weekly, sometimes daily, celebration of the Eucharistic banquet and the *agape*

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<sup>1</sup> Customs are forms of action which have been endorsed by public opinion and are observed by people. See G. MOUSOURAKIS, *Roman Law and the Origins of the Civil Law*, Switzerland, Springer International Publishing, 2015, 61.

<sup>2</sup> "After the Ascension of our Lord, the Apostles and the rest of the faithful, whose number before Pentecost was 120, continued living and eating in common. In Jerusalem, the Apostles depended for their sustenance upon the offerings of those faithful. One may assume that, as a consequence of their community life, the Apostles celebrated the Eucharistic Supper after their usual evening meal, thus imitating the example and obeying the precept of their Divine Master, 'Do this for a commemoration of me [...] Closely connected with the Agape were the offerings of the faithful; for these offerings alone made the love-feasts possible. The notable offerings made by those Christians of Jerusalem who sold their possessions and gave the proceeds to the Apostles, are in proportion with the great expense which the community life entailed" (C.F. KELLER, *Mass Stipends*, Washington, DC, Catholic University of America, 1925; also published as a book with the same title by B. Herder Book Co., South Broadway, St. Louis, MO, 1926, 3-4).

<sup>3</sup> "The custom was for the faithful to carry bread and mixed wine to the altar, and from these offerings, the priest selected what was required for the eucharistic consecration, the rest being distributed in favor of the needy [...] The theological outlook that exercised considerable influence on the development of the new practice was the understanding of the eucharistic worship as a unified sacrificial act performed by the priest on behalf of the community and in the name of Christ. The offering of gifts was considered to be the expression of the desire of the faithful to participate in the celebration [...] by adding a kind of sacrifice of their own." (E.J. KILMARTIN, *The Eucharist in the West: History and Theology*, Collegeville, MN, The Liturgical Press, 1998, 110).

of the Apostolic Christian centuries, when the faithful after Pentecost assembled together with the Apostles in the evening, usually for a common meal (*agape*), and thereafter commemorated the Lord's Supper, which he commanded and ordered them to celebrate in his memory until his return.<sup>4</sup> These common meals in the Apostolic times (*agape*) were made possible by the generous material donations of the faithful, who not only brought foodstuffs for the meals, but also other material gifts for charity to the poor, and also bread and wine both for the celebration and redistribution at the Eucharist, and material gifts on which the Apostles depended for their own sustenance.<sup>5</sup> All the faithful who were present and took part in the Eucharistic celebration provided offerings of bread and wine (Eucharistic offerings), elements to be used for the celebration of the Eucharist, as a particular sign of their participation and contribution to the oblation of the priests who offered the sacrifice of the Mass on their behalf, but also other food items for the *agape*,

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<sup>4</sup>The transition and distinction of a mere meal which the Apostles shared together with the rest of the faithful usually in the evening before the Lord's Supper, to a manifestly Eucharistic banquet, took place after the ascension of our Lord. Then the Apostles and the rest for the faithful lived and shared their meals together, and celebrated the Eucharist daily, in the original cenacle where the last supper took place, and the Apostles and the early Church depended on the material offerings of the faithful who sold their possessions and gave the proceeds to the Apostles. The life of the community was made possible thanks to these generous donations of material offerings and gifts. This could be likened to non-Eucharistic offerings made to the Apostles as opposed to Eucharistic offerings that were brought forth during the communal offertory procession for the celebration of the Eucharist. As the Christian population increased, it became expedient for some to attend the divine services not daily but only on Sundays. Consequently, the notion of house-churches developed, along with the *agape* feast, distinct from the ordinary daily meal, a banquet symbolic of true Christian Communion, a banquet only on Sundays, a commemoration of the Lord, and true Christian charity to the poor, made possible not only by the material gifts of the faithful to the Apostles, but also the material elements that were provided for the Eucharist, bread and wine (Eucharistic offerings), and other material gifts destined for the poor. There is then a distinction between the material gifts which were given in charity to the poor during the love feast and the bread and wine offerings that were provided by the faithful for consecration and redistribution during communion (KELLER, *Mass Stipends*, 3-4).

<sup>5</sup>"The gifts made at the Sunday liturgical celebration were means of supplying the needs of the clergy and of the poor, even the poor of other churches. But from the time the Christians in Jerusalem laid their possessions at the feet of the apostles, gifts were also made to the Church outside the Eucharistic celebration. One way of doing so, although probably associated sometimes with the liturgy, was the custom of offering tithes. This practice grew and became common by the third century" (C. KENNY, "Mass Stipends: Origin and Relevance; Updating the Practice of Stole Fees," in *Homiletic and Pastoral Review*, 64 [1964], 842-850).

gifts for the poor, and the support of the priests.<sup>6</sup> In this sense, all the Christians who were present took part at the offertory procession with the bread and wine mixed with a little bit of water, and were considered as making the offering for the sacrifice of the Mass together with the priest because they made provision of the elements for the celebration of the Eucharist. The Mass was not offered for any one special intention, but it was understood that the Mass was offered for the intentions of all who were present and those absent but who had sent their contributions, since everyone made provision for the elements that made possible the celebration of the Eucharist. The offering of the Mass was understood to be a unified sacrificial communal act. The material gifts for the support of the priests and charity to the poor (non-Eucharistic elements) were not brought forth during the offertory, but most likely during the *agape* and this collection took place before the celebration of the Mass. The excess of the Eucharistic elements, bread and wine, that were not required for the celebration of the Eucharist were handed over to the priest for his support and some of it used for charity to the poor together with the other non-Eucharistic material elements.<sup>7</sup> However, in the early Church, there were still some Apostles, bishops, and priests, who earned their livelihood through the exercise of one secular profession or the other, for example, Saint Paul was a tent maker.<sup>8</sup> Clergy support

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<sup>6</sup> From the beginning of the Church, the faithful were very quick to follow the instructions of Christ and his Apostles (Mtt. 10:10; Lk. 10:7; 1Cor. 9:13; 1Tim. 5:17-18) and thus did the lay faithful provided for the bodily welfare of the clergy in return for the spiritual gifts received through their ministry.

<sup>7</sup> A. MUNIER, "Les offrandes de messes" in *Revue Ecclesiastique de Liège*, 43-44 (1956), 107-116. We notice here already the practice of the distinction of a particular oblation of the Eucharistic elements. The particular oblation made possible the celebration of the Eucharist, and this is what gave rise to the present-day practice of Mass offerings. "There is some evidence that as early as the 2d century Mass was sometimes celebrated in homes in the presence of only a few participants. Those present provided the elements used in the sacrifice. By these offerings the faithful participated in and provided for the celebration of the Mass and the sustenance of the clergy" (P.M. BOYLE, "Stipends," 715).

<sup>8</sup> Acts 18:3.

in the early Church was very quickly associated with the celebration of the Eucharist.<sup>9</sup> In the Western Latin Church, as distinguished from the Eastern tradition, the custom evolved in the Roman provinces of Africa.<sup>10</sup> This practice was also observed in third century North Africa and most likely Rome and, in the fourth century, it was used in Milan, as well as in Spain.<sup>11</sup>

The practice of supporting clergy by means of providing the elements for the celebration of the Eucharist will be received in the Western Churches beginning in the fifth century, and gradually took on a new meaning accompanied by some changes occasioned by the addition of other valuable gifts. Besides bread and wine, other gifts of value and money were made for the support of the poor and the priests.<sup>12</sup> The symbolism of the original offertory procession with gifts of bread and wine, signifying a unified communal act of worship, in which there was no distinction between the faithful members who made an offering and those that did not, changed in the Western churches. In place of it, a new practice emerged of making an offering whereby a variety of gifts

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<sup>9</sup> It should be noted here, however, that from the time of the early Christians in Jerusalem, gifts were also made to the Apostles outside the Eucharistic celebration, when the believers shared their belongings among themselves and also made gifts of money, land, and other possessions to the Apostles. See Acts 2:43-46; Acts 5:1-11.

<sup>10</sup> "Since the third century it has become more and more the practice for the faithful to express their bond with the altar by bringing first bread and wine and later other gifts, for the needs of the Church and the priest, to Mass as their offering. This practice was also observed at votive Masses" (J. A. JUNGSMANN, "Mass Intentions and Mass Stipends," in A. KIRCHGAESSNER [ed.], *Unto the Altar: The Practice of Catholic Worship*, Montreal, Palm Publishers, 1963, 26).

<sup>11</sup> "The meaning of this practice derives from the understanding of the celebration as a constellation of prayers and actions in which each participant had a role to play in the realization of the one sacrificial worship" (KILMARTIN, *The Eucharist in the West*, 110).

<sup>12</sup> "These common offerings, which were very abundant, served many purposes: the provision of the elements for the sacrifice, the maintenance of all that pertained to divine worship, the sustenance of the clergy (who usually concelebrated), and the support of Christ's poor. By their offerings the faithful signified their participation in the sacrifice of praise offered to God, and at the same time they expected to share in a special way in the fruits of the sacrifice" (C.E. GILPATRICK, "Mass Stipends and Mass Intentions," in *Worship*, 38 [1963-1964], 194).

were offered, emphasizing the individuality of those who made the offering.<sup>13</sup> In the fifth century, this new practice penetrated Rome and here, as in North Africa, the symbolism of the co-offering of the faithful was maintained, but the way was already opened to a more individualistic understanding and appreciation of the offertory procession which emerged in the Roman Church before the end of the first millennium, and which led to the practice of making an individual special offering to the priest requesting a special remembrance at the Mass. This practice will spread in the entire Roman Church and will thereafter become consolidated.<sup>14</sup> This adaptation of the original offertory procession eventually resulted in the loss of its original meaning. Whereas in the beginning it was all the members of the community together who made the offertory procession, eventually it became an activity of the individual members of the community. The communal offertory procession continued down through the ages up to the period of early scholasticism. However, this custom was not the only one that existed in the later part of the first millennium. Rather, another form of the old custom, which took root in Germany around the middle of the ninth century, was characterised by a juridical outlook and the notion of

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<sup>13</sup> "The faithful thus used the expressive symbolic action of their own presentation of material gifts, either in kind or in coin, as a means of showing their participation in the sacrifice. Because of their bringing of gifts to the altar, the early liturgies and the Fathers do not hesitate to call them offerers of the sacrifice. In time it became the general rule that both laity and clergy were to present gifts for the eucharistic celebration. For anyone to communicate without having previously made an offering was considered a matter of reproach" (GILPATRICK, "Mass Stipends and Mass Intentions," 194).

<sup>14</sup> KILMARTIN, *The Eucharist in the West*, 110-111. "Formerly the whole congregation would take part in an offertory procession on Sundays and Holy Days as well, a practice which was as is well known, made compulsory by Gregory VII when it threatened to lapse. The essential nature of the practice was in no way altered by the fact that gifts in kind were increasingly replaced by money, even though the symbolism was further weakened, although again without a change in its essential nature, when, in the case of the private offering, the presentation of the gift took place separately from the liturgical proceedings. We even find this, although here it is an exception, in the early days of Christianity, where it is the handing over of a gift of money before the liturgical action: Epiphanius, for example, records of a newly-baptized person that he handed a sum of money to the bishop who baptized him with the request: Make an offering for me! (*Adv. Haer.* 30:6)" (JUNGMANN, "Mass Intentions and Mass Stipends," 27).

the reciprocity of gift-giving.<sup>15</sup> The completely new form of this custom, which had roots in the seventh century, began to emerge in the eighth century in Spain, Western Europe, and the British Isles. This new form would prove to be the forerunner of the practice of Mass stipends that was fully established by the thirteenth century and continued to survive in the Church down through the ages.<sup>16</sup>

The good of the Church and her works and the support of the clergy have always been the principal purposes and justification for retaining the centuries-old custom of Mass offerings, not on the basis of any convincing theological arguments, but rather because through such a custom, the faithful participate actively in a particular way in the Church's solicitude to assure the decent support of her ministers, and also to unite themselves to the act of the priest who offers the Mass on their behalf.<sup>17</sup> The Mass offering is a direct contribution towards the support of the priest and it "is beneficial for

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<sup>15</sup> "A notable development of this new form was occasion by the conviction of the importance of placing oneself on the side of the priest 'mediator' in order to share more fully in the blessings of the Mass. This understanding of the priest's role in the Eucharist, as analogous to that of the Old Testament priest, led to the persuasion that one gains more blessings from the Mass if the priest agrees to celebrate the Mass for one donor only to the exclusion of other donors of gifts. This notion was also shared by priests and put into practice" (KILMARTIN, *The Eucharist in the West*, 113).

<sup>16</sup> "The material gifts offered in the tributary of the offertory procession consisted of fruits of nature and money. But, in the process of the development, the preference for gifts of money or other valuables over products of nature was already manifested at the end of the first millennium" (KILMARTIN, *The Eucharist in the West*, 111).

<sup>17</sup> "Such offerings are the symbolic expression not only of one's spiritual union with the sacrificial worship of Christ, but also of one's membership in the celebration of the faith of the hierarchically organized local Catholic community[...] The offering of gifts was considered to be the expression of the desire of the faithful to participate in the celebration- which in the West came to be seen increasingly, eventually even primarily, as an act of the priest- by adding a kind of sacrifice of their own" (KILMARTIN, *The Eucharist in the West*, 110).

those whom it is offered, and through this offering some grace of remission of sin flows."<sup>18</sup>

### 1.1. Roman Law and Mass Stipends

The custom of Mass stipends resembles customs of ancient Roman secular law.<sup>19</sup> The term employed by the Code to describe Mass stipends is derived directly from the Latin word *stips, stipis* (f) which means "a gift." In ancient Roman secular law and customs, this juridic expression was used to indicate a token that was given for a religious purpose. Literally, the term means "a small coin," that is, a gift, a donation, or alms. This expression was also used in Roman law to describe the fee that was given to a pagan priest when he performed burial services or made a sacrifice to the gods on behalf of the people.<sup>20</sup> The custom of Mass stipends has borrowed this juridic term in Roman Law to describe the offerings given to a priest on the occasion of the celebration of the sacrifice of the Mass.<sup>21</sup>

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<sup>18</sup> D. POWER, *The Sacrifice We Offer: The Tridentine Dogma and Its Reinterpretation*, Edinburg, T & T Clark, 1987, 128; see also idem, *The Eucharistic Mystery: Revitalizing the Tradition*, New York, Crossroad, 1992, 250-263.

<sup>19</sup> The custom of offering Mass stipends was borrowed from ancient secular Roman law because the services provided by a pagan priest were considered in Roman secular law to belong to the class of the liberal professions which *per se* did not constitute an object deserving payment or a salary. However, the one who had profited from the services of those who exercised the liberal professions was called upon to give an honorarium to his benefactor, not by virtue of an obligation in justice, but a mere secular custom, even if with time such a custom in Roman law became an obligation in justice (R. NAZ, *Dictionnaire de droit canonique*, tome V, Paris, Librairie Letouzey et Ané, 1953, 1203).

<sup>20</sup> "Pagan priests were paid a fee for their services, such as a burial fee. When they sacrificed to the gods for the people, part of the sacrificial offering was retained for their own sustenance." (P.M. BOYLE "Stipends," in W.J. McDONALD; J.A. MAGNER; M.R.P. MCGUIRE [eds.], *New Catholic Encyclopedia*, vol. 13, Washington, McGraw-Hill Book Company, 1967, 715).

<sup>21</sup> P.N.S. PEIG, "The Offering given for the Celebration of Mass (Mass Stipends)," in *Immaculate Conception School of Theology Journal (ICST)*, 5 (2003), 20-28.

Accordingly, therefore, in Roman law, one was called upon to compensate – *renumerare* – his benefactor, on whose behalf he had carried out his profession. This custom would later become juridic, an obligation binding in justice, so that anyone who had benefitted from the exercise of the services of these professions had an obligation in justice to compensate his benefactor.<sup>22</sup> The custom of giving a bonus or an honorarium in Roman law was never considered in a strict sense as paying the price for the services rendered. The token was given more as a kind gesture, a gift on the occasion of rendering a service. Its purpose was to support the person who provided the services so that such a person would always dedicate his life to serving people through his profession.<sup>23</sup> Likewise, in the Church and in canon law, the spiritual services rendered by priests have never been considered as rendered primarily because of payment. Spiritual services in the Church have always been considered as something similar to the services of the liberal professions in Roman law. However, the Church considers it necessary to support priests, whose profession, moreover, has a sacred character that can be compared to the liberal professions in Roman law, called *res religiosas*.<sup>24</sup> This is an acceptable practice which should be fostered, the desire to ensure the decent support of priests. The offerings given on the occasion of the celebration of Mass fulfill this purpose. These offerings are not a payment for the Mass celebrated, but Mass stipends are direct support which the faithful make to the clergy out of concern for the exercise their ministry.

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<sup>22</sup> NAZ, *Dictionnaire de droit canonique*, 1203. Even at such a stage, there was no fixed amount of payment for the services rendered, but then one was obliged to give something, an amount, no matter how little, which was to reflect what his benefactor will need for his daily upkeep.

<sup>23</sup> PEIG, "Mass Stipends," 20-28.

<sup>24</sup> NAZ, *Dictionnaire de droit canonique*, 1203.

## 1.2 Tithes and Mass Stipends

The custom of Mass stipends also resembles the biblical precept of paying tithes<sup>25</sup> to God, which is a tenth of one's income and material possessions.<sup>26</sup> This practice is well rooted in Jewish consciousness within the context of Temple worship and the terms of God's covenant with his people.<sup>27</sup> The practice of the tithe goes back to Abraham himself, who for the first time, after recovering his kinsmen, Lot and his possessions, along with the women and the other people returning from the battle in which he defeated Chedor-Laomer, gave a tithe of everything he owned to Melchizedek, King of Salem, and priest of the God Most High.<sup>28</sup> At Bethel, Jacob made a solemn vow to God to give a tenth of all that God will give him.<sup>29</sup> The Torah includes the demand to pay a tithe of land, seed or fruit trees, and animals.<sup>30</sup> In the New Testament, the faithful Jew was required also to pay a tithe of all his income, and the Pharisees were extremely scrupulous on this matter as

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<sup>25</sup> Tithe, by way of definition, is a tenth of the produce of the earth consecrated or set apart for special purposes. In modern times some of the faithful still practice the tithe, that is, when families or individuals personally give part of their annual income or personal possessions for charitable purposes. This generally amounts to ten percent (one tenth) of what the person or family possesses. However, there is no Church rule stipulating that anyone should give ten per cent of their personal income or possessions to the Church. Each Catholic faithful is urged to give according to their financial means. Catholics who observe the practice of the tithe are generally believed to have borrowed this from the bible (F. PODIMATTAM, "The Theology of Mass Stipends," in *Indian Theological Studies*, 48 [2011], 257-278).

<sup>26</sup> Lev. 27:30-34; Num. 18: 20-32. The Jews gave tithes of all their goods and produce for the sustenance of priests and Levites.

<sup>27</sup> Gen. 28:22; Lev. 27:30; Lk. 18:12. "Among the Hebrews, as the Old Testament indicates, great importance was attached to sacrificial rituals. They were performed primarily as external signs of adoration. Sometimes, however, they were offered for the added purpose of atoning for sin, in thanksgiving for benefits received, or as an act of intercession for temporal or spiritual needs" (E.J. KILMARTIN, "Eucharist as Sacrifice," in W.J. McDONALD et al. (eds.), *New Catholic Encyclopedia*, vol. 5, New York, McGraw-Hill Book Company, 1967, 609-615).

<sup>28</sup> Gen. 14:16-20.

<sup>29</sup> Gen. 28:22.

<sup>30</sup> Lev. 27: 30.

even to "tithe mint and dill and cumin."<sup>31</sup> To fail to pay one's full tithes was considered as robbing God<sup>32</sup> and, though officially offered to God, the tithe was meant to benefit the most needy within the community.<sup>33</sup> Saint Paul in his first letter to the Corinthians urged that ministers live by the altar.<sup>34</sup> God himself affirmed that he does not need our material offerings.<sup>35</sup> In the biblical world, the tithe was an integral part of the human response to the covenant with God, an acknowledgement that God is the primary source of all that we are and have.<sup>36</sup> The tithe was sacred not because God really needed it as such, but because God asked for it on behalf of the most needy in society, namely, the Levite, who had no inheritance among the sons of Israel, the sojourner or stranger, the fatherless or orphan, and the widow. It was sacred because it was put to sacred use, for the most needy and vulnerable in society.<sup>37</sup>

In response to God's call and in keeping with his vocation, the priest, just like the Levite of the Old Testament, renounced home, family, and inheritance to embrace God's

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<sup>31</sup> Lk. 18:12; Mtt. 23:23. It is worth noting here that in the New Testament, the parents of Mary, that is, Anna and Joachim, and the parents of Jesus, that is, Mary and Joseph, also participated in the law of the tithe.

<sup>32</sup> Mal. 3:8

<sup>33</sup> In the biblical world, the neediest within the community were identified as the Levite, the orphan, the widow and the stranger. For how the tithe was meant to be used by the Levite, Num 18:25-32 states: "You may consume them anyway, you and your people: this is your payment for serving in the Tent of Meeting."

<sup>34</sup> "Remember that the ministers serving in the Temple get their food from the Temple and those serving at the altar can claim their share from the altar itself" (1 Cor. 9:13).

<sup>35</sup> Ps. 50:12-13

<sup>36</sup> Every faithful Jew was required by Levitical Law to pay three tithes of his property: (a) one for the Levites (priests), (b) one for the use of the Temple and for great feasts, (c) one for the poor of the land and these poor varied from the widow, the orphan, and the stranger.

<sup>37</sup> Deut. 14:28-29; Deut. 26:12-15. Both texts are a solemn divine summons to come to the generous aid of the most vulnerable and the neediest within the community, and through such help, one derives abundant blessings from God. Charity and solidarity with the poor become, then, the most authentic and ever-present biblical challenge.

call, yet God's call does not place him above the need for basic human and material possessions.<sup>38</sup> God himself commands that the Levite should not be neglected.<sup>39</sup> The Levite had the primary right to the tithe that was offered. From the biblical perspective, the tithe in the Temple looks like the custom of Mass offerings because it fulfills a similar purpose, namely, support to priests in the form of Mass stipends.

### 1.3 History of Mass Stipends

It is impossible to identify the exact historical date when Mass stipends, properly so called, became part of normal daily life within the Church, that is, when the giving of monetary offerings (Mass stipends) outnumbered the giving of bread and wine, gifts in kind, as it was in the early ages.<sup>40</sup> The point at which the Mass stipend proper emerged was the point at which the connection between Eucharistic preparation and presentation of gifts had also finally broken down, usually considered to be around the seventh century.<sup>41</sup> There are differences of opinion concerning the exact time at which Mass stipends, in the present sense of the word, came into existence. Some authors have suggested that the usage of money existed in the eighth century,<sup>42</sup> and became much

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<sup>38</sup> This renunciation puts him in a vulnerable social position and his basic human and material needs could be easily neglected if people forget to pay attention to him.

<sup>39</sup> Num. 18:24; Deut. 12:19; 14:27.

<sup>40</sup> This transition was made possible not only because of the perishable nature of the elements used for the celebration of the Eucharist, bread and wine, but also because the excess that was not required for the celebration was usually handed over to the priest celebrant for his support.

<sup>41</sup> "By the seventh century even this bread and wine were no longer used as material for consecration, but each church or monastery prepared its own supply. Secondly, in the seventh century the Church began to be given benefices. These land endowments assured the parishes and monasteries of an income, so that they no longer had to depend upon the offerings of the faithful" (KENNY, "Mass Stipends," 844).

<sup>42</sup> "The practice of adding a gift during the eucharistic celebration, whether before or during Mass (and in addition to the later form of the offertory procession), is well attested in the eighth century. It has

more general during the eleventh century, and universal in the twelfth century. Some authors maintain that this transition took place only during the ninth century, when private Masses flourished, and other authors have maintained the seventh century as the time of this transition, at which time private Masses were quite common.<sup>43</sup> Keller concludes that it would seem that Mass stipends, in the strict sense of the word, existed before the eighth century.<sup>44</sup> Therefore, beyond this date, it cannot be ascertained with historical accuracy at exactly what date this transition took place and when the first Mass stipend was made to a priest.<sup>45</sup> However, notwithstanding this difficulty, it is possible to describe the historical stages that the Mass stipend went through to emerge in its present form, that is, the evolution and transition from the primitive oblations of the early Christian faithful to the present-day distinctive custom of Mass stipends.<sup>46</sup> It is first to the history of Mass stipends that we turn our attention, and thereafter the process of transition

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earlier roots than this, and in any case, it took on the same meaning as individualized participation in the 'offertory'" (KILMARTIN, *The Eucharist in the West*, 111).

<sup>43</sup> "During the course of centuries offerings of money gradually replaced those made in kind, although both flourished side by side as absolutely equivalent for several hundred years. The practice of money offerings was sufficiently common by the eighth century. Such money offerings frequently were made apart from the Mass itself. Often enough those unable to be present at Mass and make their offering in person had a representative bring it to the priest. This seems to be the reason why the words, 'pro quibus tibi offerimus' were added to the memento of the living in the canon around the ninth century" (C.E. GILPATRICK, "Mass Stipends and Mass Intentions," in *Worship*, 38 [1963-1964], 194).

<sup>44</sup> KELLER, *Mass Stipends*, 15-16.

<sup>45</sup> "In time, either because of the almost universal decline of the practice of common Mass offerings, or perhaps due to the mistaken notion that the unique donor could somehow capture the whole fruit of the Mass for himself, and ultimately because of the intervention of authority, the rule became that which now prevails: for each Mass but a single offering or stipend" (GILPATRICK, "Mass Stipends and Mass Intentions," 195).

<sup>46</sup> Five distinct stages have been identified in the process of the evolution of the custom of offering Masses from the primitive oblations of the faithful, to the present-day custom. The Mass stipend proper takes its roots from the "oblaciones particulares." "Mass stipends in the strict sense are termed oblationes particulares" (KELLER, *Mass Stipends*, 10-14).

from the common oblations of the faithful to the particular oblations, the forerunner that gave rise to the present day Mass stipend system.

### 1.3.1 Early Apostolic Era to Fifth Century

The history of Mass stipends can be traced to the primitive oblations of the faithful during the *agape* of the early Apostolic centuries of the Church.<sup>47</sup> The writings of the early Church fathers also bear testimony to a practice whereby all the faithful who took part at the celebration of Mass made an offering, usually bread and wine, which was placed on the altar and offered frequently.<sup>48</sup> From the writings of the early Church fathers, in the first few centuries of Christianity, we see evidence in the writings of Irenaeus, who flourished towards the close of the second century, a recommendation that God prescribes that an offering should be placed upon the altar and offered frequently and uninterruptedly.<sup>49</sup> At some point in time, however, only what was used for divine worship could be placed on the altar.<sup>50</sup> Tertullian, who conceived of the offerings of the

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<sup>47</sup> "This Agape used to take place in the house-churches at the time when St. Paul wrote his first Epistle to the Christians of Corinth, *i.e.*, about Easter, A.D. 57. Finally, because of the abuses attendant upon it the Agape was prohibited in the fourth century. Closely connected with the Agape were the offerings of the faithful; for these offerings alone made the love-feasts possible. The notable offerings made by those Christians of Jerusalem who sold their possessions and gave the proceeds to the Apostles, are in proportion with the great expense which the community life entailed" (KELLER, *Mass Stipends*, 2).

<sup>48</sup> "In the early centuries of Christianity, the bishop celebrated Mass with all the clergy and the people participating. The faithful brought bread and wine to be used in the Sacrifice of the Mass. Later, other gifts were substituted for bread and wine. These offerings were used for the support of the clergy and the poor. There is some evidence that as early as the 2d century Mass was sometimes celebrated in homes in the presence of only a few participants. Those present provided the elements used in the sacrifice. By these offerings the faithful participated in and provided for the celebration of the Mass and the sustenance of the clergy. Mass was not offered for the special intentions of any one person. There are strong indications that from the 4th and following centuries people made offerings, not merely to participate in the sacrifice, but to have Mass celebrated for their particular intentions" (P.M. BOYLE, "Stipends," 715).

<sup>49</sup> KELLER, *Mass Stipends*, 4.

<sup>50</sup> "The Apostolic canons allowed only oil, incense, and fresh fruit to be placed on the altar along with bread and wine. The Third Council of Carthage allowed only grapes, wheat, and corn. The idea was obviously, that only those substances which were to be used in the divine worship should be dedicated on

Christians as an exercise of their lay priesthood,<sup>51</sup> uses expressions like “making of yearly and annual offerings” and “offering of sacrifices.” Such expressions incline us to speculate that similar offerings were made either to the priest or bishop, not by the faithful in general, but by the donor in particular for the celebration of the Eucharist for special occasions like weddings and other anniversaries. The use of the expression “sacrifice” points to one who had made the priest's Mass his own sacrifice by giving a donation, most probably bread and wine as was the custom then, for the celebration of the sacrifice and to the exclusion of others.<sup>52</sup> Justin Martyr speaks directly about the celebration of the Eucharist.<sup>53</sup> There are testimonies in the writings of the fathers concerning the kind of offerings, the places where some of these offerings were placed, and the procession with the offerings to the altar.<sup>54</sup> In several cases, the offerings were not presented by the faithful in general, but by a particular group, for example, the

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the altar. The inclusion of the other gifts in this dedication would have tended to give a false impression of the nature of Christian sacrifice" (T. McDONNELL, "Stipends and Simony," in *Irish Ecclesiastical Record*, 54 [1939], 35-36).

<sup>51</sup> "At this time the offering of gifts and the receiving of communion were complementary acts which the faithful performed whenever they attended Mass. According to Tertullian, 'no one is compelled, but everyone spontaneously offers" (KENNY, "Mass Stipends: Origin and Relevance," 843).

<sup>52</sup> "Tertullian (born 160 A.D.), writing to a widower who wanted to marry again, asked this significant question: 'You pray for your deceased wife and offer the annual sacrifice for her. But if you marry again, will you offer sacrifice for the two wives, and recommend both of them to God through the priest?' The words 'Your sacrifice' point definitely to the man who has made the priest's Mass his own sacrifice by requesting its celebration and excluding others from its special application" (KELLER, *Mass Stipends*, 4).

<sup>53</sup> "Then there is brought to the president of the brothers, bread and a cup of wine mixed with water, and the president takes them and sends up praise and glory to the Father of all through the name of his Son and of the Holy Spirit, and he makes thanksgiving at length for being considered worthy of these things by him." (D. MINNS, P. PARVIS, (ed.), *Justin, Philosopher and Martyr, Apologies*, New York, Oxford University Press Inc. 2009, 253-254).

<sup>54</sup> "Origen (185-254) mentions offerings which consist of victuals and money" (KELLER, *Mass Stipends*, 6).

neophytes, who made provision of the elements for the celebration of the Eucharist, or by the persons requesting a special celebration of Mass. In the Gallican liturgy, for example, each of the faithful who participated was compelled to give something of their own which could be any other material gift other than bread and wine.<sup>55</sup> The meaning given for this is that those who make the offerings make provision of the elements for the celebration and application of the Mass for their intentions. However, at this early stage it must be emphasized that there was no such thing as offering the Mass for particular persons in an exclusive or preferential way, because all who offered, those present, those absent but who sent their gifts, and the dead who shared in the gifts of their relatives and friends, formed part of the community for whom the priest prayed in the secret of his heart during Mass. The theology of the fruits of the Mass had not been developed. Hence the Mass was offered for everyone whether they were physically present or not, living and dead. The entire Christian community made the offering whenever and wherever there was a celebration of the Mass. Everyone in the Christian community also contributed and, as such, participated in the unified sacrificial act of the priest and was considered as an offerer of the sacrifice.<sup>56</sup>

There are indications also concerning another kind of practice, connected with the celebration of the Eucharist at the tomb of the deceased after burial, for example in the *Acta Johannis* towards AD 170. The same kind of celebration is previewed for the annual

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<sup>55</sup> "Le sens des honoraires de messe," *Réflexion de L'hebdomadaire pastoral officiel des diocèses suisses romands*, in *DC*, 86 (1989), 965-966.

<sup>56</sup> KENNY, "Mass Stipends," 843. "Only in the 6th century do we find any evidence of private Masses, without any participants except the prescribed servers. There is evidence dating from this time, of offerings made to have Mass celebrated for the intentions of the donor. But the earliest certain proof of stipends for an individual intention is from the Rule of St. Chrodegang in the middle of the 8th century" (BOYLE, "Stipends," 715).

anniversary of someone's death.<sup>57</sup> As well, the community of Smyrna celebrated the memory of Polycarp.<sup>58</sup> The Christian assemblies visited the tombs of the dead to officially celebrate their anniversary. A meal was then eaten at the tomb of the martyrs and a Eucharistic liturgy was celebrated. This practice became a foundation of the celebration of Solemnities.<sup>59</sup> Tertullian affirms that sacrifices were offered annually for the dead and for those who had just been born. In this way, the celebration of the Eucharist, for the new Christians, replaced the pagan sacrifices and even this practice was included during the celebration of a memorial banquet of the dead. Augustine recalls the offering of her mother Monica and those of the virgins who, because they had fallen into the hands of the barbarians, could no longer carry offerings to the altar of God and so could no longer meet the priests by whom these offerings could be offered. These practices attest to the custom whereby the faithful celebrated votive Masses.<sup>60</sup>

Gregory of Tours, an inexhaustible story teller, has preserved for us an anecdote which vividly illustrates the custom whereby the faithful offered bread and wine for the

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<sup>57</sup> "[...] it has from earliest times been offered for special intentions, for particular *votum* (Votive Masses). The account given in the apocryphal, half-Gnostic acts of John, written around the middle of the second century, of the Apostle John standing by a tomb, breaking the bread, beginning a prayer of thanksgiving and then distributing the Eucharist to those gathered around the grave, clearly mirrors a custom extant even at that time in the Catholic Church: the celebration of the Eucharist for the dead. A little later, this custom is, in fact, attested by Tertullian: *Oblationes pro defunctis... annua facimus* (De cor. ch. 3). We have frequent proofs of the fact that the Eucharist was also occasionally celebrated for a small group in a private house or chapel, and then, too, probably for a special intention[...] help in any trouble, in danger of plague; prayer for rain, for fine weather, for the blessing of children, for the sick, for the dead, in time of war, for peace; thanks and prayers for a birthday, at a marriage, on the anniversary of a priest's ordination, etc." (JUNGSMANN, "Mass Intentions and Mass Stipends," 25-26).

<sup>58</sup> Ibid.

<sup>59</sup> W.H. WOESTMAN (ed.) *Canonisation: Theology, History, Process*, Ottawa, Saint Paul University, 2002, 20-21.

<sup>60</sup> DC, 86 (1989), 965-966; Votive Masses are Masses which are offered for the intentions and desires (*vota*) of a group or an individual, and of private Masses celebrated with only a server present out of a priest's personal devotion (J.M. HUELS, "Offerings Given at the Celebration of the Mass [cc. 945-958]," in *CLSA Comm2*, 1129).

celebration of the Eucharist. He tells a story of a widow who attended Mass every day for a period of one year, celebrated for the intention of her deceased husband, and for which she offered a sixth of her best wine for the priest's celebration which, according to Gallic custom, she would hand into the sacristy to the sacristan before Mass. However, a sub-deacon, who was a great thief, used to receive this wine every day but kept it for himself and in place of the good wine, brought out wine of bad quality to the altar, until the day when the woman was admonished in a dream to receive communion and when she communicated from the chalice, she discovered that she had been deceived.<sup>61</sup>

Christian antiquity attests to the fact that, besides the Masses celebrated for the dead, there were also votive Masses celebrated for particular intentions. The Sacramentaries of Leo and Gelasius present to us a number of votive Mass formularies, for example, illnesses, marriages, childlessness, in time of drought and in time of floods, for peace, and against epidemics and all who requested the celebration Masses for particular intentions also contributed to the priest for their celebration.<sup>62</sup>

Pope Gregory the Great also tells a story of John who wished to give two loaves of bread for the sacrifice to the guard of the public washing pool. This guard asked John to offer rather a sacrifice for him, and that is what he did for a week. Saint Benedict also gave an offering for the celebration of Mass for two religious women, and in the monasteries Mass for the dead was as a matter of fact.<sup>63</sup>

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<sup>61</sup> KELLER, *Mass Stipends*, 12-13; see also JUNGSMANN, "Mass Intentions and Mass Stipends," 26-27.

<sup>62</sup> *DC*, 86 (1989), 965-966.

<sup>63</sup> *Ibid.*

### 1.3.2 Sixth to Twelfth Century

The sixth century is marked by the fact that people continued to make an offering at each Mass they attended, not only Sunday Masses but even daily Mass, a practice which was begun already in the fourth century. The Church continued to urge this practice. We see, for example, that the wife of King Childebert made many individual offerings to St. Martin for the celebration of Masses and, towards the close of the same century, Pope Gregory declared that one-fourth of the sacrificial bread presented by the faithful belonged to the clergy. About this same time, the practice of offering bread and wine was beginning to decline among the faithful. When the offering of bread ceased, the offering of money became common.<sup>64</sup> Two reasons are advanced for the decline in offerings of bread and wine at this period. First of all, daily communion became less frequent by the fifth century which necessarily led to a decrease in the amount of bread and wine that was needed for the celebration of Mass.<sup>65</sup> By the seventh century, each Church or monastery had the habit of preparing its own supply of bread and wine.<sup>66</sup>

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<sup>64</sup> KELLER, *Mass Stipends*, 6.

<sup>65</sup> "The withdrawal of the people from communion may be regarded as the first of a series of radical shifts in the Church's eucharistic transaction. Now the gifts were prepared and offered by the people, *but no longer shared in communion*. Thus, was established a serious break in the giving and sharing of the gifts of the eucharist. The result was a profound modification not only of the dynamics of eucharistic participation, but of the manner in which eucharistic realities would be perceived as accessible thereafter" (M.F. MANNION, "Stipends and Eucharistic Practice," in *Worship*, 57 [1983], 200).

<sup>66</sup> "From the seventh century onwards, the offering of money came increasingly to the fore and the offering of bread and wine discontinued. Apart from the practical consideration that the decrease in congregational communion led to a curtailment of the offering of the elements for communion, the more significant reason for this development was the transition from the use of leavened to unleavened eucharistic bread [...] The motivation behind this change was to remove eucharistic bread and its production from the sphere of the earthly and the profane and to ensure its worthiness for the Christian cult. The result was the ritualization of the process of producing eucharistic bread and the restriction of its production to the clergy and to the monasteries. In this way, the people were excluded from the process of preparing and providing bread for the eucharist. With this development, the people's role was curtailed once more, this time at the level of the originating action which the preparation and provision of material gifts for the eucharist represent" (ibid., 201).

Secondly, in the seventh century the Church began to be given benefices of land endowments. These benefices assured parishes of an income so that they no longer depended upon the offerings of the faithful.<sup>67</sup>

By the seventh century, money became commonplace and those who wanted Masses said for their intentions gave money to the priest and the offering of bread and wine was discontinued. The motivation of this shift was to remove Eucharistic bread and its production from the sphere of the earthly and the profane and to ensure its worthiness for Christian cult, coupled with the fact that parishes and monasteries could now assure themselves of income and no longer depended on the offerings of the faithful. It is in this century that St John the Almoner offered Mass for the safe return of a son whose father had given money to him, and by the eighth century individual priests were permitted to receive money, or alms, in return for saying Mass for the intentions of the donor.<sup>68</sup>

The gift of money that was frequently substituted for bread and wine, in the seventh and eight centuries, became chiefly the support of the clergy.<sup>69</sup> In the early Western Church the practice of giving money to the priest on the occasion of the celebration of Mass became obligatory around the eighth century. By this time, it had become the accepted practice that money be given in place of the bread and wine in order to assure the decent support of the clergy. The custom soon became widespread in Christendom, and then universally adopted beginning in the twelfth century. Thereafter, money became almost the exclusive manner of offerings made on the occasion of the

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<sup>67</sup> "Even though the giving of an offering became increasingly the lot of a few, the Mass continued to be offered for all present, although not equally" (KENNY, "Mass Stipends: Origin and Relevance," 844).

<sup>68</sup> KELLER, *Mass Stipends*, 7.

<sup>69</sup> HUELS, "Offerings Given at the Celebration of the Mass [cc. 945-958]," 1129.

celebration of Mass.<sup>70</sup> The gifts in kind were replaced by an amount of money, which was then handed to the priest during the celebration of Mass or even outside Mass itself, but was always given in view of a future celebration. Because of this separation in time between the handing over of the offering and the celebration, this offering slowly lost its original significance in the conscience of the faithful.<sup>71</sup>

By the eleventh and twelfth centuries, these customs converged to give rise to the distinctive custom, whereby a priest accepted a single donation or “stipend” for each Mass in return for remembering a special intention. This practice rapidly spread and thereafter became popular and firmly established in the thirteenth century onwards. One of the reasons for this popularity was the opportunity it gave the faithful to take a more active role in the liturgy, which by then had become largely an affair of the clergy. In donating for the celebration of Mass in advance, the faithful could participate more fully in the action of the priest who offered the Mass on their behalf. From the middle ages until the liturgical reforms of the twentieth century, the liturgy was largely a clerical affair and the lay Christians were silent spectators; most of them did not understand the Latin language, and the reception of daily communion was uncommon. Thus, to give an offering to the priest to remember one’s intention at Mass became a very popular way of

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<sup>70</sup> "By the 11th century both private Masses and individual stipends were common practice" (BOYLE, "Stipends," 715).

<sup>71</sup> HUELS, "Offerings Given at the Celebration of the Mass [cc. 945-958]," 1129. "By the twelfth century, the presentation of bread and wine by the people took place only on a very small number of occasions, and, when practiced, had little more than dramatic value. Where the collection of money continued, it had no longer intrinsic connection with the eucharist or with alms for the poor [...] It was against this sort of background that the practice of the Mass stipend had begun to emerge from the eighth century onwards [...] the point at which the Mass stipend proper emerged was the point at which the connection between eucharistic participation and the presentation of gifts finally broke down; for the particular characteristic of the Mass stipend was that it was an honorarium paid in advance to obligate a priest to celebrate exclusively for the intention of the donor. It was thus an *extra-eucharistic* transaction directed toward obtaining a special benefit from the eucharist available only through the exclusive mediation of the priest" (MANNION, "Stipends and Eucharistic Practice," 202).

participating more closely in the action of the priest.<sup>72</sup> By the thirteenth century, the custom for a priest to accept a single donation from the faithful or a "Mass stipend" in return for remembering a special intention in the Mass became very well established.<sup>73</sup>

Once the custom of offering stipends for Masses became common and accepted practice, private Mass offerings spread and flourished since there were many priests whose only pastoral duty was the celebration of these Masses. The theology of the various fruits of the Mass would be mentioned for the first time in the ninth century, in defense of the practice of Mass stipends, but this only received ample theological treatment during the era of high scholastic theology of Duns Scotus in the middle ages.<sup>74</sup> It was already common in the eleventh and twelfth centuries for people to make offerings for Masses on the occasions of weddings, funerals, birthdays, and anniversaries.<sup>75</sup> The growth in the practice during this period also increasingly carried the stipulation that the Church or monastery that received the benefices should have a certain number of Masses said regularly for the donor. Sometimes money from an endowment was given to the priest during the offertory of the Mass, sometimes it was given to him outside of the

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<sup>72</sup> HUELS, "Offerings Given at the Celebration of the Mass [cc. 945-958]," 1129.

<sup>73</sup> KELLER, *Mass Stipends*, 10.

<sup>74</sup> "Amalar of Metz in the ninth century, was the first to distinguish the fruits of the Mass. 'The Sacrifice is offered for three intentions: for the holy, universal Church, for those special brethren whose alms or gifts we have received, and for us priests ourselves'" (KENNY, "Mass Stipends," 844). "Amalar of Metz in the ninth century had suggested a threefold distinction that was now taken up and elaborated upon as a way of explaining how these fruits might be applied. The Mass, according to Amalar, is offered for the holy universal church; for those who offer alms and gifts; and for the priest. Duns Scotus in the thirteenth century developed this scheme, asserting the existence of three distinct fruits of the Mass, applicable as follows: to the priest (*specialissime*); to the universal church (*generalissime*); and to the one who is the subject of the special intention (*specialiter*). With this scheme came a set of assertions that were widely accepted thereafter: that the fruits available from each Mass are limited; that they are produced in an objective fashion independent of the dispositions of the priest and the participation of the people; and that the priest has the power to apply these fruits as he intends" (MANNION, "Stipends and Eucharistic Practice," 205).

<sup>75</sup> KENNY, "Mass Stipends," 844.

Mass.<sup>76</sup> The custom then developed of giving a lump sum to the priest for the celebration of a certain number of Masses. It was longer necessary to say these Masses on the anniversary day itself, since a specified number of Masses sufficed, often requested by a single donor for one deceased person.

The common or general offerings of the faithful, which by the eleventh century had generally changed from kind to money, still remained obligatory only on major feasts of the year. The custom of offering stipends apart from the celebration prevailed and continued to grow enormously in importance as the number of private Masses and priests increased.<sup>77</sup> Offerings by the congregation during Mass all but disappeared, and, where they remained, they lost all connection with sharing in the benefits of the Mass. As such, they were pure alms which happened to be given to the Church during Mass. Only on major feasts did the pastor offer Mass for the intention of his people as a whole. This custom developed and eventually became a binding obligation on the pastor.

### **1.3.3 Thirteenth Century**

This century is characterized by the manner in which the special intention of the Mass was expressed. In the early Roman Mass, the intention was expressed in the Secret of the priest's prayer. In the fourth century, due to the desire to pray for certain benefactors in particular, the practice of inscribing their names in the diptychs and reading them aloud in the canon of the Mass was developed. Because the number of

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<sup>76</sup> Ibid.

<sup>77</sup> "With the growing organization of the stipend system came the multiplication of votive Masses of all kinds and an enormous increase in the number of priests whose single duty was the celebration of Masses to fulfill the numerous requests. In this way, there was firmly established the practice of private Masses and the principle that the giving of a stipend was effective even without the physical presence of the donor" (MANNION, "Stipends and Eucharistic Practice," 203).

benefactors kept on growing, coupled with the difficulties of keeping records, by the eleventh century the function of the diptychs was taken over by the prayers at the offering which were developed around the actions of preparing the bread and wine for the sacrifice, a general remembrance of all the benefactors, those who made an offering and those for whom the Mass was offered. In private and public Masses where diptychs were not read, the memento of the Canon of the Mass was free so that the names of those who offered the stipend could be inserted or mentioned. Mass endowments of the eleventh century frequently stipulated that the priest should do so. In the twelfth century, the custom developed of making the intention in a special collect of the Mass. In the thirteenth century, the intention of the Mass was determined upon receipt of the stipend and the special mention in the canon of the name of the person for whom the Mass was said was no longer required.<sup>78</sup>

#### **1.4 Mass Stipend Proper**

The *agape* or love-feasts were different from the Lord's Supper, and this difference was also reflected in the kind of gifts that were brought for the *agape* (mainly, but not limited to, foodstuffs), and those that were brought forward for the Lord's Supper (bread and wine which were elements for the Eucharist). The gifts that were brought for the *agape* were complementary, and the *agape* took place just before the celebration of the Lord's supper.<sup>79</sup> The gifts that were brought for the *agape* consisted largely but not exclusively of bread and wine, but other edible foodstuff and money was also brought for the feast, including other material gifts, destined for the support of the priests and the

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<sup>78</sup> KENNY, "Mass Stipends," 845.

<sup>79</sup> 1 Cor. 11:20-22.

poor. The faithful brought their gifts of bread and wine, and in the early ages, the first fruits, or one-sixtieth of the crop as part of the offering, and received a blessing from the bishop. These gifts were then distributed partly for the love-feast itself, some part of it was reserved for the poor, and another portion for the clergy.<sup>80</sup> These offerings constituted the "*oblaciones communes ad gazophylacium*," to designate all kinds of donations destined for the clergy, bishop, priests, deacons and clerics of inferior rank that were dropped in the "poor box."<sup>81</sup>

Communion, however, was infrequent.<sup>82</sup> "In other words, the giver of the offering at this period no longer took part in the Offertory or Communion, but only in the Consecration or sacrifice itself by attending Mass and having its fruits offered [...]."<sup>83</sup>

Because of this increase in the number of priests whose only pastoral duty was the celebration of Masses to fulfill numerous requests, private Masses became common place.<sup>84</sup> Private Masses flourished especially around the seventh century in which those who took part offered money in place of bread and wine.

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<sup>80</sup> "In the year 563, the Spanish Synod of Braga (Canon 22) decreed that the offerings made by the faithful should be collected by the archdeacon and distributed among the clergy annually or semi-annually. He portioned out one part to the bishop, another to the priest and deacons, and the rest to clerics of inferior rank. Pope Gregory the Great (510-604) tells that one-fourth of the bread presented by the faithful belonged to the clergy" (KELLER, *Mass Stipends*, 11).

<sup>81</sup> Ibid.

<sup>82</sup> KELLER, *Mass Stipends*, 13.

<sup>83</sup> Ibid.

<sup>84</sup> "Other changes were made as well in the practice of Mass offerings. As the number of priests increased, the number of Masses multiplied. This last development greatly favoured the practice of individual offerings for particular vota. Such votive Masses occasioned by the monetary offerings of individual believers existed perhaps as early as the third century and became much more common in the early Middle ages" (GILPATRICK, "Mass Stipends and Mass Intentions," 195).

Mass stipends in the strict sense of the word originated from *oblaciones particulares*. They differ from all other offerings, *oblaciones communes ad altare*, *Oblaciones communes ad manum*, *oblaciones communes ad gazophylacium*, because Mass stipends are given by an individual person directly to a particular priest; the donor requests the celebration of Mass for a determined intention. Formal Mass stipends are therefore essentially different from any and all the primitive oblations of the faithful from which they developed.<sup>85</sup>

### 1.5 Abuses in Mass Stipends

The history of the development of the Mass stipend system would be incomplete if mention is not made of the abuses that characterised the development of this custom. Some of these abuses will influence the later formulation of legislation on Mass stipends. During the course of the eighth and ninth centuries, there were significant abuses with Mass stipends.<sup>86</sup> For example, in the ninth century, some priests celebrated several times a day for the sole purpose of receiving stipends (money). During this period, there was even a rumour circulated that Pope Leo III used to celebrate Mass nine times a day.<sup>87</sup> The

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<sup>85</sup> KELLER, *Mass Stipends*, 15.

<sup>86</sup> In the ninth century, Walafrid Strabo attacked the application of a Mass's special fruit to an individual (and consequently the reception of stipends), on the ground that a man who gave the alms could not profit by the Mass any more than the rest of the faithful" (KELLER, *Mass Stipends*, 7). This in the strict sense of the word does not constitute an abuse as such, but rather an attack on the custom of giving Mass stipends and the theology of the fruits of the Mass that had been developed in defense of the giving of Mass stipends.

<sup>87</sup> "By the IXth century the multiplication of Masses had progressed so far that many priests said Mass several times the same day. Walafrid Strabo notes this and adds that Pope Leo (795-816) sometimes celebrated as often as nine times on one day. Honorius of Autun (XIIth cent.) says that one Mass each day is the rule, but as many as three or four may be said. However, by the XIIIth century the excessive multiplication of Masses began to be forbidden. From that time a number of Synods forbid a priest to celebrate more than once a day, except at Christmas and in the case of necessity (bination on Sundays and feastsdays)" (A. FORTESCUE, *The Mass: A Study of the Roman Liturgy*, London, Longmans Green and Co., 1937, 188).

particular abuse of celebrating several times a day for the sole purpose of receiving stipends was rampant in the ninth century, and thereafter remained so up to the sixteenth century, when the Council of Trent reacted in very strong terms to this particular abuse. There was even mention of a series of abuses like that of giving an offering for a funeral (burial) Mass for an enemy who was still alive, with the intention that the person would die as soon as possible, or that of priests consecrating many large hosts, with each large host representing or having its own “special intention” as a way of by passing the restriction on celebrating several times a day.<sup>88</sup> In the thirteenth century, besides the multiplication of daily celebrations of Masses for stipends, the next most notable abuse with Mass stipends is the famous case of the *Missa sicca* (dry Mass), so-called because the priest simulated the celebration of Mass for which a stipend had been received but without the consecration the Body and Blood of Christ, and, as such, there was no Eucharist.<sup>89</sup> In the middle ages, the *Missa sicca* (dry Mass) was a common form of devotion used for funerals or marriages in the afternoon, when a real Mass could not be said. It consisted of all the Mass except the offertory, consecration and communion. In some monasteries each priest was obliged to say a dry Mass after the real (conventual) Mass.

Popes Alexander II (1061-1073) and Innocent III (1198-1216) both condemned priests who celebrated many Masses a day in order to increase their revenues. These condemnations were once again taken up, first in the *Decretum Gratiani* (1140), and then secondly in the *Decretals of Gregory IX* (1234). Pope Pius V (1566-1572) reformed the

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<sup>88</sup> KELLER, *Mass Stipends*, 7.

<sup>89</sup> KELLER, *Mass Stipends*, 8.

liturgy and this particular abuse gradually disappeared. Cardinal Giovanni Bona argued against the practice of saying dry Masses.

In order to bypass the prohibition of celebrating several times a day, some priests celebrated one Mass a day, but repeated those portions of the Mass up to the offertory, depending on the number of Mass stipends wishing to be satisfied. By an inspiration which is more or less pharisaic, the legitimacy of the Mass stipend was denied by John Wycliffe (1330-1384). Pope Martin V condemned him in the Council of Constance (1418) for maintaining the proposition that it was simoniacal to give money to a priest so that he could celebrate Mass for one's intention.<sup>90</sup>

By the sixteenth century, serious problems had arisen that were attached to Mass stipends, some of which had made their appearance in the earlier centuries. For example, having Mass said for one's intention was commonly called "*missae comparatio*," that is, buying oneself into the Mass for which there was already a definite intention. This was done (*missae comparatio*) by giving a priest money beforehand so that he could include one's intention in the same Mass for which there was already an intention. Although medieval theologians distinguished between the use of expressions like "arranging for and obtaining" (*comparatio*), and "buying a Mass" (*emptio*) with regards to making an offering for the Mass intention, the former word became the common meaning for buying in the Romance languages.<sup>91</sup> This word reflected the fact that before the Reformation,

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<sup>90</sup> M.A. MANCINI, *The Tradition of Mass Offerings: The Rights and Obligations of the Priest*, (Unpublished Licentiate Thesis), The Catholic University of America Washington D.C., 1999, 4.

<sup>91</sup> "In the later Middle Ages, it became more and more the general custom to give the priest a gift beforehand. Even when the Mass in question already had a definite intention and perhaps already contained an Offertory procession (say, on behalf of a family who had asked for the Mass), anyone could include himself in the Mass, according to the current practice, through a gift given beforehand or through joining in

commercialism with the Mass stipend was a major abuse.<sup>92</sup> The outstanding abuse in the sixteenth century was chiefly that of commercialism (the buying and selling of Masses) and the sale of indulgences, together with trafficking in the relics of the saints, which became frequent and widespread.<sup>93</sup> This led Martin Luther to attack the behaviour of priests who manifested this tendency.<sup>94</sup> In the light of this greedy behaviour of priests, Martin Luther called into question the celebration of Mass since it had been obscured and perverted by means of superstitious ceremonies, and from which priests now derive much financial profit<sup>95</sup> and proposed the complete abolition of the Mass in the light of the manifold crimes of commercialization that had surrounded the custom of giving stipends.<sup>96</sup>

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the Offertory procession. Frequently, as a result of this, there was even a second Offertory procession at the beginning of the Mass. It was called - quite without embarrassment - buying oneself into the Mass: *comparare Missam*. This *comparatio Missae* was already present, in a narrower sense, if the priest was offered a gift to oblige him to celebrate Mass for the sole intention of the donor" (JUNGMANN, "Mass Intentions and Mass Stipends," 28).

<sup>92</sup> KENNY, "Mass Stipends," 845.

<sup>93</sup> "Again, that if anyone put money in the box for a soul in purgatory, the soul would fly to heaven as soon as the coin clinked on the bottom" (L.D. MANSCH and C.H. PETERS, *Martin Luther: The Life and Lessons*, Jefferson, North Carolina, McFarland & Company, Inc. Publishers, 2016, 233).

<sup>94</sup> For a list of the 95 theses of Martin Luther against the sale of indulgences see T. KAUFMANN, *A Short life of Martin Luther*, Grand Rapids, Michigan, William B. Eerdmans Publishing Company, 2016, 127-136.

<sup>95</sup> Martin Luther challenged the medieval practice of limiting communion to the laity under one species only (bread) and of restricting the cup to priests, the doctrine of transubstantiation, and the sacrificial character of the Mass. For further development of these thoughts, see J. MACKINNON, *Luther and the Reformation*, vol. II, London, Longmans, Green and Co. Ltd., 1928, 251-255.

<sup>96</sup> "Since such countless and unspeakable abuses have arisen everywhere through the buying and selling of Masses, it would be prudent to do without the Mass for no other reason than to curb such abuses, even if it actually possesses some value in and of itself" (KENNY, "Mass Stipends," 845).

The Council of Trent (1545-1563) maintained the value of the Mass, stressing the sacrificial nature of the Mass, and urged that all commercialism be eliminated in what concerns the celebration of Masses. This was enunciated in order to defend the system of Mass offerings and intentions. The pertinent dogmatic teaching of Trent is that Mass can be offered for both the intentions of living and dead, for sins, punishments, satisfactions, and other necessities. In the theological introduction to the canons on the Mass, Trent taught:

The fruits of that bloody sacrifice (of the cross), it is well understood, are received most abundantly through this unbloody one, so far is the later form derogating in any way from the former. Wherefore, it is rightly offered not only for the sins, punishments, satisfactions and other necessities of the faithful who are living, but also for those departed in Christ but not yet fully purified.<sup>97</sup>

Pope Innocent XII, following from the Council of Trent, on December 23, 1697 promulgated the apostolic constitution *Nuper* to strengthen the Church's position on Mass stipends. The Council of Trent's decree and the apostolic constitution of Innocent XII were the most significant texts from a historical point of view that will help in the formulation of norms against commercialism with the Mass stipend in the 1917 Code.

Pope Pius VI, in a bull entitled *Auctorem Fidei* in 1794, condemned the proposition of the Synod at Pistoia (1786). The proposition maintained that it is a *false opinion* to consider that those who give alms to a priest on condition that he celebrates a Mass receive a special fruit from the Mass. The 1917 Code defended the custom of Mass stipends by incorporating twenty-one canons to regulate the practice.

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<sup>97</sup> COUNCIL OF TRENT, Sess. XXII, *de observandis et evitandis in celebrationem missae*, English translation in H.J. SCHROEDER (ed.), *Canons and Decrees of the Council of Trent*, Rockford, Illinois, Tan Books and Publishers, 1978, 151.

## 1.6 Theology of the Value and Fruits of the Mass

The practice of securing a special remembrance in the Mass through a gift of money offered to the priest beforehand now served as the source for the reflection on the theology of the efficacy of the Mass. The implication of limiting the application of the Mass to the intention of one stipend donor, to the exclusion of others, and the practice of repeatedly having Masses offered for the same intention, suggested that the blessings applied through the Mass are limited in themselves and not simply limited by the measure of receptivity in the beneficiaries. But this conclusion seems to run contrary to the fact that the Mass applies the graces from the redemptive sacrifice of Christ, which is of infinite value.<sup>98</sup> Can one objectively secure a special fruit (spiritual benefits)<sup>99</sup> for himself/herself to the exclusion of others, by a monetary transaction with a priest beforehand so that he can celebrate the Mass for one's special intention?

In the background to the reflection on the theology of the value of the fruits of the Mass are important theological developments which took place before the close of the first millennium. These theological developments consisted of a new understanding of the role of the faithful as co-offerers of the Eucharistic sacrifice through the gift-giving of a

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<sup>98</sup> "From the thirteenth to the sixteenth centuries, the value of the fruits of the eucharistic sacrifice is the only theological question given much attention in the discussion of the theology of the sacrifice of the Mass. This subject was developed from the reflection on the possible implications of the practice of limiting the application of the Mass to the intention of one donor of a stipend to the exclusion of other potential donors, and the practice of having Masses repeatedly offered for the same intention. These practices suggested that the blessings applied through the Mass for this intention are already limited in themselves before the application, and not simply limited by the measure of receptivity in the beneficiaries. But this conclusion seemed to run contrary to the fact that the Mass applies the graces from the redemptive sacrifice of Christ, which is of infinite value" (KILMARTIN, *The Eucharist in the West*, 165).

<sup>99</sup> "[...] [T]he fruits of the Mass are those graces or temporal favors which men derive from the unbloody sacrifice" (M.D. FOREST, *The Clean Oblation*, St. Paul, Minnesota, Radio Replies Press, 1945, 170).

stipend and the theology of priesthood conceived according to the imperial model.<sup>100</sup> The gift giving of the laity at the Eucharistic celebration and the ritual offertory procession, with the elements for the celebration of the Eucharist, was viewed on the analogy with the Old Testament practice, as a sacrifice of almsgiving. The laity were co-offerers with the priest of the Eucharist. Of theological importance was the determining of the essential form of the Eucharist: the words of institution of Christ in relation to the consecration of the elements of bread and wine. It is when spoken by the priest that the Eucharistic transformation takes place.<sup>101</sup> Also important was the notion of the local community's involvement in the Eucharist of the universal Church because it is part of the mystical body of Christ. Because of this, all members of the mystical body of Christ, present or absent, stand in the same relation to the celebration of the Eucharist through their representative, the priest. They are all able, by their devotion, to contribute to the spiritual benefits that derive from the Mass.<sup>102</sup>

By the thirteenth century, with a number of theological developments, the people were no longer understood as active subjects of the offering of the Eucharistic

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<sup>100</sup> "Clericalization was quickly established as the church began to be conceived structurally according to the imperial model. Increasingly the ministry of the ordained ceased to be understood as a charism within a community of believers and appeared instead as a personal authority complete in itself, ecclesiastically absolute, with ordination seen as accession to hierarchical power and official status" (M.F. MANNION, *Masterworks of God: Essays in Liturgical Theory and Practice*, Chicago, Liturgy Training Publications, 2004, 47-48).

<sup>101</sup> "At this moment the priest is said to be placed precisely *on the side of Christ vis-a-vis the* liturgical assembly and to act in the name of Christ. Moreover, it was also concluded that, in this role, he also acts in the name of the Church. The laity were understood to have a part to play in the Mass, and especially in the eucharistic prayer, in which the priest acted as their representative. But they were understood to act as 'hearers' and to participate by reason of their spiritual devotion" (KILMARTIN, *The Eucharist in the West*, 114).

<sup>102</sup> KILMARTIN, *The Eucharist in the West*, 114-115.

sacrifice.<sup>103</sup> It should not be surprising, then, that with the practice of Mass stipends, the language of economics and commerce entered into the conceptualization of eucharistic operability and efficacy.<sup>104</sup>

By the time of high scholastic theology in the middle ages, the practice of offering distinct Masses for individual donors had become the general rule. As well, the history of theological speculation concerning the value and fruits of the Mass is intimately related to the history of the development of the Mass stipend system<sup>105</sup> because the doctrine of the value of the fruits of the Mass had far reaching consequences with regard to the pastoral practice of the Mass stipend system.<sup>106</sup>

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<sup>103</sup> "The liturgy itself had unwittingly provided some internal impetus in this direction when it began to appropriate the style and ethos of imperial ceremonial. This gave rise to a set of symbols that would result in the transference to Christ of regal categories and thus to a changed relationship between Christ and believers. The latter began to be seen more as servants and unworthy dependents, and as a result there arose a growing sense of unworthiness and awe in the face of the *mysterium tremendum*, as the eucharist was increasingly called [...] There emerged a growing sense of the eucharist as a privileged act by which God's aid might be sought for various personal favors as well as for the benefit of others, living and dead. This resulted in a conception of the priests as the exclusive subject of the eucharist and his personal act of offering and consecration as the central dynamic of eucharistic transactions" (MANNION, *Masterworks of God*, 47).

<sup>104</sup> KILMARTIN, *The Eucharist in the West*, 115. "The analysis of the monetary transactions in the Mass stipend system as eucharistic praxis involves the assertion that these transactions are highly consequential and that they have played and continue to play a highly generative role in the formation of attitudes and ideas about the church, eucharist, and ministry [...] action generates and shapes theoretical formulations and is in turn modified by theory. Attention to Mass stipend as eucharistic praxis, then, means attention to the origin and evolution of monetary transactions in the eucharist with a view to ascertaining theological effects and consequences [...] modifications and changes in one part of the ritual system affect and modify the whole, and consequently the activity and role of the participants" (MANNION, *Masterworks of God*, 42).

<sup>105</sup> The history of theological opinion from the eighth to the thirteenth century right up to the twentieth century regarding the value and fruits of the Mass can be broadly divided into two theological schools of thought, even if there are differences on a number of aspects of the problem. On the one hand, there is the widely held view of a good number of theologians that one (donor of stipend) receives more blessings from the Mass for their intention if the number of special remembrances is limited. On the other hand, there is a definite reaction of some theologians against the tendency to make the Mass a "private affair" and the clear affirmation that the Mass, as sacrifice of Christ, is of infinite value and, therefore, able to fulfill the special requests of all (donors of stipends). For further development of the history of theological opinion from the eighth to the twentieth century, see KILMARTIN, "The One Fruit or the Many Fruits of the Mass," 37-57.

<sup>106</sup> *Ibid.*, 37-38.

If praxis refers to the process by which practice shapes and generates theoretical understanding, then it should not be surprising that the medieval theology of the Eucharist arose to a considerable extent out of the Mass stipend system, given the prominence this system had achieved. Nor should it be surprising that the language of economics and commerce should have entered into the conceptualization of eucharistic operationality and efficacy.<sup>107</sup>

The shift of emphasis and focus gave rise to the celebration of Mass for the special intention of the donor independent of the donor's devout assistance at the Mass. As a result, it led to a withdrawal of the people from frequent Mass attendance and daily communion.<sup>108</sup> At the time, too, there was the widely held opinion that one receives more blessings from the Mass for his intention if the number of special remembrances is limited, because the fruits of the Mass were finite in themselves and not limited by the dispositions of the recipients.<sup>109</sup> Also, there was the growing conviction that the celebration of Mass for the intention of the donor is what matters independent of the donor's devout assistance.<sup>110</sup> What about the other people participating at Mass? Do they receive less spiritual favours because the Mass has been offered for the special intention of the stipend-donor?<sup>111</sup> Can a priest, if he accepts a gift to offer for the intention of one,

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<sup>107</sup> MANNION, *Masterworks of God*, 51.

<sup>108</sup> "Paralleling this development, there was a growing conviction that the celebration of the Mass, as such, for the intention of the donor, is what matters. This prompted a spirit of indifference regarding the importance of the devout assistance of the donor at the Mass he had requested. As the function of devotion in calling forth the blessings of the Mass was placed in the background, more and more the Mass began to be looked on as a good work which assures blessings for the intention of the founder independently of his devotion and that of the priest. Of decisive importance was the intention of the priest in remembering the request of the donor of the alms" (E.J. KILMARTIN, "The One Fruit or the Many Fruits of the Mass," in *Proceedings*, 1966, 39).

<sup>109</sup> "In order to avoid certain absurdities that would follow from such a premise (e.g., the larger the congregation at Mass, the less each would profit), theologians found it necessary to posit the existence of the various fruits of the Mass, all of which were finite except that for the congregation, which seemingly expands with the size of the congregation" (C.E. GILPATRICK, "Mass Stipends and Mass Intentions," in *Worship*, 38 [1963-1964], 191).

<sup>110</sup> KILMARTIN, "The One Fruit or the Many Fruits of the Mass," in *Proceedings*, 39.

<sup>111</sup> "Assuming that a stipend did give the donor a right to the application of the Mass and thereby to certain spiritual benefits, it is clear that the rich would enjoy an enormous advantage over the poor in this regard. Whereas the rich and the well-to-do could acquire by their donations a right in justice to certain

also include the requests of others in the same Mass?<sup>112</sup> How is the seemingly finite effect of the Mass to be explained? If something may be gained from the Mass by one who offers a stipend to a priest which is independent of the donor's own attendance or non-attendance, then that gain must be in the objective order. Is there an objective quantity of grace to be gained by the one who offers a stipend for Mass? Medieval theologians affirmed the existence of such an objective quantity of grace and thus was established the theory of the various fruits of the Mass. Summarily, the fundamental theological Eucharistic problem of the value of the various fruits of the Mass is the difficulty to harmonize the infinite value of the Mass, as the offering of Christ, which is of unlimited value, with its limited effects on those who offer and on those for whom it is offered and the practice of the Church of encouraging frequent offerings of individual Mass stipends for special intentions. What are the practical pastoral problems and theological consequences of such monetary transactions carried out in view of the celebration of the Eucharist?

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graces, the poor would be excluded for the most part from these graces that come from the application of Mass in their favor. It needs scarcely be pointed out that such a situation would be an anomaly in the Church of the poor Christ" (GILPATRICK, "Mass Stipends and Mass Intentions," 190).

<sup>112</sup> "Considering the original form and conception of monetary transactions as a profound mode of participation and communion in the eucharist, we are thus given the signal of the extent of the problem that the final evolution of the Mass stipend represented. Within the early practice of the eucharist, monetary transactions were intrinsic expressions of *koinonia* and of care for the needy in the community (including the church's ministers); within the medieval eucharistic context, these monetary transactions bordered dangerously on the buying and selling of spiritual goods from a priest conceived as the exclusive subject of the church's power. From the medieval eucharistic praxis in which the stipend came to play such a condensed role there was derived a theology of the practice of monetary gifts as a ritual means of obtaining rights and power over eucharistic fruits; an ecclesiology and a theology of orders that placed the ordinary Christian outside the realm of eucharistic subjectivity; and a popular spirituality concerned to a great extent with personal gain and self-advancement in a rather materialistic and objectivist terms" (MANNION, "Stipends and Eucharistic Praxis," 208).

The central thesis of classical high scholastic theology in the medieval period assumed that there are three distinct fruits derived from the Mass which act *ex opere operato* (by the simple fact that the sacramental act is carried out by a duly ordained minister as opposed to *ex opere operantis*,<sup>113</sup> which means the effects of the sacrament are produced in virtue of the acts or dispositions of the recipient, or of the worthiness of the minister)<sup>114</sup> and which are limited both intensively and extensively and applied by the priest to a particular person in proportion to the number for whom the Mass is especially offered. The thesis of traditional scholastic theology maintained that these special "fruits," intrinsic to the Mass as such, are derived from the celebration independent of any consideration of the devotion of those who in some way actually participate in the Mass, that is, those actually present or absent (including the stipend donor). These fruits are distinguished among themselves and are applied to various subjects according to special or distinct laws,<sup>115</sup> and the "special fruit" derived from the application of the Mass is somehow limited prior to the application.<sup>116</sup> On the other hand, there is also the definite reaction of theologians during this era against the tendency to make the Mass a "private affair," and the clear affirmation that the Mass, as a sacrifice of Christ, is of infinite value and, therefore, able to fulfill the special requests of all. The blessings derived from the

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<sup>113</sup> The fruits of the Mass are the gifts or graces or temporal favours bestowed on us through the Eucharistic Sacrifice. The expression *ex opere operato* used in the discussion of the various fruits of the Mass by theologians means the production of an effect or fruit independently of the merits of the minister or the degree of holiness or merit on the part of the recipient. *Ex opere operantis* refers to the dispositions of the human agent, in this case the priest, aided of course by grace. The effect may be produced both *ex opere operato* and *ex opere operantis* for the better the dispositions of the recipient of a sacrament, the more grace he will receive, and the better the disposition of the minister of the Eucharistic Sacrifice, the greater the grace he will derive from the sacrifice (FORREST, *The Clean Oblation*, St. Paul Minnesota, 172).

<sup>114</sup> "This means that everyone who receives the elements, be he wicked or pious, also receives the grace signified, which is conceived of as a substance contained in the elements" (L. BERKHOF, *Systematic Theology*, fourth revised and enlarged edition, Michigan, Eerdmans Publishing Co., 1941, 655).

<sup>115</sup> KILMARTIN, *The Eucharist in the West*, 230.

<sup>116</sup> *Ibid.*, 115.

Mass are limited only by the devotion of the offerers and the capacity of those for whom the Mass is offered.<sup>117</sup> Hence one Mass can simultaneously be offered for the intentions of many donors of stipends.

From the beginning debate of the theology of the value of the fruits of the Mass beginning from the eighth century right up to the thirteenth century, the most systematic theological exposition and explanation of how the measure of the limited fruits were derived from the Mass was developed by John Duns Scotus (d.1308). His conclusions took central stage in the discussion of the theology of the various fruits of the Mass and were accepted by a number of theologians.<sup>118</sup> While other theological opinions concerning the origin of the limitations of the fruits of the Mass were not limited to Scotus' explanation, it is his theological orientation that determined for a large part the teaching about Mass stipends and its practice until the twentieth century.

Duns Scotus based the limitation of the efficacy of the eucharistic sacrifice on the quality of the subjective devotion of those engaged actively by faith in the celebration of the Mass. He explained that since the sacrifice of the Mass is offered indirectly by Christ and directly by the Church militant in union with the priest, the measure of the efficacy of

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<sup>117</sup> "[...] [T]he value of the Mass is not limited in itself and that the measure of the blessings received from the celebration of the liturgy depends on the devotion of the offerers and those for whom the sacrifice is offered. Hence one Mass could bring as much fruit to each if offered for many, as it brings to one person if offered for him alone[...] while the custom grew more widespread of giving gifts beforehand for the celebration of Mass, this did not necessarily prejudice the rights of others to make offerings at the same Mass" (KILMARTIN, "The One Fruit or the Many Fruits of the Mass," 42-43).

<sup>118</sup> "During the fourteenth and fifteenth centuries, the conclusions reached by Scotus were commonly accepted: (1) Only a limited fruit is available from each Mass; (2) This fruit is infallibly produced independently of the dispositions of the priest and assisting congregation; (3) The priest can apply certain fruits of the Mass to an individual or to a number of persons" (KILMARTIN, "The One Fruit or the Many Fruits of the Mass," 52).

the Mass is linked to the devotion of the whole Church at any given time in history.<sup>119</sup> The Church militant, “the offering church,” presents Christ, victim of the Cross, before the Father in order to plead the merits of his passion for the welfare of the world. The corporate holiness of all the members of the Church militant (pilgrim Church) at every given time in history determines the measure of acceptability of each Mass, and it is this condition which limits the measure in which the Church receives the benefits of Christ's sacrificial merits for distribution through the Mass. Since the corporate holiness of the Church is always finite at any given time in history, the fruits of the Mass are, therefore, always limited by the actual holiness of the members of the Church which exists at any particular time in history. Hence there are always fruits derived from each Mass infallibly because the Church always possesses holy members at any given time in history who intentionally unite themselves with the Masses of the world.<sup>120</sup>

As concerns the distribution of the finite fruits of each Mass, because of the finite corporate holiness of the “offering Church,” Scotus offers the following reflections: that in the Mass the Church prays for herself (*generalissime*), for the priest (*specialissime*), and for the particular intention for which the Mass is celebrated (*specialiter*). Hence independently of the fruits arising from the personal merits or the holiness of the priest (*ex opere operantis*), there are always threefold fruits derived from each Mass. These

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<sup>119</sup> KILMARTIN, *The Eucharist in the West*, 166-167.

<sup>120</sup> KILMARTIN, "The One Fruit or the Many Fruits of the Mass," 51. "Scotus grounds the limitation of the efficacious value of the Mass on the fact that the active subject of the offering is (not Christ but) the Church. The Church that offers is conceived in the congregationalist sense of the sum total of the members of the Church Militant. As offered by this universal Church, the sacrifice of the Mass is always efficacious because there are always some members who are holy and whose devotion, related to each Mass, accounts for its value [...] the intensity of the remembrance determines the devotion that measures the value of each individual Mass, that is, the measure of the merit won by Christ on the cross which is applied to the merit of the Church" (KILMARTIN, *The Eucharist in the West*, 160-161).

fruits are not given automatically but are received according to the capacity of those to whom they are applied. In the case of the special fruit (*fructus specialis*), when it is not determined by the Church as in the case where the pastor is obliged to celebrate the *Missa pro populo* for his flock, the priest as representative of the Church determines to whom the fruit will be given. If this limited fruit is applied to a number of persons, it is divided among them.<sup>121</sup>

The study of theology of the value and fruits of the Mass allows us to make the following points on which theologians have consistently agreed despite their differences on a number of aspects of the problem.

(1) Fruits flow from the Mass independently of the dispositions of those present (at least by way of stipend donation) and participating in a particular Mass.

(2) The source of these fruits is either the act of Christ and also the holy members of the Church who intentionally unite themselves with the Masses of the world, or simply the act of the holy Church.

(3) There are three distinct fruits which flow from the Mass *ex opere operato*, independently of the devotion of those present and participating in a particular Mass. These fruits are generally termed *fructus specialissimus*, *specialis (medius)* and *generalis*. The first comes to the priest as presider, the second comes to the person to whom the

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<sup>121</sup> Ibid., 52. "There is the fruit applied to the Church, world, etc., for whom intercession is made in the liturgical Eucharistic Prayer; the special fruit that comes to the priest in virtue of the fact that he presides at the Eucharist as representative of the militant Church and Christ, the head of the Church; the fruit applied to the special intention for which the Mass is celebrated. This latter fruit was thought to be applied by an authoritative act of the will of the priest who is the official representative of the Church [...] these fruits of the Mass are applied according to different laws" (Ibid., 167).

priest applies the Mass for a particular intention and the third comes to the Church at large.<sup>122</sup>

The Council of Trent debated extensively the issue of what it means to apply the “special fruits” of the Mass in three of its sessions, and it concluded by eliminating from its definitive text any specific mention of the words “apply” or “application” of the fruits of the Mass by the priest. The Council of Trent did not adopt any particular theory about the way that the fruits of the Mass were received, whether this was *ex opere operato* or by way of intercession. However, the Council of Trent was contented to conclude that Mass celebrated by a priest, who had been duly ordained, under whatever circumstance, is beneficial for those for whom it is offered, and through this offering some grace of remission of sin flows.<sup>123</sup> Up to that moment, then, the Church had no firm doctrine or any particular theology of the value of the various fruits of the Mass or the way that the fruits of the Mass were received, even if there are three magisterial documents that date after the Council of Trent that seem to indicate a kind of tacit approval of the common teachings of theologians on the threefold fruits of the Mass. The bull *Ex omnibus afflictionibus* of Pope Alexander VII (1655-1667), mentions the existence of a *fructus specialissimus*, as does the encyclical letter *Cum semper oblatas* (August 19, 1744) of Benedict XIV, and the apostolic constitution *Auctorem Fidei* (August 28, 1794) of Pius VI.<sup>124</sup> However, the Church teaches and believes that the one who gives a Mass stipend

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<sup>122</sup> KILMARTIN, "The One Fruit or the Many Fruits of the Mass, in *Proceedings*, 1966, 56-57.

<sup>123</sup> HUELS, "Offerings Given at the Celebration of the Mass [cc. 945-958]," 1129-1130; see also D.N. POWER, *The Sacrifice we Offer: The Tridentine Dogma and its Reinterpretation*, New York, The Crossroad Publishing Company, 1987, 128.

<sup>124</sup> "For the existence of a *fructus specialissimus*, appeal is made to the condemnation by Pope Alexander VII, in the bull *Ex omnibus afflictionibus*, of the opinion that a priest can apply to a person for a

for an intention derives spiritual benefits.<sup>125</sup> How these fruits are applied and how this is accomplished still largely remain matters within the realm of theological speculation.<sup>126</sup> What must be held as sound doctrine guaranteed by the instinct of the faithful and by the teaching of the Magisterium, is the conviction that fruits derive from the Mass for the whole Church, for the world, for the individuals for whom the Church prays in the Eucharistic sacrifice, and especially for those who actively participate in the celebration, as well as for those in favour of whom the Eucharistic sacrifice is celebrated. This is especially witnessed by the liturgy of the Eucharist itself.<sup>127</sup> In the Mass, the priest prays for three intentions: to offer the Mass reverently and validly according to the liturgical norms laid down by the Church in union with the whole Church, for the good of the whole Church and the world, and for the particular Mass intention such as the repose of the soul of someone who has died.<sup>128</sup>

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stipend part of the *fructus specialissimus* which accrues to him as celebrant [...] It seems clear that he [the pope] accepts the common teaching of the day that a priest receives a special fruit precisely because he celebrates a Mass and that he also accepted the common teaching, first formulated by Scotus, that a priest cannot apply this fruit to anyone else. [...] For the existence of a *fructus specialis*, as traditionally understood, reference is made to the encyclical letter *Cum semper oblatas* (August 19, 1744) of Benedict XIV and the constitution *Auctorem Fidei* (August 28, 1794) of Pius VI" (KILMARTIN, "The One Fruit or the Many Fruits of the Mass, in *Proceedings*, 66-67).

<sup>125</sup> "However, the scholastic theology of the fruits of the Mass, although accepted in some measure by the magisterium, and also expressed in official documents, has not yet been fully stated and guaranteed by the magisterium itself" (KILMARTIN, *The Eucharist in the West*, 230).

<sup>126</sup> HUELS, "Offerings Given at the Celebration of the Mass [cc. 945-958]," 1129-1130.

<sup>127</sup> KILMARTIN, *The Eucharist in the West*, 231.

<sup>128</sup> "[...] [T]he Eucharist is celebrated in communion with the entire Church, of heaven as well as of earth, and that the offering made for her and for all her members, living and dead, who have been called to participate in the redemption and salvation purchased by Christ's Body and Blood" (E. FOLEY, "The Structure of the Mass, Its Elements and Parts" in E. FOLEY, N.D. MITCHELL, and J.M. PIERCE [eds.] *A Commentary on the General Instruction of the Roman Missal*, Developed under the Auspices of the

Theologians in the 21<sup>st</sup> century have taken up the issue of the value of the fruits of the sacrifice of the Mass and have shown great ingenuity in trying to combat the difficulty, but the fact that no generally acceptable solution to the problem has been found is evidence that the problem still exists.<sup>129</sup> For example, Karl Rahner,<sup>130</sup> takes a different approach and declares all the three points of agreement to be without sufficient theological basis. He makes the following points:

1) New fruits do not come from the Mass by reason of the action of Christ independently of the devotion of those who actually offer the Mass in a true sense. The sacramental representation of the sacrifice of the cross in the Mass does not immediately bring new blessings to the Church. Through the Mass, men participate in the sacrificial offering of Christ and this is the occasion for God to afford actual graces so that men may offer acceptable sacrificial prayer in union with Christ. The opinion of the past that the Mass produces fruits because of the activity of Christ independently of the devotion of those who actually participate in the liturgical offering, is simply a misunderstanding of

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Catholic Academy of Liturgy and Cosponsored by the Federation of diocesan Liturgical Commissions, Collegeville, Minnesota, Liturgical Press, 2007, 178).

<sup>129</sup> "Moreover, if one can judge by publications over the last four decades, the majority of catholic theologians are opposed to the kernel of this scholastic thesis. They hold that there is "one fruit" of the Mass, which fruit is derived from Christ's redemptive work, and which is measured by the devotion of those participating in the Mass, and by the devotion of those in whose favor intercession is made through the eucharistic sacrifice" (KILMARTIN, *The Eucharist in the West*, 230).

<sup>130</sup> "[...] [T]he fruits of the Mass cannot divide up in virtue of the Mass itself into essentially and quantitatively different benefits. It is essentially one, offered to each as the same, but received in different ways and degrees. The communion which God offers in Christ is one only, even though at the celebration of its sacramental sign, various particular functions are exercised" (K. RAHNER, A. HÄUSSLING, *The Celebration of the Eucharist*, Montreal, Palm Publishers, 1968, 87).

the nature of the term *ex opere operato* (by the very fact of offering the Mass) and the essentially relative character of the Mass with respect to the sacrifice of the Cross.

2) New fruits do not come from the Mass by reason of the activity of the holy members of the Church who intentionally unite themselves with the Masses of the world. It is only in the actual devotion of the immediate subject of the offering that new fruits can be ascribed, hence the assertion that new fruits arise from each Mass through the activity of the "offering Church"<sup>131</sup> remains extremely dubious.

3) The devotion of those actually involved in the offering of a particular Mass measures the effect which the offering has on them and the blessings which will be extended to those for whom they offer.<sup>132</sup> The devotion of those involved in the offering of a particular Mass is increased under the impetus of actual graces in the course of the liturgical action, to measure the actual effect of the offering. The devotion of those actually participating in the Mass is not the cause of the graces given through Mass. The graces are given in view of the sacrifice of Christ. But the graces are measured by the

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<sup>131</sup> For a summary of a discussion on the concept of the "offering Church," see KILMARTIN, "The One Fruit or the Many Fruits of the Mass," 58-63.

<sup>132</sup> "The explanation of the value and fruits of the Mass proposed by K. Rahner seems to be acceptable on all points. It is consistent with the constant belief of the Church from earliest times that the Mass offered with devotion brings benefits to the whole Church, to those participating in the cultic offering and to those for whom a special remembrance is made. It takes into account the essentially relative character of the sacrifice of the Mass with respect to the cross. It takes into account the importance of the re-presentation of the sacrifice of the Cross in the Mass. It emphasizes the importance of the subjective acts of men placed within the scope of the liturgical action. It gives due consideration to the role of the Church's prayer with respect to particular Masses. It does all these things in a way which is able to harmonize the Church's practice regarding Mass stipends with an acceptable theology of the Mass" (KILMARTIN, "The One Fruit or the Many Fruits of the Mass", 66).

intensity with which human persons unite themselves in the liturgy with the one acceptable sacrifice made for all.<sup>133</sup>

Accordingly, therefore, there does not exist a *fructus specialissimus, specialis (medius)* or *generalis* which comes from the celebration of the Mass independently of the devotion of those who actually offer a particular Mass. There is a *fructus generalis* which comes to the whole Church by reason of the devout prayer of the participants of the Mass. One can speak also of a *fructus specialissimus* which comes to the priest only in the sense that he receives those special graces which are consistent with his state of life. However, it is the personal devotion of the priest which calls forth these graces upon himself.<sup>134</sup> The priest will always receive from the celebration of Mass only those blessings which are proportional to his cooperation with actual graces. We can speak of a *fructus specialis* which comes to those for whom the Mass is offered. But this fruit is called forth exclusively by the devotion of the participants of the Mass.

In conclusion, the Mass stipend only makes sense if it is an active form of participation in the Mass.<sup>135</sup> Mass stipends are intrinsically related to the sacrifice of the Mass. Mass stipends, even though presented to the priest outside Mass, are identical with

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<sup>133</sup> RAHNER, HÄUSSLING, *The Celebration of the Eucharist*, 77.

<sup>134</sup> "Hence by the very fact that a priest celebrates mass, he does not necessarily receive more grace than if he attended Mass. Devotion, certainly, is linked to the mode of participation in the Mass. It can increase by different modes of participation. But equal devotion, no matter what mode of participation, will mean equal fruits." (KILMARTIN, "The One Fruit or the Many Fruits of the Mass, 63-64).

<sup>135</sup> "The connection of the donor of a stipend [...] is only one of the forms of participation in the Mass, and is no different in principle from other forms (serving, assisting, etc)" (RAHNER, HÄUSSLING, *The Celebration of the Eucharist*, 116).

the common offerings of the early Christian communities.<sup>136</sup> The priest's intention is required to assign the sacrificial gift to a particular Mass. But the priest does not apply by his intention a *fructus specialis* which is given *ex opere operato* or *ex opere operantis Ecclesiae*. The gift is thus the expression of the donor's devotion with reference to a particular Mass in that by reason of their gift, they cause the Mass to be said, and the fruits received by the person for whom the donor arranges the Mass will be measured by the devotion of the donor, the priest and others who actually pray for the intention of the donor.

If the donor of the stipend is present at Mass, a desirable ideal, they will normally experience an increase in devotion and so will call forth more fruits from the Mass for the one for whom they offers it.<sup>137</sup> If the donor is not present, the devotion attached to their action of giving a gift for the Mass will bring fruits to the person for whom the offering was made. But the fruits coming to the person are not increased by the simple fact that the gift is assigned to a particular Mass.

What follows is a presentation of the main doctrine about theoretical speculation regarding the distribution of the various fruits of the Mass which are three-fold: (1) The Holy Sacrifice is offered for the benefit of the whole Church, that is, in the Mass the Church prays for herself (*a general fruit*); (2) The Mass benefits the presiding priest(s) (*a*

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<sup>136</sup> "The symbolism and its essential relation to the sacrifice of the Mass still belong to this offertory even when finally the offerings came to be presented outside Mass. Then the link with the presentation of the offerings at the holy sacrifice is no longer made clearly visible and the stipend begins to look like a contribution to the priest's upkeep and so gets its name. The stipend nevertheless remains the sacrificial offering, presented by those who are entitled and wish to offer sacrifice with Christ in the Church" (RAHNER, HÄUSSLING, *The Celebration of the Eucharist*, 115).

<sup>137</sup> "It is also self-evident that the *devotio* of the donor of the stipend in regard to a particular Mass increases if he personally assists at the Mass and that the fruit of the sacrifice for him also increases thereby *ex opere operato*" (RAHNER, HÄUSSLING, *The Celebration of the Eucharist*, 118).

*very special fruit*); and (3) The Mass may be applied to the specific intention of the priest(s) celebrant (*a special fruit*).<sup>138</sup>

### 1.6.1 General Fruits of the Mass

General fruits flow from the Holy Sacrifice of the Mass in as much as the Mass is celebrated by a duly ordained priest in the name of Christ and the Church. This is the fruit that is applied to all the faithful, living and dead, and especially to those that attend a particular Mass, provided there is no obstacle in their way in receiving these benefits, for example, if they have not committed mortal sin or other sins.<sup>139</sup> The general fruit of the Mass is beneficial to all the faithful who participate in Mass and to those for whom the Mass is offered in the Eucharistic prayers, and others that they too may enter into full communion with the Church, even if the celebrating or presiding priest does not necessarily apply this fruit. The application is due to the will of Christ and the cooperate will of the offering Church since Christ died for all and the Church offers the Sacrifice of the Mass for the world.<sup>140</sup> This is the fruit that is applied to the whole Church, the world, and those for whom intercession is specially mentioned in the Eucharistic Prayer. The general fruits are independent of the priest's will. The fruits received are certainly impetratory, and probably propitiatory for all the faithful; and satisfactory for the dead, in

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<sup>138</sup> P. ERDŐ, "The Blessed Eucharist," in *Exegetical Comm*, 579.

<sup>139</sup> "The living alone can put obstacles in the way, namely, the state of enmity to God, and affection for sin. Mortal sin is an obstacle to participation in the satisfactory fruit of the Mass" (H. DAVIS, *Moral and Pastoral Theology*, vol. 3, [4th ed.], London, Sheed and Ward, 1949, 94).

<sup>140</sup> "As the unbloody repetition of the Sacrifice of the Cross, the Mass is likewise offered up for all; it is essentially an act of public worship. No special application of the celebrant is required beyond a general intention to celebrate according to the mind of the Church" (N. HALLIGAN, *The Sacraments and their Celebration*, New York, Alba House, 1986, 72).

a measure defined by Divine Will.<sup>141</sup> Because the general fruits derived from the Mass are ordained for the good of the world, the benefits derived from this fruit are not lessened by the number of individuals sharing in them.<sup>142</sup>

### 1.6.2 Ministerial Fruits

The ministerial fruit of the Mass is considered by most theologians as a finite quantity of grace which is expressly applied to a special intention or to particular persons for particular purposes, as designated by the priest celebrant, for the intention requested by the donor requesting the Mass. In order to benefit from this fruit, then, those who request the application of the Mass have to offer a stipend for the temporal needs of the celebrating priest. The distribution of this fruit is accomplished by the priest's naming the recipients through his Mass intentions.<sup>143</sup> Since the fruits of the Mass are believed to be somehow limited before application, one receives more benefit if the Mass is directed solely to their intention.<sup>144</sup> Should the priest fail to name anyone, the graces return to the

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<sup>141</sup> The Mass is a proprietary sacrifice means that the Sacrifice of the Mass can be offered for living and the dead (for souls in purgatory), since it effects reconciliation with God, the satisfaction or remission of sins and temporal punishments due to sin. The Mass is a sacrifice of Atonement and for the expiation of sins and also intercession and an occasion for God to shower on those who offer and those for whom the Mass is offered those actual graces and material blessings conducive for salvation. It is also offered for particular intentions and desires (vota). It is an occasion for God to shower his blessings on the faithful. The Mass is an impetratory sacrifice, meaning it is offered for spiritual goods of the world. The Mass is a prayer, the highest and most efficacious Christian prayer, offered by priest and congregation acting together for the remission of sins and temporal punishments due to sin for the souls in purgatory. Supposing the proper dispositions, the Mass is infallibly efficacious to those who offer and those for whom the Mass is offered, since they receive the actual graces they need in order to grow in holiness. These are benefits or fruits accruing from the Mass to man.

<sup>142</sup> HALLIGAN, *The Sacraments and their Celebration*, 72.

<sup>143</sup> "This latter fruit was thought to be applied by an authoritative act of the will of the priest who is the official representative of the Church" (KILMARTIN, *The Eucharist in the West*, 167).

<sup>144</sup> KILMARTIN, "The One Fruit or the Many Fruits of the Mass," 41. "The share of each in these benefits is probably diminished as they are applied to more persons or purposes" (HALLIGAN, *The Sacraments and their Celebration*, 72).

treasury of the Church which is the source of all indulgences granted by the Church.<sup>145</sup> Indulgences<sup>146</sup> are the accumulated merits of Christ's superabundant and meritorious sacrifice on the cross and the virtues and penances of the saints.<sup>147</sup> An indulgence is "a way to reduce the amount of punishment one has to undergo for sins."<sup>148</sup> It may reduce the "temporal punishment for sin" after death (as opposed to eternal punishment merited by mortal sin) in a state or process of purification called "purgatory." Indulgences are applied only to sins that have been previously forgiven. The recipient of an indulgence must perform an action in order to receive it. To obtain a partial indulgence, one must be baptized, be in a state of grace, have the intention to obtain an indulgence, and perform the works or prayers correctly. To obtain a plenary indulgence, one must meet all the requirements for a partial indulgence, not be excommunicated, have no affection for sin, not even venial sin, and receive the sacrament of reconciliation and Holy communion and offer prayers for the pope's intention within the prescribed period of time.<sup>149</sup>

An indulgence is granted only through the Catholic Church. This is most often the saying (once or many times) of a specified prayer, but may also include the visiting of

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<sup>145</sup> "The treasury of the Church is the accumulated merits and satisfaction of Christ our Lord, of His Blessed Mother, of all the Saints, and of the just. The treasury is inexhaustible, and is the source of all indulgences granted by the Church. In cases where Mass is said for a Soul whom it cannot benefit, it is very probable that the fruit of the Mass goes to the treasury of the Church" (DAVIS, *Moral and Pastoral Theology*, vol. 3, 95).

<sup>146</sup> The Catechism of the Catholic Church, no. 1471, describes an indulgence as "a remission before God of the temporal punishment due to sins whose guilt has already be forgiven, which the faithful Christian who is duly disposed gains under certain prescribed conditions through the action of the Church which, as minister of redemption, dispenses and applies with authority the treasury of the satisfactions of Christ and the saints[...]. An indulgence is partial or plenary according as it removes either part or all of the temporal punishment due to sin. The faithful can gain indulgences for themselves or apply them to the dead."

<sup>147</sup> The law governing indulgences is found in cc. 992-997.

<sup>148</sup> E.N. PETERS, *A Modern Guide to Indulgences: Rediscovering this often-Misinterpreted Teaching*, Chicago, Illinois, Hillenbrand Books, 2008, 13.

<sup>149</sup> *Ibid.*, 16.

a particular place, or the performance of specific good works as described by the indulgence. They are granted for the specific good works and prayers in proportion to the devotion with which those good works are performed or prayers recited. One can apply the good of an indulgence either for one's own benefit or for that of the faithful departed.<sup>150</sup>

If a priest accepts a stipend for a Mass, he is understood to be bound in commutative justice to assign the ministerial fruit to the stipend-donor by his first intention. He may apply Mass to other intentions only on the condition that no injustice be done to the stipend-donor. Thus, the application of the Mass, which is requested by the faithful with an offering or stipend, has reference only to the special or ministerial fruits of the Holy Sacrifice.

In a somewhat theological criticism of the existence of a ministerial fruit, Gilpatrick maintains that the existence of ministerial fruit is totally unsupported by the dogmatic sources, and reflects in addition a most peculiar concept of grace. Grace is neither quantifiable nor subject to the discretion of the priest saying Mass, nor can it be stored away in any fashion in that unique storehouse, called the treasury of the Church. The fruits of the Mass are not limited before application and one does not receive more benefit if the Mass is directed solely to his intention. If this juridical outlook were the case, then the giving of a gift to the priest for the celebration of Mass would not serve the function of the offertory processions of the early Church which symbolized the co-offering of the faithful with the priest at Mass, but to obtain certain rights over the fruits

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<sup>150</sup> Ibid., 13.

of the Mass. But this is not the case since the Mass stipend symbolizes the communal offerings of the early Church. The Mass produces effects according to the measure of the devotion of those who offer or those for whom the Mass is offered which can be applied to a special intention. The devotion of those for whom the Mass is offered will measure the blessings they receive from the application.<sup>151</sup>

### **1.6.3 More Special Fruits**

The more special fruit of the Mass is the portion of the benefits reserved to the priest as he is presider of the Eucharist and it is beneficial to him. These fruits are not transferable to others; likewise, more special fruits are received by those who in some particular way are united with the priest in offering the Sacrifice, for example, the altar servers, assistants, attendants at Mass, offerers of bread and wine, etc. The more intimately one shares in the offering of the Mass, the more fully its benefits are enjoyed. The more special fruit of the Mass are perceived only by the presiding priest in virtue of his ordination and on condition of his dispositions and on the fact that he presides at and offers the Sacrifice of the Holy Mass. In performing the act to which he is called, in

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<sup>151</sup> "The fact that those who offer the sacrifice that is the Mass receive its fruits only indirectly does not at all imply that these fruits are given sparingly. Quite the contrary. The fruits or graces made accessible to us through the Mass are indeed infinite in their source, and are limited in the actual conferring only by the dispositions of the recipients[...] The priest simply does not have at his disposal certain graces to be conferred by his naming of recipients, nor can he by his failure or refusal to name a recipient cut him off from graces that are properly his due in view of his dispositions. As a participant in a distinctive way in the offering of the sacrifice, the stipend-donor will receive along with all other offerers such graces as God chooses to grant." (C.E. GILPATRICK, "Mass Stipends and Mass Intentions," in *Worship*, 38 [1963-1964], 198).

fulfilling the vocation of his life in its most essential form, it is agreed, that he receives a special divine blessing.<sup>152</sup>

#### **1.6.4 The Application of Mass**

The study of the history and theology of Mass stipends has revealed that the Church has never at any one time bound the faithful to any particular theological justification of Mass stipends nor any single conception of the theological nature of the Mass stipend itself and how the fruits of the Mass may be applied. All that the Church maintains is that the celebration of Mass is meaningful in itself without any special intention.<sup>153</sup> All that is required is that Christians who participate at the celebration of Mass pray for the special intention offered at the Mass if there is any, or remember to pray for their own private intentions during the Mass. All that is required of the priest who presides at Mass is for him to make a positive act of the will to apply the Mass for the special intention that has been offered and not for anyone attending Mass to remember this intention.

Canon 945, § 1 of the present Code of Canon Law uses the expression "applying the Mass for a specific intention of the donor." The expression "application of Mass"<sup>154</sup> is

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<sup>152</sup> E.J. KILMARTIN, "Eucharist as Sacrifice", in *New Catholic Encyclopedia*, vol. 5, Washington DC, The Catholic University of America, 1967, 609-615.

<sup>153</sup> "First of all, it must be said that it is by no means in the nature of the Mass that it should be applied to a definite intention; for it is meaningful in itself without any special intention" (J. A. JUNGSMANN, "Mass Intentions and Mass Stipends" in A. KIRCHGAESSNER [ed.], *Unto the Altar: The Practice of Catholic Worship*, Montreal, Palm Publishers, 1963, 24).

<sup>154</sup> Canon 901 states that: "A priest is free to apply the Mass for anyone, living or dead." "[...] [T]here is no longer any prohibition against having a Mass offered for a non-Catholic" (P. VERE, M. TRUEMAN, *Surprised by Canon Law*, Cincinnati, Ohio, Servant Books, St. Anthony Messenger Press, 2004, 84). "Mass may be applied for anyone. The person may be living or deceased, Catholic or not, sinner or

generally agreed upon to mean "the intention or will of the celebrating priest to apply the *special* or *ministerial* fruit of the Eucharistic sacrifice in favor of a person or to attain a particular grace desired by one who requested the Mass."<sup>155</sup>

The expression "application of Mass" for a specific intention raises the theological question where a priest has to pray for many intentions in the same Mass. If, as c. 945, §1 maintains, the priest can "apply the Mass only for a specific intention," can we maintain that by accepting to pray for many intentions during the same Mass, for which single offerings were given and accepted, the priest "multiplies" the fruits of the same Mass among the beneficiaries? This position has already been called into question for a number of reasons. For example, Kenny argues against the view that maintains that by multiplying intentions the priest fractions the fruits of the Mass among the beneficiaries. Each added intention shares fully, and without fractioning, in the blessings which God offers in the Mass through the application of the priest. The abundant graces of Christ's passion which God offers to us in the Mass are limited only by our dispositions of receiving them. God sanctifies people through the active part they take in Mass by uniting their minds and hearts with the action of the priest and by taking part in

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saint" (L.J. SPITERI, *Canon Law Explained: A Handbook for Laymen*, Manchester, New Hampshire, Sophia Institute Press, 2013, 130).

<sup>155</sup> G. EXCELSONO, "Mass Application," in *Boletín eclesiástico de Filipinas*, vol. LXXIII, no. 798 (1997), 85-90. See also G. EXCELSONO, "Limitation in Mass Application," in *Boletín eclesiástico de Filipinas*, vol. LXXIII, no. 801 (1997), 460-464. Both articles are helpful in the study of what it means by the *application of Mass* and the theory of the *various fruits* of the Mass. In the latter article, the author makes a study of the effects and the threefold distinctions of the *various fruits* of the Mass.

the prayers, bringing an offering, and receiving communion.<sup>156</sup> It is true that the benefits of the fruits of the Mass are inexhaustible and are only limited by our dispositions of receiving them.<sup>157</sup> If one were to maintain a contrary position then one would be forced to conclude that all Masses with multiple intentions are invalid since c. 945, §1 of the present code allows the priest to apply the Mass only for a specific intention.<sup>158</sup> Karl Rahner maintains that a priest can have other secondary intentions and intercessions in addition to the intention of a stipend Mass, however he maintains that by canon law, the priest can only take one of these as his "intention" or stipend.<sup>159</sup> The canon law principle of separate Masses to be said for those from whom single stipends have been given and accepted, as stated in c. 948, is not for the validity or efficacy of the prayers at the application of the Mass, but in order to eliminate commercialism within the Mass stipend

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<sup>156</sup> KENNY, "Mass Stipends," 847; "The application of a number of offerings of donors to a particular Mass does not, in itself, necessarily result in a diminishing of the efficacy of the Mass for the intention of the individual donor. For, always, the efficacy of the Mass is measured by the quality of the devotion of the participants" (KILMARTIN, *The Eucharist in the West*, 235).

<sup>157</sup> "For since the intercessory power of the sacrifice of the Mass, which is in fact that of the sacrifice on the Cross, as a majority of theologians maintain, is in itself unlimited and can only be limited by the receptiveness of the recipient, it can, therefore, be applied to more than one intention at the same time" (J.A. JUNGSMANN, "Mass Intentions and Mass Stipends" in A. KIRCHGAESSNER, [ed.], *Unto the Altar: The Practice of Catholic Worship*, Montreal, Palm Publishers, 1963, 28).

<sup>158</sup> "Nevertheless, the Roman magisterium still speaks of the relatively greater efficacy of the normative practice of the Mass stipend, but without sufficiently clarifying the basis for this position" (KILMARTIN, *The Eucharist in the West*, 235).

<sup>159</sup> "[...] [T]he priest can certainly have many 'intentions' or 'applications' at his Mass [...] But just as by the offertory gifts at Mass each of those taking part, however numerous they may be, receives the full fruit of the Mass *ex opere operato*, each in proportion to his actual *devotio*, so each of those included in a Mass by the kind of application we have been referring to as cooperating in the sacrifice, receives its full fruit corresponding to the *devotio* of each. It is therefore perfectly correct to say that the Canon Law axiom: *stipendium excludit stipendium* does not mean: *applicatio excludit applicationem*. The numerous applications which the priest has perhaps promised and makes, do not cancel one another out. They do not divide a fruit of the sacrifice which is to be regarded from the start as limited, but in each instance give the whole-the one fruit of Christ's sacrifice" (RAHNER, HÄUSLING, *The Celebration of the Eucharist*, 123).

system.<sup>160</sup> The law governing the reception and application of only one stipend for the celebration of the Mass is for the sake of order and has nothing to do with the multiplication and as such diminishing of the application of the fruits of the Mass.<sup>161</sup> The limitation of one stipend is not a condition of the merits and satisfactions for the validity and efficacy of the fruits or benefits at Mass, but a regulation of a custom.<sup>162</sup> That is why the 1991 decree *Mos iugiter* derogated from the principle of one Mass for a single offering in certain determined circumstances in order to allow priests to pray for many intentions in a single Mass with the understanding that there is no diminishing of the fruits of the Mass by the number of intentions that are prayed for in the same Mass.<sup>163</sup> The derogation from the law was in order to accommodate the intentions of the faithful and to ensure that they can be satisfied efficiently. It is clear that the one who wishes that

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<sup>160</sup> "If someone by his stipend has been wholly responsible for making the Mass possible and in this way has become a participant, no second person can make the same Mass possible by his stipend and so also join in offering the Mass by doing so" (RAHNER, HÄUSLING, *The Celebration of the Eucharist*, 125).

<sup>161</sup> "The fact that the Church for disciplinary reasons forbids the acceptance of more than one stipend for each Mass in no way implies that a priest may offer the Mass for only one intention [...] Since the fruits made available through the Mass are none other than the infinite graces won for us on Calvary, those offering the Mass may petition these graces for any number of intentions without prejudice of one another" (C.E. GILPATRICK, "Mass Stipends and Mass Intentions" in *Worship*, 38 [1963-1964], 200).

<sup>162</sup> "The fruits or graces made accessible to us through the Mass are indeed infinite in their source, and are limited in the actual conferring only by the dispositions of the recipients." (C.E. GILPATRICK, "Mass Stipends and Mass Intentions" in *Worship*, 38 [1963-1964], 198).

<sup>163</sup> For a historico-liturgical and theological perspectives of the decree *Mos iugiter* and the official commentary on the decree, see KILMARTIN, *The Eucharist in the West*, 205-237. "The most serious deficiency of the decree and commentary, from the standpoint of the history of the practice of linking material offerings of the faithful to the liturgy of the Eucharist, is the tendency to conflate several types of the general practice and, at the same time, to attribute to them the same motivation and finality[...] [T]he illusory impression is given of a linear development in the direction of a more perfect expression of the practice and its interpretation. However, history teaches us that there has been a somewhat complex "evolution" in the practice under consideration: a development from an original practice to later forms due to variations in the intervening period induced by significant changes in the theology of the Eucharist. In fact, when placed in its full context, the whole history of the whole Church, the subject of the decree turns out to be a particular medieval tributary of the most ancient form of the offertory ritual of the Latin Church" (ibid., 211).

Mass be celebrated for their intention has to give something of his own, and the main reason for this is given in the motu proprio *Firma in traditione* of Paul VI and c. 946:

Canon 946 and *Firma in traditione* [...] assert that Mass offerings also benefit the *donors* themselves by their sharing in the Church's concern for the support of its ministers and through an increased participation in Christ's self-offering. However, these worthy benefits cannot be achieved if there is no donation. It would seem that poor people would profit more if they gave some donation of their own, even if very small.<sup>164</sup>

The discipline of the Church of limiting one Mass stipend to one Mass has no doctrinal or theological implications on the essential value of the Mass, which would run contrary to the theory of the doctrine of the various fruits of the Mass.<sup>165</sup> This disciplinary restriction is a regulation of a custom, which if not checked may cause incalculable damage and scandal, and this is a safeguard against abuses.<sup>166</sup> It is not possible to assign limits to the efficacy of the Mass either in number or in quality of its fruits and the individuals sharing in them based on the number of special intentions.<sup>167</sup>

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<sup>164</sup> HUELS, "The Offering Given for the Celebration of Mass [cc. 945-958]," 1131.

<sup>165</sup> "Even though the Sacrifice of the Cross is infinite *in itself*, it remains limited *in its application*; otherwise all men would be automatically justified and saved, as likewise one Mass would suffice to save the whole world and eliminate Purgatory. This is the practice of the Church in repeatedly offering Masses to apply both for different persons and also for the same person and for the same benefit. Thus, as with the Sacrifice of the Cross, the Sacrifice of the Mass in the *application* of its effects, in its fruits directed towards man's welfare, depends not only upon the efficacy of the principal cause, Christ, but also upon the dispositions, the willingness or acceptance of those for whom entreaty, propitiation, or satisfaction are offered. These fruits may also increase as a result of the special prayers of the Church, e.g., in a votive or *requiem Mass*, or because of greater external solemnity, e.g., a sung Mass, or due to additional ways of entering into the offering of the Mass, e.g., by offering an alms or stipend for the application of the Mass and also participation in the very Mass offered." (HALLIGAN, *The Sacraments and their Celebration*, 72).

<sup>166</sup> KILMARTIN, "The One Fruit or the Many Fruits of the Mass", *Proceedings*, 56.

<sup>167</sup> "The value of the Mass is the intrinsic power which it enjoys to produce its effects or fruits. In itself the Sacrifice of the Mass has an infinite value and efficacy, since Christ, who is of infinite dignity, is both Priest or principal offerer and the sacrificial Victim. Moreover, being substantially the same sacrifice as that of the Cross, it possesses the same infinite value and sufficiency. Thus, any one Mass in itself is capable of truly infinite praise and glorification of God, of thanksgiving and propitiation to him, of securing from him the remission of all sins and punishment whatever, as well as beseeching all possible goods and inexhaustible benefits. The Mass, of absolutely infinite value in itself, has a capability which is infinite both intensively and extensively, i.e., as regards the degrees of its effects and as regards the number of its effects and the individuals sharing in them. In other words, it is not possible to assign limits to the efficacy of the Mass either in the number or in the quality of its fruits. It is only in comparison with this essential and proper value and efficacy that the concomitant effectiveness of the impetration, the merit and satisfaction of

The Sacrifice of the Mass, just like the Sacrifice of the cross, is efficacious because Christ is the principal cause, and the effects and fruits of the Mass directed towards men and women can only be limited by their dispositions and willingness to accept them.<sup>168</sup>

The private advantage of any individual human being can never be the whole or even the primary reason for offering Mass. In the Mass, the priest prays for the Church, for the pope, for all Christians living and dead, for the assisting congregation, and for the salvation of the whole world.<sup>169</sup> Since a spiritual benefit could never be assured by the mere offering of money, then the Mass stipend assures no one of such benefit. The temporal consideration is dependent on the donor's intention and dispositions. Christ's faithful do not take a greater share of the fruits of the Mass because they have given a Mass stipend, or that the giving of a Mass stipend is a more meritorious way of participating in the offering of the Mass than actual in attendance. The offering of a stipend is just the beginning of one's participation in the sacrifice. Where possible it ought to be completed by actual attendance at the Eucharist where one's gift is offered, and where one receives communion. A priest is free in his offering of Mass to petition

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the Church, of the priest or secondary minister, and of the assisting faithful is to be considered, i.e., inasmuch as the Mass is also man's oblation[...] due to the holiness and merits of Christ, this Sacrifice is always and unfailingly pleasing and acceptable to God" (HALLIGAN, *The Sacraments and their Celebration*, 71).

<sup>168</sup> "Thus, as with the Sacrifice of the Cross, the Sacrifice of the Mass in the *application* of its effects, in its fruits directed toward man's welfare, depends not only upon the efficacy of the principal cause, Christ, but also upon the dispositions, the willingness or acceptance of those for whom entreaty, propitiation, or satisfaction are offered" (Ibid., 72).

<sup>169</sup> For instance, in Eucharistic Prayer II, the priest prays for "our brothers and sisters who have gone to their rest" but also for "all the departed". In Eucharistic Prayer III, the priest prays that "this sacrifice which has made our peace with you advance the peace and salvation of all the world" and then prays for "all who have left this world in your friendship." Eucharistic Prayer IV includes prayers for "all who seek you with a sincere heart."

God for whatever graces, favours, causes, or intentions he may desire for himself or others, and this he does with no injustice to the stipend donor and no impairment of his rights.<sup>170</sup>

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<sup>170</sup> "If we detach ourselves from the narrow confines of abstract legal analysis and view the whole matter of stipends and the fruits of the Mass in a broader theological and liturgical context, the situation will appear in an altogether different perspective. Since the fruits of the Mass are identical with the infinite graces won for us by Christ, there is no reason to fear that these graces are soon going to be exhausted or that one person can be disadvantaged by another's share" (C.E. GILPATRICK, "Mass Stipends and Mass Intentions," in *Worship*, 38 [1963-1964], 198).

## CONCLUSION

The focus of this chapter has been a study of the history of Mass stipends, while highlighting the complex evolution that it went through, giving rise to the present-day distinctive custom whereby the donor makes a monetary donation to a priest requesting a remembrance at the Mass for a special intention. The custom of Mass stipends originated from the communal offertory processions of bread and wine with other material gifts in the apostolic times, which were meant to provide what was needed for divine worship, but also the sustenance of the priests and the support of the poor. These offerings by the faithful were conceived as the expression of their co-offering of the Eucharistic sacrifice in which there was no differentiation in the offering and each participant had a role to play in the realization of the one sacrificial act of worship in making provision for the elements for the celebration of the Eucharist, and also in taking part in the communal offertory procession. The growth and consolidation of the Mass stipend system experienced external changes, especially when money became almost the exclusive way of requesting a special remembrance at the Mass. This development affected the practice of offering material gifts as well as the act of offering which became more and more individualistic, accompanied, too, by the restrictive roles which the faithful had to play in the realization of the liturgy which was seen more and more as the exclusive action of the priest. The Mass stipend became a way of participating in the action of the priest. While this examination was not exhaustive, our study was able to highlight the major abuses when the use of money came into effect. Because money became almost the exclusive way of requesting the celebration of the Mass, and because the role of the laity in the liturgy was further curtailed in the matter of the production of Eucharistic bread, and their

reduced role of participation was expressed mainly by offering money for the celebration of Mass, it is no wonder, then, that the language of economics and commerce entered the discussion of the theology and conceptualization of the value of the fruits of the Mass. With the new pastoral practice of celebrating distinct Masses for the special intention of the donor now firmly established, such a practice served as the source for reflecting on the theology of the efficacy of the Mass. This led theologians to develop or posit the threefold theory of the fruits of the Mass, an existence of an objective quantity of graces which are derived *ex opere operato*.

The term “fruits of the Mass” is one that we find expressed by most theologians when they discuss the theology of the Mass, and it simply means the effects of the Mass, namely, actual graces received from the Mass. We made a presentation of the threefold theory of the various fruits of the Mass. But the theory of the three-fold effects of the Mass is without solid theological foundation. This has been the position of a theologian like Karl Rahner. At the same time, the custom of offering and accepting Mass stipends is legitimate, if understood correctly. It is one of the most excellent ways by which the laity participate more actively in the celebration of the Mass and thereby call down more abundant blessings upon themselves. The Mass stipend should be viewed as analogous to, or a substitute for the communal offertory procession of the early apostolic centuries, whereby the faithful provided the material elements of bread and wine, for the Eucharistic celebration. Only then will the present Mass stipend system be substantially the same as the offertory processions of bread and wine of the early apostolic centuries. Through the present Mass stipend system, the donor signifies his/her special participation and devotion and, if this be authentic and not just a formality, thereby calls down more

abundant graces for his/her particular intention through the gift given beforehand to the priest. A practical pastoral consequence of this outlook is that whenever possible the donor of the stipend should be present and participate in the Mass offered for their intention and, if possible, to also receive holy communion. The application of a number of intentions at a particular Mass does not, in itself, necessarily result in a diminishing of the efficacy of the Mass for the intention of the individual donor. The efficacy of the Mass is measured by the quality of the subjective devotion of those who take part actively in the Mass.

## CHAPTER TWO

### THE LAW ON MASS OFFERINGS AND THE 1983 CODE

The 1917 Code of Canon Law (cc. 824-844)<sup>171</sup> used three terms to describe the practice whereby the faithful gave an offering for the celebration of Mass, that is, *stipendium Missae* (Mass stipend or salary), *eleemosynam Missae*<sup>172</sup> (Mass alms), and *stips* (a small coin given as a religious offering or gift). The present code prefers the second term<sup>173</sup> and, more commonly, the third term, *stips*<sup>174</sup> which conveys the meaning of an offering or gift made for the celebration of Mass. The present law retains the word *stips* because the word *stipendium*, as was used in the 1917 code, gave the meaning of a

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<sup>171</sup> *Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus*, Romae, Typis Polyglotis Vaticanis, 1917, English translation by E.N. PETERS, *The 1917- Pio-Benedictine Code of Canon Law*, San Francisco, California, Ignatius Press, 2001, 297-302. The 1917 Code addresses the following topics concerning Mass offerings: The legitimacy of such an offerings (cc. 824-825); Manual and Founded Masses (c. 826); Trading or trafficking in Mass stipends (c. 827); obligation resulting from the reception of an offering: nature of obligation (c. 829); determination of the Mass offering by the local ordinary and or diocesan custom (cc. 830-831); superior and inferior stipends to the diocesan amount (c. 832); the manner of fulfilling such an obligation (c. 833); the number of Masses to be accepted by a priest (c. 835); time for discharging obligations (cc. 834-836); the transmission of stipends: obligation and rights (canons 837-839); stipends to be transmitted (c. 840); transmission to the ordinary (c. 841); control and registration of Mass stipends (cc. 842-844); penal sanctions (c. 2324). For commentaries on the canons on Mass stipends in the 1917 Code, see S. WOYWOD, *A Practical Commentary on the Code of Canon Law*, revised and enlarged edition, vol.1, New York, Joseph F. Wagner, Inc., 1948, 443-458; P. C. AUGUSTINE, *A Commentary on the New Code of Canon Law*, vol. IV, third revised edition, St. Louis, MO, B. Herder Book Co. South Broadway, 1925, 175-212; M.J. MATHIS and N.W. MEYER, *The Pastoral Companion: A Handbook of Canon Law*, Cork, The Mercier Press Ltd., 1961, 54-59; C.F. KELLER, *Mass Stipends*, CLS, no. 27, Washington, DC, Catholic University of America, 1925; also published as a book with the same title by B. Herder Book Co., South Broadway, St. Louis, MO, 1926.

<sup>172</sup> W.H. WOESTMAN, *Canon Law of the Sacraments for Parish Ministry*, second revised and updated edition, Ottawa, Ontario, Faculty of Canon Law, Saint Paul University, 2011, 162.

<sup>173</sup> Canon 1308, §3 of the present code, addressing Foundational Masses, retains the Latin word “eleemosynae.” This is unusual and might have been a result of an editorial oversight on the part of the editors because the idea was clearly expressed during the revision process to eliminate from the language of Mass offering anything that might suggest the wrongful impression of a commercial or business transaction as the language of the 1917 Code on Mass stipends gave the impression of a *do ut facias* kind of contract. The Mass offering is not a commercial transaction, or money paid for services rendered, as the word might suggest.

<sup>174</sup> Title III, Chapter Three of Book IV, which contain the canons treating Mass offerings is entitled “*De Oblata ad Missae Celebrationem Stipe*” (“The Offering Given for the Celebration of Mass”) in order to emphasize the point that what the law regulates is a gift and not something else.

stipend, or a salary, which is foreign to the very nature of the institution that is considered.<sup>175</sup>

No longer does the present law refer to the donation given by the faithful for the celebration and application of Mass as a *stipend* (*stipendium*), but rather the present law refers to this donation as an *offering* (*stips*), that is, a gift, by which the faithful make a donation for the celebration of Mass for their intention.<sup>176</sup> The old law on Mass stipends gave the impression of a contract in the sense that it retained the use of the word *stipendium*.<sup>177</sup>

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<sup>175</sup> St. Hillaire argues for the elimination or substitution of the Mass stipend system because the present practice leaves the danger of simony since the practice of offering Masses is associated with money; the ever-present danger of abuse surrounding the use of money; the danger of excluding the poor from offering the Mass intention; and also because of the inappropriateness of the theology of Mass stipends regarding the recipients of the fruits of the Mass. Even if we were to argue that the practice should be preserved because of the advantage of financial support it affords the clergy, we could still say that if money is available for support of priests through stipends, then it must also be available for the direct support of the clergy (G. St. HILLAIRE, "Eliminating Mass Stipends," in *Homiletic and Pastoral Review*, 66 [1966], 845-851). For a positive evolution and correct interpretation of Mass Stipends, see L. KAUFMANN, "The Labourer Deserves His Wages," in *African Ecclesiastical Review*, 15-16 (1973), 46-54.

<sup>176</sup> It is worth noting here that in the *CCEO*, c. 715, §§1 and 2, which is the parallel of c. 945, §§1& 2 of the Latin code does not use the terms *stips*, or *stipendium* or *eleemosyna* to talk about Mass offerings but *oblaciones*. Whereas c. 945, §1 allows a priest to accept an offering for the celebration of Mass, *CCEO* c. 715 leaves the regulation of the number of offerings that can be accepted during the divine liturgy to the particular laws of the Churches. See V.J. POSPISHIL, *Eastern Catholic Church Law*, Second revised and augmented edition, New York, Saint Maron Publications, Staten Islands, 1996, 404-406; D. SALACHAS, "Divine Worship, Especially the Sacraments [cc. 667-775]," in G. NEDUNGATT (ed.) *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, Rome, Pontificio Instituto Orientale, 2002, 518-519; J. ABBASS, *Two Codes in Comparison*, Rome, Pontificio Instituto Orientale, 1997, 201-202.

<sup>177</sup> *CIC'17* c. 824, §1. "Secundum receptum et probatum Ecclesiae morem atque institutum, sacerdoti cuilibet Missam celebranti et applicanti licet eleemosynam sue stipendium recipere." "According to the received and approved manner and institution of the Church it is permitted to every priest celebrating and applying a Mass to receive an offering, that is, a stipend." For a treatment of manual Masses in the former code, see P.J-B. FERRERÈS, *Ce qu'il faut observer et éviter dans la célébration des messe manuelles*, troisième édition corrigée et augmentée, Paris, Maison de la Bonne Presse, 1908; M. GOMMAR, *Les messes manuelles*, Ottawa, Université d'Ottawa, 1953.

The historical meaning<sup>178</sup> of the term *stips* describes a small offering or a voluntary contribution that was usually made on behalf of a public charity, an offering in honour of God or an offering meant to help the poor and the needy,<sup>179</sup> a small coin or donation as a religious offering or a gift.<sup>180</sup> The word *stips*, then, as used in the present law, clearly signifies that the offering or donation is freely given by the faithful, primarily out of their concern for the Church in their desire to support its material needs and most especially its ministers.<sup>181</sup> "Mass offerings can therefore be understood as *gifts to the Church or to its ministers on behalf of some intention*, as much as a donation or bequest is made to any charitable institution in the name of some person living or dead,"<sup>182</sup> or as "a gift entrusted to the priest's keeping to be used for the Holy Sacrifice of the Mass and which on the completion of the Sacrifice comes to the priest from the altar as a gratuitous gift,"<sup>183</sup> or " a sum of money or some other thing of value which is given to the priest for his maintenance with the understanding that he will offer the Sacrifice of the Mass for a

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<sup>178</sup> For an historico-juridical study of Mass offerings in the 1983 Code, see S. THEKETHECHERIL, *Offering for the Celebration of Mass in the Canonical Legislation: A Historico-Juridical Study*, JCD Thesis, Rome, Pontificia Universitas Urbaniana, 1989. Worthy of note is the fact that this is the last major study on the subject of Mass Offerings prior to the publication of the decree *Mos Iugiter* in 1991 on collective Mass intentions.

<sup>179</sup> *Ibid.*

<sup>180</sup> WOESTMAN, *Canon Law of the Sacraments for Parish Ministry Sacraments*, 162.

<sup>181</sup> "[...] Mass stipends were deemed from the earliest days, and still are so deemed, to be voluntary contributions towards the support of the priest who celebrated and applied the Mass as requested in accordance with the intention of the donor" (K.R. O'BRIEN, *The Nature of Support of Diocesan Priests in the United States of America: A Historical Synopsis and Commentary*, JCD diss., *CLS*, no. 286, Washington DC, The Catholic University of America Press, 1949, 102). See also M.N. KREMER, *Church Support in the United States*, JCD diss., *CLS*, no. 61, Washington, DC, Catholic University of America, 1930.

<sup>182</sup> J.M. HUELS, "Offerings Given at the Celebration of the Mass, [cc. 945-958]," in *CLSA Comm2*, 1130.

<sup>183</sup> JUNGSMANN, "Mass Intentions and Mass Stipends" in A. KIRCHGAESSNER, (ed.) *Unto the Altar: The Practice of Catholic Worship*, Montreal, Quebec, Palm Publishers, 1963, 29.

determined purpose."<sup>184</sup> *Stips a fidelibus oblata* is a more fitting term for the Mass offering system in the present law than was the previous expression in the 1917 Code which suggested conditions of payment in return for services rendered, and left the impression of a *do ut facias* contract.<sup>185</sup>

While acknowledging the legitimacy of Mass offerings, the Church nonetheless regulates this institute. Fourteen canons in the present code, as opposed to twenty-one canons of the former code, treat the canonical discipline and institute of Mass offerings.<sup>186</sup> In the *CCEO*, three canons regulate this practice.<sup>187</sup> In the Latin code, the canons treating Mass offerings are found in Title III, Chapter Three of Book IV, entitled: *The Sanctifying Function of the Church*. These canons run from cc. 945-958.<sup>188</sup> These canons treat first of all a general principle that should characterize the entire Mass stipend system, then followed by particular norms regulating the reception of an offering for the

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<sup>184</sup> N. HALLIGAN, *The Sacraments and their Celebration*, New York, Alba House, 1986, 75. For a reflection on how the custom of a stipend has its inseparable link with the biblical injunction of paying tithes to God, see T. PUNNAPADAM, "Father, what is a Stipend?" in *Vidyajyoti Journal of Theological Reflection*, vol. 74, no. 7 (2010), 58-62.

<sup>185</sup> J. McAREAVY, "The Offering made for the celebration of Mass," in *CLSBGI Comm*, 517.

<sup>186</sup> For a catechesis on the offering given for the celebration of Mass, see P. NILO, S. PEIG, "The Offering Given for the Celebration of Mass (Mass Stipends)," in *Immaculate Conception School of Theology Journal*, 5 (2003), 20-28. See also J. SIN, "The Offerors and the Offering," in *Boletin Ecclesiastico de Filipinas*, vol. LXXIV no. 806, (1998), 460-462; F. TESTERA, "Pointers on Mass Stipends or Offerings," in *Boletin Ecclesiastico de Filipinas*, vol. LXII, nos. 684-685 (1986), 627-638; J-P. SCHOUPE, *Droit canonique des biens*, Montréal, Wilson & Lafleur, 2008, 110-112.

<sup>187</sup> *CCEO*, cc. 715-717 and 1013 regulate the practice of the faithful to give an offering for the celebration of the Divine Liturgy for the intentions of the Christian faithful; the legitimacy to accept offerings, even for the liturgy of the pre-sanctified and for the commemorations of the Divine liturgy (c. 715); the recommendation to priests to prefer the spontaneous offering of the faithful and even to celebrate without asking for an offering, above all for the intentions of the needy (c. 716); the obligation of priests to observe the norms of the Church *sui iuris* from which they have received Mass offerings (c. 717); the competence of the Eparchial Bishop to determine the amount "of the offerings made on the occasion of the celebration of the Divine Liturgy" and other liturgical celebrations, as well as stole fees for conferring sacraments and sacramentals (c. 1013§1).

<sup>188</sup> T. RINCON-PEREZ, *La liturgia e i sacramenti nel diritto della Chiesa*, Pontificia Università della Santa Croce, 2014, 267-286.

celebration of Mass for a particular intention. In order to avoid the danger of uses more or less related to simony or commercial transactions, the canons that treat of the Mass offering are more detailed. It is to these fourteen canons that we turn our attention for an examination at some length. In so doing, we shall also examine other canons dispersed throughout the code that relate to the Mass offering. We must begin, however, with the fundamental principle that ought to govern the entire Mass offering system.

### 2.1. The General Fundamental Principle

Canon 947. Any appearance of trafficking or trading is to be excluded entirely from the offering for Masses.

This canon has as its source the identical c. 827 of the 1917 Code.<sup>189</sup> Canon 947 of the present code, recapitulates centuries of the Church's experience with the Mass offering system and the numerous disciplinary measures enacted over the centuries, either by popes or by ecumenical councils, to check abuses with regards to the offering for the celebration of Masses.<sup>190</sup> Cappello, commenting on the old law, maintains that the canon forbidding commercialism in the Mass stipend system is not only an ecclesiastical law, but is also of divine origin as it is evident in the law itself, and to transgress such a law is

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<sup>189</sup> Canon 947 of the present code appears as c. 112 of the 1975 schema and is repeated verbatim through the successive stages of the revision process, in the 1980 schema, and the 1982 *Codicis*. It should be noted that here, as in the old law, this canon maintains the use of the word "stipe," offering. The revision commission, therefore, did not see it necessary to revise this particular canon, probably because it remains a valid fundamental principle that should govern the entire Mass stipend system.

<sup>190</sup> See E.F. REGATILLO, *Ius Sacramentarium (=Ius Sacramentarium)*, editio secunda, Sal Terrae, 1949, 155-156; P.M. CONTE A CORONATA, *Institutionis Iuris Canonici: De Sacramentis Tractatus Canonici, (De Sacramentis)* vol. 1, Romae, Domus Editirialis Marietti, 1943, 243-244; H.A. AYRINHAC, *Legislation on the Sacraments in the New Code of Canon Law, (=Legislation on the Sacraments)* New York, Longmans Green and Co. 1928, 139-142; P.C. AUGUSTINE, *A Commentary on the New Code of Canon Law, Commentary on the New Code*, 186-187; M. DESDUITS, "Des intensions de messes," in *Esprit et Vie*, 81 (1971), 427.

to incur a grave sin.<sup>191</sup> The Church in this regulation praises and encourages this institution and the assistance given by the faithful primarily out of their concern for the decent support of her ministers and the needs of the Church. By strictly regulating this custom, the Church, in this canon, wishes to protect the Mass offering system from any semblance of profiteering, or exchange of merchandise, as is known in the business world. The Church also wishes to exclude any possible abuses since this usage is associated with the celebration of the “most august sacrament of the Church,” the Eucharist, “the source and summit of the Christian life.”<sup>192</sup> The faithful who make an offering for the Mass spontaneously contribute something of their own resources for the good of the Church and for the support of the Church’s ministers.<sup>193</sup>

The first major abuse, therefore, that should be avoided is that of any semblance to trafficking or trading (*mercatura*). Even the appearance or impression of negotiation (*negotiatio*) should be entirely excluded from the practice of offering Masses. Canon 947 obliges both the lay faithful and the clergy who celebrate such Masses, since the giving and the acceptance of Mass offerings in the past had been frequently known to lead to accusations of simony.<sup>194</sup> This canon excludes all forms of trade and of commerce as it is

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<sup>191</sup> "Id non solum iure ecclesiastico, sed etiam divino vetitum est, uti per se patet; et quidem non modo negotiatio vel mercatura proprie dicta, verum quoque species ipsa sue apparentia. Peccatum est in genere suo grave" (F.M. CAPPELLO, *Tractatus Canonico-Moralis de Sacramentis*, vol. 1, editio tertia emendata et aucta, Torino, Italy, Casa Editrice Marietti, 1938, 679).

<sup>192</sup> *LG*, 11; CCC, no. 1324.

<sup>193</sup> Canon 946. For a study of the historical and juridical support of the Church's ministers under both the 1917 and 1983 codes, see J-M.P. CARRION, *La sustentacion del clero: sintesis historica y estudio juridico*, Tesis Doctoral, Sevilla, Universidad Pontificia de Salamanca, 1963; R.M. KIFFMAN, *The Implementation of Canon Law in Ontario Regarding Descent Support for Retired Diocesan Clergy*, JCD Thesis, Ottawa, Saint Paul University, 2004.

<sup>194</sup> See the synopsis of the reaction to the initial schema on the sacraments by T. GREEN, "The Revision of Sacramental Law: Perspectives on the Sacraments other than Marriage," in *Studia canonica*, 11 (1977), 261-327.

known in the business world, that is to say, all business dealings and transactions whatsoever, the exchange of goods and services made in view of making a profit with the Mass offering and, more particularly, all dealings of buying of goods with the intention of selling them more expensively such that one party makes a profit. For example, if someone were to collect Mass intentions and offerings from a diocese, with the intention of transferring the Mass offerings to another diocese, where the fixed amount for the Mass offering is lower than from the diocese where the offerings were collected, in transferring the offerings, they should not keep for themselves the excess over the fixed amount in the diocese where he is transferring the offerings.<sup>195</sup> It will be trafficking, that is, if they collected Mass offerings with the intention of making a profit, unless the excess over the fixed amount in the diocese to which they are transferring the offerings was given to them as a personal gift by the donor(s). This intention should be made explicit by the donor and not presumed by the recipient of the Mass intentions.

A person could also, after receiving the money for the Mass offerings, decide to purchase goods with the Mass offerings, with the intention of reselling the goods in such a way as to make a profit, and keep the profit for himself, before refunding the money of the Mass offerings account. Such a person would be acting contrary to the stipulated laws, since this is bartering with Mass stipends, an act forbidden by the law. However, the same person would not be acting against the law if he were to use the money from the Mass offerings to carry out the same transaction, if he had first satisfied all the

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<sup>195</sup> "In the Const. *Apostolicae Sedis* (Oct. 12, 1869) Pius IX pronounced excommunication *latae sententiae* against those who collected alms for Masses, had these celebrated for a smaller stipend, and retained the difference" (H.A. AYRINHAC, *Legislation on the Sacraments*, 139). The 1917 code, however, did not renew the ancient censures, but only enacted penalties *ferendae sententiae* for the violation of these rules. See *CIC/17* canon 2324.

obligations involved. He could then discharge the money as he so wishes because, in principle, he has already celebrated the Masses and as such has fulfilled the obligation and can therefore lawfully claim ownership of the money. Since the purpose of the Mass offering is a gift or donation to the priest, it would be acting contrary to the spirit and fundamental rationale of the Mass offering if one were to first of all make use of the offering, for some financial gain, even before the obligations have been satisfied. Any semblances of profiteering, business, bartering and the like are to be entirely excluded from the offering of Masses. A priest may invest the money he receives by means of Mass offerings in an interest-bearing savings account, or the stock market even before the obligations have been satisfied. Any interest accrued on the Mass offerings can be used for whatever the one receiving the offering determined because the offering is intended to support the clergy.<sup>196</sup> To invest Mass offerings in an interest-bearing savings account, even before the obligations have been satisfied will not be acting contrary to the law, even though, strictly speaking, the code does not require that Mass offerings be segregated into a special bank account. Such a custom is laudable, but it is not obligatory. Canon 958, § 1 requires that the priest keep a "special book in which they note accurately the number of Masses to be celebrated, the intention, the offering given and their

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<sup>196</sup> "Any interest accrued on the Mass offering monies can be used for whatever the one receiving the offering determined would be the best use. Because the offering is intended to support the members of the religious institute, the interest could be applied to those expenses as determined by the religious superior or the individual member in accord with the Constitutions, Statutes and Norms of the institute" (P.L. GOLDEN, "Mass Offerings held in an Interest Bearing Account," in R.E. JENKINS, J.J. KOURY, R. MCDERMOTT, L.A. ROBITAILLE, S.M. VERBEEK [eds.], *Roman Replies and CLSA Advisory Opinions 2007*, Washington, DC, Canon Law Society of America, 2007, (77-78). See also A.M. CARR, "Interest on Mass Stipend Account" in *Homiletic and Pastoral Review*, 64 (1964), 346; A.M. CARR, "Interest on Mass Stipend Account" in *Homiletic and Pastoral Review*, 69 (1969), 568; F.J. CONNELL, "Interest on Stipends" in *American Ecclesiastical Review*, 154 (1966), 53.

celebration."<sup>197</sup> The investment of the Mass offering moneys in an interest-bearing savings account is for safety rather than profit. The profit accrued from the savings account is an unavoidable consequence that is not directly desired but permissible.

Furthermore, we are right to dismiss all semblances of trade and commerce, that is to say, any appearance of gain and profit. Examples of this include requesting a larger amount than what has been legitimately permitted by particular law, or, by accepting Mass offerings with the intention of transferring them to another priest with a reduction in the amount.<sup>198</sup> To ask for a higher amount than that which is legitimately permitted by particular law will be tantamount to exploiting the Mass offering system for money making. The amount stipulated by particular law should express the spirit of generosity of the faithful. To require an amount higher than that stipulated by particular law is to abuse not only the freewill of the faithful, but also to exploit them. This is contrary to both the letter and the spirit of the law. We concur with Woestman, however, that it is not forbidden to deduct the just expenses involved in transmitting the offering to others, for example, for postage, money exchange fees, and money transfer orders.<sup>199</sup>

As a general law, therefore, there is to be not even the slightest appearance or semblance of gain or profit with the Mass offering system. As much as possible, all such semblances are to be completely eliminated from Mass offerings. Consequently, the

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<sup>197</sup> GOLDEN, "Mass Offerings held in an Interest-Bearing Account," 78.

<sup>198</sup> "Nemini licet colligere Missarum stipendia et ex eis lucrum captare faciendo eas celebrare, sive in aliis locis ubi Missarum eleemosynae sunt minores, sive in iisdem locis, etsi lucrum inde perceptum in favorem ecclesiae aut pii operis impendatur" (CAPPELLO, *De Sacramentis*, 679).

<sup>199</sup> He also cautions, however, that these fees are usually not deducted because, "[...]the transmission of Mass offerings is considered by most as a work of charity both to aid the faithful desiring the celebration of Mass for their intentions, and also to assist priests needing Mass offerings for their support" (WOESTMAN, *Canon Law of the Sacraments*, 163).

precept of c. 898 has also to be obeyed, that is to say, “the Christian faithful are to hold the most holy Eucharist in highest honour.” For this reason, the code calls on individual bishops, or the provincial council, or a meeting of the bishops of the province, to make particular regulations governing these practices in their respective territories, in order to avoid trafficking or trading or gain with the Mass offering system. Canon 1385 of the code also establishes a sanction for those who illegitimately make a profit from Mass offerings. They are to be punished with a censure or another just penalty.<sup>200</sup> The principle stated in c. 947 is an exhortation, a warning and a reminder that the Mass offering system is not an occasion for making money. This canon is the result of the Church’s response to abuses that have taken place in the past, and also serves to counter any further abuse to the Church’s practice of the Mass offering system.

## **2.2 Particular Norms on Mass Offerings**

The code develops seven particular canons or norms which regulate the application of the general principle on Mass offerings. These seven particular norms elaborate on the general principle against any trafficking and give the dispositions which, if strictly followed, will absolutely eliminate the possibilities of trade or commerce, or any semblances of negotiation with regard to the practice of the Mass offering system. These canons reflect the long experience and tradition of the Church in dealing with the Mass offering system.<sup>201</sup> A few other canons concerning Mass offerings, which reflect

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<sup>200</sup> We shall return to the treatment of canon 1385 in a later section of our work when we discuss trafficking in Mass offerings and canonical sanctions (section 2.6).

<sup>201</sup> Sigler argues in defense of the Mass stipend system. "The notion of a free-will offering on the occasion of celebrating Mass for a specific intention should NOT be discarded at this time. Despite the many difficulties with the retention of stipends, there has been, since the third century, a growing practice for the faithful to express their bond with the altar by bringing to Mass as their offering, first the bread and

this same concern and sensitivity, are dispersed throughout the code. But it is to these seven particular canons that we turn our attention. We shall also mention some other canons, dispersed throughout the code, as they pertain to the Mass offering system.

### 2.2.1 The Right of the Priest Celebrant to Retain the Mass Offering

Canon 945, §1. In accord with the approved practice for the Church, any priest celebrating or concelebrating is permitted to receive an offering to apply the Mass for a specific intention.<sup>202</sup>

This canon continues in the tradition of the former code and has as its source c. 824, §1<sup>203</sup> of the 1917 Code. Except for a few grammatical changes that took place during the revision process, the wording of the present canon reproduces the wisdom of the old law.<sup>204</sup> The canon under consideration went through successive drafts in the

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wine and, later, other gifts for the needs of the Church. It would be most undesirable if this element were eliminated in an attempt to lessen the abuses of this practice" (G.J. SIGLER, "Mass Stipends: A New Approach" in *Pastoral Life*, 13 [1965], 645-648). "With all its limitations, however, the mass stipend has preserved a custom which, if properly interpreted and practiced, should be retained. Offerings made for the Eucharist will help build up the Church as a 'spiritual temple' in the measure that the donor, as well as the priest who receives the gift from the altar, employ it as an expression of priestly vocation. Through the gift the donor should give cultic expression of his priestly service of God and mankind. The priest who receives the gift from the altar should, in turn, exercise the same priesthood by using it to witness to God's love for those in need" (E.J. KILMARTIN, "Money and the Ministry of the Sacraments," in *Concilium*, no. 117 [1979], 104-111).

<sup>202</sup> "Secundum probatum Ecclesiae morem, sacerdoti cuilibet Missam celebranti licet aut concelebranti licet stipem oblatam recipere, ut iuxta certam intentionem Missam applicet."

<sup>203</sup> *CIC/ 17*, c. 824, §1 "Secundum receptum et probatum Ecclesiae morem atque institutum, sacerdoti cuilibet Missam celebranti et applicanti licet eleemosynam seu stipendium recipere." "According to the received and approved manner and institution of the Church it is permitted to every priest celebrating and applying a Mass to receive an offering, that is, a stipend."

<sup>204</sup> The most significant and noticeable shift in c. 945, §1, as well as in the rest of the canons on Mass offering in the 1983 Code, is the elimination of the use of the word stipend (*eleemosynam/stipendium*) as in canon 824, §1, of the 1917 Code, and the introduction exclusively of the use of the word offering (*stips*), a usage which is more in keeping with the historical origins and nature of the gift that is offered, and the system or institution that is considered.

revision process as c. 109, §1 of the 1975 schema,<sup>205</sup> as c. 894, §1 of the 1980 schema<sup>206</sup> and it appears as c. 940, §1 of the 1982 revised code.<sup>207</sup> This canon expressly confirms this custom and the legitimacy of the offering given for the application of Mass celebrated or concelebrated according to the determined intention of the donor and the right of any priest celebrating or concelebrating Mass<sup>208</sup> to retain the offering.<sup>209</sup> It also states that the priest “is permitted,” meaning he is allowed to receive Mass offerings and that it is his right to retain the Mass offering that he receives.<sup>210</sup> This canon, therefore, clearly establishes the legitimacy of this institution as well as the personal inalienable right of the celebrating or concelebrating priests for the offering.<sup>211</sup> This same right of the

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<sup>205</sup> *Pontificia Commissio Codici Iuris Canonici Recognoscendo, Schema Documenti Pontificii Quo Disciplina Canonica De Sacramentis Recognoscitur*, (= *Schema De Sacramentis*) Typis Polyglotis Vaticanis, 1975. Canon 109, §1 "Secundum probatum Ecclesiae morem, sacerdoti cuilibet Missam celebranti et applicanti necnon concelebranti licet stipem a fidelibus oblatam recipere." We notice already here in this draft that the use of the word 'stipend' has been dropped.

<sup>206</sup> *Schema De Sacramentis*, Canon 894, §1: "Secundum probatum Ecclesiae morem, sacerdoti cuilibet Missam celebranti aut concelebranti licet stipem oblatam recipere ut iuxta certam intentionem Missam applicet."

<sup>207</sup> E.D. PETERS (compl.), *Incrementa in Progressu 1983 Codicis Iuris Canonici*, with a multilingual introduction, Montréal, Quebec, Wilson & Lafleur Ltée, 2005 (= PETERS, *Incrementa*), 861.

<sup>208</sup> Carr admits the right of concelebrating priests to accept stipends for the application of Mass for a determined intention (A.M. CARR, "Stipend for Concelebration" in *Homiletic and Pastoral Review*, 66 [1966], 340). See also A.M. CARR, "Mass Stipends at a Concelebration" in *Homiletic and Pastoral Review*, 66 (1966), 879-880. "[...] [Y]ou are perfectly right to continue your practice of accepting stipends for sung Masses and satisfying these obligations at concelebrated Masses" (P.M. BOYLE, "Stipend at Concelebrated Mass," in *The Priest*, 23-1 (1967), 144-145). See also F.J. CONNELL, "Stipends for Concelebrated High Mass," in *American Ecclesiastical Review*, 155 (1966), 415; J.C. DIDIER, "Des intensions « secondes » à la concélébration," in *Ami du Clergé*, 78 (1978), 30-31; E.F. REGATILLO, "Estipendio de misas cantadas concelebradas" in *Sal Terrae*, 55 (1967), 804-806.

<sup>209</sup> For an exhaustive treatment of the doctrine and legitimacy of the Mass offering, see D.F. GALEA, "Dottrina antica e problematica moderna sulla legittimazione dello 'Stipendium Missae,'" in *Divinitas*, vol. II (1981), 183-205; 273-315. Keller, maintains that "[...] when two or more priests say Mass together, each may accept the usual Mass stipend. For according to the most common teaching concerning the nature of the Eucharistic Sacrifice, there are as many Masses as there are priests who offer to God His immolated Son" (KELLER, *Mass Stipends*, 34-35).

<sup>210</sup> HUELS, "Offerings Given at the Celebration of the Mass, [cc. 945-958]," in *CLSA Comm2*, 1131.

<sup>211</sup> Carr maintains that a priest is not allowed to accept Mass Stipends for the celebration of the Good Friday Liturgy since the Good Friday ceremonies are an act of the Liturgy with pre-eminently a

priest celebrant is affirmed in the old law.<sup>212</sup> In light of this, therefore, the present canon has to be interpreted and applied in relation to the praxis and wisdom that obtained under the regime of the former law.<sup>213</sup> Since the law maintains that it is permitted for the priest celebrant and concelebrants to receive an offering, he may do so if he so decides, and no one should prevent him from exercising this right. This right is a grant of the universal law of the Church.

The one who gives a donation asking that the priest prays during the Mass for a special intention is not “buying” the sacrifice of the Mass or “paying” for the Mass. The donor gives the offering as a means to support of the priest; it is a participation in the action of the priest. That is why pastoral charity and sensitivity urges the priest to celebrate Mass for the people, even if no offering were given. The second paragraph of c. 945 encourages priests to celebrate Masses for the intention of the faithful even when they have not received an offering for it or, as c. 948 stipulates, if the offering given is

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Communion liturgy (A.M. CARR, "He took Mass Stipends for Good Friday" in *Homiletic and Pastoral Review*, 64 [1964], 712-713).

<sup>212</sup> "The practice of giving alms to a determined priest so that he might offer the special or ministerial fruit of the Holy Sacrifice either for the donor or his relatives and friends, began about the eighth century and became universal after the twelfth. There is no incongruity in applying Mass for a special person or purpose. For, although the Holy Sacrifice, by reason of its main offerer and object, viz., Christ, is of infinite value, yet the special fruit or effect is not infinite, and therefore one person may derive greater profit from it than the rest, and repeated oblations for a particular person or object will produce their effect more certainly and abundantly. Nor is there simony connected with receiving a Mass stipend" (P.C. AUGUSTINE, *Commentary on the New Code*, vol. IV, 176).

<sup>213</sup> "Non est simoniacum recipere stipendia missarum, quia stipendium non est pretium Missae, ideoque non habetur emptio-venditio rei spiritualis cum pretio temporali, sed adminiculum honestae clerici sue sacerdotis sustentationis." The priest does not receive the stipend as a price for consecration of the Holy Eucharist, but as part of his support. The Mass stipend is given in view of the honest/descent sustenance or support of the priest. (P.M.C.A. CORONATA, *Institutiones Iuris canonici: De Sacramentis Tractatus Canonici*, vol. 1, Romae, Domus Editorialis Marietti, 1943).

less than the usual amount of the offering stipulated in the decree for the entire province according to c. 952, §1.<sup>214</sup> The custom of Mass offering expresses the right of remuneration which the priest enjoys by virtue of the right articulated in the code, and it will benefit those who request Masses to be celebrated for their intentions if they make a modest donation towards this goal even if it is, in fact, a small donation.<sup>215</sup> The custom of Mass offerings expresses the participation of the lay faithful in the action of the priest who offers Mass for their intentions and, as such, they share in the solicitude of the Church in the support of her priests and its works.<sup>216</sup>

We can also look at the legitimacy of this practice from the writings of numerous popes and decrees of several ecumenical councils throughout history.<sup>217</sup> While on the one hand, they struggled to fight against the abuses associated with this usage, on the other hand, the councils and popes not only defended this custom, but also promoted it.<sup>218</sup> The Church has thus admitted this practice and has legally reinforced it. It is an approved practice for the Church for it is sanctioned in her laws. Furthermore, the *motu proprio*

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<sup>214</sup> Canon 952§1. "It is for the provincial council or a meeting of the bishops of the province to define by decree for the entire province the offering to be given for the celebration and application of Mass, and a priest is not permitted to seek a larger sum. Nevertheless, he is permitted to accept for the application of a Mass a voluntary offering which is larger or even smaller than the one defined."

<sup>215</sup> HUELS, "Offerings Given at the Celebration of the Mass [cc. 945-958]," in *CLSA Comm2*, 1131.

<sup>216</sup> Canon 946 "The Christian faithful who give an offering to apply Mass for their intention contribute to the good of the Church and by that offering share its concern to support its ministers and work." Mass offerings are justified by the Church because of they provide the donors the opportunity to contribute financially in supporting the clergy.

<sup>217</sup> Ayrinhac addresses the ancient decrees and apostolic constitutions from the Council of Trent to the 1917 Code that dealt with abuses of the Mass stipend system and penalties incurred by those who were guilty of offending the Mass stipend system (H.A. AYRINHAC, *Legislation on the Sacraments*, 139-142). See section 1.4 of this work.

<sup>218</sup> CALVO-ÁLVAREZ, "The Offering Made for the Celebration of Mass," in *Exegetical Comm*, vol. III/1, 695-697. In legally reinforcing this practice, the Church acknowledges and approves the origin and development of this age-old custom by which the faithful spontaneously brought the gifts to be offered for the Mass.

*Firma in traditione*, of Paul VI, upholds the legitimacy of such a practice by invoking tradition. This "reveals how much weight tradition alone has with the Holy See even when convincing theological arguments are lacking."<sup>219</sup> Besides, this canonical discipline is regulated with a plethora of details in order to avoid the slightest hint of negotiation, trade or commerce with the Mass offering. Such a robust legal approach on the part of the Church's hierarchy points to the legitimacy of this ancient practice.<sup>220</sup>

Once the legitimacy of this practice has been established, we turn to the application and implementation of c. 945, §1. However, in doing so, we must also bear in mind the principle that is stated in c. 6, §2, that is, "insofar as they repeat former law, the canons of this code must be assessed also in accord with canonical tradition." In reviewing, therefore, the application and implementation of c. 945, §1, we will rely on canonical tradition, which is the carefully considered opinions of learned scholars, and also the wisdom of the former code and the *Code of Canons of the Eastern Churches*.

### **2.2.1.1 Applying Canon 945, §1.**

In the first place, the text of c. 945, §1 is inspired in part by the motu proprio of Paul VI, *Firma in Traditione*, in which he invokes the custom of Mass offerings as belonging to the tradition of the Church, and, in the second place, to c. 945, §1 of the present code as inspired by c. 824, §1 of the 1917 Code which legally reinforced this custom. Therefore, c. 945, §1 of the present code continues the long tradition and practice which, by the eighth century, was already commonplace in the Church for a priest to

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<sup>219</sup> HUELS, "Stipends in the New Code," 215-224.

<sup>220</sup> A. SERIAUX, *Droit canonique*, Paris, Presses Universitaires de France, 1996, 508.

accept an offering for the celebration of Mass. This canon is consistent with this ancient custom by which the faithful who took part in the Eucharistic sacrifice provided the gifts to be offered during the Mass or together with the gifts for the support of the clergy and the poor. Tradition alone holds the key to interpreting and applying the rules of this practice. The title of this motu proprio alone is very telling on this point: *Firma in Traditione* ("firm in the tradition"). Secondly, c. 945, § 1 no longer uses the term *stipendium missae* to describe the practice of Mass offering, as did c. 824, § 1 of the 1917 Code. For competent authority to determine otherwise will defeat the wisdom of retaining such a custom. The amount defined by competent authority has to be within the reach of the majority of the faithful, and should in part reflect what is required for daily sustenance in a given socio-economic condition. This intention was clearly expressed by the members of the Commission for the Revision of the Code of Canon Law.<sup>221</sup> One may ask whether particular law should define a specific amount for an offering whose purpose is to be spontaneous and free on the part of the faithful on behalf of their priests. Would it not be more in accord with the historical origin and nature of this practice to allow the faithful to give spontaneously, that is, any amount as they desire? The purpose of strict regulation is not to preclude the possibility of a more generous donation on the part of the faithful, but to exclude from this practice any possible abuses, and to completely eliminate any semblances of trafficking or commercialism with the Mass offering.

Furthermore, this intention of the members of the Commission for the Revision of the Code of Canon Law, has been clearly expressed and incorporated into the Church's

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<sup>221</sup> *Communicationes*, 5 (1973), 95.

legislation, as can be seen in cc. 945, § 2; 948 and 952, §1. Canon 945, § 2<sup>222</sup> earnestly recommends to priests to celebrate Mass for the intentions of the Christian faithful, especially the needy, even if they have not received an offering. Canon 948, on the other hand, maintains that “separate Masses are to be applied for the intentions of those, for whom a single offering, although small, has been, given and accepted.” While the second part of c. 952, §1, permits the priest to accept an offering which may be larger in amount than defined in particular law provided it is freely given. It is then clear that the role of legislation is to prevent any abuses associated with this institution.

If the money given for the celebration of Mass is an offering, a donation of the faithful to their priest, then the question can be asked whether the *stips* offered for the celebration of Mass is a juridical obligation or not? In other words, are the Christian faithful always obliged to offer monetary Mass offerings, and is the priest obliged to say Mass for the intentions of the faithful only when there is a financial donation given on the occasion of a requested intention? Keller discusses the morality of priests who would refuse to say Mass unless they have received an offering for it, and says it a question that can rightly be handled by moralists.<sup>223</sup> However, the answer to this is given in c. 276, §2, 2° of the current law, which invites priests to offer the Mass daily. That priests are encouraged to say Mass daily does not depend on the priest's reception of Mass offerings,

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<sup>222</sup> This canon which has no parallel in the former code, appears as c. 109, §2 in the 1975 schema and remains the same throughout the revision process. It was introduced by the *coetus* for the revision of the code, without any evidence of any document that could be considered as the source of what is stated in this paragraph. It suggests that the introduction of such a canon is in keeping with spirit of rigorous transparency that ought to characterize the practice or the custom of Mass offerings, as much as possible, that all semblances of commerce or anything that smacks of casuistry must be completely eliminated from this custom.

<sup>223</sup> KELLER, *Mass Stipends*, 35.

but it is an encouragement found in the law itself.<sup>224</sup> In celebrating Mass daily, the priest nourishes his spiritual life and fulfils his principal function as a priest, which is not dependent on Mass offerings. Canon 945, § 2 recommends the celebration of Mass for the intentions of the faithful even when the priest has not received an offering, and c. 948 encourages priests to celebrate separate Masses for those from whom a single offering, although small, has been given and accepted. In keeping with their vocation, therefore, and for their own spiritual good, priests are encouraged to say Mass frequently, indeed daily.<sup>225</sup> The celebration of Mass by the priest is an act of Christ and the Church whom he represents. Calvo-Álvarez underlines the necessity for the daily celebration of Mass by the priest. This daily celebration:

[...] is emphasized in § 2 of the present canon. That is, the 'stipend' for the Mass is not a sort of tribute or tax; nor is it the economic retribution for a service rendered. This matter is '*res sane gravis multumque postulans prudential'*, (*sic*) and throughout history the pastors of the Church have shown a diligent vigilance on this point.<sup>226</sup>

Canon 945, §1, affirms the right of the priest who celebrates or concelebrates to receive and retain an offering to apply the Mass for a specific intention. This canon maintains that it is permitted, authorized, allowed, and, therefore, it is lawful. It is a right given by the universal law of the Church. This same right was affirmed by the 1917 Code in c. 824, §1. In view of the double affirmation of the right of the priests to retain the Mass offering in both the 1917 and 1983 Codes, is it possible for a diocesan bishop to

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<sup>224</sup> For a study of the obligation that binds a priest to celebrate Mass, see C.P. DURIEUX, *The Eucharist: Law and Practice*, English translation by O. DOLPHIN, Chicago, Illinois, The Lakeside Press, 1926, 43-67.

<sup>225</sup> Canon 904: "Remembering always that in the mystery of the Eucharistic sacrifice the work of redemption is exercised continually, priests are to celebrate frequently; indeed, daily celebration is recommended earnestly since, even if the faithful cannot be present, it is the act of Christ and the Church in which priests fulfill their principal function." See also *Presbyterorum ordinis*, 18, and *Perfectae caritas*, 6.

<sup>226</sup> CALVO-ÁLVAREZ, "The Offering Made for the Celebration of Mass," in *Exegetical Comm*, vol. III/1 697.

determine, in the particular law of his diocese, that all Mass offerings are to be considered the good of the public juridic person of the parish? This question touches not only on the principle of the hierarchy of laws within the Church, mentioned in cc. 6, 12 and 135, §2,<sup>227</sup> but also on the personal inalienable right of the priest celebrant to retain the Mass offering and the right to remuneration given to him by the law. Church law and canonists maintain that it is the personal right of the priest to retain the offering given for the celebration of Mass. Gregory Ingels argues:

Since this is a question which touches on the right of remuneration enjoyed by the clergy, any norm of particular law would be required in principle to take this right of universal law into consideration. Particular law cannot arbitrarily remove a right which the faithful enjoy by reason of universal law. Hence, it would be inappropriate simply to decree that Mass stipends received in individual parishes are to be considered the assets of that juridic person.<sup>228</sup>

This right belongs to the priest by virtue of tradition and also by grant of universal law. The priest should not be deprived of it simply by declaring in particular law that Mass offerings are the goods of the parish without particular law providing in some way for this right to be respected. "Thus a legal right is granted which cannot be

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<sup>227</sup> "[...] [A]ll contrary particular laws are abrogated unless the code expressly makes an exception for particular laws..." In the case of the priest not retaining the Mass offering, it is not known of any universal law that has made an exception in this regard. Canon 135, § 2 states: "Legislative power must be exercised in the manner prescribed by law; that which a legislator below the supreme authority possesses in the Church cannot be validly delegated unless the law explicitly provides otherwise. A lower legislator cannot validly issue a law contrary to higher law" (J.M. HUELS, "Ecclesiastical Laws, [cc. 7-22], " in *CLSA Comm2*, 54).

<sup>228</sup> "[...] [W]hile it does appear that a diocesan bishop could implement a particular law stating that stipends received from Mass requests are to be considered the income of the individual parishes, the necessity of providing for the rights of the individual priests and the fact that such a particular law would in principle be binding on all parishes in the diocese (c. 13§, 1) might possibly work an undue hardship on a number of parishes which could call into question the wisdom of such a particular law." However, it is unclear how such an arrangement in particular law could possibly work out in the light of the provisions of c. 135, §2 on the exercise of legislative power and the hierarchy of laws" (G. INGELS, "Mass stipends as Goods of the Parish," in A.J. ESPALAGE, *CLSA Advisory Opinions, 2001-2005*, Washington, DC, Canon Law Society of America, 2005, 252-254).

denied or restricted without the consent of the priest.”<sup>229</sup> To do otherwise would not only be unjust to the priest, but would also be contrary to the provisions of universal law given by the supreme legislator.<sup>230</sup> It is a strictly personal right and cannot be removed arbitrarily without causing disservice and injustice to the priest because this right is given by universal law,<sup>231</sup> and also because he enjoys the right to remuneration and support. The offering given for the celebration of Mass, therefore, belongs to the priest celebrant by right (or law) and also by custom; the Mass offering is his personal property, and it is a grave injustice for anyone to seek to deprive him of the exercise of this right. Mendonça maintains the same position when he writes:

it seems clear that the offering made to the priest for celebrating the Mass for a particular intention belongs to the priest, unless he is a member of a religious institute, by justice and no authority can lay claim to it [...] Therefore, one can rightly argue that no particular law can override this right of the priest without consent of the priest(s) concerned.<sup>232</sup>

He goes on to argue against some questionable practices in some dioceses according to which half of the amount given for the celebration of Mass is surrendered to the diocese, and the other half retained by the priest celebrant. He maintains that "unless proven otherwise, such a practice could be considered contrary to the common norm and the matter could be referred to the Pontifical Council for Legislative Texts for clarification."<sup>233</sup> He then concludes that "the offering made to the priest belongs solely to

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<sup>229</sup> HUELS, "Offerings Given at the Celebration of the Mass, [cc.945-958]" in *CLSA Comm2*, 1131.

<sup>230</sup> Canon 333, §1. "By virtue of his office, the Roman Pontiff not only possesses power over the universal Church but also obtains the primacy of ordinary power over all particular churches and groups of them. Moreover, this primacy strengthens and protects the proper, ordinary, and immediate power which bishops possess in particular churches entrusted to their care."

<sup>231</sup> Canon 12, §1 "Universal laws bind everywhere all those for whom they were issued."

<sup>232</sup> A. MENDONÇA, "Unlawful Use of Money Offered for the Celebration of Mass," in *Studies in Church Law*, 7 (2011), 411-416.

<sup>233</sup> *Ibid.*

the priest and the diocesan bishop cannot decree division of that offering without his consent."<sup>234</sup>

James I. Dolan describes a situation in a diocese which considered a policy in which priests relinquish all stipends and, alternatively, are given an annual amount in place of stipends. In his response he states:

Since canon 945 allowing priests to accept stipends for applying intentions to Masses celebrated, is universal law, only the Holy See would be competent to derogate from it. The local diocesan bishop would not have the authority to do so. And thus, the diocesan bishop could not mandate a priest relinquish his stipends. Making such a requirement would in essence be derogating from universal law of the Church. Thus, a bishop could not mandate that a priest not accept or receive Mass stipends.<sup>235</sup>

A response in the negative had been given by the Congregation of the Clergy in 1981 to a diocesan bishop who sought an indult from the same Congregation, inquiring whether Mass stipends could be assigned to the parish or institution where the Mass was celebrated, rather than to the priest celebrant. In response, the Congregation for the Clergy maintained that it is part of the letter and the spirit of the law to give Mass stipends directly to the priest celebrant.<sup>236</sup>

J.A. Renken, makes the point even clearer when he writes:

If a diocese were to offer priests the option of an increase in monthly remuneration in return for surrendering their Mass offerings, this arrangement would need to be entirely voluntary-that is, it would need to be an option which each priest may freely either select or reject. If a priest chooses to surrender Mass offerings in return for a set monthly

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<sup>234</sup> Ibid.

<sup>235</sup> "Canonically, even when agreeing to the above-mentioned policy, the priest in fact retains the right to receive stipends offered by the faithful. The right to receive stipends is not taken away. In agreeing to the policy, the priest does not really relinquish or lose that right. Rather, he is merely agreeing to forego what is rightfully his and accept this other policy" (J.I. DOLAN, "Priests' Remuneration and Mass Stipends," in A.J. ESPELAGE [ed.], *CLSA Advisory Opinions, 2001-2005*, Washington, DC, Canon Law Society of America, 2005, 254-256).

<sup>236</sup> W.A. SCHUMACHER, R.A. HILL (eds.) in *Roman Replies and CLSA Advisory Opinions*, Canon Law Society of America, Washington, DC, 1984, 2.

remuneration, in effect he would be freely giving the Mass offerings to the parish and in turn receiving a set remuneration. Seemingly, this arrangement would not contradict the letter or spirit of the law concerning Mass offerings. The Mass offerings would still be the property of the priest, who can dispose of them however he would wish. Unlike the indult which was denied in 1981 by the Sacred Congregation for the Clergy and would have been mandatory throughout the archdiocese, this arrangement would be voluntary-freely chosen or not by each priest. Given the complexity of this (e.g., the need to customize the arrangement for each priest, including visiting priests who celebrate Mass at the parish on occasion), one may question its practical advantage.<sup>237</sup>

R. A. Hill, had made the same point:

There could not, therefore, be a parish or diocesan policy which would prevent a priest from exercising his right which is stated in canon 945. While an individual priest or a group of priests may voluntarily agree to forego the exercise of this canonical right, an individual can change his mind and withdraw from the plan and a newcomer could not be compelled to surrender the exercise of his right.<sup>238</sup>

There is a convergence of opinion that in issuing any particular laws regarding the destination of the offerings given for the celebration of Mass, except in the case of the excess Mass offerings, the diocesan bishop for secular clergy ought to take into consideration this right of the individual priest to retain the offering given for the celebration of Mass as stipulated by the universal law and practice of the Church, which ought to bind everywhere and on all those for whom they were issued. The Mass offering is a custom which is inextricable from the long tradition and practice of the Church. Consequently, the practice ought to receive recognition in the formulation of any particular law, recognizing the right of the priest celebrant to retain the offering.

It has been expressed historically that *stips* means the work is carried out in honour of God or to help the poor and represents the freewill donations of the faithful

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<sup>237</sup> J.A. RENKEN, "Diocesan Practices Concerning Mass Offerings," in S.A. EUART, S.M. VERBEEK (eds.) *Roman Replies and CLSA Advisory Opinions 2009*, Washington, DC, Canon Law Society of America, 2009, 94-99. See also A.M. CARR, "They put Mass Stipends in a 'Kitty'," in *Homiletic and Pastoral Review*, 66 (1966), 782-783; C.W. WEISS, "The Priest's Salary: Size and Sources," in *Homiletic and Pastoral Review*, 65 (1964), 134-135.

<sup>238</sup> R.A. HILL, "Mass stipends and Offerings for Special Intentions," in P.J. COGAN (ed.), *CLSA Advisory Opinions 1984-1993*, Canon Law Society of America, Washington DC, 1993, 292-294.

given during the celebration of Mass; it became chiefly to support the clergy. Can something else, other than money, be given on the occasion of the celebration of Mass? The donation of monetary offerings for the celebration of Mass is not an absolute necessity. Gifts other than money have been and could also be given for the celebration of Masses. History attests to the fact that gifts other than money used to be given for the celebration of Masses.<sup>239</sup> The practice of giving money only became common around the twelfth century. Agustoni, commenting on the decree on collective Mass intentions, *Mos iugiter*, maintains that gifts other than money could be and have been offered for the celebration of Mass, particularly when he refers to practices of certain poor and economically depressed regions of the world where the faithful give gifts in kind to the priests for the celebration of Mass.<sup>240</sup>

### **2.2.1.2 The Diocesan Bishop and the Tax on the Mass Offerings**

In order to meet the regularly occurring needs of the diocese, could the diocesan bishop levy an ecclesiastical tax on the Mass offering, just as he would do on the

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<sup>239</sup> "Dealers, on the other hand, like all other persons may, if they wish to have Masses said for their personal intentions, give books or other articles as stipends; they might also give books in place of stipends for Masses brought to them spontaneously by others" (H.A. AYRINHAC, *Legislation on the Sacraments*, 142). Cappello states: "Permutatio inter Missas celebrandas et libros vel ephemeridum associationes aut alias merces eatenus iure novo est prohibita, quatenus species negotiationis vel mercaturae habeatur; secus non est vetita; at caute ac prudenter agendum, ne abusus facile irrepant" (F.M. CAPPELLO, *De Sacramentis*, 680); See also E.F. REGATILLO, "Estipendios de misas para retribuir la enseñanza, in *Sal Terrae*, 55 (1967), 869-870.

<sup>240</sup> "[...] [I]t is a question of a practice which dates to time immemorial in certain poor regions where the faithful give the priest moderate offerings, sometimes still gifts in kind, not to request the celebration of Masses for their individual, particular intentions, but rather to contribute in general to the church's public worship and the support of the priest himself, knowing quite well that he will then celebrate Mass for their intentions and needs as canon law does in fact prescribe for bishops and priests with the Masses *pro populo* and which is also suggested by sensitivity and priestly charity" (G. AGUSTONI, "Commentary on Collective Mass Intention Decree," in *Origins*, 20 [1990-1991], 706-707).

financial assets of public juridic persons,<sup>241</sup> and other physical juridic persons subject to his governance which the law allows him to do so in case of grave necessity?<sup>242</sup> The diocesan bishop, by law, is competent to administer the temporal goods of the particular Church even if this is fulfilled by the assistance and collaboration of certain organs and persons within the diocese.<sup>243</sup> It follows, then, that the offering given by the faithful for the celebration of Mass does not fall within the scope of income that is liable to be taxed by the diocesan bishop. Mass offerings are incidental gifts to priests. Talking about the right of the diocesan bishop to levy an ecclesiastical tax on public, private, and physical juridic persons subject to him, c. 1263 states:

After the diocesan bishop has heard the finance council and the presbyteral council, he has the right to impose a moderate tax for the needs of the diocese upon public juridic persons subject to his governance; this tax is to be proportionate to their income. He is permitted only to impose an extraordinary and moderate exaction upon other physical and juridic persons in case of grave necessity and under the same conditions, without prejudice to particular laws and customs which attribute greater rights to him.

There is no doubt that the first part of c. 1263,<sup>244</sup> separated by a semi-colon, gives the diocesan bishop,<sup>245</sup> upon consultation of the relevant diocesan organs of consultation

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<sup>241</sup> Canon 113, §2 "In the Church, besides physical persons, there are also juridic persons, that is, subjects in canon law of obligations and rights which correspond to their nature." For the development of the notion of public juridic persons within the Church, see A.J. MAIDA, and N.P. CAFARDI, *Church Property, Church Finances, and Church Related Corporations*, St. Louis, MO, The Catholic Health Association of the United States, 1984, 21-27.

<sup>242</sup> D.J. FRUGE, "Taxes in the Proposed Law" in *CLSA Proceedings*, 44 (1982), 274-288. See also D.J. FRUGE, "Diocesan Taxation of Parishes in the United States: Sign of *Communio* or Source of Tension?" in *CLSA Proceedings*, 60 (1998), 68-81; A.M. CARR, "Mass Stipends for Diocesan Use," in *Homiletic and Pastoral Review*, 1971, 69-70.

<sup>243</sup> J.B.J. STEPHAN, *The Competence of Diocesan Bishop on Temporal Goods*, JCD thesis, Rome, Pontificia Universitas Urbaniana, 2005.

<sup>244</sup> For an excellent overview of the legislative history and evolution and interpretative application of canon 1263, and also the clause on the prohibition of a tax on the Mass stipends, see R.L. KEALY, *Diocesan Financial Support: Its History and Canonical Status*, (JCD thesis) Romae, Pontificia Universitas Gregoriana, 1986, 312-340. "Nevertheless, it is clear that there was no intention of introducing a tax on Mass stipends and the only safe interpretation is that such a tax continues to be prohibited" (ibid.). See also J.A. RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, Staten Island, New York, St. Paul's/Alba House, 2009, 78-95.

(diocesan finance council and presbyteral council),<sup>246</sup> the right to impose an ordinary moderate ecclesiastical tax,<sup>247</sup> for the regularly occurring financial needs of the diocese that is proportionate to the income of public juridic persons subject to his governance.<sup>248</sup> The second part of the canon says that he may, however, impose an extraordinary and moderate tax upon other physical and juridic persons in case of grave necessity. This tax is extraordinary which means it is not something that occurs regularly; it is imposed for a limited time to respond to a grave necessity,<sup>249</sup> a particular situation that is at hand, and

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<sup>245</sup> "The debated issues resolved by the final text of canon 1263 included: who can impose a tax (any local ordinary or only the diocesan bishop), who can be taxed, what can be taxed, to what extent, for what reasons, and only after what, if any, consultation" (R.T. KENNEDY, "The Acquisition of Goods [cc. 1259-1272]" in *CLSA Comm 2*, 1463).

<sup>246</sup> For studies on both organs of consultation, see A. ALAGUSELVAN, *Priests' Council A Representative Body of the Presbyterium in the Governance of the Diocese: A Juridical Study of Can. 495, §1 and its Relevance in Today's Context*, JCD thesis, Rome, Pontificia Universitas Urbaniana, 1998; R.R.U. CALVO, *Consultation and the Presbyteral Council: New Emphasis in the Ratio Legis*, JCD thesis, Rome, Pontificia Studiorum Universitas A S. Thoma AQ. in Urbe, 1986; A. MUTABAZI, *Le conseil presbyteral et le conseil diocesan de pastorale dans le nouveau code: evolution doctrinale, contenu de la nouvelle normative et critique prospective*, JCD thesis, Rome, Pontificia Universitas Urnanianna, 1987; T.A. KPENU, *Le conseil presbyteral, organe de communion de l'evêque avec son presbyterium: canon 495, §1*, JCD thesis, Rome, Pontificia Universitas Urbaniana, 1998; M.I. UZOUKWU, *The Diocesan Finance Committee and the Financial Officer, (canons 492-494)*, JCD thesis, Rome, Pontificia Universitas Urbaniana, 1991; A. FARRELY, "The Diocesan Finance Council: Functions and Duties According to the Code of Canon Law," in *Studia canonica*, 23 (1989), 149-166; R. PAGÉ, *Les Eglises particulières: Leurs structures de gouvernement selon le code de droit canonique de 1983*, tome 1, Montréal, Québec, Éditions Paulines & Médiaspaul, 1985, 115-153.

<sup>247</sup> J.H. PROVOST, "Right of the Diocesan Bishop to Levy a Tax on a Juridic Person Subject to Him," in P.J. COGAN (ed.), *CLSA Advisory Opinions, 1984-1993*, Washington, DC, Canon Law Society of America, 1993, 408-410.

<sup>248</sup> "Public juridic persons subject to the diocesan bishop are such by the disposition of universal law, such as parishes and minor or major seminaries, or those that have been erected by him within the context of the governance of the diocese like schools or a diocesan hospital, and or diocesan religious institutes (canons 114, §§1,2,3; 116, §§1 and 2)" (P. VERE, M. TRUEMAN, *Surprised by Canon Law*, vol. 2 Cincinnati, Ohio, Servant Books, St. Anthony Messenger Press, 2007, 62-64).

<sup>249</sup> Grave necessity that can occasion the diocesan bishop to impose an extraordinary tax on other physical and juridic persons can be for example to cover the cost of a papal visit, in order to build or repair

once the situation ceases to exist, the tax should be suspended. Each time the diocesan bishop is to impose such a tax, he is required by the law always to consult the diocesan finance council<sup>250</sup> and the presbyteral council.<sup>251</sup> The canon does not say that he needs the consent of these organs before he can proceed to impose such a tax but simply that he needs to consult these bodies.<sup>252</sup> Canon 127, §1 states that these bodies must be formally convoked to discuss the question and it requires for validity that the counsel of all those present be sought.<sup>253</sup> Parishes are public juridic persons subject to the bishop's governance by law and their ordinary income can be taxed by the bishop.<sup>254</sup> The question is whether local Mass offerings belong to the public juridic person of the parish, and not to the priest celebrant,<sup>255</sup> as is the practice and discipline of Church law? Mass legacies

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a Cathedral, to construct a seminary or a retirement home for priests. See M. NGUNDU, *Comment gerer les biens de l'eglise*, Kinshasa, Les Editions Baobab, 1998, 27.

<sup>250</sup> A. FARRELLY, "The Diocesan Finance Council," 154-155. See also J.B.J. STEPHAN, *The Competence of Diocesan Bishop on Temporal Goods*, JCD Thesis, Pontificia Universitas Urbaniana, Rome, 2005, 139-152.

<sup>251</sup> Canon 495, §1: " In each diocese a presbyteral council is to be established, that is, a group of priests which, representing the presbyterate, is to be like a senate of the bishop and which assists the bishop in the governance of the diocese according to the norm of the law to promote as much as possible the pastoral good of the portion of the people of God entrusted to him."

<sup>252</sup> "Therefore, the task of the diocesan finance council is to express their advice and not the consent when the bishop asks of it before to impose any tax." (J.B.J. STEPHAN, *The Competence of Diocesan Bishop on Temporal Goods*, JCD Thesis, Pontificia Universitas Urbaniana, Rome, 2005, 58).

<sup>253</sup> Canon 127, §2, 2°: "if counsel is required, the act of a superior who does not hear those persons is invalid; although not obliged to accept their opinion even if unanimous, a superior is nonetheless not to act contrary to that opinion, especially if unanimous, without reason which is overriding in the superior's judgment."

<sup>254</sup> For a study of the kinds of funds subject to the diocesan tax, see N. CAFARDI, "The Bishop's Power to Tax all Parish Funds," in P.J. COGAN (ed.), *CLSA Advisory Opinions 1984-1993*, Washington, DC, Canon Law Society of America, 1993, 410-413; D.J. FRUGE, *The Taxation Practices of the United States Bishops in Relation to the Authority of Bishops to tax According to the Code of Canon Law and Proposed revisions*, JCD thesis, CLS, 506, Washington, DC, The Catholic University of America, 1982.

<sup>255</sup> Canons 945, § 1; 946.

and pious wills for Masses will not be considered because those who make them wish that the income benefit the public juridic person of the parish.<sup>256</sup>

Robert T. Kennedy, commenting on Book V on the temporal Goods of the Church maintains that in both the 1917 Code<sup>257</sup> and the Code of Canons of the Eastern Churches,<sup>258</sup> there are clear provisions prohibiting the imposition of a tax on Mass offerings. However, the 1983 Code does not contain any such provision,<sup>259</sup> a situation which leaves Mass offerings technically taxable in the 1983 Code.<sup>260</sup>

Despite the absence of clear provisions prohibiting the imposition of a tax on Mass offerings in the 1983 Code, the intention continued to be clearly expressed by the coetus working on the schema on the temporal goods of the Church<sup>261</sup> throughout the revision of c. 1263 that this prohibition of a tax on Mass offerings be transferred to the

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<sup>256</sup> Concerning offerings left to parishes in a will for the celebration of Masses, Morrisey says: "In order to provide for respect of the intentions of the donors, yet at the same time take into account our theology in relation to the infinite value of the Mass, in some dioceses bishops have established a policy to the effect that if the number of Masses is not specified in the will, and if the amount available for the celebration of Masses is more than thirty times the diocesan offering, then the sum is to be divided by thirty (in line with the former 'month's mind Masses'); the celebrant receives the ordinary offering in the diocese, and the rest goes to the parish or institution that was the beneficiary. Such a policy would have to be issued before a will is received and the executor notified accordingly when they present the request for Masses. If the number of Masses is indicated in the will and the bequest is accepted, then, of course, the intention has to be honored. At times, a percentage of what remains is taxed to provide for the continuing education of priests, and so forth." (F.G. MORRISEY "Acquiring Temporal Goods for the Church's Mission," in *The Jurist*, 56 [1996], 586-603). For another canonical opinion regarding an indeterminate number of Masses, see J.M. HUELS, "Indeterminate Mass Obligations," in J. KOURY, and S.M. VERBEEK (eds.), *CLSA, Roman Replies and Advisory Opinions*, Washington, DC, CLSA, 2007, 79-80.

<sup>257</sup> Canon 1506 of the 1917 Code which is the source of c. 1263 of the present code, expressly forbids taxation of Mass offerings, whether manual or foundational. It states: "[...] but there can be no tax placed on the Mass offerings, whether manual or foundational."

<sup>258</sup> *CCEO*, c. 1012, § 1. "[...] no tax can be imposed on the offerings received on the occasion of the celebration of the Divine Liturgy."

<sup>259</sup> R.T. KENNEDY, "The Acquisition of Goods [cc. 1259-1272]," in *CLSA Comm2*, 1465.

<sup>260</sup> *Ibid.*

<sup>261</sup> *Communicationes*, 5 (1973), 95.

more appropriate place in the code,<sup>262</sup> most likely to the section on the canons governing Mass offerings, and that the canons governing the Mass offering system be taken out of the book on temporal goods of the Church. It should be noted that in the earlier drafts of c. 1263 the 1980 and 1982 schemas continued to maintain this prohibition against taxes on Mass offerings.<sup>263</sup> There was some discussion in the drafting stages concerning the taxability of Mass funds, and a prohibition against this type of tax appeared in both the 1973 and 1980 schemata.<sup>264</sup> Although the principle that no tax could be imposed on the Mass offerings continued to be agreed upon by those drafting c. 1263,<sup>265</sup> in the end no such prohibition was included in the revised canons on the temporal goods of the Church or anywhere else in the code regarding the canons on Mass offerings.<sup>266</sup> Apparently, through lack of attention, the prohibition was not inserted into any other part of the code. This inadvertence on the part of those charged with the revision of the code had the consequence of leaving the Mass offerings technically taxable under the 1983 Code. However, in line with the Church's long canonical discipline and tradition, and in line with the clear provisions prohibiting the imposition of a tax on Mass offerings in the 1917 Code, in the light of the expressed intention during the revision process simply to

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<sup>262</sup> Ibid. Indeed, the prohibition on the tax on Mass stipends continued to be upheld and appears in all the schemas of 1973, 1977, and 1980. For an extensive discussion on this, see R.L. KEALY, *Diocesan Financial Support*, 312-330.

<sup>263</sup> *Communicationes*, 1 (1984), 28-30. See also PETERS, *Incrementa*, 1093: "[...] nullum vero tributum imponi potest super eleemosynis missarum." This canon appeared as c. 1213 of the 1980 schema and c. 1263 of the 1982 schema.

<sup>264</sup> *Communicationes*, 5 (1973), 94-103: "Ordinariis locorum ius quoque est tributa imponendi personis ecclesiasticis tam physicis quam moralibus, quatenus necessaria sint in bonum diocesis, prius autem audito Consilio Presbyterali, et iuxta normas a Conferentia Episcopali statuendas (mens vero Coetus est ut in alio aptiore Codicis loco conficiatur canon quo vetatur ne tributa super eleemosynis Missarum imponantur). Fideles tamen suasionem magis quam coactionem inducendi sunt ut subsidia Ecclesiae conferant per obventiones rogatas et iuxta normas a Conferentia Episcopali probatas."

<sup>265</sup> *Communicationes*, 12 (1980), 402.

<sup>266</sup> R.T. KENNEDY, "The Acquisition of Goods [cc.1259-1272]" in *CLSA Comm2*, 1465.

relocate and not eliminate the prohibition, and also in light of the Eastern code's clear retention of the prohibition,<sup>267</sup> a diocesan bishop should in fact exempt Mass offerings from any tax he may impose on physical persons and religious institutes for the regularly occurring needs of the diocese.<sup>268</sup> Here, the canonical principle of interpretation as found in c. 6, §2 can be applied.<sup>269</sup> This canon mentions a very important guiding principle to be taken into consideration in the interpretation and application of the prohibition of a tax on Mass offerings: the principle of "canonical tradition."<sup>270</sup>

Canonical tradition is not the only source of interpretation; there are other principles to be noted in cc. 16-19, and in particular c. 17.<sup>271</sup> If we were to make recourse to: (1) the common understanding that emerged by means of the practice that obtained before, during, and after the 1917 Code, and also the 1983 Code, and the 1990 *CCEO*'s clear prohibition of imposing a tax on the Mass offering, (2) a decree of the Pontifical Council for Legislative Texts concerning diocesan taxes,<sup>272</sup> and (3) the proper meaning of

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<sup>267</sup> *CCEO*, c. 1012, §1 retains a clear prohibition of a tax on the Mass offering corresponds to c. 1263 of the Latin code. This canon of the Eastern code, among others, maintains that: "[...] no tax can be imposed on the offerings received on the occasion of the celebration of the divine liturgy."

<sup>268</sup> R.T. KENNEDY, "The Acquisition of Goods [cc. 1259-1272]," in *CLSA Comm2*, 1465.

<sup>269</sup> Canon 6, §2, maintains that: "Insofar as they repeat former law, the canons of this code must be assessed also in accord with canonical tradition."

<sup>270</sup> "The canonical tradition refers here to the expanse of time prior to the 1983 code in which a common understanding of a norm emerged by means of the practice of the Holy See and the writings of canonical scholars. Since many canons of the code are not new but were taken up from previous sources, especially the 1917 code and documents of the Holy See issued after Vatican II, the interpreter of the 1983 code must investigate the canonical tradition in order to achieve a well-grounded interpretation of such canons" (J.M. HUELS, "Ecclesiastical Laws [cc. 7-22]," in *CLSA Comm2*, 55).

<sup>271</sup> Canon 17 states: "Ecclesiastical laws must be understood in accord with the proper meaning of words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator."

<sup>272</sup> PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, *Decretum, De recursu super contrugentia inter legem particularem et normam codicalem* [Recourse against a general decree which establishes a diocesan *tributum*], February 8, 2000, in *Communicationes*, 32 (2000), 23. Also see E.J. FITZSIMMONS, "Mass

the text and context of c. 1263, we may conclude that local Mass offerings should be excluded from the normal taxes that are imposed to meet regularly occurring diocesan needs.<sup>273</sup> J.A. Renken agrees with this conclusion: "Put simply, the Mass offering belongs to the priest who celebrates or concelebrates the Mass, and is unable to be treated like the sacramental offerings treated in canon 1264, 2°. It is not subject to the ordinary or extraordinary diocesan tax."<sup>274</sup> J.A. Renken argues the point even further by referring to the fact that the intention of the donor of the gift controls the use of the donor's gift.<sup>275</sup>

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Offerings and Stole Fees," in K.E. MCKENNA, L.A. DiNARDO, J.W. POKUSA (eds.), *Church Finance Handbook*, Washington, DC, Canon Law Society of America, 1999, 97-109.

<sup>273</sup> Morrisey concurs with this conclusion when he maintains that: "It could be noted in passing that the prohibition against taxing Mass offerings which was contained in the drafts, was removed in the promulgated version of canon 1263. However, canon 1012 of the Eastern code retains the prohibition: 'No tax can be imposed on the offerings received on the occasion of the celebration of the Divine Liturgy.' Indeed, in some dioceses, there is now a tax on Mass offerings, particularly in the case of announced or 'High' Masses, with a certain percentage of the offering going to the priests' retirement or compensation fund, and another percentage going to the parish or institution which received the offering." (F.G. MORRISEY, "Acquiring Temporal Goods," 586-603).

<sup>274</sup> Renken says: "[...] Mass offerings are not subject to the diocesan taxation permitted by canon 1263. They are not considered part of parish income [...] Mass offerings always belong to the priest-celebrant, whether they are accepted personally by him or by a church or oratory and given to him when he celebrates Mass" (J.A. RENKEN, *Church Property*, 116-117). See also J.A. RENKEN, "Diocesan Practices Concerning Mass Offerings," in S.A. EUART, S.M. VERBEEK (eds.), *Roman Replies and CLSA Advisory Opinions 2009*, Washington, DC, Canon Law Society of America, 2009, 94-99.

<sup>275</sup> "Quite simply, the bishop's right to tax, as established by canon 1263, is limited by the provisions of canons 1267, §3 and 1300, that the intent of the donor controls the use of the donor's gift. This is perhaps why no specific prohibition was placed in the 1983 Code against taxing Mass stipends. It was not necessary because canons 1267, §3 and 1300 cover the situation. One would be hard pressed to think of an instance in which money was given to the Church with a clearer donative intent than in gifts to the Church for Masses, and as such they are already protected from taxation by canons 1267, §3 and 1300." He also states: "[...] this canon does not give the diocesan bishops the right to tax gifts received by a parish that are designated for a particular purpose, such as Mass stipends. The Code is very clear that gifts given for a particular purpose, once accepted, must be used for that purpose and that purpose only and obviously a tax on such gifts would in fact divert the gift to an alternate purpose - diocesan support" (J.A. RENKEN, *Church Property*, 107-108). (N. CAFARDI, "Sources of Diocesan Finance in the 1983 Code of Canon Law," in J. FOX (ed.), *Render unto Caesar: Church Property in Roman Catholic and Anglican Canon Law*, Rome, Pontifical University of St. Thomas, 2000, 105-112). Concerning the strict observance of the donor's intention, Lahey states: "The principle of respecting and strictly observing the intentions of those who give

### 2.2.2 Separate Masses and Collective Intentions and the Decree *Mos iugiter*

Canon 948. Separate Masses are to be applied for the intentions of those for whom a single offering, although small, has been given and accepted.

This canon has as its source c. 828 of 1917 Code,<sup>276</sup> and, although the wording used in the present canon is somewhat slightly different from that of the previous legislation, the meaning remains basically the same.<sup>277</sup> The fundamental principle underlying this canon is that there must be as many Masses celebrated as there are single offerings that have been given and accepted, even if the offering given is small.<sup>278</sup> One Mass offering in the strict sense of the word excludes another offering for the same Mass, even if both offerings are small, that is, lower than the amount fixed by particular law.<sup>279</sup> This canon adopts the same principle that was also stated in the old code, with the addition of the clause that even if the amount given is smaller than the usual amount, separate Masses are to be applied, as long as a single offering was given and accepted. In

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to religion or charity, one of the fundamental principles of the Church's law on property, is reaffirmed in a number of places in the recodification of that law found in the 1983 Code of Canon Law. In addition, the 1983 code restricts the permissible alteration of pious wills under certain circumstances. These restrictions themselves underline the importance of the strict observance of donors' intentions (J.F. LAHEY, *Faithful Fulfillment of the Pious Will: A Fundamental Principle in Church Law as found in the 1983 Code of Canon Law*, CLS, no. 521, Washington, The Catholic University of America, 1987, 150).

<sup>276</sup> Canon 828 of the 1917 Code stated: "Tot celebrandae et applicandae sunt Missae, quot stipendia etiam exigua data et accepta fuerint" ("There should be as many Masses applied and celebrated as there are stipends given and accepted").

<sup>277</sup> It appears as c. 114, §1 of the 1975 schema, and as c. 898 of the 1982 codicis.

<sup>278</sup> J. McAREAVY, "The Offering made for the celebration of Mass" in *CLSGBI Comm*, 518.

<sup>279</sup> WOESTMAN, *Canon Law of the Sacraments*, 163. Canon 956, §1: "It is for the provincial council or meeting of bishops of the province to define by decree for the entire province the offering to be given for the celebration and application of Mass, and the priest is not permitted to seek a larger sum. Nevertheless, he is permitted to accept for the application of Mass a voluntary offering which is even larger than the one defined."

practice, therefore, one Mass for each offering is required, notwithstanding if the amount given is more or less than that fixed by particular law.<sup>280</sup>

The mere fact of accepting an offering from the faithful to celebrate Mass for their intentions implies an undertaking, an obligation in the law to accomplish the wish of the donor. The acceptance of an offering from the donor creates a relationship, an obligation in justice whose accomplishment does not depend on the amount of the offering vis-a-vis the amount defined by particular law, but on the fact of acceptance. One is only discharged from such an obligation after fulfilling it. The offering given and received is not a compensation for applying the Mass, it is the contribution of the faithful towards the subsistence and sustenance of the celebrant and a support to the works of the Church, even if the faithful who made the offering are not aware of this double finality.<sup>281</sup> By accepting an offering, a relationship of justice is established, and the priest commits himself to ensure that the Mass is applied either by himself or by another priest according to the intention of the donor. "The relationship of justice is not based on the offering itself but rather on the acceptance [...]."<sup>282</sup> The offering is a conditional gift since the priest is under no obligation to accept the gift, but once accepted, he has a duty, a moral obligation to fulfill the wish of the donor.

On the 22 February 1991, the Congregation for the Clergy, following extensive consultation with the conferences of bishops around the world, issued the Decree *Mos*

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<sup>280</sup> For the historical antecedents of the development of the principle of as many Masses to be said as there are single offerings given and accepted, see Keller: "priests could not fulfill their obligation by saying one Mass when they had agreed to say two" (KELLER, *Mass Stipends*, 88-92).

<sup>281</sup> Canon 946.

<sup>282</sup> A. MARZOA, "The Blessed Eucharist," in *CCLA*, 730.

*iugiter*.<sup>283</sup> This document was motivated by the fact that a good number of bishops had repeatedly requested that the Holy See should make an authoritative clarification on a new practice that was beginning to appear, that is, the celebration of one Mass for so-called “collective” Mass intentions.<sup>284</sup> This request from the bishops was occasioned by an illicit practice that had developed among some priests, motivated by some arguments which are qualified by the Congregation for the Clergy as:

[...] specious and pretentious, if not reflecting an erroneous ecclesiology. In any case this use can run the risk of not satisfying an obligation of justice towards the donors of the offerings and progressively spread and extinguish in the entire Christian people the awareness and understanding of the motives and purpose of making an offering for the celebration of the holy Sacrifice for particular intentions, therefore depriving the sacred ministers who still live from these offerings of a necessary means of support, and depriving many particular Churches of the resources for their apostolic activity.<sup>285</sup>

There were abuses in the celebration of the so called "collective" Mass intentions, especially the cases of those priests who indiscriminately collected the offerings of the faithful destined for the celebration of Masses for particular intentions, and, having accumulated them into one offering, were content to have satisfied the obligation by just a single Mass celebrated simultaneously according to the so-called “collective” intention. The argument put forth in favour of those who uphold this practice is "that the Eucharistic celebration is an action of the church and is therefore eminently

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<sup>283</sup> CONGREGATION FOR THE CLERGY, decree *Mos iugiter*, February 22, 1991, in AAS, 83 (1991), 443-446, English translation in *CLD*, vol. 13, 527-530. For an extensive commentary on *Mos iugiter*, see G. AGUSTONI, "Commentary on Collective Mass Intention Decree," in *Origins*, 20 (1990-1991), 706-707; J. MANZARES, "De stipendio pro missis ad intentionem 'collectivam' celebratis iuxta decretum 'Mos iugiter'," in *Periodica*, 80 (1991), 579-608. On the issue of pluri-intentional Masses prior to 1991 by means of private replies, see W.A. SCHUMACHER, J.J. CUNEO (eds.), *Roman Replies and CLSA Advisory Opinions 1986*, Washington, DC, Canon Law Society of America, 1986, 8-11.

<sup>284</sup> For studies on the decree *Mos iugiter*, see A. PERLASCA, "Óbolo de san pedro canon 1271 misas, así llamadas, pluri-intencionales," in *Anuario Argentino de Derecho Canónico*, vol. XIV (2007), 307-316; P. GAFAEL, "A proposito del decreto sulle messe plurintenzionali," in *Ius Ecclesiae*, 3 (1991), 760-765. "The legislation does not specify how many intentions may be combined [...] In short, there is no strict limit, and no easy answer. Each case must be judged on its merits [...]" (G. READ, "Pluri-Intentional Masses: How Many Intentions?" in *Canon Law Society Newsletter [=CLSN]*, no. 157 [2009], 73-74).

<sup>285</sup> CONGREGATION FOR THE CLERGY, decree *Mos iugiter*, 528.

communitarian, and that it will also be alien to the very nature of the Mass to 'privatize it,' affixing particular intentions, or seek to channel its benefits for private purposes."<sup>286</sup> Another reason brought forward was primarily of a utilitarian or pastoral order, the issue of the shortage of priests, whose number is admittedly dwindling, that if the intentions of the faithful are not accumulated and celebrated in a single offering then the intentions will not be prayed for.<sup>287</sup>

If such imprudent arguments and practices were permitted to spread, Augustoni argues, it would in effect be "precluding people from an excellent way of participating actively in the celebration of the memorial of the Lord, [...] precisely through an offering given to the priest."<sup>288</sup> He further cautions, however, that such practices are abusive, and should not be confused with other morally licit and therefore legitimate time immemorial practices of certain poor and economically depressed regions of the world,

where the faithful give the priest modest offerings, sometimes gifts in kind, not to request the celebration of Masses for their individual, particular intentions, but rather to contribute in general to the Church's public worship and the support of the priest himself, knowing quite well that he will then celebrate Mass for their intentions and needs as canon law does in fact prescribe for bishops and priests with the Masses *pro populo* and which is also suggested by sensitivity and priestly charity.<sup>289</sup>

The other case involves the faithful who spontaneously get together and agree to have one or more Masses celebrated for their common or various intentions, which in reality flow together voluntarily into a single intention, and offer the relative amount. No one can fail to see the radical difference between these practices and the 'multi-intentional' Mass<sup>290</sup>

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<sup>286</sup> AGUSTONI, "Collective Mass Decree," 707.

<sup>287</sup> Ibid.

<sup>288</sup> Ibid.

<sup>289</sup> Ibid., 706.

<sup>290</sup> Ibid.

This practice can be compared to a similar canon which was introduced in the 1975 Schema on the Sacraments during the revision of the code, but which did not succeed the revision process, and thus did not make it into the final text of the 1983 code. The newly proposed c. 114, §2 of the 1975 Schema, maintained that: “A priest may celebrate and apply a Mass for the intentions of many persons who freely offered a common stipend for the celebration and application of the same Mass.”<sup>291</sup>

In his article, Hill describes an analogous practice which resembles the pluri-intentional Masses but which, in fact, is quite distinct. This practice involves pastors who leave a book in the church inviting people to list special intentions for Masses, along with an offering box for free-will donations which do not necessarily correspond to the normal offering for one Mass. In response to such a practice, he offers the following opinion:

[...] the principle that as many Masses must be offered as there are stipends received has to be preserved. At the very least this means that the total amount of stipends received must be divided by the amount established in the diocese as usual for a stipend and the resulting number of Masses must be celebrated for those intentions.<sup>292</sup>

The publication of *Mos iugiter* derogated from the c. 948, to permit priests to accept several distinct offerings for a “collective intention” at a single Mass. With the

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<sup>291</sup> *Pontificia Commissio Codici Iuris Canonici Recognoscendo, Schema Documenti Pontificii Quo Disciplina Canonica De Sacramentis Recognoscitur (Reservatum)*, Typis Polyglotis Vaticanis, 1975. Canon 114, §2: "Licet autem unam eandemque celerare et applicare Missam ad intentionem plurium, qui ad communem pro eiusdem Missae celebratione et applicatione stipem oblatam ad libitum contulerint." *CLSA*, 22.

<sup>292</sup> "Provided it is clear that there is no question of an individual intention, this does not appear to be 'collective' intention in terms of the decree. Such offerings should be distributed at the standard rate for the diocese, and an appropriate number of Masses celebrated for those who have requested prayer in this way" (R.A. HILL, "Mass stipends and Offerings for Special Intentions," in P.J. COGAN (ed.), *CLSA Advisory Opinions, 1984-1993*, Washington, DC, Canon Law Society of America, 1993, 292-294). See also G. READ, "Pluri-Intentional Masses: How Many Intentions?" in *CLSA*; SACRED CONGRGATION FOR THE CLERY, "As Many Masses as stipends" in "private response," in *CLD*, vol. 9, 590.

publication of this decree, therefore, pluri-intentional Masses became legitimate.<sup>293</sup>

However, the following regulations of the decree must be observed wherever this practice is carried out:

- 1) The donors or the people making the offering must have been previously and explicitly informed and must have freely consented to the combining of their offering before a single Mass for the collective intention is celebrated, the donors' consent should not be presumed in this matter;
- 2) It is also necessary to clearly and publicly indicate the date, the place and time for the celebration of the Mass which must be announced;
- 3) The practice may not be observed more than twice a week in any church. This is in order that such a practice may be contained as much as possible, even with the conditions made to avoid abuses and to prevent its spread;
- 4) The celebrant may keep for himself no more than the usual amount of a single Mass determined within the diocese and must send any excess to his ordinary in keeping with canon 951, §1.<sup>294</sup>

The essential point of article 2 of the decree is that the faithful who make the offering for a collective intention must have been previously informed about such a practice and, above all, consent to such a practice. One can say that the derogation of this decree from the usual norm of one Mass, one intention, is not in favour of the priest celebrants, but to accommodate the intentions of the donors so that the intentions of the faithful can be satisfied within a short period of time. Furthermore, the norm of c. 948 is still to be maintained wherever this practice is followed, that is, the celebrant is to keep for himself only the amount of a single offering established in the diocese and he is to forward the excess to the ordinary as specified according to the norm in c. 951, §1. Priests who transgress the spirit and letter of the norm of c. 948 and the decree *Mos iugiter* assume the relative moral responsibility if they indistinctly collect offerings for

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<sup>293</sup> A. MENDONÇA, "Legitimacy of Collective or Pluri-intentional Masses" in A.J. ESPELAGE (ed.), *Roman Replies and CLSA Advisory Opinions 1994-2000*, Washington, DC, Canon Law Society of America, 2002, 284-288.

<sup>294</sup> CONGREGATION FOR THE CLERGY, *Mos iugiter*, 529.

the celebration of Masses for particular intentions, as may happen during the feast of All Souls in some places,<sup>295</sup> and then combine them in a single offering, and, without the previous knowledge and consent of those who made the offerings, satisfy them with a single Mass celebrated according to an intention which they call "collective," retaining for themselves the entire amount of the "collective intention." Also, the decree cautions that the practice of celebrating a "collective intention" is not to be observed in any given Church more than twice a week. This is so that this practice, which is an exception to the norm, may not spread and thus progressively discourage and extinguish in the entire Christian people the awareness and understanding of the motives and purpose of making an offering for the celebration of Mass for particular intentions. Similarly, this limitation prevents the danger that may result from this practice, that is, the misunderstanding that such a practice is favoured because of the extra income it generates for the Church. It is for this reason then that the decree restricts the practice in any given Church to two times a week and wherever it spreads it should be discouraged as much as possible because this is an exception to the norm, and the priest is also to forward the extra Mass offerings to his ordinary in keeping with the norm of c. 951, §1.

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<sup>295</sup> "[...] [A] person who hands the priest some money and says to him, 'Remember me at Mass' or 'say a prayer for my intention in your Mass,' does not give the priest a Mass stipend in the canonical sense of the term; and so the recipient of that gift is free to apply the Mass for another intention, for which he has accepted a regular stipend. The offerings which are made by the faithful on All Souls' Day form a sort of exception to this rule" (KELLER, *Mass Stipends*, 92). Mahoney describes the custom in some places where the faithful send in, during November, a list of their deceased relatives and friends, together with any offering they may choose to make which may be more or less than the customary amount for a stipend. On certain days of the month Mass is offered in the Church for these departed souls. He maintains that it must be admitted that these offerings are not the ordinary kind of stipend, which the law has in mind. The lawfulness of this practice will depend on the intention of the donors and it must be evident to them that, their joint offering is a wholly indeterminate sum which may be more than the diocesan stipend or less. The priest on his part has to undertake to celebrate a definite number of Masses despite the outcome of the collective stipend which may be more or less than the diocesan stipend (E.J. MAHONEY, "Moral Cases;" "November Masses," in *Clergy Review*, 8 [1934], 323-325).

On the basis of these principles, therefore, a parish priest who receives more Mass intentions than he can possibly fulfill himself can, after carefully informing his parishioners, who should not be opposed to the idea of their intention being celebrated in another parish, forward these intentions to other priests of his choice who may be lacking in Mass offerings. He could also celebrate one Mass with several Mass offerings, and then forward the other intentions that are in excess to other priests elsewhere, or to his ordinary according to the norms of c. 951, §1. He will retain for himself only the amount corresponding to a single offering and the others he will forward to other priests of his choice. There will be celebrated as many Masses, therefore, as there were offerings that were given and received. The decree *Mos iugiter* makes it abundantly clear that the principle of a single Mass for a single offering remains the fundamental norm. The derogation from the norm is an exception under certain given circumstances. The collective Mass intentions permitted by the decree ought not to be confused with other legitimate practices as the three Masses celebrated on the Feast of all Souls on the 2<sup>nd</sup> of November, and on Christmas day, when the priest celebrant may retain the offerings of all three Masses that he celebrated only on Christmas day according to the norm of the law.<sup>296</sup>

### **2.2.3. The Obligation to Celebrate Lost Offerings**

Canon 949. A person obliged to celebrate and apply Mass for the intention of those who gave an offering is bound by the obligation even if the offerings received have been lost through no fault of his own.

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<sup>296</sup> Canon 951, §1: "A priest who celebrates several Masses on the same day can apply each to the intention for which the offering was given, but subject to the rule that, except on Christmas, he is to keep the offering for only one Mass and transfer the others to the purposes prescribed by the ordinary, while allowing for some recompense by reason of an extrinsic title."

This canon repeats verbatim c. 829<sup>297</sup> of the former code<sup>298</sup> which appears as c. 115 of the 1975 schema, c. 899 of the 1980 schema and c. 945 of the 1982 schema. Following immediately from the canon that stipulates that there are to be as many Masses said as there are single offerings given and accepted, this canon maintains another principle, that in case of the loss of an offering already received, even through no fault of the priest (*sine ipsius culpa*), the obligation to celebrate and apply the Mass for the intention of the donor still remains.<sup>299</sup> This disposition follows logically from the relationship of justice created between the priest who accepted the offering and the faithful who made the offering. This obligation in justice has little to do with the amount of the offering and even if afterwards the offering is lost or subsequently loses its value, the obligation to celebrate and apply the Mass for the intention of the donor still persists and remains unchanged. The obligation to celebrate arises from the moment the offering is received. Calvo-Álvarez, maintains that “Here, priority attention to the pious intention of the faithful and its efficacy is stressed. The Church expressed in this norm a profound

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<sup>297</sup> *CIC'* 17, c. 829: "Even though a Mass offering, given and accepted, might be lost without any fault of the one who is gravely bound to celebrate it, the obligation does not cease." "Whenever the stipends, having been accepted and received by the celebrant, are lost, with or without the celebrant's negligence, the Masses for those stipends must be celebrated" (E. GRACIA, "Mass Application" in *Boletín Ecclesiástico de Filipinas*, vol. LXXII, no. 798, [1997], 84-90).

<sup>298</sup> Commenting on canon 829 of the former code, Ayrinhac makes the following point: "The obligation of saying the Masses rests with the priest who has received the stipends, even though the latter may afterwards get lost either through or without his fault. He would have no obligation if the stipends were lost before they reached him" (H.A. AYRINHAC, *Legislation on the Sacraments in the New Code of canon law*, New York, Longman's Green and Co. 1928, 142-143). Keller maintains that the obligation to celebrate arises from the moment the priest receives the stipend: "A priest to whom offerings are sent by private messenger or through the mail, is not responsible for those offerings until he has received them; and he is not bound to say Masses in return for them until he has accepted them" (KELLER, *Mass Stipends*, 95). See also CAPPELLO, *De Sacramentis*, 679.

<sup>299</sup> CALVO-ÁLVAREZ, "The Blessed Eucharist," in *Exegetical Comm*, 709. "The owner of the stipends is the loser" (A.M. CARR, "Who must pay the stolen \$600," in *Homiletic and Pastoral Review*, 63 [1962-63], 904).

sense of justice, which is of itself inseparable from an authentic and profound pastoral sense.<sup>300</sup>

The special strength and permanence of the obligation is expressed in c. 199, 5° of the present code which, among other things, states that Mass offerings and the obligations arising thereof are not subject to prescription.<sup>301</sup> No passage of time relieves the priest from the obligation to celebrate Mass or the designated number of Masses for which one had accepted an offering unless, of course, one has legitimately transferred the offering and obligation to another priest according to the norm of the law.<sup>302</sup>

The same principle is applied to juridic persons such as parishes or houses of religious institutes, which have accepted Mass offerings. Similarly, the passage of time does not relieve one from giving to priests, who have celebrated Masses, the full offering for the Masses celebrated, unless the priests have voluntarily relinquished their rights to the offerings.<sup>303</sup> Therefore, it can be firmly held that the norms referring to Mass offerings provide for public order. Consequently, everyone who has a responsibility for dealing with Mass offerings is subject to the law no matter where they find themselves.<sup>304</sup>

What about the case where a large number of Mass offerings have been lost or stolen due to no one's fault? What can be done in such a case? How can we proceed in

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<sup>300</sup> Ibid.

<sup>301</sup> "Prescription is a means of acquiring or losing rights, or of freeing oneself from obligations, by the passage of time under conditions prescribed by the law" (R.T. KENNEDY, "Prescription [cc. 197-199]," in *CLSA Comm2*, 230).

<sup>302</sup> Canon 955, §1.

<sup>303</sup> R.T. KENNEDY, "Prescription [cc. 197-199]," in *CLSA Comm2*, 232.

<sup>304</sup> Canon 12, §1: "Universal laws bind everywhere all those for whom they were issued."

such a situation? The provisions of cc. 1308-1309<sup>305</sup> could be applied in a situation where a large number of Mass offerings have been lost or stolen due to no one's fault, provided that the offerings had been given in a will and provided for in the charters of the foundation. In the drawing up of pious wills, whether *inter vivos* or *mortis causa*, we can never eliminate the possibility of alteration of such wills if some future need will require its modification.<sup>306</sup>

Canon 1308 §1 gives the general norm that the reduction of Mass obligations is reserved to the Apostolic See.<sup>307</sup> Four dicasteries of the Holy See are competent to deal with issues concerning Mass obligations, pious wills in general, and pious foundations in particular.<sup>308</sup> These Congregations are: the Congregation for the Clergy, for the Latin

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<sup>305</sup> Canon 1308 states: “§1 A reduction of the obligation of Masses, to be made only for a just and necessary cause, is reserved to the Apostolic See, without prejudice to the following prescripts. §2 If it is expressly provided for in the charters of the foundations, the ordinary is able to reduce the Mass obligations because of diminished revenues. §3 With regard to Masses independently founded in legacies or in any other way, the diocesan bishop has the power, because of diminished revenues and as long as the cause exists, to reduce the obligations to the level of offering legitimately established in the diocese, provided that there is no one obliged to increase the offering who can effectively be made to do so. §4 The diocesan bishop also has the power to reduce the obligations or legacies of Masses binding an ecclesiastical institute if the revenue has become insufficient to pursue appropriately the proper purpose of the institute. §5 The supreme moderator of a clerical religious institute of pontifical right possesses the same powers mentioned in §§3 and 4.” Canon 1309: “The authorities mentioned in c. 1308 also have the power to transfer, for an appropriate cause, the obligations of Masses to days, churches, or altars different from those determined in the foundations.”

<sup>306</sup> R.T. KENNEDY, "Alteration of Pious Wills [cc. 1254-1310]," in *CLSA Comm2*, 1521.

<sup>307</sup> "Reduction is the lessening or reducing of the number of Masses *to be said*, which may be granted for a just cause and is the competency of the Sacred Congregation for the Clergy [...] Local Ordinaries have the faculty to reduce, because of diminished revenue and for as long as the situation endures" (HALLIGAN, *Sacraments and their Celebration*, 77-78). For studies on the reduction of Mass obligations, see F. ROMITA, *De missarum satisfactione et reductione*, Romae, Officium Libri Catholici, 1952; D.F. GALEA, "Mass Stipends and Application in a Vacuum," in *Ephemerides Juris Canonici*, 27-28 (1971-72), 144-167; C.P. DURIEUX, *The Eucharist*, 70-72.

<sup>308</sup> On 13 June 1974, Paul VI, granted faculties and norms to reduce the number of manual and quasi manual stipends to the Sacred Congregations of the Roman Curia. The dispositions would constitute the manner of proceeding in the reduction of Mass obligations, pious wills in general, and pious foundations in particular under certain conditions, which must always be evaluated in the light of the present law that is in force when facing similar situations. See PAUL VI, "Mass Stipends: Faculties of

Church in general;<sup>309</sup> the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life for individual members thereof;<sup>310</sup> the Apostolic Penitentiary for internal forum issues;<sup>311</sup> and the Congregation for the Eastern Churches for Eastern Churches.<sup>312</sup> Canon 1308, §§2-5 may also be applicable to this situation.<sup>313</sup>

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Sacred Congregations," in *CLD*, vol. 8, 533-536. See also D.F. GALEA, "Ordinamento circa l'elemosina delle SS Messe," in *Appolinaris*, 45 (1972), 77-85.

<sup>309</sup> "The Congregation for the Clergy, deals with those matters that are within the competence of the Holy See [...] and those concerning Mass obligations as well as pious wills in general and pious foundations" (JOHN PAUL II, apostolic constitution on the Roman Curia, *Pastor bonus*, June 28, 1988, in *AAS*, 80 [1988], 841-930, English translation in *Exegetical Comm*, 1422-1551, no. 97, 2°).

<sup>310</sup> *Pastor bonus*, 108 § 1: "It deals with everything which, in accordance with the law, belongs to the Holy See concerning the life and work of the institutes and societies, especially the approval of their constitutions, their manner of government and apostolate, the recruitment and training as well as the right and obligations of members, dispensations from vows and the dismissal of members and the administration of goods."

<sup>311</sup> *Pastor bonus*, 118: "For the internal forum, whether sacramental or non-sacramental, it grants absolutions, dispensations, commutations, validations, condonations, and other favours."

<sup>312</sup> *Pastor bonus*, 56: "The Congregation for the Oriental Churches considers those matters, whether concerning persons or things, affecting the Catholic Oriental churches." *Pastor Bonus*, 58§1: "The competence of this Congregation extends to all matters which are proper to the Oriental Churches and which are to be referred to the Apostolic See, whether concerning the structure and organization of the Churches, the exercise of the office of teaching, sanctifying and governing, or the status, rights, and obligations of persons. It also handles everything that has to be done concerning quinquennial reports and the *ad limina* visits in accordance with arts. 31-32."

<sup>313</sup> Canon 1398, §3: "With regard to Masses independently founded in legacies or in any other way, the diocesan bishop has the power, because of diminished revenues and for as long as the cause exists, to reduce the obligations to the level of offering legitimately established in the diocese, provided that there is no one obliged to increase the offering who can effectively be made to do so. §4. The diocesan bishop also has the power to reduce the obligations or legacies of Masses binding an ecclesiastical institute if the revenue has become insufficient to pursue appropriately the proper purpose of the institute. §5. The supreme moderator of a clerical religious institute of pontifical right possesses the same powers mentioned in §§3 and 4."

## 2.2.4 Obligations Deriving from Masses Celebrated with Invalid Matter

The Church has always taught and believed that the Eucharist,<sup>314</sup> the "source and summit of the Christian life,"<sup>315</sup> has its origin in the life and mission of Jesus.<sup>316</sup> Jesus invited us at the Last Supper to do the same as he did when he took bread and wine, and he blessed them and gave them to his disciples at the same time saying: "this is my body, this is my blood."<sup>317</sup> The bread Jesus used was probably unleavened. The requirement of bread made from wheat flour<sup>318</sup> and wine from the grape,<sup>319</sup> as the essential matter for the celebration of the Eucharist, is a tradition that goes back to the very moment of the

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<sup>314</sup> Canon 897. "At the last Supper, on the night he was betrayed, our saviour instituted the Eucharistic sacrifice of his Body and Blood. This he did in order to perpetuate the sacrifice of the cross throughout the ages until he should come again, and so to entrust to his beloved Spouse, the Church, a memorial of his death and resurrection: a sacrament of love, a sign of unity, a bond of charity, a Paschal banquet 'in which Christ is consumed, the mind is filled with grace, and a pledge of future glory is given to us.'" (CCC, no. 1323).

<sup>315</sup> "For in the blessed Eucharist is contained the whole spiritual good of the Church, namely Christ himself, our Pasch" (*Sacrosanctum concilium* no. 47; *Presbyterorum ordinis* no. 5, also quoted in CCC, 1324).

<sup>316</sup> CCC 1374: "The mode of Christ's presence under the Eucharistic species is unique. It raises the Eucharist above all the other sacraments as 'the perfection of the spiritual life and the end to which all the sacraments tend.' In the most blessed sacrament of the Eucharist, 'the body and blood, together with the soul and divinity, of our Lord Jesus Christ and, therefore, the whole Christ is truly, really and substantially contained'."

<sup>317</sup> Canon 927: "It is absolutely forbidden, even in extreme urgent necessity, to consecrate one matter without the other or even both outside the Eucharistic celebration."

<sup>318</sup> "It is, however, certain from the tradition of the Church, which the Council of Florence merely reaffirmed, that the remote matter of the sacrament is wheaten bread; and whether the determination of the matter was made irrevocably by Christ, or derives from the exercise of the Church's vicarious power and could in the future be modified by her to include other forms of bread, the present fact is that wheaten bread must be regarded as necessary to the validity of the sacrament. Probabilism has no place in questions of this kind" (L.L. MCREAVY, "Altar-Breads Made from Adulterated Wheaten Flour," in *The Clergy Review* [1965] 716-718).

<sup>319</sup> T. RINCON, "La Santísima Eucaristía," in *Manual de Derecho Canonico*, Ediciones Universidad de Navarra, S.A., Pamplona, 1988, 461. Dondas takes a different view about the matter for the celebration of the Eucharist. He argues that "Communities that do not have unleavened bread and wine made of grapes should be allowed to use their own food for the Eucharist. Unleavened bread was not used in Christian communities until the ninth century, and table wine was used before Mass wine became a requirement" (J.D. DONDAS, "We Should Take a more Catholic view of the Eucharist," in *US Catholic*, 61.2 [1996], 28).

institution of the Eucharist by Jesus during the last supper.<sup>320</sup> Bread made from wheat flour and wines from grapes are the necessary and indispensable matter, by divine institution, for the celebration of the Eucharist.<sup>321</sup> This is a requirement not only for lawfulness but also for validity of the sacrament,<sup>322</sup> for to celebrate the Eucharist with any other matter would be invalid.<sup>323</sup> According to the ancient tradition of the Church, therefore, the priest wherever he celebrates the Mass does so by using bread from wheat

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<sup>320</sup> Mtt. 26:26-30; Mk. 14:22-26; Lk. 22:14-20; 1Cor. 11:23. See also CCC, 1323. Bradshaw argues that "there were Christian communities in the second half of the first century that still did not connect the tradition of the sayings about his body and blood over bread and cup directly with a Passover meal at which he made an eschatological statement, nor even with the night before he died." He goes on to contend that the Eucharist emerged from the "regular sharing of meals was fundamental to the common life of the first Christian communities, as it apparently had been to Jesus' own mission[...]" He then concludes that it is possibly St. Paul himself who began "to associate the sayings of Jesus with the supper that took place on the night before he died, and interpreted them as referring to the sacrifice of his body and blood and to the new covenant that would be made through his death. It is perfectly legitimate for Christians to interpret Jesus' sayings in relation to his death, whenever and wherever they may have first been uttered [...]" (P.F. BRADSHAW, "Did Jesus Institute the Eucharist at the Last Supper?" in *Issues in Eucharistic Praying in East and West: Essays in Liturgical and Theological Analysis*, Collegeville, Liturgical Press, 2010, 17-19).

<sup>321</sup> CCC, 1333. "At the heart of the Eucharistic celebration are the bread and wine that, by the words of Christ and the invocation of the Holy Spirit, become Christ's Body and Blood. Faithful to the Lord's command the Church continues to do, in his memory until his glorious return, what he did on the eve of his passion [...]"

<sup>322</sup> J. MCHUGH, "Num solus panis triticeus sit materia valida SS. Eucharistiae?" in *Verbum Domini*, 38-39 (1961), 229-239.

<sup>323</sup> "[...] [B]read made of any substance other than wheat is invalid matter, as is bread to which has been added such a great quantity of another substance that it can no longer be considered bread in the common estimation [...] if bread is so corrupt that it is no longer considered bread in the common estimation, it is invalid matter." (J.M. HUELS, "The Rites and Ceremonies of the Eucharistic Celebration," in *CLSA Comm1*, 1116).

flour and wine from grapes.<sup>324</sup> It is also obligatory to add to the wine a few drops of water, according to the disposition of the Council of Trent.<sup>325</sup>

Bread for liturgical use is to be made exclusively of wheat flour and water and nothing else whatsoever.<sup>326</sup> The local Ordinary may permit a priest to distribute holy communion under the species of wine for those faithful who suffer from celiac disease,<sup>327</sup> requiring them to abstain from the gluten present in wheat flour and therefore from the Eucharistic bread.<sup>328</sup>

As concerns the species of wine to be used for the celebration of the Eucharist, it is possible to make the same observations in the sense that it must be natural, the fruit of the vine, and not corrupted. Wine made of other substances other than grapes would be invalid matter for the celebration of the Eucharist. If the wine has gone to vinegar, it is

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<sup>324</sup> Canon 926 only mentions unleavened bread, so there is the possibility that leavened bread could also valid matter for the celebration of the Eucharist, though this may be illicit. "The bread for the celebration of the Eucharist in accordance with tradition of the whole Church, must be made solely of wheat, [...]it must be unleavened [...]. No other ingredients are to be added to the wheaten flour and water [...] The wine for the Eucharistic celebration must be of 'the fruit of the vine' (Lk 22:18) and be natural and genuine, that is to say not mixed with other substances" (SCDW, Norms Concerning Worship of the Eucharistic Mystery," in AAS [1980], 72-331, English translation in *CLD*, vol. 9, 563-574).

<sup>325</sup> "The holy council draws the attention of priests to the rule of the church that they should mix water with the wine to be offered in the chalice, both because Christ the Lord is believed to have done so, and because water came from his side together with blood, and this sacred sign is recalled by this mixing[...]. If anyone says [...] that water should not be mixed with the wine to be offered in the chalice, on the grounds that this is against Christ's institution: let him be anathema" (N.P. TANNER [ed.], *Decrees of the Ecumenical Councils*, 2 vols. Sess. XXII, chp. 7, Sheed & Ward and Georgetown University Press, 1990, 735). Also see THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *The Roman Missal (=GIRM)*, English Translation According to the Third Edition, approved for use in the Dioceses of Canada and confirmed by THE APOSTOLIC SEE, St Joseph's Communications, 2011, 142.

<sup>326</sup> Private letter of the Archbishop of Cincinnati, 1980, in *CLD*, vol. 9, 580-582.

<sup>327</sup> "Celiac disease is an intolerance to gluten which can only be treated by means of a strict gluten-free diet. Since gluten is one of the components of bread made from wheat and hence eucharistic bread, celiac disease inevitably has an impact on religious practice" (A. BAMBERG, "Celiac Disease and Eucharistic Communion," in *The Jurist*, 61 [2001], 281-289).

<sup>328</sup> Canon 925 states: "Holy communion is to be given under the form of bread alone, or under both species according to the norm of the liturgical laws, or even under the form of wine alone in a case of necessity."

invalid matter for the celebration of the Eucharist.<sup>329</sup> In view of the discipline and doctrine of the Church, the Congregation for the Doctrine of the Faith, in July 2003, gave clear answers to the problems posed by certain diseases, such as alcoholism and celiac disease,<sup>330</sup> at the time of taking part in the Mass.<sup>331</sup> Concelebrating priests recovering from alcoholism who are unable to consume wine may receive communion by intinction or they may receive under the species of bread alone. The local ordinary may permit those who celebrate alone to receive by intinction, leaving it to an assistant to consume the consecrated wine.<sup>332</sup> In such a case, while here we may say that the intention has been effectively exonerated, if the priest does not consume the consecrated wine as in the case of an alcoholic priest for whom even a small quantity of wine creates a problem for their

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<sup>329</sup> "The wine for Mass is to be pure and natural, made only from grapes. Wine that has turned to vinegar, is souring or cloudy, or in any other way spoiled, is excluded. The wine must not have any artificial additives [...] care should be taken with regular commercial wines in this regard" (R.E. McCARRON and A.C. McGUIRE in E. FOLEY, N.D. MITCHEL, J.M. PIERCE [eds.], *Commentary*, 389).

<sup>330</sup> "The Church, in her loving wisdom and concern for the welfare of her faithful, has provided spiritual remedies for those who find themselves in situations of this kind. For example, the bishop, or a local ordinary, is able to grant a priest affected by alcoholism permission to use *mustum*, a type of grape juice, for the celebration of the Eucharist. Similarly, the Church has issued several documents that offer the clergy and laity uniform and clear direction concerning digestive diseases, and wheat allergies, and the reception of Holy Communion" (M.J. MERDIAN, "Celiac Disease and Holy Communion: A Medical and Spiritual Dilemma," in *Homiletic and Pastoral Review*, 2013, online resource: <http://www.hprweb.com/2013/06/celiac-disease-and-holy-communion-a-medical-and-spiritual-dilemma/>).

<sup>331</sup> CDF, "Circular Letter to all Presidents of the Episcopal Conferences concerning the use of low-gluten altar breads and mustum as matter for the celebration of the Eucharist," 2003, Prot. 89/78-17498, no. A2. "The elimination of gluten denatures wheat flour, so that olive or fermented bread made with gluten-free flour would not be any longer wheat bread, and as such would not be valid matter for the celebration of the Eucharist, so too with wine from which all alcohol has been eliminated" (CDF "Responses regarding the Eucharistic communication of the celebrant 'by intinction' and of the faithful only under the species of wine," in *AAS*, 74 [1982], 1298-1299; CDF, "Use of low-gluten Bread and Mustum for the Eucharist," in *CLD*, vol. 13, 526-527). See also Congregation for Divine Worship and the Discipline of the Sacraments, Circular Letter to Bishops on the bread and wine for the Eucharist, June 15, 2017.

<sup>332</sup> J.M. HUELS, "The Rites and ceremonies of the Eucharistic Celebration," in *CLSA Comm1*, 1117.

health and for the cure of alcoholism, he incurs no obligation whatsoever because the obligation of the offering has been fulfilled.<sup>333</sup>

Canon 927 states: "It is absolutely forbidden, even in extreme urgent necessity, to consecrate one matter without the other, or even both outside the Eucharistic celebration." This prohibition is formulated in such a way that it does not give room for any exception. This prohibition "most strongly conveys the Church's desire to maintain the integrity of the Eucharistic celebration and the two signs of bread and wine."<sup>334</sup> The priest, especially when he celebrates the Eucharist, acts "in the power and place of the person of Christ himself."<sup>335</sup> There are no extenuating circumstances that could possibly mitigate the case of a priest celebrating with only one matter, either danger of death, lack of bread or lack of wine, not even health issues. As such, the Mass obligation is unfulfilled, and there remains an obligation of justice on the part of the priest celebrant to discharge all the intentions not yet satisfied due to the use of invalid matter or a grave defect in the Eucharistic celebration.<sup>336</sup>

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<sup>333</sup> Connell maintains that a priest who celebrates Mass in mortal sin, though this is gravely sacrilegious, nevertheless fulfills the obligation he had undertaken toward the person who gave a stipend even when he celebrates in this state (F.J. CONNELL, "Satisfying Obligation with Unworthy Mass," in *American Ecclesiastical Review*, 154 [1966], 133).

<sup>334</sup> J.M. HUELS, "The Rites and Ceremonies of the Eucharistic Celebration [cc. 924-930]," in *CLSA Comm* 2, 1119.

<sup>335</sup> CCC, 1548. Acting in the power and place of Christ the head means he represents Christ the priest seeks to do what Christ did when he instituted the Eucharist and commanded that it be done in memory of him. The priest therefore is bound to respect the discipline and the norms that have been laid down by the Church around the celebration of the Eucharist. The celebration of the Eucharist then it not the private affair of the priest so that he can choose which laws to keep and which laws not to obey, but it is the public prayer of the Church hence he is bound to respect the norms for the celebration of the Eucharist as laid down by the Church.

<sup>336</sup> CCC, 1552: "The ministerial priesthood has the task not only of representing Christ-Head of the Church-before the assembly of the faithful, but also of acting in the name of the whole Church when presenting to God the prayer of the Church, and above all when offering the Eucharistic sacrifice."

## 2.2.5 Unspecified Number of Masses

Canon 950. If a sum of money is offered for the application of Masses without any indication of the number of Masses to be celebrated, the number is to be computed on the basis of the offering established in the place where the donor resides, unless, the intention of the donor must be presumed legitimately to have been different.

This canon has as its source c. 830 of the 1917 Code<sup>337</sup>; it appears as c. 116 in the 1975 schema<sup>338</sup> and c. 900 of the 1980 schema. After debates, observations and considerations, the introduction of some amendments to the final text were approved.<sup>339</sup> It is c. 946 in the 1982 schema.<sup>340</sup> Canon 1300 contains the general principle that the intentions of the donors, especially the faithful who leave their resources to the Church, are to be most carefully observed in the manner of the administration and distribution of the goods.<sup>341</sup> This canon deals with the case where and when it is possible to know the intention of the donor.<sup>342</sup> Canon 950 gives as a general rule of interpretation of the will of the donor.<sup>343</sup> If more money is offered than the usual amount demanded for a Mass

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<sup>337</sup> Canon 830: "If someone puts down a sum of money for the application of Masses, not indicating their number, it should be calculated according to the offerings customarily given in that place, unless his intention must be legitimately presumed otherwise." See also A.M. CARR, "A Dilemma on His Mass Stipends," in *Homiletic and Pastoral Review*, 63 (1963), 905; A.M. CARR, "The Will Did Not Specify the Quality of Masses," in *Homiletic and Pastoral Review*, 63 (1963), 808-809.

<sup>338</sup> "Si quis pecuniae summa obtulerit pro Missarum applicatione, non *indicans* Missarum celebrandum *numerum*, hic supputetur attendenda stipe statuta in loco in quo oblatus *morabatur*, nisi aliam fuisse *eiusdem* intentionem legitime praesumi debeat."

<sup>339</sup> *Communicationes*, 13 (1975), 435. "Si pecuniae summa **offertur** pro Missarum applicatione, non **indicato** Missarum celebrandum **numero**, hic supputetur attendenda stipe statuta in loco in quo oblatus **commoratur**, nisi aliam fuisse **eius** intentionem legitime praesumi debeat."

<sup>340</sup> PETERS, *Incrementa*, 865.

<sup>341</sup> Canon 1300: "The legitimately accepted wills of the faithful who give or leave their resources for pious causes, whether through an act *inter vivos* or through an act *mortis causa*, are to be fulfilled most diligently even regarding the manner of administration and distribution of goods, without prejudice to the prescript of can. 1301, §3."

<sup>342</sup> A situation may arise where a priest receives an amount of money or an amount of money is discovered in a bank account labeled under the title of Mass offerings without the donor specifying the number of Masses to be celebrated.

<sup>343</sup> SERIAUX, *Droit canonique*, 510.

offering, the number of Masses is to be reckoned according to the customary amount for an offering established in the place where the donor resides and not necessarily where the Masses will be said. The rate in force where the donor lives is the rate that will be applied to determine the number of Masses that will be celebrated. J.M. Huels addresses a situation in a diocese where a bank account is discovered after the death of a priest which has been labeled "Mass Stipends for Special Needs," but in which there is no indication of how many Masses were accepted and how many have actually been said. He proposes that it would be prudent to assume that all Mass obligations must be satisfied.<sup>344</sup>

In the case where an amount of money is discovered without the donor specifying the number of Masses to be celebrated, two presumptions must be considered. On the one hand, in total silence of the donor, we settle the issue of applying the general rule, i.e., the number of Masses is computed on the basis of the standard amount in the place where the donor resides, that is, where the money was discovered. On the other hand, in partial silence of the donor, it has to be said that the canon presumes legitimately another wish in the donor. Thus, if during his lifetime, a donor had habitually given an offering in an amount more than the prescribed one, or if there was a special relationship between the donor and the priest (friend, relative, or he often offered gifts to the priest for his works), it should be presumed that the intention was to give an offering larger than the one prescribed. Such a presumption is obviously and properly founded and not just one that

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<sup>344</sup> "[...] [A]ll diocesan priests, as well as all priests of religious institutes and societies of apostolic life who are pastors or parochial vicars, must celebrate their binations and trinations for the "intention of the donor" and report the number of these binations and trinations to the chancery on a monthly basis. Once it has been reported [...] binations and trinations have been celebrated for the donor's intention then the obligation can be considered to have been satisfied" (J.M. HUELS, "Indeterminate Mass Obligations," in R.E. JENKINS, J.J. KOURY, R. MCDERMOTT, L.A. ROBITAILLE, S.M. VERBEEK [eds.] *Roman Replies and CLSA Advisory Opinions 2007*, Washington, DC, Canon Law Society of America, 2007, 79-80).

has been made lightly or arbitrarily. The dispositions of canon 1300, concerning the faithful fulfillment of the intentions of those who leave goods to pious wills, are of cardinal importance here.<sup>345</sup>

### 2.2.6. The Celebration of Several Masses

Canon 951, §1. A priest who celebrates several Masses on the same day can apply each to the intention for which the offering was given, but subject to the rule that, except on Christmas, he is to keep the offering for only one Mass and transfer the others to the purposes prescribed by the ordinary, while allowing for some recompense by reason of an extrinsic title.

Canon 905 of the present code determines the number of times a priest may celebrate Mass on the same day. This canon states:

§1 A priest is not permitted to celebrate the Eucharist more than once a day except in cases where the law permits him to celebrate or concelebrate more than once on the same day.

§2 If there is a shortage of priests, the local ordinary can allow priests to celebrate twice a day for a just cause, or if pastoral necessity requires it, even three times on Sundays and holy days of obligations.

The norm of c. 951, §1 has been substantially changed with regard to the discipline contained in the norm of c. 824, §2<sup>346</sup> of the former code which is the parallel canon of the present code. Canon 824, §2 of the 1917 Code said that the *parochus* offered the *Missa pro populo* “*ex titulo iustitiae*.” Under the 1917 Code it was prohibited for the bishop or pastor or those who took their place, to retain an offering for a bination or

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<sup>345</sup> R.T. KENNEDY, "Pious Wills in General and Pious Foundations [cc. 1299-1310]," in *CLSA Comm2*, 1512.

<sup>346</sup> Connell, maintains that a priest who takes two stipends for two Masses on Sunday contrary to the express prohibition of canon law is obliged to make restitution to the poor afterward because there was no title of justice for the celebration of the Mass (F.J. CONNELL, "May the stipend be Retained" in *American Ecclesiastical Review*, 149 [1963], 435). Carr says that a priest cannot receive a stipend for a Saturday evening Mass if he already said Mass that morning at which he received a stipend *ex titulo iustitiae*, but the same priest will not be acting contrary to the law if he receives a stipend for the Saturday evening Mass if that was his only Mass for the day and he says the Mass for the people the following Sunday (A.M. CARR, "Stipend o.k. at Saturday evening Mass?" in *Homiletic and Pastoral Review*, 72 [1971-72], 75).

trination<sup>347</sup> on the same day in which he fulfilled the obligation of the Mass for the people, because he offered the *Missa pro populo* "from a title of justice."<sup>348</sup> The prohibition on the pastor from receiving an offering for the other Masses that he celebrated on the same day that he who fulfilled the obligation *Missa pro populo* under the 1917 Code, however, did not apply on Christmas day.<sup>349</sup>

The 1917 code, c. 824, §2, prohibits a binating pastor to accept a stipend for himself if one of the Masses is offered *ex titulo iustitiae*. Since the application of the Mass *pro populo* is from a title of justice, this precluded receiving a stipend for himself for the other Mass.<sup>350</sup>

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<sup>347</sup> Connell maintains that even when the obligation to say Masses for a deceased member of a Priests' Mass Association is only one of charity and fidelity, as opposed to one of justice, a priest who says a *Missa pro populo* could fulfill his obligation of Masses for the deceased priests by his second or third Mass (F.J. CONNELL, "Obligations of a Priests' Mass Association" in *American Ecclesiastical Review*, 151 [1964], 345-346); See also C.P. DURIEUX, *The Eucharist*, 87-92. On a legal investigation of the history of bination in the former code, see C. HOLBÖCK, *Die Bination: Rechtsgeschichtliche Untersuchung*, Romae, Officium Libri Catholic, 1941.

<sup>348</sup> For a study of the obligation *Missa pro populo*, under the 1917 code, see the following works: A.L. ALBARES FERNÁNDEZ, *Misa pro pópulo: Origen y desarrollo de este Instituto Juridico*, JCD diss., Santander, Facultad Canónica de Comillas, 1939; T.A. DONNELAN, *The Obligation of the Missa pro Populo: An Historical Synopsis and Commentary*, JCD diss., CLS, no. 155, Washington, DC, The Catholic University of America Press, 1942. This work provides a background that can be used for a good historical comparison of the *Missa pro populo* between the 1917 and 1983 codes. P. THEODORO, *De applicatione Missae pro populo*, JCD diss., Romae, Pontificia Universitae Gregoriana, 1939. See also S.P. FERREIRA, "Missa pro populo e suas antinêcias," in *Folia canonica*, 10 (2008), 159-166. Mahoney argues that the strength of the law which precluded the pastor from retaining a stipend for second Mass on the same day which he celebrated the Mass for the people is a divine precept, "similarly, because it is an obligation of justice, the law of canon 824, § 2, forbids him to accept a stipend for a second Mass except only on Christmas Day" (E.J. MAHONEY, "Missa pro Populo," in *The Clergy Review*, 21 [1941], 110-111; See also E.J. MAHONEY, "Missa pro Populo," in *The Clergy Review*, 22 [1942], 80-81).

<sup>349</sup> "[W]henever he says Mass several times on the same day, and has to apply one Mass from a title of justice, he cannot receive a stipend for another Mass, excepting some compensation for an extrinsic reason. On Christmas, however, he may receive a stipend also for the second and third Masses. [...] Bishops and pastors who on Sundays and holidays of obligation, [...], are obliged to apply Mass for the people, may not take a stipend if they say a second Mass on some Sunday or holiday of obligation, with the sole exception of Christmas Day" (WOYWOD, *Practical Commentary*, 444). Abbo maintains that by reason of the faculty of diocesan bishops to grant plenary Indulgence at either Vigil Mass or Easter Sunday Mass, an assistant priest who has Easter Vigil liturgy with Mass at midnight, may accept a stipend for it and another stipend if he binates later on Easter Sunday and likewise a pastor who offers the Easter midnight Mass *pro populo* may take a stipend for a latter bination Mass on Easter Sunday (J.A. ABBO, "Easter Vigil and bination Stipend," in *The Priest*, 19-2 [1963], 842).

<sup>350</sup> "Were a generous parishioner to give the pastor an "offering" for the *pro populo* Mass this would be by way of personal gift because the obligation arises not from this offering, but from canon law [...] It permits the pastor to celebrate the Mass for the people when it is prescribed and at the same time to accept this special kind of contribution to his own support" (A.R. HILL, "Stipend for Second Mass After

If we are to make use of the practice of the former law, therefore, it was prohibited for the pastor who celebrated a Mass under a *title of justice*, such as the *Missa pro populo*, to receive an offering for another Mass he celebrated on the same day.<sup>351</sup> In the present code, c. 951, §1 which is the parallel provision of c. 824, §2 of the former code, retains the prohibition against the priest retaining stipends for bination and trination Masses, but does not maintain the restriction concerning Masses celebrated *ex titulo iustitiae* as in the former code.<sup>352</sup> The canon addresses a situation where a priest has already received a stipend for celebrating Mass on a given day. The restriction contained in the 1917 Code has been dropped from this canon and permits pastors and others who

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*Missa pro populo?*" in W.A. SCHUMACHER, R. A. HILL [eds.], *Roman Replies and CLSA Advisory Opinions 1984*, Washington, DC, Canon Law Society of America, 1984, 50). See also R.A. HILL, "The Mass *pro populo* and the acceptance of other intentions," in W.A. SCHUMACHER, J.J. CUNEO (eds.), *Roman Replies and CLSA Advisory Opinions 1985*, Washington, DC, Canon Law Society of America, 1985, 41.

<sup>351</sup> Canon 534 obliges the pastor to apply a Mass for the people on each Sunday and holiday of obligation. If necessary, he may offer the Mass on the same day through another priest or on other days himself: "§1 After a pastor has taken possession of his parish, he is obliged to apply a Mass for the people entrusted to him on each Sunday and holiday of obligation in his diocese. If he is legitimately impeded from this celebration, however, he is to apply it on the same days through another or on other days himself. §2 A pastor who has the care of several parishes is bound to apply only one Mass for the entire people entrusted to him on the days mentioned in §1. §3 A pastor who has not satisfied the obligation mentioned in §§1 and 2 is to apply as soon as possible many Masses for the people as he has omitted." A pastor who has been entrusted with care of a convent of sisters within his jurisdiction satisfies the same obligation to apply Mass for the people when he applies the *Missa pro populo*. See A.M. CARR, "Sisters in *Missa pro populo*," in *Homiletic and Pastoral Review*, 63 (1963), 806.

<sup>352</sup> Boyle maintains that "where the obligation in justice arises from some source other than a stipend source, there does not seem to be any danger in fulfilling this obligation on the same day when one receives a stipend for a second Mass[...]. It would be perfectly lawful for such a priest to fulfill this obligation at one Mass on Sunday and then receive a stipend for a second Mass that same day." He goes on to argue that where the *Missa pro populo* is involved, "Priests do not actually receive a stipend for applying this Mass for their people. Hence it seems quite clear that they should be able to satisfy this obligation on the same day when they celebrate another Mass for which they have accepted a stipend" (P.M. BOYLE, "Two Stipends in One Day?" in *The Priest*, 23-1 [1967], 317-319). For a contrary position, see A.M. CARR, "Stipend for binated Mass," in *Homiletic and Pastoral Review*, 69 (1968), 244-245; See also A.M. CARR, "Again: Stipend for binated Mass," in *Homiletic and Pastoral Review*, 69 (1969), 402; W.F. ALLEN, "Second Mass Stipends," in *Pastoral Life*, 17-18 (1969), 140-141.

have to fulfill the obligation *Missa pro populo* to receive Mass offerings for the other Mass or Masses that they may celebrate on the same day, but still subject to the rule, however, that they may retain only one of the offerings that they received on that day.<sup>353</sup>

On Christmas day, however, the pastor who satisfies the obligation *Missa pro populo* may receive the offerings for the second and third Mass that he celebrates on the same day. On the other holy days of obligation in which he satisfies the *Missa pro populo*, Mendonça argues:

[...] it is not licit for the pastor to receive any stipend for the *Missa pro populo* since, in justice, he is to apply the Mass to the people entrusted to his pastoral care. He is allowed to offer only two pluri-intentional Masses per week according to the decree *Mos iugiter*, and these could be offered on a Sunday or holy day of obligation. Should a pastor offer more than one Mass on a Sunday or holy day of obligation, he is allowed to receive a stipend for only one of those Masses even if one of them was in fact *Missa pro populo*. The excess of the offerings is to be assigned to the purposes determined by the diocesan norms or forwarded to the diocesan bishop.<sup>354</sup>

According to canon 951, §1 therefore, it is permitted for the bishop or pastor, and other priests who fulfill the same functions, to retain the offering from a second Mass celebrated on the same day in which they satisfy the obligation of Mass for the people.<sup>355</sup>

The deletion in c. 951, §1 of the reference to “title of justice,” even though the obligation to celebrate Mass for the people is an obligation in justice, does not preclude retaining a stipend for another Mass celebrated on the same day out of pastoral necessity. It is not

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<sup>353</sup> Carr maintains that a priest member of a religious order that has an apostolic indult permitting the use of binated stipends for foreign missions should benefit from a binated stipend (A.M. CARR, "To Whom is this Stipend," in *Homiletic and Pastoral Review*, 64 [1964], 618-619).

<sup>354</sup> A. MENDONÇA, "The Obligation of *Missa pro populo* and the Pluri-Intentional Masses," in A.J. ESPELAGE (ed.), *Roman Replies and CLSA Advisory Opinions 1994-2000*, Washington, DC, Canon Law Society of America, 2002, 152-154.

<sup>355</sup> J.H. PROVOST, "Retention of Stipend for a Second Mass and Mass for the People," in A.J. ESPELAGE (ed.), *Roman Replies and CLSA Advisory Opinions 1994*, Washington, DC, Canon Law Society of America, 1994, 111.

stated in the revision process why the reference to “title of justice” was omitted.<sup>356</sup> The 1975 schema, c. 111, which has as its source c. 824 of the former code, omitted this reference to “title of justice,” and it never reappeared during the entire revision process.

Canon 951, §1, while allowing the priest to receive an offering for each Mass that he may celebrate on the same day, nevertheless, stipulates that he may claim as his own only the offering for one Mass, except for Christmas day when he may retain the offering for all three Masses. May one say that this special privilege is given for reason of the special solemn nature of such a feast like Christmas? What about the other legitimate practice of three Masses celebrated on the Feast of All Souls on the 2<sup>nd</sup> of November? Can such a privilege be extended to such a feast, since the three Masses previewed are a legitimate practice of the Church? In addition, c. 905, §1, allows the priest to celebrate or concelebrate more than once a day in cases where the law permits him. The Feast of All Souls is clearly a case where the law permits the priest to celebrate or concelebrate more than once, provided he uses the prescribed liturgical formulae and their proper times of the day. However, the canon under consideration says nothing about this other legitimate practice of the Church. As such, the exception given by the law for a priest to celebrate more than once a day on Christmas day and to retain the stipends for all three Masses that he celebrates or concelebrates is to be subject to strict interpretation according to the norm of c. 18 of the code.<sup>357</sup> "The extrinsic title referred to by the code means the labour

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<sup>356</sup> *Communicationes* 4 (1972), 57-59; 7(1975), 33-34; 8 (1981), 433.

<sup>357</sup> Canon 18: "Laws which establish a penalty, restrict the free exercise of rights, or contain an exception from the law are subject to strict interpretation." The Holy See has been known in the past to give indulgences and rescripts to members of religious institutes in cases of diminished revenues for members to retain stipends for binated and trinated Masses, but on condition that the stipends are at the disposition of the major religious superiors. See SACRED CONGRGATION FOR RELIGIOUS, "Acceptance of Stipends for Bination and Trination," in *CLD*, vol. IX, 588-589; *CLD*, vol. VII, 642-643.

of work or the extra effort of the priest to celebrate other Masses for which a compensation may be received."<sup>358</sup>

Besides this case, the ordinary has the power to authorize bination, when the following conditions are present: a shortage of priests relative to pastoral necessity of the moment and a just cause, to be interpreted in a wide sense, e.g., to take care of a religious community or celebrate funerals. The ordinary has the power to authorize three Masses on Sundays and holydays of obligations in case there is a scarcity of priests or if pastoral necessity also requires it.

Besides cases of pastoral necessity, where the bishop may authorize bination and trination, or where the law permits him to celebrate or concelebrate more than once on the same day, the *General Instruction on the Roman Missal* indicates other special cases when the law also allows a priest to celebrate Mass more than once a day:<sup>359</sup>

- a) A Priest who has celebrated or concelebrated the Chrism Mass on Holy Thursday of Holy Week may also celebrate or concelebrate at the Evening Mass of the Lord's Supper;
- b) a priest who has celebrated or concelebrated the Mass of the Easter Vigil may celebrate or concelebrate Mass during the day on Easter Sunday;
- c) on the Nativity of the Lord (Christmas Day), all Priests may celebrate or concelebrate three Masses, provided the Masses are celebrated at their proper times of day;
- d) on the Commemoration of the faithful Departed (All Souls' Day), all Priests may celebrate or concelebrate three Masses, provided that the celebrations take place at different times, and with due regard for what has been laid down regarding the application of second and third Masses;

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<sup>358</sup> WOYWOD, *Practical Commentary*, 444.

<sup>359</sup> Canon 2: "For the most part the Code does not define the rites which must be observed in celebrating liturgical actions. Therefore, liturgical laws in force until now retain their force unless one of them is contrary to the canons of the Code."

- e) a Priest who concelebrates with the Bishop or his delegate at a Synod or pastoral visitation, or concelebrates on the occasion of a gathering of Priests, may celebrate Mass again for the benefit of the faithful. This holds also, with due regard for the prescriptions of law, for groups of religious.<sup>360</sup>

If there is a diversity of amounts in the offerings of the Masses that a priest celebrates in a given day, he is free to claim as his own the offering he considers appropriate. However, he must transmit the other offerings in their entirety for the purposes prescribed by the ordinary. On November, 25 1986, a doubt was placed before the Pontifical Commission for the Interpretation of the Code of Canon Law on how we are to understand the meaning of the term “Ordinary” that is mentioned in c. 951, §1, the Ordinary of the place where the Mass is celebrated or as the proper Ordinary of the celebrant. According to c. 134, §1:

In addition to the Roman Pontiff, by the title of ordinary are understood in the law diocesan bishops and others who, even if only temporarily, are placed over some particular church or community equivalent to it according to the norm of can. 368 as well as those who possess general ordinary executive power in them, namely, vicars general and episcopal vicars; likewise, for their members, major superiors of clerical religious institutes of pontifical right and clerical societies of apostolic life of pontifical right who at least possess ordinary executive power.

In its response, the Pontifical Commission for the Interpretation of the Code added that if the celebrant's Ordinary does not coincide with the Ordinary of the place where the Mass is celebrated, then the provisions of the local Ordinary of the place where the Mass is celebrated are to be followed, namely, the local Ordinary for diocesan clergy and the major superior for members of clerical institutes and societies of apostolic life. All pastors and parochial vicars, not just diocesan priests, are bound to send the offering

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<sup>360</sup> THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *The Roman Missal*, English translation According to the Third Edition, approved for use in the Dioceses of Canada and confirmed by The Apostolic See, Ottawa, St Joseph's Communications, 2011, 62.

for additional Masses celebrated each day to the local Ordinary.<sup>361</sup> Furthermore, the priest celebrant can always receive compensation or recompense by reason of an extrinsic title<sup>362</sup> for the extra Masses he celebrates on the same day, provided the Masses are celebrated for the benefit of the faithful.

The priest can be paid for his services in celebrating the Mass even though he may not keep personally the offering from any extra Masses celebrated in one day. However, pastors who celebrate Mass more than once a day to provide for the needs of the faithful in their care may not receive additional remuneration because this is a service which they are obliged to offer in virtue of their office.<sup>363</sup>

### 2.2.7 Concelebration at a Second Mass

Canon 951, §2. A priest who concelebrates a second Mass on the same day cannot accept an offering for it under any title.

This norm has as its source the declaration on concelebration from the Sacred Congregation for Divine Worship in 1972,<sup>364</sup> a declaration that was affirmed by Paul VI in his 1974 *motu proprio*, *Firma in traditione*. This canon deals with a priest who celebrates two Masses on the same day, when he concelebrates on the same day that he celebrates or concelebrates another Mass. In other words, a priest may not receive an offering for the second Mass at which he only concelebrates, but only for the first Mass at

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<sup>361</sup> PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, in *AAS*, 79 (1987), 1132, English translation in W.A. SCHUMACHER, L. JARREL (eds.), *CLSA Advisory Opinions, 1990*, Washington, DC, Canon Law Society of America, 115.

<sup>362</sup> The expression *extrinsic title* refers to a visiting priest who is not a regular parochial clergy of the given parish. He is compensated on grounds that he has made an extra effort to celebrate extra Masses for the benefit of the parish which is normally not his responsibility to do so (J.M. HUELS, "The Offering Given for the Celebration of Mass [cc. 945-958]," in *CLSA Comm2*, 1133).

<sup>363</sup> J.M. HUELS, "Offerings Given at the Celebration of the Mass [cc. 945-958]," in *CLSA Comm1*, 670.

<sup>364</sup> SACRED CONGREGATION FOR DIVINE WORSHIP, *Celebratione Missae*, 7 August 1972, in *AAS*, 64 (1972), 561-563, English translation in G. FONTAINE, T. O'BRIEN, (eds.), *Documents on the Liturgy, 1963-1979, Conciliar, Papal, and Curial Texts*, The Liturgical Press, Collegeville, Minnesota, 1982, 564. "Those priests who celebrate one Mass for the pastoral benefit of the faithful and concelebrate a second Mass may not lawfully accept a stipend on any grounds for the concelebrated Mass." This prohibition would significantly influence the canonical norms found in the revised code.

which he celebrated or concelebrated. He can accept an offering only for the first Mass that he celebrated or concelebrated.

The reason for this rule is to avoid the appearance that concelebration, which is an optional practice, might be done merely for the sake of taking an offering.<sup>365</sup> If we take the example of an assistant pastor who planned to concelebrate at one Mass, he can accept an offering to apply it for a specific intention. It can happen, however, that during the day, for urgent pastoral needs, like a funeral, he may be asked to celebrate a second Mass. What he has to do now during this second Mass of the day, at which he presides, is to apply the general norm of c. 951, §1. For each of these Masses, the priest can receive an offering, but he can keep only one for himself. The others are destined to the goals fixed by the Ordinary.

### **2.2.8 Determining the Amount for the Offering**

Canon 952, §1. It is for the provincial council or a meeting of the bishops of the province to define by decree for the entire province the offering to be given for the celebration and application of Mass, and a priest is not permitted to seek a larger sum. Nevertheless, he is permitted to accept for the application of a Mass a voluntary offering which is larger or even smaller than the one defined.

This canon treats the competent authority to fix the amount for Mass offering – the provincial council or meeting of the bishops of the province. This paragraph represents two significant changes from cc. 830-831 of the 1917 Code which it has as its source. The 1917 Code gave the local Ordinary the power to determine what offering was

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<sup>365</sup> J.M. HUELS, "The Offering Given for the Celebration of Mass [cc. 945-958]," in *CLSA Comm2*, 1133.

to be made for Masses.<sup>366</sup> In the first part of the present canon, the 1975 schema (c. 117) maintained that it was for the diocesan bishop to determine what offering was to be made in his diocese in accordance with the rule that has been laid down by the Episcopal conference.<sup>367</sup> The 1980 schema (c. 901) maintained that this was to be done after consultation with the bishops of the country.<sup>368</sup> However, we notice a significant change in the 1980 schema which maintained that it was for the provincial council or meeting of bishops of the province to define by a decree what offering was to be made for Masses.<sup>369</sup> The competent authority for determining the amount of Mass offerings in the present code is no longer the local Ordinary but the provincial council or a meeting of bishops of a province, a change which ensures uniformity of practice among neighbouring dioceses of an ecclesiastical province. The amount of the offering made ought to be such that, on the one hand, it represents, at least in part, a contribution by the faithful for the upkeep of the ministers of the Church, and, on the other hand, it takes into consideration the economic situation of the majority of the faithful. That is why this present paragraph stipulates that the authority competent to determine the amount of the offering is either

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<sup>366</sup> Canon 831, §1: "It is for the local Ordinary to determine by decree the stipend for manual Masses in his diocese, [and this decree] as far as possible, [is to be] laid down in a diocesan synod; nor is it permitted for a priest to demand a higher one."

<sup>367</sup> §1 "Episcopi dioecesani est pro sua dioecesi per decretum definire quaenam pro celebratione et applicatione Missae sit offerenda stips, itemque quid ratione tituli extrinseci sit debitum, nec licet sacerdoti summam maiorem expetere; curet autem idem Episcopus ut quantum fieri possit eadem definiantur secundum rationem ab Episcoporum Conferentia compositam."

<sup>368</sup> Canon 901, §1 "Episcopi dioecesani est, collatis consiliis cum Episcopis regionis, pro sua dioecesi per decretum definire quaenam pro celebratione et applicatione Missae sit offerenda stips."

<sup>369</sup> PETERS, *Incrementa*, 867. For studies on the provincial council, see M.P.J. WILSON, M.J. O'BRIEN, "Provincial and Plenary Councils: Renewed Interest in an Ancient Institution," in *The Jurist*, 65 (2005), 241-267.

the provincial council<sup>370</sup> or the meeting of the bishops of the province. This puts the decision-making at an intermediate level between that of the individual diocesan bishop and the conference of bishops of a nation. The reason that was given during the drafting process of this canon is that, while it is desirable to have uniformity on this matter in a given region,<sup>371</sup> conditions in the region covered by the meeting of bishops might be too diverse as to allow such uniformity in the whole region.<sup>372</sup> This canon does not say that a uniform offering for all Masses is to be made. Hence, the bishops in their decree could determine one amount for “announced,” “anniversary,” “marriage,” and even “funeral Masses,”<sup>373</sup> as the case may warrant. The amount may also vary from province to province because of financial, economic and sociological reasons.<sup>374</sup>

A second change from the former law in this paragraph is the absence of any provision allowing the local Ordinary to prevent priests from accepting an offering that is lower than that defined by the law, as was the case in the former law.<sup>375</sup> While a priest

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<sup>370</sup> Canon 440: "A provincial council for the different particular churches of the same ecclesiastical province is to be celebrated whenever it seems opportune in the judgment of the majority of the diocesan bishops of the province, without prejudice to can. 439, §2."

<sup>371</sup> Canon 433, §1: "If it seems advantageous, especially in nations where particular churches are more numerous, the Holy See can unite neighbouring ecclesiastical provinces into ecclesiastical regions at the request of the conference of bishops."

<sup>372</sup> *Communicationes*, 15 (1983), 201.

<sup>373</sup> J. McAREAVY, "The Offering made for the celebration of Mass," in *CLSGBI Comm*, 520.

<sup>374</sup> NATIONAL EPISCOPAL CONFERENCE OF CAMEROON, "Directives of the Bishops of Cameroon on the Mass Offerings," KD/A – 103/04/06, Yaounde, 2003. Article 3, of this document stipulates: "Considering the preceding articles, the stipend or offering corresponding to one Mass is fixed at 2,000frs CFA. No priest should request a higher amount than that fixed by the bishops of the province; he may accept a higher amount if given spontaneously by the donor; but he may on the other hand, accept a less amount or celebrate without an offering."

<sup>375</sup> Under the regime of the former code, "The bishop could under penalties forbid priests to take a smaller stipend than that fixed by the bishop's law" (WOYWOD, *Practical Commentary*, 449). "The reason why the local ordinary can forbid the acceptance of a lower stipend is to prevent injury to other priests whose economic circumstances do not permit them to do so" (J.A. ABBO and J. D. HANNAN, *The Sacred*

may not ask for a higher amount than that defined by law in the province, he may, however, accept an offering in any amount that is freely given.<sup>376</sup>

The competence of the meeting of bishops of a province to issue a decree on this issue is an exception to the norm. The bishops at such meetings lack the power of governance. This is an example of a special grant of legislative power by the supreme legislator to the bishops of a province that is by analogy equal to the exception mentioned in c. 434 with reference to the gathering of bishops of a region. The decisions of the majority of bishops on this matter will be, therefore, binding on all.<sup>377</sup>

The directives of the bishops of Cameroon, published in 2003, fixed the amount for the entire territory of Cameroon at 2000 frs.<sup>378</sup> It is not the competence of the conference of bishops of a given nation to fix the amount corresponding to the offering for the celebration of Mass. This task belongs to the meeting of bishops of a province or the provincial council as seen in c. 952, §1. The directives of the bishops of Cameroon, fixing the amount for Mass offering for the nation of Cameroon, have not received the *recognitio* of the Holy See.

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*Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, vol. 1, revised edition, St. Louis, MO. B. Herder Book Co. South Broadway, 1957, 832).

<sup>376</sup> J.M. HUELS, "The Offering Given for the Celebration of Mass [cc. 945-958]," in *CLSA Comm2*, 1134; See also E.J. MAHONEY, "Moral Cases;" "November Masses," in *Clergy Review*, 8 (1934), 323-325; E.J. MAHONEY, "November Masses," in *Clergy Review*, 22 (1942), 81-82.

<sup>377</sup> *Ibid.*, and c. 119, 2°.

<sup>378</sup> NATIONAL EPISCOPAL CONFERENCE OF CAMEROON, "Directives of the Bishops of Cameroon on the Offering Made for the Celebration of Mass," art. 3, Yaoundé, 2003.

### 2.3 Particular Law or Custom

Canon 952, §2. Where there is no such decree, the custom in force in the diocese is to be observed.

§3. Members of all religious institutions must also observe the same decree or local custom mentioned in §§1 and 2.

The paragraphs above have as their source cc. 831, §§2 and 3 of the 1917 code.<sup>379</sup>

During the revision process, both paragraphs appeared as c. 117, §§ 2 and 3 of the 1975 schema, c. 901, §§2 and 3 of the 1980 schema, and c. 947, §§2 and 3 of the 1980 schema codicis with very slight changes in the revision process. The changes introduced were largely of a grammatical nature, i.e., the dropping of the expression referring to the decree of the diocesan bishop in the 1982 schema codicis, the suppression of the expression, "institutes of consecrated life," in favour of the expression, "religious institutes," and the suppression of the expression referring to "exempt religious."<sup>380</sup> The two paragraphs treat a situation where the competent authority has not issued the decree determining the amount of Mass offering. In the absence of a decree, each priest may accept an offering in any amount according to what is customary practice in the diocese.<sup>381</sup> Indeed such a custom could provide a valuable guideline to the bishops of a province in determining the amount of the offering.<sup>382</sup> Moreover, the bishop has the

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<sup>379</sup> Canon 831, §2 "Where there is lacking a decree of the Ordinary, the custom of the diocese is observed." §3 "Religious, too, even exempt ones, must stand by the decree of the local Ordinary concerning manual stipends, or by diocesan custom."

<sup>380</sup> PETERS, *Incrementa*, 867. "Ubi desit tale decretum, servetur consuetudo in diocesis vicens." §3: "Sodales quoque institutorum religiosorum quorumlibet stare debent eidem decreto aut consuetudini loci, de quibus in §§1 et 2."

<sup>381</sup> J.M. HUELS, "The Offering Given for the Celebration of Mass [cc. 945-958]," in *CLSA Comm2*, 1134.

<sup>382</sup> J. McAREAVY, "The Offering made for the celebration of Mass," in *CLSGBI Comm*, 520.

power to enact his own law if the bishops of the province have not done so.<sup>383</sup> Canon 952, §3 maintains that all religious are subject to the decree of the bishop; they may not introduce their own amounts.<sup>384</sup> This paragraph is principally to avoid confusion and the appearance of trafficking or trading that could result from not having uniformity of practice.<sup>385</sup>

## 2.4 Transfer of Mass Obligations

Canon 955, §1. A person who intends to entrust to others the celebration of Masses to be applied is to entrust their celebration as soon as possible to priests acceptable to him, provided that he is certain that they are above suspicion.

This paragraph appears as c. 112 of the 1975 schema. Here in this schema, in addition to the fact that the entrusting priest is to have the certainty that the priests to whom he is entrusting the celebration of Masses must be above any suspicion, the testimony of their Ordinary is also required, as was the case in the 1917 Code.<sup>386</sup> In the 1980 schema (c. 905), the testimony of the ordinary is omitted, so also in c. 951 of the

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<sup>383</sup> J.M. HUELS, "The Offering Given for the Celebration of Mass [cc. 945-958]," in *CLSA Comm2*, 1134.

<sup>384</sup> A. PERLASCO, "Poverta consacrata e stips della santa Messa," in *Quaderni di Dirritto Ecclesiale*, 15 (2002), 419-434.

<sup>385</sup> Naughton describes a custom in a province that offers Masses for the All Souls Novena of Masses, in an amount which is higher than the usual amount of an offering, which the decree of the bishops in the said province has not considered in accordance with can 952, §1. What should be done with excess of the amount which is higher than the diocesan offering? He puts forth the following arguments: "The object of offerings given for a novena of Masses is clearly and unambiguously for the purpose of the offering of the Masses in question [...]. The priests who accept such offerings are seriously obliged to fulfill this intention [...]. The offerings belong by right to the priests who honor the Mass stipends in question [...]. It would seem a violation of the law regarding Mass stipends to direct any portion of novena Mass offerings to other causes apart from the priests who participate in the fulfillment of the particular obligations involved" (L. NAUGHTON, "Offering for Novena of Masses," in P.J. COGAN [ed.], *CLSA Advisory Opinions*, 1993, Washington, DC, Canon Law Society of America, 1993, 294-295).

<sup>386</sup> "He who has a number of Mass stipends which he is permitted to transmit to others without restriction, may send them to priests selected by himself, provided it is sufficiently clear to him that their reputation leaves nothing to be desired or that they have been recommended on the word of their own ordinary. The commendation of the ordinary suffices even if it is not in writing" (J.A. ABBO and J.D. HANNAN, *The Sacred Canons*, 838).

1982 schema codicis.<sup>387</sup> It is the responsibility of the one transferring to ensure that the priests to whom he is transferring the Mass intentions are of proven integrity. The testimony of their ordinary is not required. Canon 955, §1, deals with the conditions for transmitting the requests for the celebration of Masses to be applied. This paragraph has as its source cc. 837-840 of the 1917 Code.<sup>388</sup> In the 1917 Code, the burden fell upon whoever had Masses to be celebrated by others. However, in the present code, the demand mentioned weighs on anybody who wishes to entrust to others the celebration of Masses to be applied. As soon as a priest decides not to celebrate Masses entrusted to him personally, he must seek, as soon as possible, the appropriate priests he wishes to entrust their celebration to them.<sup>389</sup> This paragraph lays down rules about such transfers of Mass obligations.

a) The priest who intends to entrust the celebration of Masses to other priests is to transfer the offerings “as soon as possible.” This expression refers to the action of the person who entrusts the Mass obligations, that is, the one who sends the offerings. He is to do so as soon as he has decided that he will not be the one to satisfy that obligation. The expression “as soon as possible”<sup>390</sup> denotes a sense of urgency which will naturally

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<sup>387</sup> PETERS, *Incrementa*, 869. "Qui stipes Missarum habet, quarum applicationem aliis concedere potest, earum celebrationem committere valet sacerdotibus sibi acceptis, dummodo constet eos esse omni exceptione maiores."

<sup>388</sup> M. HUFTIER, "Messes: honoraires, intentions pour défunct et pour vivants," in *L'Ami du Clergé*, 75 (1965), 462-463.

<sup>389</sup> CALVO-ÁLVAREZ, "The Offering Made for the Celebration of Mass," in *Exegetical Comm*, 735.

<sup>390</sup> Carr maintains that the more Masses accepted, the more the time for their celebration, which should not be a mathematical calculation, but a good moral approximation. If the donor had an urgent request wherein time was of the essence, then the Mass is to be celebrated as soon as conveniently possible (A.M. CARR, "How Promptly to Satisfy Mass Intentions" in *Homiletic and Pastoral Review*, 63 [1963], 348-349). McReavy talks of a discreet judgement and conscience of priests, but he also cautions that the law allows for exceptions and makes provision for special circumstances which render prompt fulfilment

depend on the number of Masses that must be transferred.<sup>391</sup> The greater the number of Masses to be transferred, the greater the urgency to do so "as soon as possible" so that the intentions of the faithful do not wait for a long time before they are celebrated.

b) He is to transfer them to priests of his own choice, whom he knows and is certain that they are above suspicion, that is, priests who are of proven integrity.

A priest who is above suspicion is any one about whom there is no doubt that he will satisfy the Mass obligations received. This is to be presumed of all priests in good standing unless the contrary is evident. One may also presume that the Mass obligations have been accepted by the other priest if he has received and keeps the offerings. The time within which the Masses are to be celebrated is one year from the day on which the offerings were received, (can. 953), unless it is evident that one or more Masses are to be celebrated sooner.<sup>392</sup>

c) He is to transfer the entire offering, unless it is quite certain that the amount in excess of the local offering was intended as a personal gift to him. This norm again is intended to prevent "trading or trafficking," mentioned in c. 947. The expression, "the sum fixed in the diocese," means the offering determined by decree of the local Ordinary for the particular diocese or by the bishops of the province or by diocesan custom.<sup>393</sup>

d) The responsibility of having Masses celebrated remains that of the priest transferring the obligation until he is certain that the offerings have been received and

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difficult (L.L. MCREAVY, "Time of Fulfilment of Manual Mass Obligations," in *The Clergy Review*, 48 [1963], 644-647). See also E.J. MAHONEY, "Time for Discharging Mass Obligations," in *The Clergy Review*, 21 (1941), 50-51.

<sup>391</sup> A. MARZOA, "The Blessed Eucharist," in *CCLA*, 734.

<sup>392</sup> J.M HUELS, "The Offering Given for the Celebration of Mass [cc. 945-958]," in *CLSA Comm2*, 1135.

<sup>393</sup> Canon 952 § 1.

that the obligations have been undertaken.<sup>394</sup> In practice, this imposes upon the priest receiving the transferred Masses the obligation to acknowledge receipt of them, acceptance of the responsibility, and the obligation to fulfill them.<sup>395</sup> The priest who has transferred the Masses does not need to ensure that the obligation has been fulfilled. Once it has been accepted by another, and the offering transferred, he no longer possesses an obligation with regards to that Mass intention.

### 2.4.1 General Principle

Canon 953. No one is permitted to accept more offerings for Masses to be applied by himself than he can satisfy within a year.

This canon repeats the norm of c. 835 of the 1917 Code and forbids a priest to accept more offerings for Masses to be celebrated by himself than he can discharge within a year.<sup>396</sup> The wording is designed to guarantee, as effectively as possible, compliance with the will of the donor. By stating it in the negative, the text expresses the unbending duty of every priest to adhere to the norm, which has to do with the maximum time allowed to satisfy obligations undertaken by the priest himself.<sup>397</sup> It implies that the Church does not allow a priest to accumulate a great number of stipends for his own use, with the consequent danger of not satisfying them within the prescribed time.<sup>398</sup>

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<sup>394</sup> Canon 949.

<sup>395</sup> J. McAREAVY, "The Offering Made for the Celebration of Mass," in *CLSGBI Comm*, 521.

<sup>396</sup> *Ibid.*

<sup>397</sup> CALVO-ÁLVAREZ, "The Offering Made for the Celebration of Mass," in *Exegetical Comm*, 729.

<sup>398</sup> "The words 'to be said by himself' indicate that the Church does not allow the priest to accumulate a great number of stipends for his own use with the consequent danger of not saying them within the prescribed time, even if the giver of the stipends offers them expressly with the provision that the priest may say the Masses at any future time" (WOYWOD, *Practical Commentary*, 451).

There is no norm that limits the number of Mass offerings that a member of the faithful can offer to his parish priest, or to any other priest, or to a clerical institute of consecrated life. Some priests may receive more Mass offerings than they can discharge over a reasonable length of time, such as one year. In order that members of the faithful should not wait a long period of time before Mass intentions are celebrated, the legislator imposes the observation of a very strict norm: no celebrant may accept more Mass intentions than he can celebrate within the course of a year. The computation of time for a year is measured as from the day that the priest accepted the offering.<sup>399</sup>

This prohibition does not prevent the priest from accepting many offerings on condition that he transfers the excess offerings which he cannot celebrate to other priests according to the norms that have been established by c. 955. The code gives practical applications of this general principle. Excess Mass offerings are to be celebrated elsewhere;<sup>400</sup> unsatisfied obligations are to be handed to the ordinary.<sup>401</sup> It is to the practical applications of this general principle, that is, the ordinary ways of managing the extra Mass offerings of the donors, that we now turn our attention.

#### **2.4.2 First Application: Celebration of Mass Elsewhere**

It may happen that in certain churches, oratories, or places of pilgrimages and popular devotions, more Mass obligations are accepted than can be satisfied in these

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<sup>399</sup> Canon 202 §1: “In law, a day is understood as a period consisting of 24 continuous hours and begins at midnight unless other provision is expressly made; a week is a period of 7 days; a month is a period of 30 days, and a year is a period of 365 days unless a month and a year are said to be taken as they are in the calendar.”

<sup>400</sup> Canon 955.

<sup>401</sup> Canon 956.

places.<sup>402</sup> The faithful may wish that their Masses be celebrated in these places because of the particular attention that Christian devotion has attached to these places or because such places are associated with one miracle or another. What is to be done with the excess Masses requested? A first response to this difficulty is given by c. 954.

If in certain Churches or oratories more Masses are asked to be celebrated than can be celebrated there, it is permitted for them to be celebrated elsewhere unless the donors have expressly indicated a contrary intention.

Therefore, excess Mass offerings can be transferred and celebrated in a different place and by other priests on condition that “the donors have not expressly indicated a contrary intention.” The term “expressly” signifies either an explicit or implicit indication of intention: The donor has clearly expressed his intention, or special and specific circumstances have manifested clearly this intention. When a priest accepts Mass offerings and agrees to have the Masses celebrated in that place, the Mass obligation cannot be satisfied elsewhere without the donor’s permission. What should be done if the donor refuses that such Masses be celebrated elsewhere? It has to be noted that these Masses are to be celebrated within the course of the year, according to the principle of c. 953.<sup>403</sup>

There are several ways of proceeding in resolving this problem. Those responsible for receiving Mass offerings on behalf of priests, such as parish secretaries, are to ensure that they do not accept more Masses than can be celebrated in the particular church or pilgrimage site. The local Ordinary or his delegate for diocesan clergy, or the superiors of religious institutes and societies of apostolic life, are to regularly inspect the account of

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<sup>402</sup> J. McAREAVY, "The Offering Made for the Celebration of Mass," in *CLSGBI, Comm*, 521.

<sup>403</sup> Canon 953: “No one is permitted to accept more offerings for Masses to be applied by himself than he can satisfy within a year.”

registers for Mass offerings to make sure that the Mass intentions have been satisfied or transferred according to the norm of the law.<sup>404</sup> They can also inform the faithful, by a public notice that is clearly visible, that the Masses will be celebrated either in the place, when this can be done easily, or in another place. Better still, they can invite other priests who are available to come and celebrate the Masses in the particular church or place where the faithful wish their intentions to be satisfied. Those responsible for receiving Mass intentions in these places can also proceed with the permission of the competent authority mentioned in c. 1309 in transferring the obligations of Masses to churches or altars different from those determined in the wishes of the donors. If the Mass offerings were accepted on condition that it will be celebrated in that place, this fact is to be noted in writing along with the intention when such permission is being sought.<sup>405</sup>

### **2.4.3 Second Application: Transfer of Intentions to Other Priests**

A second response to the difficulty of having more Mass offerings than can be celebrated within one year is given by c. 955. In the case of a priest who has already accepted sufficient Mass obligations for a year's time,<sup>406</sup> he must proceed according to c. 955. This canon gives the procedure of this transfer in a very detailed manner, but always with the intention and aim of avoiding all appearances of trade and trafficking.

§1. A person who intends to entrust to others the celebration of Masses to be applied: Is to entrust their celebration as soon as possible to priests acceptable to him, provided that he is certain that they are above suspicion. He must transfer the entire offering received unless it is certain that the excess over the sum fixed in the diocese was given for him

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<sup>404</sup> Canon 957.

<sup>405</sup> J.M. HUELS, "The Offering Given for the Celebration of Mass [cc. 945-958]," in *CLSA Comm2*, 1134.

<sup>406</sup> Canon 953.

personally. He is also obliged to see to the celebration of the Masses until he learns that the obligation has been accepted and the offering received.

§2. The time within which Masses must be celebrated begins on the day the priest who is to celebrate them received them unless it is otherwise evident.

§3. Those who entrust to others Masses to be celebrated are to record in a book without delay: The Masses which they received, those which they transferred to others, and note as well the amount of their offerings.

§4. Every priest must note accurately the Masses which he accepted to celebrate and those which he has satisfied.<sup>407</sup>

Although these rules are self-evident, brief comments on some expressions will not be out of place. In paragraph one, for example, the priest who has decided to entrust excess Mass obligations to another priest is to transfer this obligation “as soon as possible.” In the case of a priest who has already accepted sufficient Mass obligations for a year, he must send to one or more priests the excess offerings. In the case of transferring Mass obligations elsewhere,<sup>408</sup> this is to be done “as soon as possible” after it is determined that there are too many Masses to be celebrated in a given place.<sup>409</sup>

#### **2.4.4 Third Application: Other Ways of Managing the Intentions of the Faithful**

The preceding canons treat Mass offerings that have been given directly by the faithful to priests or given to those who are responsible for pilgrimage sites or churches or oratories for the celebration of Masses. The celebration of excess Mass offerings is to

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<sup>407</sup> It is a question of a true canonical obligation, not only to avoid negligence. In case of prolonged hospitalization, or incapacity, or death, the competent authorities will be able to provide for the Masses that have not been celebrated.

<sup>408</sup> Canon 954.

<sup>409</sup> J.M. HUELS, "The Offering Given for the Celebration of Mass [cc. 945-958]," in *CLSA Comm2*, 1135.

be entrusted to any priest who is above suspicion.<sup>410</sup> There are other ways to celebrate Masses for particular intentions: to accept in trust an amount of money or goods for the celebration of Masses;<sup>411</sup> to constitute a pious foundation<sup>412</sup> of which the annual revenue is destined for the celebration of Masses;<sup>413</sup> to make a substantial gift to a seminary which comprises scholarships, with the condition that a number of Masses will be celebrated;<sup>414</sup> or to make a will which comprises a legacy for Mass intentions.<sup>415</sup> In all these cases, there are intermediaries. The people who are responsible for these institutions, who can either be clerics or the lay faithful, ought to see to the celebration of the Masses.<sup>416</sup> It could happen, however, that the Masses are not celebrated within one, but over several years on the anniversary of death. This could be at the request of the donor. This does not present a problem with c. 953 since the Mass is said only on the anniversary of death at the request of the donor.

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<sup>410</sup> A priest who is above suspicion is any priest about whom there is no doubt that he will satisfy the mass obligations received. This is to be presumed of all priests in good standing unless the contrary is evident. The priest transferring the Mass obligations is to do that "as soon as possible" in order to minimize delay in the celebration of the Masses.

<sup>411</sup> Canon 1302.

<sup>412</sup> P.G. MARCUZZI, "Le fondazioni pie (cann. 1303-1310)," in *I beni temporali della chiesa*, Città del Vaticano, Libreria Editrice Vaticana, 1999, 223-259. For studies on "Founded Masses" in the 1917 Code, see N.T. MILLER, *Founded Masses According to the Code of Canon Law*, JCD diss., CLS, no. 34, Washington, DC, Catholic University of America, 1926; C.P. DURIEUX, *The Eucharist*, 67-70.

<sup>413</sup> Canon 1303.

<sup>414</sup> Canon 1300.

<sup>415</sup> Canon. 1308 § 3.

<sup>416</sup> For studies on the problems related to Mass bequests and possible solutions, see D.F. O'CALLAGHAN, "Problems in Mass Bequests," in *The Irish Ecclesiastical Record*, 101-102 (1964), 174-177; D.F. O'CALLAGHAN, "The Stipend in Mass Bequests," in *The Irish Ecclesiastical Record*, 101-102 (1964), 258-261. "If a person bequeaths to a priest a sum of money for a specified number of Masses, that priest may have some or all of those Masses said by other priests, to whom he need give only the usual fee" (KELLER, *Mass Stipends*, 168).

According to c. 956, these clerics or lay people are to hand over to their Ordinaries “the mass obligations which have not been satisfied within a year,” that is to say, according to c. 955, §2, within the limit of time that started on the day on which they accepted the obligation of the Masses.<sup>417</sup> Each and every administrator of pious causes or those obliged in any way to see to the celebration of Masses, whether clerics or laity, are to hand over to their ordinaries, according to the method defined by the latter, the Mass obligations which have not been satisfied within a period of one year.<sup>418</sup>

### **2.5 Right and Obligation to Exercise Vigilance by Competent Authority**

The last two canons of the Book IV, Title III, chapter three, which have as their source cc. 842 and 843 of the former code, deal with the offering made for the celebration of Mass for a particular intention. Both canons regulate the necessary control in the handling and transmission of Mass offerings.<sup>419</sup> Since the handling of money can lead often to problems, the code wishes to regulate this practice by naming the competent authority whose duty it is to see to it that Mass obligations are faithfully discharged. The right and duty of exercising vigilance to ensure that Mass obligations are fulfilled belong to the local Ordinary in churches of secular clergy and to the superiors in churches of

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<sup>417</sup> "The year referred to in canon 955, §2 is the period of one year that each priest has to satisfy all Mass obligations; likewise, the year referred to in canon 956 is not the calendar year but one year from the day of the acceptance of the offering" (J.M. HUELS, "Offerings given at the Celebration of the Mass [cc. 945-958]," in *CLSA Comm1*, 671).

<sup>418</sup> For an opinion regarding the canonical rights of a diocesan bishop to reduce and to transfer Mass obligations, see D.R. PERKIN, "Canonical Rights to Reduce and to Transfer Mass Obligations," in P.J. COGAN (ed.), *CLSA Advisory Opinions 1984-1993*, Washington, DC, Canon Law Society of America, 1993, 421-423.

<sup>419</sup> "A grave obligation is imposed by this canon; its fulfillment, in accordance with the constitution *Nuper*, cited as a source, includes enforcement of the law of the Code on the initiative of the superior, as well as in response to complaints" (J.A. ABBO and J. D. HANNAN, *The Sacred Canons*, 840).

religious institutes or societies of apostolic life.<sup>420</sup> Canon 957 speaks of churches, and this should be understood in the technical sense of c. 1214.<sup>421</sup>

A church of the secular clergy means, for purposes of this canon, a church served by secular clergy; a church of a religious institute or society of apostolic life means, for purposes of this canon, not only churches owned by them, but also churches owned by a parish or diocese and served by clergy of religious institutes and societies of apostolic life. Although the bishop has jurisdiction over all churches, to which the faithful have a right to come, the Mass offerings received in them belong to the clergy themselves, not to the churches.<sup>422</sup>

Canon 958 states:

§1. The pastor and the rector of a church or other pious place which regularly receives offerings for Masses are to have a special book in which they note accurately the number of masses to be celebrated, the intention, the offering given, and their celebration.

§2. the ordinary is obliged to examine these books each year either personally or through others.

The competent ecclesiastical authority, who has the duty and the right to see to the fulfillment of Mass obligations is determined not by the juridic condition of the celebrant, that is, whether he is a diocesan or religious priest, but by the juridic condition of the church where the Mass obligations have to be fulfilled, that is, the local ordinary in churches of secular clergy and the superior in churches or parishes entrusted to religious institutes or societies of apostolic life. J.M. Huels maintains that:

[...] in parish churches served by members of religious institutes and societies of apostolic life, it would be advisable to keep a separate account or list of all binations and trinations of the pastor and parochial vicars, in respect to the offerings for the Masses that come by way of the parish or diocese, since this income would be subject to the local ordinary's jurisdiction.<sup>423</sup>

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<sup>420</sup> Canon 957.

<sup>421</sup> Canon 1214. "By the term church is understood a sacred building designated for divine worship to which the faithful have the right of entry for the exercise, especially the public exercise, of divine worship."

<sup>422</sup> J.M. HUELS, "The Offering Given for the Celebration of Mass [cc. 945-958]," in *CLSA Comm2*, 1135.

<sup>423</sup> *ibid.*

The local Ordinary or superior has the right and duty to see that these Mass obligations are fulfilled. In parishes and other pious places which regularly receive offerings for Masses, the yearly control by the Ordinary or others is mandatory. Such pious places can be, for example, pilgrimage centers, shrines, and other holy sites. Besides, this control forms part of the obligations of a dean or a vicar forane as can be seen in c. 555, §1, 3<sup>o</sup>.<sup>424</sup>

## 2.6 Trafficking in Mass Offerings: Canonical Sanctions

In order to foster reverence due for the Most Blessed Eucharist,<sup>425</sup> which ought to be held in the highest esteem and honour by all the faithful, and forestall commercialization of sacred realities,<sup>426</sup> "because the matter directly affects the Most Blessed Sacrament, even the slightest appearance of profit or simony would cause a scandal,"<sup>427</sup> the code, in c. 1385<sup>428</sup> establishes that: "A person who illegitimately makes a profit from a Mass offering is to be punished with a censure or another just penalty." This means that one who is guilty of unlawfully making money from Mass offerings is to be

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<sup>424</sup> Canon 555, §1: "In addition to the faculties legitimately given to him by particular law, the vicar forane has the duty and right: no.3 of seeing to it that [...] parochial registers are inscribed correctly and protected appropriately."

<sup>425</sup> "[...] the Most Holy Eucharist contains the Church's entire spiritual wealth, Christ himself, our Passover and living bread. Through his own flesh now made living and life-giving by the Holy Spirit, he offers men" (JOHN PAUL II, *Ecclesia de Eucharistia*, no.1 Rome, *Libreria Editrice Vaticana*, 2003).

<sup>426</sup> Such concerns underlie the strict provisions that regulate the discipline of Mass offerings in cc. 945-958 as we have studied.

<sup>427</sup> CONGREGATION FOR THE CLERGY, *Mos Iugiter*, 528.

<sup>428</sup> "Canon 1385 of the 1983 Code of Canon Law threatens a penalty for violations of this provision, which underscores the seriousness with which the Church regards the proper distribution of Mass offerings. The canon, modified slightly in language from its predecessor canon 2324 in the 1917 Code, warns that a person who illegitimately makes a profit from a Mass offering is to be punished with a censure or another just penalty" (A.A. DELLO RUSSO, "Retention of Mass Offerings by Priests for Combined Mass Intentions," in S.A. EUART, J.A. ALESANDRO, T.J. GREEN [eds.], *Roman Replies and CLSA Advisory Opinions 2015*, Washington, DC, Canon Law Society of America, 2015, 88-91).

punished by a just *ferendae sententiae* penalty.<sup>429</sup> This canon thereby establishes canonical sanctions against such persons who trade or traffic in what concerns Mass offerings and, as such, have made an illegitimate profit from them. As stated in c. 947: "Any appearance of trafficking or trading is to be excluded entirely from the offering for Masses." Therefore, it is forbidden or unlawful to collect Mass offerings and profit from their distribution, even if the gain is for a religious or charitable purpose,<sup>430</sup> and it is illicit to indiscriminately collect the offerings of the faithful which are destined for the celebration of Masses for particular intentions, and accumulate them and satisfy the obligation with just a single Mass celebrated according to the so-called "collective" intention.<sup>431</sup>

Such trafficking means profiting unlawfully from the money or goods destined for the celebration of Mass.<sup>432</sup> The delict consist in making an illegitimate profit from Mass offerings.<sup>433</sup> Therefore, there is no delict unless and if truly the accused has made an illegitimate profit from the Mass offering. There must be trade and trafficking with Mass

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<sup>429</sup> M. VISIOLI, "Trarre profitto illegittimo dall' elemosina della Messa (can. 1385)," in *Quaderni di Dirrito Ecclesiale*, 15 (2002), 315- 324.

<sup>430</sup> "It is not forbidden to deduct the just expenses involved in transmitting the offerings, e.g., postage, bank fees, and secretarial costs. However, usually this is not done, since the transmission of Mass offerings is considered by most as a work of charity to aid the faithful desiring the celebration of Mass for their intentions, and to help priests needing Mass offerings for their support" (W.H. WOESTMAN, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, second edition revised and updated, Ottawa, Ontario, Saint Paul University, 2003, 128).

<sup>431</sup> CONGREGATION FOR THE CLERGY, *Mos Iugiter*.

<sup>432</sup> T.J. GREEN, "Usurpation of Ecclesiastical Functions and Delicts in their Exercise [cc. 1378-1389]," in *CLSA Comm2*, 1590.

<sup>433</sup> "One who violates canon 947 likely commits the delict of canon 1385, which is a species of financial malfeasance. The discipline of canon 1385 applies to everyone who collects Mass offerings. [...] Canon 1385 is also violated when one disregards the discipline of the following canons on Mass offerings: canons 948, 949, 950, 951, §§1 &2, 952, §§1,2,3, 953, 954, 955, §§1,2,3,4 and the discipline for the collective Mass intentions *Mos Iugiter*" (J.A. RENKEN, *The Penal Law of the Roman Catholic Church: Commentary on Canons 1311-1399 and 1717-1731 and other Sources of Penal Law*, Saint Paul University, Ottawa, Ontario, 2015, 297-300).

offerings, but also an illegitimate profit made by the non-observance of the canons that regulate against such abuses. The one accused has to fulfill all the conditions for there to be a delict. For example, there must be a deliberate and willful violation of the appropriate canons, that is, the appropriation of illegitimate profit<sup>434</sup> and the knowledge of this illegitimate appropriation.<sup>435</sup>

With due regard to the legitimacy of such offerings,<sup>436</sup> this canon seems to penalize deliberate violations of the following canons among others: c. 947, which prohibits any appearance of trafficking or trading in Mass offering, and c. 948, which requires that as many Masses be celebrated as offerings are accepted, thereby prohibiting the illegitimate accumulation of such offerings.

The discipline of c. 1385<sup>437</sup> also seems to be violated when one does not also follow what is required by the following canons: c. 950, where an amount of money has been left for the offering of Masses and the will of the donor is not known and the number of Masses to be said is not specified. The number is to be computed on the basis

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<sup>434</sup> Canon 1328. "[...] [I]f the actions or omissions of a person who attempts a delict are by their own nature (*natura sua*) conducive to the execution of the delict which did not occur, a person can be subjected to a penance (c.1340) or a penal remedy (c.1339), unless the person voluntarily stopped carrying out the delict after having begun it. Nonetheless, even if the person voluntarily desisted, the person can be punished with an indeterminate just penalty, but one lesser than the penalty established for the completed delict, if some scandal or other grave damage or danger resulted from the person's act or omission. In this situation of course, before a just penalty can be imposed, a penal preliminary investigation will have occurred, unless such seems entirely superfluous (c. 1717)" (RENKEN, *Penal Law*, 94).

<sup>435</sup> Canons 1323, 2°; 1324 §1, 9°. Canon 1321§1 states: "No one is punished unless the external violation of a law or precept, committed by the person, is gravely imputable by reason of malice or negligence. §2 a penalty established by a law or precept binds the person who has deliberately violated the law or precept; however, the person who has violated a law or precept by omitting necessary diligence is not punished unless the law or precept provides otherwise."

<sup>436</sup> Canon 945 §1.

<sup>437</sup> Also, see reflections on canon 1385 by J.A. RENKEN, "Penal Laws and Financial Malfeasance," in *Studia canonica*, 42 (2008), 5-57; A. MENDONÇA, "Unlawful Use of Money Offered for the Celebration of Mass," in *Studies in Church Law*, 7 (2011), 411-416; V. MATEO, "Trarre profitto illegittimo dall' elemosina della Messa (can. 1385)," in *Quaderni di diritto ecclesiale*, 15 (2002), 315-324.

of the offering established in the place where the donor resides; c. 951, §§1 and 2; c. 952, §§1, 2 and 3; c. 953 and 954; c. 955, §§1, 2, 3 and 4; c. 955, §1, which requires that in the transferring of Mass offerings the entire sum received is to be forwarded unless any excess over the offering determined by law or custom is clearly intended to benefit the recipient of the original offerings.<sup>438</sup> One will also act contrary to the provisions of c. 1385 if he violates the discipline of collective Mass intentions as laid down by the Congregation for the Clergy in the decree *Mos iugiter*, for example, if one were to celebrate collective intentions more than twice a week in his Church.<sup>439</sup>

The *ferendae sententiae*<sup>440</sup> censure or another just penalty for various violations is to be proportionate to their seriousness, for example, risk of scandalizing the faithful and damage to the institutional Church. The penal sanction is obligatory only if all other means to bring the offender to reason have failed, to repair the scandal and restore justice.<sup>441</sup> The sanction is not automatic but has to be imposed by the ordinary or the judge. Here we distinguish between *ferendae sententiae*, which is not “automatic” and *latae sententiae*<sup>442</sup> which is “automatic.”

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<sup>438</sup> T.J. GREEN, "Usurpation of Ecclesiastical Functions and Delicts in their Exercise [cc.1378-1389]," in *CLSA Comm2*, 1590.

<sup>439</sup> CONGREGATION FOR THE CLERGY, *Mos iugiter* (see especially art. 2- §§1, 2&3; art. 3- §§1&2.)

<sup>440</sup> Canon 1314: "A *ferendae sententiae* censure describes one of two forms of penalties namely, that which is imposed by the judgment of the court or by the decree of a superior, when a person has been found guilty of an offence." Canon 1347, §1: "*Ferendae Sententiae* censures require a formal warning by competent penal authority, usually an ordinary, before being imposed validly."

<sup>441</sup> According to Canon 1341, "an Ordinary is to take care to initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, and reform the offender."

<sup>442</sup> Canon 1314: "[...] if the law or precept expressly establishes it [...] a penalty is *latae sententiae*, so that it is incurred ipso facto when the delict is committed."

The full range of canonical sanctions previewed for such a delict comprises practically all those that are found in the code, on condition that they are *just*. In effect, these can be censures<sup>443</sup> or another just penalty. This penal sanction will be just if, in the concrete circumstances in which it has been imposed, it is the only appropriate means to reform the offender, repair the scandal and restore justice.<sup>444</sup>

## 2.7 Gregorian Masses

Gregorian Masses<sup>445</sup> were instituted by Pope Gregory the Great (590-604).<sup>446</sup> The acceptance of Gregorian Masses obliges the uninterrupted daily celebration of a series of

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<sup>443</sup> There are three censures or medicinal penalties: excommunication, interdict, and suspension. These are intended to heal or cure the offender. Excommunication means partial exclusion from communion of the faithful. Canon 1331§1: "An excommunicated priest is forbidden: 1° to take part in the celebration of the sacrifice of the Eucharist or any other ceremonies of worship whatsoever; 2° to celebrate the sacraments or sacramentals and to receive the sacraments; 3° To exercise any ecclesiastical offices, ministries or functions whatsoever or to place acts of governance. §2 If the excommunication has been imposed or declared, the offender: 1° who wishes to act against the prescripts of §1, 1° must be prevented from doing so, or the liturgical action must be stopped unless a grave cause precludes this; 2° invalidly places acts of governance which are illicit according to the norm of §1, 3°; 3° is forbidden to benefit from privileges previously granted; 4° cannot acquire validly a dignity, office, or other function in the Church; 5° does not appropriate the benefits of a dignity, office, any function, or pension, which the offender has in Church. An Interdict has the same sacramental restriction, but not that on governance." Canon 1333: "A suspension which can only strike clerics, it forbids either some or all acts of the power of orders, or power of governance, or the exercise of the rights or functions of the office" (Canons 1333-1334).

<sup>444</sup> Canon 1341: "An Ordinary is to take care to initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, and reform the offender."

<sup>445</sup> For a summary of the present teaching of the Church on the Gregorian Masses, see J. GONZALEZ, "Gregorian Masses: Is There Any Recent Modification on the Church Teaching," in *Boletín Ecclesiástico de Filipinas*, vol. LXXXII, no. 855 (2006), 701-704. See also E.F. REGATILLO, "Interrupción de las Misas gregorianas," in *Sal Terrae*, 1968, 389-392; E.F. REGATILLO, "Misas Gregorianas," in *Sal Terrae* (1969), 730.

<sup>446</sup> "St. Gregory, after the death of a certain monk, ordered thirty consecutive Masses for his soul. Upon completion of the Masses, the soul of the departed monk appeared to someone in the monastery and declared that he had been delivered from Purgatory in virtue of the Masses" (T.F. McMAHON, "Gregorian Masses: A Comprehensive Study," in *Homiletic and Pastoral Review*, 67 [1966-1967], 46-53). See also M. HUFTIER, "Le Trentain et la messe pour les vivants," in *Ami du Clergé*, 78 (1968) 55-56; M. HUFTIER, "Sur le Trentain," in *Esprit et Vie*, 80 (1970), 679.

Masses for the dead for a period of thirty consecutive days.<sup>447</sup> Because of the extra burden incurred and the serious obligation in accepting to celebrate Gregorian Masses, the amount for the Mass offering is usually higher than the customary stipend determined by particular law. The Masses cannot be celebrated two or three times on the same day, even though extended to thirty days, a substitute must be found for the continuous uninterrupted<sup>448</sup> series, and the thirty Masses cannot be celebrated by many priests within a few days. On 24 February 1967, the Sacred Congregation of the Council (now the Congregation for the Clergy) made a clarification with regard to the question of Gregorian Masses in its Declaration *Tricentenario Gregoriano*. Among other things, it said that for reason of unforeseen circumstances, such as illness, or for any other reasonable cause like a funeral or marriage, an interruption<sup>449</sup> may arise in the continuous celebration of Gregorian Masses. The fruits of these suffrages recognized by the praxis of the Church and the piety of the faithful are not lost, but the obligation still remains for the priest to complete as soon as possible the celebration of the thirty Masses. The Ordinary has to see to it that no abuses are committed in such an important issue.<sup>450</sup> Other regulations regarding the celebration of Gregorian Masses that are to be followed include the fact that these Masses can be celebrated on any altar, and the Masses can be said by

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<sup>447</sup> A. MARZOA, "The Blessed Eucharist," in *CCLA*, 735. "Gregorian Masses are a series of thirty Masses said on thirty consecutive days. It is required that the Masses be said for a deceased person and only one not several deceased persons" (M.J. MATHIS and N.W. MEYER, *The Pastoral Companion*, 58).

<sup>448</sup> "If the interruption is culpable, the series is to be begun anew, unless the donor of the stipend permits the opposite. If, however, the interruption is not culpable, the priest is probably not bound to begin the series anew, but it seems to suffice if he simply completes the remaining number of Masses. [...] "The last three days of Holy Week do not interrupt the Gregorian sequence, and hence the series may be interrupted on these days, and begun again on Easter Sunday" (M.J. MATHIS and N.W. MEYER, *The Pastoral Companion*, 58).

<sup>449</sup> E.F. REGATILLO, "Interrupcion de las misas gregorianas," in *Sal Terrae*, 56 (1968), 389-392.

<sup>450</sup> SACRED CONGREGATION OF THE COUNCIL, declaration, *Tricentenario Gregoriano*, 24 February 1967, in *AAS*, 59 (1967) 229-230, English translation in *CLD*, vol. VI, 559.

one or different priests. The obligation, however, is not fulfilled by distributing the Masses among various priests and applying them in a few days. They are to be celebrated in thirty consecutive days. The thirty Masses should be applied for the suffrage of only one soul.<sup>451</sup>

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<sup>451</sup> GONZALEZ, "Gregorian Masses," 704.

## Conclusion

In our study of the canons on the Mass offering, we discovered continuity between the old law and the present law, but especially a remarkable shift and improvement in the linguistic presentation of the Mass offering system in the present law. This is most noticeable in the shift from the contractual language of the former code to one that speaks more of the offering given for the celebration of Mass. The present law emphasizes the notion of a freewill donation or gift. This linguistic precision derives its significance from the custom which is at the origin of the Mass offering system, which goes back so many centuries, whereby the faithful who took part at the celebration of the Eucharist, provided the bread and wine to be offered for the Eucharistic celebration. The present law, therefore, retains the word “gift” in describing the Mass offering system in order to demonstrate that the Mass offering system deals with the freewill donations of the faithful on the occasion of the celebration of Mass. The former code used the word “stipend” which could give the impression of a business transaction, or a *do ut facias* contract, an idea which is foreign to the very institution of the Mass offering system.

Furthermore, there is a considerable reduction in number of canons in the present code, compared with the former. In continuity with the strict discipline of the old law regarding the offering given for the celebration of Mass, the present law also reiterates the fundamental principle that should govern the entire Mass stipend system, that of avoiding any appearance of trafficking with the Mass offering system and the celebrant can only accept one offering a day to apply the Mass for a specific intention of the donor, just as was the case in the former law, even as it is now legitimate, in the present law to celebrate a “collective” Mass intention. Following logically and directly from such a

principle, separate Masses are to be applied for the intentions of those for whom a single offering, although small, has been given and accepted so that there will be as many Masses said as were stipends that were given and accepted. Moreover, the law prescribes that the celebration of extra Masses ought to be forwarded to other priests, whom one has no doubt that they will fulfill the obligation, to whom also the corresponding amount for the Mass offerings must be transmitted. The code strongly recommends that each priest should keep a personal register of the Masses he has received, those he has discharged and those he has forwarded to other priests with the corresponding amount for the Masses. The local Ordinary or his delegate has the responsibility to regularly inspect these registers.

In principle, in canon law as well as civil law, prescription is a way of acquiring or losing a subjective right, or again a way of freeing oneself from obligations. The Church establishes an exception to this right as regards the Mass offerings. Once an offering has been given and accepted for the celebration of one or many Masses, the one who accepted such a responsibility is bound to fulfill this duty even if the offerings have been lost through no fault of his own. It is the case of priests who have an obligation in justice to satisfy any obligations deriving from Masses celebrated with invalid matter especially regarding the application of Masses offered for the intentions promised by a stipend.

Were a priest to transfer the obligation to celebrate to another priest, he is also obliged to give the corresponding amount of money to him. This norm is in accord with the strictness of the Church's stance in regard to the faithful fulfillment of all Mass obligations whether they arrive from freely accepted offerings or from legitimately

established foundations. The code contains appropriate sanctions against all those who illegitimately profit from Mass stipends. They are to be punished with a censure. The priest and all those involved with the handling of Mass intentions moneys are therefore encouraged to carefully observe the law and to celebrate Mass for the intentions of the faithful, especially those in need, and even those from whom he has not received offerings.

The provincial council or the meeting of bishops of a province is to issue a decree regulating the amount of the Mass offering for their dioceses. Everyone is bound by this decree. The decree is also to determine the destinations of extra Mass offerings. The competent ecclesiastical authorities are to see to it that Mass obligations are faithfully discharged and that Mass registers are periodically inspected. In order to meet the regularly occurring diocesan financial needs, the diocesan bishop is to exclude Mass offerings from the diocesan tax.

Even though the custom of Mass offering has undergone a long and problematic, often turbulent history within the life of the Church, it is still a worthwhile custom to be maintained, because such a custom is spiritually beneficial to the faithful since they add something of their own effort to the Eucharistic sacrifice of the priest who offers it on their behalf, thereby associating themselves more closely to the sacrifice of the priest and as such derive more spiritual benefits from the Mass. Such a custom assures the decent support of many priests, especially those in the poor regions of the world, who still depend on Mass stipends for their daily sustenance and if only for this reason, such a custom should be maintained, notwithstanding any abuses it might have known in history.

Because this custom involves the use of money, some authors have argued for its complete elimination or abolition. However, this use has continuously survived in the Church because the Church has legally sanctioned this custom. Without a legal approach on the part of the Church, one can imagine the disorder that would have prevailed in this practice. As such, the Church regulates the custom very strictly. Even though lacking solid theological arguments, the custom of Mass offerings in the Church is one that persists, because of its historical-anthropological and sociological significance, and also its biblical, and deep Christian significance.

Through a thorough catechesis of both the priests and the lay faithful regarding the use of Mass offerings, such a custom will be fostered. To achieve this, groups of persons are to inform themselves about the existing laws and practices of the Church regarding this institution. Contempt and disregard for the laws can only lead to a depreciation, abuses, misunderstanding and subsequent disappearance of such a custom. A proper understanding of the custom of Mass offerings, based on an equitable application of the norms, and a willingness to consult with experts of the law, will only work for the greater good of the Church and her activities, and the well-being of the Church's ministers. The custom of Mass offerings promotes a more active participation in the liturgy, communion of the faithful with God and with one another, especially when they offer collective intentions, and also communion with their priests, on whose behalf they perform their ministry, and for this reason such a custom should be maintained.

## CHAPTER THREE

### THE JURIDIC NATURE OF MASS STIPENDS

#### Introduction

The immemorial custom of giving an offering, a stipend, or an "honorarium" to a priest, consisting mostly of a cash donation but also sometimes a donation in kind, so that the priest may celebrate Mass for the donor's special intention, has not been without its complex juridical problems, particularly in view of the affirmation of this custom in the present universal law of the Church. From the earliest existence of this custom, the good of the Church and the support of the clergy<sup>452</sup> have always been the principal purposes for which Mass stipends were given.<sup>453</sup> Despite the reaffirmation of this ancient practice in the present universal law of the Church, there have been a number of juridical problems associated with this custom. In the past so much attention and energy had been given to the issue of trying to resolve the appearance of simony in Mass stipends, the main juridical problem being the difficulty to devise a convincing logical understanding and explanation of the system that would avoid the charge of simony.<sup>454</sup> The reason for the anxiety of simony surrounding Mass stipends is obvious because, from every external

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<sup>452</sup> For a study in work compensation in spiritual functions and simony of divine law, see A. NOTHUM, *La remuneration du travail inherent aux fonctions spirituelles et la simonie de droit divin*, JCD diss., Rome, Pontificia Universitas Gregoriana, Libreria Editrice dell'Universita Gregoriana, 1969.

<sup>453</sup> Canons 945, §1 and 946 of the present code affirm both the legitimacy and the twofold purpose of the centuries-old custom of Mass stipend. On the one hand, the money that the priest receives for celebrating Mass for a specific intention was essentially his source of income or support. At the same time, by giving a stipend, the person requesting that Mass be celebrated for his intention makes a sacrificial offering of his own, and through that offering, supports the ministers of the Church and the Church's activities, and unites himself more closely to the sacrifice of the priest, whereof he obtains more abundant fruits from the Mass.

<sup>454</sup> Canon, 727, §1 of the 1917 Code states: "The studious intention of buying or selling for a temporal price any intrinsically spiritual thing, or any temporal thing annexed to the spiritual in such a manner that the spiritual thing is even the partial object of the contract, is simony in the Divine Law." For further treatment of the question of Simony, see R.A. RYDER, *Simony, CLS*, no. 65, Washington, DC, Catholic University of America, 1931.

indication, the transaction appears to be like an attempt at “buying” the fruit of the Mass, since the donor gives the stipend so that the priest may apply the fruit of the Mass for the donor's intention.<sup>455</sup> There is no doubt that the Mass stipend provides necessary financial support for priests, as indeed there are many priests around the world today whose only source of financial income comes from Mass stipends. This noble, praiseworthy, and laudable intention of the Church does not provide sufficient reason in itself to dispel the suspicion that such a transaction may bear the taint of simony.<sup>456</sup> Neither is it enough to rely on the mere fact that this custom has been approved and sanctioned by ecclesiastical authority. How can it be explained convincingly that a Mass intention could be conjoined with the payment of money without such a transaction constituting simony?<sup>457</sup> The law explicitly forbids any kind of contractual transaction or bartering regarding the celebration of the sacraments, and forbids a priest contracting with anyone to celebrate the sacraments.<sup>458</sup>

For a number of centuries, canonists and theologians have grappled with the difficulty of vindicating the custom of Mass stipends from all charge of simony. Such attempts have provided an extraordinary diversity of opinions and theories. Some authors

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<sup>455</sup> Since the priest is bound in justice to say Mass for every stipend that he receives, and the donor is also bound in justice to give the stipend for the celebration of the Mass, what is the difference between this transaction and a contract of sale and hire? Why is such a transaction not simony, since it bears upon a spiritual thing, the celebration of Mass?

<sup>456</sup> "If then the ultimate purpose of my stipend for the support of the priest were sufficient by itself alone to eliminate from the contract about the application of the mass all reproach of simony, it should also suffice to eliminate it from all other contracts bearing on indulgences and the sacraments: which is not the case" (M. de la TAILLE, *The Mystery of Faith and Human Opinion Contrasted and Defined*, London, Sheed and Ward, 1930, 88).

<sup>457</sup> T. McDONNEL, "Stipends and Simony," in *The Irish Ecclesiastical Record*, 53 (1939), 593-612, 593.

<sup>458</sup> Canon 1380 of the 1983 Code forbids the celebration or reception of a sacrament through simony which is punishable with an interdict or suspension.

have maintained that the obligations incumbent on both the donor and the priest is one of strict justice,<sup>459</sup> and as a result of this have put forth a diversity of bilateral contractual juridic theories to designate this relationship.<sup>460</sup> Others have called this relationship merely one of moral obligation and have proposed non-contractual (extra-contractual) juridic theories to explain this relationship and the nature of obligations.<sup>461</sup> Still others have maintained that the relationship is a unilateral contract<sup>462</sup> in that the donor only promises to pay the stipend to the priest and the priest does not celebrate the Mass for the donor's intention until the stipend is paid.<sup>463</sup> Some other authors have simply argued that since this custom presents difficulties and insoluble problems, it would have been better if this custom is eliminated and other means of support of the clergy explored that have nothing to do with the celebration of Masses.

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<sup>459</sup> "Such an arrangement binds both parties in strict justice according to the universal opinion of theologians. This opinion must be maintained; the practice itself demands it. The priest is bound in strict justice to offer Mass for every stipend received, which obligation can obviously arise by pre-arrangement as well as by actual payment of the stipend. But if, as a result of mutual consent, the priest has an obligation of strict justice to apply Mass, it must follow that the other party to the consent has a corresponding obligation binding him to the payment of the stipend. Otherwise the priest's obligation could not be accounted for. In this practice of giving stipends for Masses we are therefore confronted with the engagement whereby the priest is bound to offer Mass in favour of one of the faithful, and the latter is bound to pay to the priest a sum of money, both being bound in strict justice" (T. McDONNEL, "Stipends and Simony," 593).

<sup>460</sup> P.Z. VARALTA, *Natura guiridica del rapport di offerta di "stipendium Missae"*, JCD thesis, Rome, Pontificium Institutum Utriusque Iuris, 1942. He argues in favour of the Mass stipend being one kind of bilateral contract, the Roman *locatio operis*, that is a hiring contract for services.

<sup>461</sup> Non-contractual theories of the juridic nature of Mass Stipends include the following theories: the theory of moral obligation, the theory of natural obligation, the theory of obligation *ex lege*, the theory of tax and the quasi-contract theory. Authors who belong to this class make use of the biblical principle that the labourer deserves his wages (1Tim. 5:18) or the natural law principle that those who serve others should be supported by those others.

<sup>462</sup> Unilateral contractual theories of Mass stipends are the following theories: the theory of modal donation, the theory of conditioned donation, the theory of pure donation and or concurrent donation, and the theory of the mandate.

<sup>463</sup> Del Guidice and De la Taille both belong to the class and maintain the mandate theory and the mandate with deposit theory respectively. A unilateral contract, as the name suggests, is a one-sided contract, that is, one person makes a promise to do something while the other does not act immediately. Rather the other party will act in the future. In a unilateral contract, one party pays the other to perform a certain duty, the donor pays the priest the Mass stipend so that the priest can carry out the celebration of Mass for the donor's intention.

Without repeating the work undertaken by others,<sup>464</sup> the present chapter, which offers a selective presentation of the juridic theories proposed, has been divided into three broad categories: extra-contractual theories, unilateral contractual theories, and bilateral contractual theories. We aim to arrive at the most appropriate juridic approach of Mass stipends that does justice both to current legislation and to the history of the custom. Before undertaking such a task, it will be helpful to make a brief study of the civil law notion of gifts and contracts since these notions have a direct bearing on our subject matter. It is to the civil law presentation of gifts and contracts that we now turn.

### 3.1 Contracts and Gifts in Civil Law

In civil law, the notion of contracts<sup>465</sup> is usually treated under the section of the law dealing with the law of obligations. The term obligation in private civil law systems (common law) denotes the legal relationship or the bond that exists between two persons in such a way that one person is obliged towards another to carry out certain duties in favour of the other or of a third party, or to refrain from performing certain acts. This relationship results in reciprocal rights and duties, on the one hand, the obligation or duty to perform or refrain from doing certain acts and, on the other hand, the right to expect

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<sup>464</sup> See, for instance, P.Z. VARALTA, *Natura guiridica di "stipendium Missae,"* 229. In a critical exposition and examination of the diverse theories, all based, of course, on the 1917 code, he divided these theories into three categories: extra-contractual theories, unilateral contractual theories, and bilateral contractual theories, and argues in favour of the Mass stipend being one kind of bilateral contract, the Roman *locatio operis*, that is, a hiring contract for services. All these theories as proposed by Varalta had as a common purpose to devise a logical or rational understanding of the system of Mass stipends which could avoid the appearance of simony. See also T. McDONNELL, "Stipends and Simony," in *Irish Ecclesiastical Record*, 53 (June, 1939), 593-612; 54 (July August, 1939), 35-57 and 159-176.

<sup>465</sup> "An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law" (B.A. GARNER [ed.], *Black's Law Dictionary*, St. Paul, MN, West Publishing Co., 2011, 158).

certain duties in one's favour.<sup>466</sup> Obligation encompasses both sides of the equation: the obligation or duty to render or perform a service and the right of the other to expect a duty or a service or favour. Obligation, therefore, arises from the law itself, and establishes the necessity of the debtor to give, to do or to refrain from doing certain acts with respect to the other. In Roman law, obligation pertained to the rights of a person that could be assessed in monetary terms. Family relations and rights stemming from public law<sup>467</sup> were not considered under the law of obligations.<sup>468</sup> The presupposition of mutual agreement (consent) is, therefore, central to the whole notion of contract law. A contract is said to be a promise or a set of promises the breach of which the law gives some kind of remedy, or the performance of which the law in some way recognizes as a duty.<sup>469</sup> In law, a gift consists in the transfer of property or a patrimonial right that has a monetary value from one person to another so that the donor receives no benefit in return. The

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<sup>466</sup> M. HOGG, "Saying What We Mean: Fundamental Structural Language in Contract Law," in L.A DIMATTEO and M. HOGG (eds.), *Comparative Contract Law*, United Kingdom, Oxford University Press, 2016, 15-16.

<sup>467</sup> Public law (*ius publicum*) is that part of law which governs relationships between the citizens and the state, and those relationships between citizens which are of direct concern to the society, the public interest or the common good. Public law comprises constitutional law, administrative law, tax law, criminal law, and procedural law. In public law, mandatory rules prevail. Laws concerning relationships between citizens themselves belong to private law. The relationship that public law governs are asymmetrical and unequal - government bodies (central and local) can make decisions about the rights of citizens. However, as a consequence of the rule of law doctrine, authorities may only act within the law (*secundum et intra legem*). The government must obey the law. For example, a citizen unhappy with the decision of an administrative authority can ask the court for judicial review (E. ZOLLER, *Introduction to Public Law: A Comparative Study*, The Netherlands, Martinus NIJHOFF Publishers, 2008).

<sup>468</sup> G. MOUSOURAKIS, *Roman Law and the Origins of the Civil Law Tradition*, Springer International Publishing, Switzerland, 2015, 126-128. "Obligation may otherwise be defined as a bond recognized by the law (*iuris vinculum*) in terms of which one party, the creditor (*creditor*), had a personal right (*ius in personam*) against the other party, the debtor (*debitor*)" (*ibid.*, 126).

<sup>469</sup> K. O'BRIEN, *The Nature of Support of Diocesan Priests in the United States of America, a Historical Synopsis and a Commentary*, CLS no. 286, Washington, DC, Catholic University of America, 1949, 43.

essential element characterizing any gift is the need to have a transfer of property or money from the donor to the person who accepts or receives the gift.<sup>470</sup>

### 3.1.1 Elements of Contracts

The principle of mutual consent or agreement is affirmed in the common law's concept of contracts, by which the contracting parties (the one who makes the *offer*, and the one who *accepts* or *agrees to* what is offered) mutually agree and objectively manifest their intention that, as a result of their transaction and interaction with one another, a contract is brought about that has legal binding force.<sup>471</sup> In modern law, in contradistinction to Roman law, there is a further requirement that the agreement should have an element referred to as the reason or cause for the contract.<sup>472</sup> The mutual agreement of the contracting parties must be capable of being objectively manifested, that is, their intention to enter into a contract that binds both of them can be objectively verified.<sup>473</sup> The parties to the contract must have the intention to conclude a contract, that is, a legally binding agreement, but it is not necessary that they agree upon all the essential terms and details of the contract. Certain essential terms of the contract may be

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<sup>470</sup> <http://www.justice.gc.ca/eng/rp-pr/csjs-sjc/harmonization/siroi/gift2-don.html>.

<sup>471</sup> P. BENSON, *The Theory of Contract Law: New Essays*, Cambridge University Press, UK, 2001, 138-163. "English law holds that a contract is formed if the parties reach **agreement** as to something (the subject matter of the contract), supported by **consideration** (something of value given in exchange for the promise) and the **intention to create legal relations**. If any of these elements is not present, then no contract will have been formed" (T.T. ARVIND, *Contract Law*, United Kingdom, Oxford University Press, 2017, 17-18).

<sup>472</sup> Mousourakis distinguishes four such causes for a contract. (i) *contractus re*, contracts that were constituted by agreement and the transfer of a thing; (ii) *contractus verbis*, contracts that were constituted by agreement and the use of certain formal words; (iii) *contractus litteris*, contracts that were constituted by agreement and formal writing; (iv) *contractus consensu*, contracts constituted by agreement without any thing further (G. MOUSOURAKIS, *Roman Law*, 128-140).

<sup>473</sup> "Contracts can be entered into in writing, orally (either over the phone or in person), and in a range of other ways" (T.T. ARVIND, *Contract Law*, 17).

implied or be explicit by the nature of the contract itself. However, the principle of mutual consent, by which the contracting parties freely consent to create or form one or more legal obligations between themselves, is so important and indispensable for the determination later on of the enforceability of such a contract.<sup>474</sup>

Juridically, the concept of contract will normally involve three essential elements or features in the formulation or formation of non-formal contracts. These elements include:

- (i) The *offer* to do or refrain from doing something on the part of the one who offers, for example, the offer to sell a car for an amount of money.
- (ii) Then, the *acceptance* by the one agreeing to the offer, for example, one agrees to purchase the car from the seller for the stated amount of money. *Acceptance* must have a final unqualified expression of assent to the terms of the offer.
- (iii) *Consideration* which constitutes what is being exchanged, in this case a car. This is what constitutes the swapping of things. If there is nothing to be exchanged, then there is no consideration.<sup>475</sup>

When there is a contract there has to be intent. If you have no intention to enter into a contract then there is no contract.<sup>476</sup> For a contract to come about, there must be an

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<sup>474</sup> T.D. CRANDAL, and D.J. WHALEY, *Cases, Problems, and Materials on Contracts*, 4<sup>th</sup> ed., Aspen Publishers, New York, 2004, 1.

<sup>475</sup> *Ibid.*, 131.

agreement of the minds of the contracting parties. Contracts are enforceable by law (recognizable at law as a duty), i.e. there is a legal remedy in the case where one party to the contract fails to honour the terms of the contract. Contracts usually have three stages: the preparatory stage, in order to arrive at a definite contract; the perfection stage, which is the meeting of minds as to the subject matter, the cause or consideration, the terms and conditions of the contract; and, finally, the consumption stage, which is the fulfillment of the terms and conditions agreed upon.<sup>477</sup>

Consideration is the exchange or price requested and received by the one who makes the offer for the promise. Consideration is “a detriment incurred by the promisee at the request of the promisor as the price for the promise, or the benefit received by the promisor.”<sup>478</sup> Detriment here is used in a juridic sense as opposed to detriment of fact. Juridically, it means the surrendering of something which before one had the privilege to keep on doing, or refraining from something which before then one was privileged to do. Benefit means receiving as the exchange for his promise some performance or forbearance which the one who accepts the offer was not previously entitled to.<sup>479</sup>

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<sup>476</sup> For example, someone wishing to sell his/her car for a given price, and another person wishing to buy the same car for a different price. Here, there is no meeting of the minds because the same thing offered has to be the same thing accepted. The price of the one offering does not match or agree with the price of the one who is wishing to buy, hence there is no intent here and, therefore, no contract.

<sup>477</sup> CRANDALL and WHALEY, *Cases*, 131.

<sup>478</sup> O'BRIEN, *The Nature of Support of Diocesan Priest*, 44.

<sup>479</sup> *Ibid.*

Consideration is the essence of the contract and it is not so if both parties do not regard it as such. “It would seem [...] that a consideration not reducible to a monetary value is to be wholly disregarded in contracts that involve a payment of money, which money thereby ceases to be received by reason of a contract, but is received rather by reason of a gift.”<sup>480</sup>

For a contract to exist, therefore, the parties have to determine the actual consideration and make it the object of their agreement. It is that which is given in exchange for the promise. Furthermore, the law gives effect to such a consideration if the thing given in exchange is considered legally sufficient. Motive, emotions, and love cannot be consideration. In consideration, the question posed is whether something is being given back. A promise motivated exclusively by a sense of moral obligation is simply a matter of voluntary action and is not a sufficient factor to give rise to a valid contract.<sup>481</sup>

Every true contract can be enforceable by juridical action. An expressed contract is one in which the intention of the parties and terms of agreement are declared or expressed by the parties in writing or orally at the time the contract is entered into. An implied contract may be (i) implied in fact, or (ii) implied in law. In the case of implied contracts in fact, there must be assent of the parties as in expressed contracts, while in the case of contracts implied in law, or more properly quasi-contracts, the obligation arises not from the consent of the contractants but from the law or natural equity.<sup>482</sup>

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<sup>480</sup> Ibid., 45.

<sup>481</sup> Ibid., 47.

<sup>482</sup> Ibid., 47-48.

Contracts implied in fact show a mutual intent to contract. Contracts implied in law or quasi-contracts constitute a class of obligations which are created by law, not in consequence of the consent of the party who is bound, but on the ground that they are dictated by reason and justice, and thus they lend themselves to becoming enforced by an action *quasi-ex contractu*. They rest solely on legal fiction; the obligation arises, not from consent, but from the creation of the law.<sup>483</sup>

### 3.1.2 Elements of a Gift

The concept of “gift” is one that is widely understood in the word itself and has received recognition and approval in many different legal systems. In civil law, a gift is considered a voluntary or willful transfer of property from one person to another without a legally sufficient consideration.<sup>484</sup> Civil law, however, acknowledges the existence of the sub-classification of a “remunerative gift” which is a gift for which the purpose is voluntary in order to compensate for the services rendered when there is no obligation, either statutory or contractual.<sup>485</sup> “Remuneration refers here to the motive on account of which the gift is made, which does not include any contractual relation with a legally sufficient consideration.”<sup>486</sup> It should be noted here, however, that the wording of the former code treated Mass stipends as some sort of “remunerative gift” and as a

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<sup>483</sup> Ibid., 48.

<sup>484</sup> Ibid., 53.

<sup>485</sup> Ibid.

<sup>486</sup> Ibid.

consequence gave the impression that Mass stipends were some kind of quasi-contractual compensation, or a remunerative gift.<sup>487</sup>

In civil law, remuneration can be the result of a contract and thereby a contractual compensation or it can be a voluntary gift. There is a certain equivocation here in civil law when it uses the term remuneration. It can mean gift, which consequently is non-contractual, or it can mean compensation, which is contractual. Hence the sub-classification of gift in civil law of “remunerative gift” can be misleading when applied to Mass stipends because it leaves a certain equivocation. However, as clearly stated in the canons of the present code of canon law, the Mass stipend is not some sort of “remunerative gift,” but it is a free gift that is offered to the priest for his support, and it is given not on grounds of any compensation or remuneration but on the occasion of the celebration of Mass as an approved custom.

The essential elements of a gift required in civil law are the following:

- (i) There must be a donor. Someone must have the intention to give something to another (donor to donee).
- (ii) The donor must be competent to make a gift. Competence here means the legal capacity in law to be able to make the gift.
- (iii) The donor must have the intention to make a gift, i.e., voluntary transfer of property without any legal consideration.
- (iv) There must be a delivery of the subject matter of the gift, which may be direct or indirect.

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<sup>487</sup> Ibid.

- (v) The absence of any legal consideration. A gift is an act of gratuity. An act of generosity to be free requires by its nature the absence of any consideration. If there is a legally sufficient consideration for the transaction, then it is not a gift but a contractual compensation.
- (vi) There must be someone competent in law to accept or receive the gift.
- (vii) The recipient must accept the gift.

If the transfer of property from one to another is as a result of a contract, then this is a contractual compensation. If there is no contractual relation between the parties, if there is no consideration or contractual obligations on the part of the recipient, then the transfer will constitute a gift.<sup>488</sup> As far as a gift is concerned, therefore, there must be an offer on the part of the one who is making the gift, such as a particular amount of money or item as gift. Then there is the acceptance on the part of the one who is receiving the gift, such that one accepts the particular amount of money or item offered. Here there is no consideration because there is nothing given back in return on the part of the one who accepts to receive the gift or what is being offered. Finally, there has to be actual transfer of the gift or property.

### **3.2 Simony**

Since the giving of a Mass stipend to a priest for the celebration of Mass for the donor's intention bears the semblance of a simoniacal transaction, a brief reflection on the

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<sup>488</sup> O'BRIEN, *The Nature of Support of Diocesan Priests*, 55.

notion of simony will be in order. Theologically, the expression simony<sup>489</sup> is the keenness and willingness (the desire and intention) to buy or sell for a temporal price, things that are intrinsically spiritual, things which have a spiritual value attached to them, or objects annexed to spiritual things. More broadly, it is to enter into any contract of this kind to sell or buy spiritual things that is forbidden both by divine and ecclesiastical law.<sup>490</sup> It is Catholic Church teaching that a priest cannot sell or contract to sell the application of Mass in exchange for the Mass stipend money, for if he were to do so, this will constitute a grave violation of the law.<sup>491</sup> However, there can be no doubt that the application of Mass is a spiritual act, and that the Mass stipend is something temporal.<sup>492</sup> We are therefore confronted with two terms required for a transaction to be simoniacal, even if we maintain that the money for Mass stipends is not necessarily intended to be the sale price or the equivalent of the application of the fruits of the Mass. It has been maintained that this exchange is not simoniacal on the grounds that the Mass stipend is not intended

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<sup>489</sup> This expression takes its origin from Acts 8:9-24, wherein is recorded the apostle Peter's confrontation with the sorcerer and magician Simon Magus who attempted to buy with money the spiritual powers of the Apostles of conferring the gifts of the Holy Spirit. Peter condemned his intention and asked him to repent of this evil act.

<sup>490</sup> "Simony is the attempt to buy or sell spiritual things for material benefit [...]. It is, in effect, an attempt at bribery" (J.H. PROVOST, "Ecclesiastical Offices [cc. 145-196]," in *CLSA Comm2*, 206).

<sup>491</sup> "Simony of the divine law is a deliberate design of buying or selling for a temporal price, such things as are spiritual in themselves or annexed to spirituals; or of making the spiritual thing at least the partial object of the contract [...] in such transactions, spiritual things are measured in terms of temporal goods, when in reality they are beyond all worldly evaluation. Hence there is sufficient profanation of a sacred thing to constitute a real sacrilege" (R.A. RYDER, *Simony: An Historical Synopsis and Commentary*, *CLS* no. 65, JCD thesis, Washington DC, Catholic University of America, 1931, 52).

<sup>492</sup> Sacramental simony means "an explicit or implicit and externally manifest agreement whereby one party deliberately agrees to confer a sacrament on another in exchange for some temporal good, e.g., money or property. The delict essentially is the deliberate intent to equalize the spiritual and the temporal, i.e., to deal commercially in sacred things. However, this is not verified regarding the legally regulated offerings of the faithful for the celebration of the Eucharist or other sacraments (cc. 945-958; 1264)" (T.J. GREEN, "Sanctions in the Church [cc.1311-1399]," in *CLSA Comm2*, 1587).

to be the sale price for the Mass.<sup>493</sup> To hold such a position requires one to maintain that every exchange of a spiritual thing for money will be justified on the grounds that it was not subjectively intended to be a sale contract, since an intention is necessary to make the exchange simoniacal.<sup>494</sup> The sale contract is not constituted by a subjective attitude on the part of those who enter it, but by an agreement to exchange two things, and in the case of simony a spiritual thing or service, for a temporal price. Nothing more than this is required in order that a transaction be simoniacal. If, in effect, there is an agreed exchange of two things, the one temporal (the Mass stipend) and the other spiritual (the application of the special fruits of the Mass for the intention of the donor), we are to presume the presence of simony until the contrary is shown to be so. No direction of intention will save the transaction of Mass stipends from avoiding the appearance or charge of simony. The question, then, is whether the exchange may avoid the semblance of simony. From the foregoing, it is clear that the "bilateral agreement" to apply Mass and to pay the stipend is, at face value, simoniacal. It will not suffice to say that the money is subjectively intended for the sustenance of the priest. Such a direction of the intention will not alter the nature of the transaction, just as it would not make any contract of sale or hire to be something different.<sup>495</sup>

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<sup>493</sup> "Though the law expressly permits the acceptance of stipends on the occasion of the celebration of mass, the Church forbids all forms of commercialism in their collection and distribution. The provision of the code is little more than an echo from the Council of Trent, which commanded bishops to safeguard the Holy Sacrifice from avaricious irreverence, exactions of alms, and everything else which might stain mass stipends with the taint of simony or venality. Even the appearance of negotiation or commercialism should be absent from mass stipends" (RYDER, *Simony*, 107-108).

<sup>494</sup> "It is not a question whether the morality of a sale is determined by the intention [...] It is a question whether an exchange may avoid being a sale if it is not intended as such, if the one thing is not intended to be the price of the other [...]" (McDONNELL, "Stipends and Simony," 594).

<sup>495</sup> McDONNELL, "Stipends and Simony," 595-596.

We shall now proceed with the examination of some juridic theories which, as noted above, seek to account for the absence of simony in the Mass stipend transaction. Juridic theories about the nature of the Mass stipends can broadly be divided into three groups, that is, the non-contractual theories (i.e., no contract/agreement is involved with the Mass stipend transaction), the unilateral contractual theories (i.e., that this transaction is a one-sided contract), and the bilateral contractual theories (i.e., this transaction has all the elements of a mutual contract).

### 3.3 Non-Contractual Theories

Included in this group of non-contractual theories are the theory of moral obligation, the theory of natural obligation (natural law), the theory of the obligation "ex lege,"<sup>496</sup> the theory of the tax,<sup>497</sup> and the quasi-contract theory. These theories have as a common characteristic, namely, the fact that the juridic nature of the Mass stipend is expressed in a negative way: the giving and receiving of Mass stipends is not bound by any contractual relationship. The source of the obligation is not in any contract. There is no need to establish a contract between the donor and priest in order to establish the obligation of the faithful to support the priest. A contract does not necessarily form part of the Mass stipend transaction, since the obligation stems from other sources. We shall

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<sup>496</sup> The obligation *ex lege* means that by virtue of the law (the obligation to support priests is created by the law itself and not by any contract), or legal justice, the faithful are legally bound to give the priest the Mass stipend who is also legally bound to celebrate Mass for the intentions of the faithful. This theory takes its force from the letter to the Corinthians where the author maintains there that those who proclaim the gospel should receive their living from the gospel, i.e. those who serve others should be supported by those others (1Cor. 9:14).

<sup>497</sup> See CAPPELLO, *De Sacramentis*, I, 586; S. MANY, *De Missa*, 85. Canon 1234, §1 of the 1917 Code identify the words *taxa* and *eleemosyna* as being of the same voluntary nature. This theory maintains that the Mass stipend is a voluntary tax which the faithful make to the priests.

examine three of these theories: the theory of natural obligation (natural law), the theory of moral obligation, and the quasi-contract theory.

### 3.3.1 The Moral Obligation

Generally speaking, when someone says of an act that it is a "moral obligation," they refer to a belief that the act is one prescribed by their set of values or morality. The theory of moral obligation holds that it is a duty which one ought to perform in conscience, but which one is not legally bound to fulfill. The obligation arises not from laws that have been promulgated, but from natural right, and the moral obligation of the faithful to support priests. These obligations are of two kinds. The first kind are those founded on natural law, such as the obligation to be charitable, which can never be enforced by law. The second kind are those which are supported by a good or valuable antecedent consideration, such as when a man owes a debt barred by the act of limitations, that cannot be recovered by law, though it subsists in morality and conscience. If the debtor promises to pay it, the moral obligation is a sufficient consideration for the promise, and the creditor may maintain an action of assumpsit<sup>498</sup>, to recover the money.<sup>499</sup>

The theory of moral obligation acknowledges and recognizes, among the faithful who give a stipend to the priest, a simple relationship of fact, a moral obligation or

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<sup>498</sup> An expressed or implied promise, not under seal, by which someone assumes or undertakes an obligation to another person to do some act or pay something to another. The promise may be oral or in writing, but it is not under seal. It is expressed when the person making the promise puts it into distinct and specific language, but may also be implied because the law sometimes imposes obligations based on the conduct of the parties or the circumstances of their dealings. it could also mean a common-law action for breach of such a promise or for breach of a contract (B.A. GARNER, *Black's Law Dictionary*, 53).

<sup>499</sup> "A duty that is based only on one's conscience and that is not legally enforceable, an obligation with a purely moral basis, as opposed to a legal one" (B.A. GARNER, *Black's Law Dictionary*, 529).

religious duty which lawfully expresses the non-judicial obligation or relationship which the priest assumes and from which he frees himself in conscience only after he has celebrated Mass for the intention of the donor.<sup>500</sup>

Historically, this can undoubtedly be seen as the first doctrinal conception that could have defined precisely the juridic nature of the Mass stipend. Historians of the Mass stipend institute agree that from the early centuries, the first meaning that was given to the common offerings – *oblaciones communes ad altare* – was that these offerings were meant to provide for what was needed for the sacrifice of the Mass and also for the support of the ministers, and that these offerings did not represent just simple donations, but were entirely meant to be spontaneous and to be without any obligation.<sup>501</sup> It is only after the 6th century, because of the diminished revenues from common offerings, which then were the only source of income for the maintenance of the clergy that bishops and councils began to speak of an obligation with regards to these offerings. It is hard to admit that such a language entered into a custom which was aimed at having only a purely moral constraint and was to bind the priest purely at the level of conscience.

### 3.3.2 The Natural Obligation

The theory of natural obligation in civil law is one which in honour and in conscience binds the person who has contracted, which derives from a universalized conception of human nature or divine justice rather than from legislative or judicial

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<sup>500</sup> Z. VARALTA, *Natura iuridica di 'Stipendium Missae'*, 2-3.

<sup>501</sup> *Ibid.*, 4-5.

action.<sup>502</sup> This concept is not very different from the theory of moral obligation mentioned above. The theory of natural obligation holds that the bond that is constituted between the faithful and the priest, which results from the offering of a stipend and the promise of the celebration and application of Mass, is simply one of natural obligation. Obligations of natural law are deduced from reason. It is the function of reason to discover and dictate obligations of natural law by looking at people and things as they are, at the consequences of actions and the requirement of right order. This is the very basis of moral speculation. By an easy inference from the nature of people and things we arrive at the principle of natural law which maintains that the labourer deserves or is worthy of his pay. Reason also tells us that these mutual obligations in the case of Mass stipends bind as soon as the priest takes office. If the priest accepts the donation from the faithful for the celebration of Mass out of consideration for his support, then natural law binds him to carry out the functions and requirements for which he receives his support, i.e. the celebration of Masses.<sup>503</sup>

A number of canonists and theologians speak of this same theory in various different terms such as *obligatio naturalis*, *ius naturale*, and *iustitia naturalis*, but it is not very clear whether these other terms employed have the same technical and legal meaning as the first term that is used to describe this relationship. Between the faithful requesting the application of Mass and the priest who promises the celebration of Mass, a relationship that takes its effectiveness from natural law is created. Natural law, defined by custom, in turn, for the specific case, is also confirmed by divine law, which maintains

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<sup>502</sup> B.A. GARNER, *Black's Law Dictionary*, 506.

<sup>503</sup> McDONNEL, "Stipends and Simony," 166.

that the one who serves the altar has the right to live by the altar.<sup>504</sup> The faithful are bound by natural obligation to support the priest who has a natural right to receive support because of his ministry, and one does not need a contract in order to establish the obligation to support the priest.

Some theologians refer to scriptures to account for natural obligation that binds the faithful to support their priests because this obligation is imposed from above, and, as such, there is no need for a contract to establish or explain this obligation. The whole economy of spiritual service in return for sustenance and vice versa is regulated by the dictates of natural justice and is independent of contractual exchanges even though they have similar effects with contractual exchanges.<sup>505</sup>

### 3.3.3 The Quasi-Contract Theory

A quasi-contract<sup>506</sup> (as if from a contract) is defined as an obligation that the law creates by order of a court, in the absence of mutual agreement between the parties, since there was no such agreement of the parties to begin with. That is why it is called a contract implied in law or a constructive contract, because a quasi-contract in reality does not exist and is only a fiction or a creation of the law. It is invoked by the courts where unjust enrichment would exist without judicial relief, as in the case when a person retains money or benefits that in all fairness belongs to another. Courts create quasi-contracts (fictitious contracts) to avoid the unjust enrichment of a party in a dispute over payment

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<sup>504</sup> Lk. 10:7; 1Cor. 7:19-14.

<sup>505</sup> McDONNEL, "Stipends and Simony," 168.

<sup>506</sup> "[A]s if there had been a contract ('*quasi ex contractu teneri*')" (G. SAMUEL, *Law of Obligations*, Cheltenham, UK, Edward Elgar Publishing Limited, 2010, 24).

for a good or service. In some cases, a party who has suffered a loss in a business relationship may not be able to recover the loss without evidence of a contract or some legally recognized agreement. To avoid this unjust result, courts create a fictitious agreement where no legally enforceable agreement exists, and the remedy is typically restitution or recovery.<sup>507</sup>

The quasi-contract theory, as it applies to Mass stipends, holds that the obligation of the faithful to support priests is one that is created by natural law and defined by custom and, as such, it is a quasi-contract.<sup>508</sup> Natural law has created a quasi-contract for the faithful to support priests through Mass stipends. This obligation properly speaking does not arise from any contract as such, but from the fact that the priest performs his ministry for the benefit of the faithful, the law (canon law) creates a fictitious contract for the faithful to support priests in form of stipends for their sustenance. The faithful and the priests thus enter into a quasi-contract because of this quasi-contract the priest is obliged in all justice to fulfill the obligation of celebrating Masses for the donors or make restitution of the stipend. This understanding was not absent in the 1917 code because the former code used two terms, *eleemosynae* and *stipendium*, borrowed from the business world.

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<sup>507</sup> "An obligation created by the law for the sake of justice; specif., an obligation imposed by law because of some special relationship between the parties or because one of them would otherwise be unjustly enriched" (B.A. GARNER, *Black's Law Dictionary*, 161). To illustrate the point, assume a home builder has built a house on A's property. However, the homebuilder signed a contract with B who claimed to be A's agent but, in fact, was not. Although there is no binding contract between A and the homebuilder, most courts will allow the homebuilder to recover the cost of the services and materials from A to avoid an unjust result. A court will accomplish this by creating a fictitious agreement between the homebuilder and A and holding A responsible for the cost of the builder's services and materials. This remedy allows the courts to recover a benefit conferred on the defendant.

<sup>508</sup> "The priest is bound in justice (the result of a quasi contract) to say the Mass for the intention of the person who has given him a stipend, just as the lay person is bound in justice to give the priest the stipend promised when the Mass was asked for" (C.P. DURIEUX, *The Eucharist: Law and Practice*, translated by D. DOLPHIN, Chicago, Illinois, The Lakeside Press, 1929, 54).

### 3.4 Unilateral Contractual Theories

Unilateral contractual theories are so called because, as the word suggests, it is a one-sided contract. When the party to whom an engagement is made makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. In a unilateral contract, only one party to the contract who is known as the offeror makes an express promise or undertakes the performance of an act without first securing a reciprocal agreement from the other party known as the offeree. In a unilateral contract, one party makes a promise in exchange for the other party performing an act or the other party abstaining from performing an act. If the latter party acts on the former party's promise, the former party is legally obliged to fulfill the contract, but the latter party cannot be forced to act or not to act because no return promise has been made to the former party. After the latter party has acted, only one enforceable promise exists, that of the former party.<sup>509</sup> Rewards are usually unilateral contracts.<sup>510</sup> For example, the offeror or the party offering the reward cannot force anyone to fulfill the reward offer. The offeree can sue for breach of contract, however, if the offeror does not provide the reward after the offeree has fulfilled the contract's requirements.<sup>511</sup> This theory maintains that the Mass stipend is a unilateral contract in the sense that the donor makes a promise to pay the priest the stipend if he would celebrate Mass for his special intention without first securing the promise/acceptance of

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<sup>509</sup> "A contract in which only one party makes a promise or undertakes a performance [...]" (B.A. GARNER, *Black's Law Dictionary*, 162).

<sup>510</sup> An example of a unilateral contract: John promises to pay Peter an amount of money if Peter would bring John's car from point A to point B. John, who makes the promise, is obliged to pay the said amount of money to Peter after he has transported his car from point A to point B.

<sup>511</sup> "[...] [A] contract in which no promisor receives a promise as consideration for the promise given" (B.A. GARNER, *Black's Law Dictionary*, 162).

the priest, and when the priest does celebrate, the donor is obliged to pay him the stipend. Among the theories included in this group are the following: the theory of a modal donation,<sup>512</sup> the theory of conditioned donation,<sup>513</sup> the theory of pure donation or concurrent (concomitant) donation,<sup>514</sup> the theory of mandate, and the theory of gratuitous mandate with deposit. We shall examine the theory of gratuitous mandate with deposit, and the historical solution proposed by de la Taille to the problem of Mass offerings.

### 3.4.1 Theory of Mandate

The theory of mandate has been proposed by Del Guidice to explain the nature of obligations between the Mass stipend donor and the priest.<sup>515</sup> Del Guidice rejects all mutual contracts (i.e. the innominate contract theory) in connection with the Mass stipend, not on moral, but on juridical grounds. In his enquiry to the question of the Mass-contract, Del Guidice proves that far from offering a unanimous solution, canonical literature presents to us the picture of a strange confusion. According to Del Guidice, a contract for Masses constitutes a mandate: the donor of the stipend gives a mandate to a

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<sup>512</sup> The theory of the modal donation holds that the Mass stipend is a spontaneous donation, on the part of the faithful accompanied by the request that the priest should carry out an act in the donor's favour which is not a consideration for the sum of money paid, either because of the intrinsic nature of the act, or because of the intension of the parties involved (Z. VARALTA, *Natura iuridica di "stipendium Missae,"* 55).

<sup>513</sup> The theory of conditional donation holds that the donation of the Mass stipend given by the faithful represents a condition that the priest celebrates and applies the Mass for their intention. It is obviously a potential suspensive condition on the part of the donor (ibid., 77).

<sup>514</sup> The theories of pure donation and/or concurrent (concomitant) donation exclude the possibility of simony with the Mass stipend by excluding the existence of a compulsory obligatory relationship between the donor and the priest. These two almost identical theories maintain that the Mass stipend is nothing else than a pure manual donation, which according to tradition, did not require any action for celebration and application of Mass on the one hand, nor the fulfillment of a promise of the stipend on the other hand. The verbal agreement was simply a promise without any legal guarantee, which was conditional and not a mandatory agreement (ibid., 80).

<sup>515</sup> DEL GUIDICE, *Stipendia Missarum*, Roma, Athenaeum, 1922.

priest to produce a spiritual good for his benefit, and for this the donor provides remuneration for the execution of this mandate. Of itself, a mandate is a gratuitous contract, thus it is distinct from hire and sale, etc. On the other hand, the mandate the donor delivers to the priest is not a mandate of production or of attribution to himself, but a mandate of oblation and transmission to God. It is essentially gratuitous, and as such involves no remuneration, but it goes with a deposit of the object to transmit to God, that is, a stipend. The mandate then is a unilateral, gratuitous contract which is perfected by the mere consent of the priest. As depositary, the priest is bound in justice towards the donor; although the donor, properly speaking, has not given anything to him, but only entrusted something from which a portion eventually returns to the priest for his maintenance. Mandate is not used in its complex meaning given it by Roman law, but in the current use of everyday language, for which all the elements of the juridical meaning are not required.<sup>516</sup>

In human affairs, a parallel of such a situation can be seen in the cases of services, in which the confidence of one party is required. The more exalted the nature of these services, like that of the priest applying the Mass, the more the confidence of the other is required, and the less they are subject to judicial inquiry and verification. Contracts for such services are considered in Roman as well as English law as gratuitous contracts or mandate,<sup>517</sup> the fulfilling of which the one mandated receives an "honorarium" or reward

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<sup>516</sup> McDONNEL, "Stipends and Simony," 608.

<sup>517</sup> "A mandate, in Roman law, is a contract whereby one party undertakes to perform a service *gratuitously* according to the instructions of the other" (ibid., 608). "The gratuitous nature of *mandatum* is explained on the grounds that the mandatary essentially performed a favour for a friend and, according to the moral code of the Romans, it was his duty to help friends free of charge. In the course of time it became an accepted practice to pay the mandatary a fee (*honorarium* or *salarium*) for his selfless service, and this was not considered contrary to the spirit of the mandate" (MOUSOURAKIS, *Roman Law*, 141).

and not a wage. The “honorarium” does not interfere with the gratuitousness of the contract, but also the “honorarium” is not considered to be the price of the service, but something “due in honour,” so that it cannot be recovered from the one who refuses to pay it by ordinary legal action as is the case with a mutual contract. According to Del Guidice, therefore, this is the kind of contract that is entered by the priest and the faithful concerning the application of Mass, but with the difference that the stipend is due to the priest in strict justice. Because it is a gratuitous contract, it cannot be simoniacal.<sup>518</sup>

Del Guidice arguments rest chiefly on the impossibility of verifying juridically the non-execution of the mandate, chiefly as to the application. However, the non-execution of a mandate may be obvious, for example, a priest may be struck dumb or paralysed shortly after receiving money for Masses hardly before he has said them, or a priest may boast of never having complied to his obligation of saying Masses for which he received stipends. These would furnish the juridical bases for a judgment of ecclesiastical or civil courts. Since only the priest's word can be taken as the guarantee that he has indeed offered Mass for a particular intention, the matter of the application of Mass is one of confidence between the faithful and the priest, and the faithful can only trust that the priest will carry out their request, or that he has actually celebrated the Mass for their intentions.<sup>519</sup>

Gratuitousness is an essential part of the mandate or contract; it is by reason of this element that it differs from the *locatio-conductio*, which is a mutual contract, by which a person becomes bound to deliver to another the use of a thing for a certain time,

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<sup>518</sup> McDONNEL, "Stipends and Simony," 608.

<sup>519</sup> Ibid.

or to do work at a certain price. A mandate is not completely free of charge if it is not also gratuitous. The amount of the stipend in a *locatio-conductio* contract becomes the price for the celebration and application of the Mass. If a wage is introduced, the mandate ceases to be a mandate, it becomes a contract for it is no longer completely free of charge. If the mandated accepts money as gift, given out of gratitude, it is not a wage. If he accepts it as an "honorarium," that is, it is "due in honour," it is possible to regard it as not being a wage. But if he accepts it as something due in strict justice, the money must be regarded as a wage, because a contract begetting mutual obligations of service and payment does not differ in actual fact from a wage contract. Del Guidice, and others with him, hold that the Mass stipend is due in strict justice. If this is the case, how can the Mass stipend still be a mandate and not a contract? How can the Mass stipend contract still be completely free of charge if it is due in strict justice since the specific difference, which is gratuitousness, has been made to disappear by the fact of introducing in the Mass stipend transaction the condition of strict justice. Strict justice begets mutual obligations of payment and service. The mutual obligations of payment and service, that is, the Mass stipend is due in strict justice, and the priest is obliged in strict justice to celebrate Mass, changes the mandate into a *locatio-conductio* bilateral contract, by the very nature of the case.

In order to avoid this difficulty, Del Guidice contends that radical difference between the mandate with an "honorarium" and *locatio-conductio* is found in the mindset of the parties involved. If their intention was to acknowledge an economic equality and consistency between the priest's service and the money, or even between the money and the Mass, then their contract was a *locatio-conductio*. But if their mind set was such as to

exclude all notions of economic equality and consistency, as the elements of confidence and gratuitousness suggest, then the contract remained a mandate. In the Mass stipend-contract, complete confidence is required on the part of the donor that the priest will carry out the service gratuitously, and there is no question of acknowledging an economic equality of the Mass with the stipend. Therefore, the Mass stipend-contract is one of mandate and "honorarium," and it is gratuitous even though the stipend is due in strict justice.

Del Guidice allows the intention of the parties of the Mass contract to be the determining factor of rendering a gratuitous service, and thus eliminating simony from the Mass stipend transaction. In other words, he attempts to justify the absence of simony in the Mass stipend transaction simply by eliminating, on the part of the donor and the priest, any subjective equalization of the services of the priest in saying the Mass and the money for the stipend. The money is not intended to be a price for the service of applying the Mass. This principle will make all simony then a matter of the discretion or mentalities of the parties, which is not the case. The mandate and "honorarium" contract are not sufficiently distinguished from a contract of hire. Roman and English law granted a special action for the recovery of honoraria and as such in principle, the donor can recover the stipend by juridic action which makes the gratuitousness of the contract unreal.<sup>520</sup>

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<sup>520</sup> "It is true that in later times a special action was granted both in Roman and English law for the recovery of honoraria. But even if we grant that the Mass-contract is of this kind, the gratuitousness of the one or the other still remains to be demonstrated [...] 'Doubtless the limits of mandate and *locatio-conductio* were not strictly defined [...] this makes its gratuitous character rather unreal.' The truth seems to be that, once there was an action granted for the recovery of these fees, the gratuitous character of the contract was a mere legal fiction. To justify the Mass-contract by invoking such a parallel does not seem to be theologically scientific" (McDONNEL, "Stipends and Simony," 609-610).

The law governing the Mass stipend system does not allow us to regard the Mass-contract as one of mandate, because the mandate and honorarium contract in Roman law is something very indefinite. Different services, at different times, were subjected to it, and as such it cannot be employed as a parallel of dissociating simony from the engagement that takes place between a priest and the donor of the Mass stipend. In classical law, a mandate ceases to bind on the death of either of the parties, or on recall by the one who mandates, or on resignation by the one who is mandated. Such modes of cessation of the obligation to offer Mass for which stipends were given and accepted are not at all contemplated by the law on Mass stipends or by commentators of the law. The law, i.e., c. 828 of the 1917 Code and c. 948 of the 1983 Code, both maintain the same simple principle that as many Masses are to be celebrated and applied as there were stipends given and accepted. The present code goes further to maintain that the amount of the stipend does not affect the relationship of justice, by which the faithful are entitled to have Masses celebrated for their intention. The obligation to celebrate Mass for the intention of the stipend donor, which arises from the acceptance of a stipend, does not cease to bind at the death of either one or both parties, nor by recall of the donor. This obligation arises from the law itself and it is not a matter between both parties themselves, but it is a custom that is regulated by the law, and not a matter between the priest and the donor. Nor can it be admitted that the stipend donor can withdraw his commission to the priest in preference to another priest once he has handed over the stipends, because the right belongs to the priest himself to celebrate Mass for the stipends he has accepted/received. This right is given him by the law itself. Therefore, it is altogether contrary to accepted teaching and canonical practice that a priest can at will

renounce the obligation of applying Mass for which stipends were given and accepted, based on the withdrawal of the commission/mandate of the donor, without also renouncing the exact number of stipends he accepted. The obligation of applying Mass binds him by the law itself, and not to the alternative of applying Mass or refunding the stipend.

Del Guidice's theory, therefore, does not in the end solve the issues connected with the obligation of the Mass stipend. There is no doubt that the application of Mass cannot be ordinarily verified and that civil law, to which contracts pertain, would not contemplate such a contract which binds only in conscience. In civil law, the source of contractual obligations arises from the consent of the contracting parties which can be objectively verified. Nevertheless, a contract may still be entered into which binds only in conscience even though it cannot be objectively verified and therefore cannot be juridically manifested and legally enforced. The source of the contractual obligations of the parties, as has been said, lies solely in their mutual consent. Such mutual consent can bind both in the internal act of the will, as our case when the priest accepts to celebrate Mass for the intention of the faithful, as well as his external act of actually celebrating the Mass. It is true that the judiciary cannot verify the performance of the internal act of the will of the priest, nor can the Church, but the Church can rely on moral sanctions to enforce the performance of such an internal act of the will, and the fulfilling of a contract binding such an act. Church legislation can move within the sphere of conscience and rely on moral sanctions in matters concerning the internal act of the will, while for the State the only weapon will be a judicial sanction.

### 3.4.2 The Historical Solution of De La Taille

De la Taille proposes a historical solution to the problem of Mass-offerings obligations<sup>521</sup> that the priest celebrant is not remunerated by the lay person but he is sustained by God. He maintains that from the history of salvation, the sacrificial activity of lay faithful to offer sacrifice to God is the same as the sacrificial activity of the Jews under the Old Law. Under the Old Law, the Jews provided the sheep to be offered for the sacrifice. The priests in the Old Law offered the sacrifice on behalf of the people, but afterwards as Yahweh's table guests, they divided among themselves the various parts of the victim that was not consumed by the fire.<sup>522</sup> In the New Law, the Christian provides the *res sacrificanda* of the Mass in the same sense in which the Jews provided the sheep for the sacrificial offerings. In the New Law, the faithful provide the bread and wine to be used for the sacrifice of the Mass and the surplus goes for the support of the priest. The

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<sup>521</sup> "Yes, the customary offering for the Mass (whether it be monetary or otherwise), although involving a contract in justice between mandator and mandatory, depositor and depository, is nevertheless not received by the priest as a salary, but only as a means of sustenance, precisely because it does not intervene as a counter-prestation in return for a prestation, or vice versa, but simply as an oblation made to God, as a gift which the official minister, the consecrated mediator is charged with rendering acceptable; it intervenes as the intended sacrifice which by the sacramental operation of the priest will be transformed into the effective, true and perfect sacrifice, which is the Body and Blood of Jesus Christ. Out of these goods, which are divine property, the priest draws his sustenance: and so these same goods, from having been divine, by their assignment become clerical ecclesiastical. They are the priest's property, the priest's emolument, the priest's *stipend*, not for the purpose of enriching him, as the theologians and canonists of the past warn us, but of supporting him" (de la TAILLE, *The Mystery of Faith and Human Opinion*, 165-166).

<sup>522</sup> "The sacrifice was ritually offered by the priest; and because of this all the sacrifices were sacrifices of Aaron and of his sons. But the sacrifice was also, and in a very true sense, the sacrifice of the worshipper who had brought the sheep, his sheep, to offer it to Yahweh by the hands of the priest. The priest transmitted the sacrifice of the faithful; what the latter offered (*offerebat*), the former bound himself to present (*defererebat*): more correctly still, the priest offered on BEHALF of the faithful, though he did so by divine institution and investiture. The faithful gave a mandate to the priest to offer his sacrifice as to the agent qualified from on high. Were the priests paid? No; but of the faithful's oblation, entirely directed towards Yahweh himself, they deducted after the rite was accomplished, by virtue of a surrender which the Lord made in their favour as well as in that of the faithful, their personal share of the feast which had been prepared for the Lord, and of which his altar had received the substance under the form of blood. In this manner the priests lived by the altar, lived on the sacrifices; not as the salaried servants of the people, but as the guests of the Most High" (de la TAILLE, *The Mystery of Faith and Human Opinion*, 109).

priest takes the offering of the lay faithful, uses the bread and wine provided for it to offer sacrifice to God. The remainder goes to the priest, not as something that he accepts from the faithful, but as something that has gone over to the table of God like the sheep the Jews offered in the Old testament.<sup>523</sup> The contract the priest enters with the faithful is a gratuitous one, a mandate to offer sacrifice for them, a mandate to transmit their offerings to God.<sup>524</sup> Once he accepts the offering, an obligation of justice is incumbent on him to offer sacrifice for the donor because it is his gift that is offered to God which the priest accepts in trust as transmission agent.<sup>525</sup> The offering provides for what is needed for the sacrifice, part of it is sacrificially handed over to God, the part that is changed into the

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<sup>523</sup> "It is fitting, therefore, that the one who presents the sacrifice to God should receive sustenance from the offerings of him who provided the materials for the sacrifice. Hence in the eyes of God one will not be considered to have prepared the Eucharistic table, unless he has provided sufficient, not only that the sacrament may be duly consecrated, but also that those may be given sustenance to whom it is due from the altar" (de la TAILLE, *The Mystery of Faith, Book II: The Sacrifice of the Church*, London, Sheed and Ward, 1950, 255).

<sup>524</sup> The Mass stipends "[...] have a contract for their basis, but a contract that is essentially gratuitous. It is a contract required by the very nature of the gifts, which the faithful transmit through the hands of the priest, to be by him dedicated to God, who, when the transfer has been made, graciously admits his minister to a share of the perquisites acquired by the altar. On this condition, and on it alone, have we truly a right to say what Suarez says: the obligation of the priest as regards the application of the mass 'results from the (material) thing that has been accepted' and kept" (de la TAILLE, *The Mystery of Faith and Human Opinion*, 178).

<sup>525</sup> McDONNELL, "Stipends and Simony, II- Evolution of the Mass-Offering and De La Taille's Theory" (= "Stipends and Simony, II"), in *The Irish Ecclesiastical Record*, 54 (1939), 35-57. "[...] [T]he minister of the altar is authorized by God to participate at the altar, where he has a right to find his subsistence. The sacrifice which I offer to God must suffice, therefore, for the sustenance of the priest. It follows that my contribution will not be adequate to do duty as an offering, as it is my purpose that it should, unless it satisfies the above condition. I remit, therefore, to the priest the amount required (gifts in kind or their monetary equivalent), which is entirely sufficient. He celebrates, and takes for himself what remains of my offering after the liturgical celebration. What has taken place? That has taken place, which, under different conditions, was the regular custom in the sacrifices of the Old Law. The gift, after providing for the altar table, passes to the priest's table. The priest is endowed by God with the appurtenances of the sanctuary. In relation to me he fulfilled a mandate, in his capacity of public official. I did not pay him for carrying out of the mandate, even though it turned to his advantage. But after consigning into his hands the amount of the symbolical tribute which I dedicated to the Divine Majesty, I had the right that he should make it arrive at its destination. It was on his part a duty of contractual justice *ratione rei detentae*. We have, then, on the one hand the absolute gratuitousness of his ministry, on the other a strict obligation of contractual justice. It is all that is needed to secure for the Mass-contract the highest juridical force and at the same time to free it from every blot of simony" (M. de la TAILLE, *The Mystery of Faith and Human Opinion*, 170).

body and blood of Christ, and the priest partakes of the remainder as something that belongs to God, just as the priests of Aaron partook of the things sacrificed; the portion that comes to him for his sustenance comes as a gift from God. The priests of the New Testament partake from the altar in the same way as the priests of Aaron of the Old Law<sup>526</sup> thus making a parity between Jews and Christians in what concerns the office of the Jewish priest and that of a Christian priest and also in what concerns the revenues of the priesthood of the Old Law and the revenues of the priesthood in the New law.<sup>527</sup> The preacher has the right to live by preaching just as the priest lives by assiduity to the altar, their sustenance both coming from the faithful. The preacher receives his sustenance directly on account of his office, the priest partakes of what is spread on the altar of God.<sup>528</sup> And just as what was offered in the Old Law (sheep) came from creation, so too what is offered in the New Law (bread and wine) come from creation. The only difference being that the offerings of the Jews were tithes coming from a contrite heart, while that of Christians is a pledge of our freedom and our interior consecration.<sup>529</sup> The

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<sup>526</sup> "Why should the priest of Aaron have enjoyed this great privilege while the priest of Christ is condemned to be a hireling of those for whom he offers sacrifice?" (ibid., 47-48).

<sup>527</sup> "The ancients offered gifts to God; we also offer gifts to God, 'the first fruits of creation'" [...] "They are divine sources of income; they are goods dispensed to the priest by God. It is a sharing on God's part with his priest in that which through the priest's ministry became God's property. The sustenance which the minister of the altar draws from the altar is a table companionship with God; it is not a remuneration from men. Hence, we may note, the ancients were careful to point out that the priest must not see in it a reward (*praemium*), but an allowance from on high for the support of his life, for the support of clerics employed with the priest in the service of the altar; and for the support of the poor, of whom the Church must consider herself in charge in the name of God, because the Church, the goods of the Father of the family, are their patrimony" (de la TAILLE, *The Mystery of Faith and Human Opinion*, 111; 120).

<sup>528</sup> "Under the Old Law the office of prophet and that of priest were two separate functions, often in opposition, at all events entirely different in their organisation and sources of income. Under the New Law, prophecy, that is to say preaching, is regularly a duty of the priesthood, and as a matter of fact creates claims to similar means of subsistence [...] But this analogy between preaching and sacrificing does not eliminate, on the contrary, it superimposes itself on then parity which properly and formally exists between the Christian priesthood and the Mosaic priesthood, as regards the table supplying the one and the other with a livelihood" (ibid., 119-120).

<sup>529</sup> De la TAILLE, *The Mystery of Faith and Human Opinion*, 112-113.

role of offerer belongs to the worshipper together with the indispensable ministry of the priests. The priest receives a mandate to act in the name of the faithful and this mandate is for him to direct the gifts of the faithful to their destination.<sup>530</sup> De la Taille maintains that simony is excluded because there is already an agreement which is implied in the fact of accepting gifts for transmission to God, to whom they are destined, which is already in the minds of the faithful.<sup>531</sup>

De La Taille concludes that after transmitting the gifts of the faithful to God, the disposal of what remains, which is not a matter of choice, but an indispensable requisite, are gifts that under their natural form serve for the maintenance of the minister of the altar, *de jure divino*. The question of the stipend is the Christian's sheep, as it was of old the Jew's.<sup>532</sup> As such, there is no simony involved in this transaction.<sup>533</sup>

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<sup>530</sup> Ibid., 122.

<sup>531</sup> "There will be no 'repayment' (*praemium, pretium*) from the faithful, but there will be a 'gift from God.' Everything will have taken place gratuitously (*charitative, gratis, sponte*). Not a shadow of a bargain has appeared; the divine *Hostia* has not been the object of an exchange, nor has the action of the priest been pledged for a temporal gain: no *locatio operae*, no contract *do ut facias*, no modal donation[...] He will have none of those pacts whereby the grant of a spiritual benefit is made subordinate to the concession of a temporal benefit. There is no contractual reciprocity between a sacerdotal action and a material subsidy or assistance given to the priest; but only a humble offering made to God, to Jesus Christ, to the altar; and the priest shares in it merely as the natural and rightful guest of the altar and of Jesus Christ and of God." (ibid, 127). "There is nothing wrong in this pact, if is such as we have described: a pact in justice, but a gratuitous pact, a pact intrinsic to the mandate of the sacrifice together with the consignment of the matter of the sacrifice. It is from this matter thus received for the purpose of being transmitted that the obligation in justice results, *tanquam 'ex re accepta'* without this dependency '*ex re accepta*' involving in the obligation thus contracted even a shadow of simony" (ibid.,178).

<sup>532</sup> "It goes over to God by a ministry not paid from below, but endowed from above, and the dower of the new priesthood, like that of the old, is the community of acquired goods, for ever established by God, between the priest and the altar" (ibid., 135).

<sup>533</sup> "[...] I secure for myself by a contract in justice, but a contract that is gratuitous and not onerous, a spiritual benefit by means of a pecuniary disbursement. The mass bears fruit on my behalf and for my intentions (for instance the cure of my brother) for this one reason, that I am its offerer in virtue of my material contribution. It does not cease bearing fruit also on behalf and for the intentions of the whole Church, the whole of which is offerer by reason of its claim on the Body and Blood of Jesus Christ, the undivided property of the Church. But this general fruit does not abolish my own 'special fruit,' any more than a common right excludes a particular one, when they are exercised in two orders of different considerations. This contract refers therefore to the application, and not merely to the celebration of the

If we are to avoid the charge of simony in explaining the Mass stipends, De La Taille argues we must hold that Mass stipends were and are the offerings of the faithful that are meant for the oblation of the sacrifice and are in no sense a payment to the priest who has offered the Mass. Such a position has three advantages. In the first place, it upholds the dignity of the priest by making him not the stipendiary of the faithful but of God. Secondly, it enhances the role of the faithful, by restoring them to their native condition of a holy, sacerdotal race, qualified by their baptism to offer gifts to God, and to offer sacrifices, which are to be consecrated by the ministry of the priest invested with the priesthood of Jesus Christ. Thirdly, it dignifies the monetary transactions for Masses, which otherwise run the risk of giving occasion to the shocking language, so unworthy of the sacrifice of the Altar, and not infrequently, heard of expressions like “buying the Mass,” “the price for a Mass,” “paying for the Mass” or “how much does a Mass cost?” The whole idea of a gratuitous contract is one that agrees with tradition and the economy of sacrifices.<sup>534</sup>

De La Taille also recommends modifying the terminology used for Mass stipends, that is, a return to the ancient expression and legislation. The old word *oblationes*, seems to be by far the most suitable word in relation to offerings for Masses, because the word

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mass; it is a monetary contract, and yet it is absolutely moral; it is even essentially pious, since it deals only with elements borrowed directly from the religion of sacrifices. It is consequently a contract worthy of the sanction of the Church and of the full protection of the jurist, a protection which has not been wanting, and which moreover extends itself to a number of other transactions regulated by natural Law" (ibid.,171).

<sup>534</sup> H. DAVIS, *Moral and Pastoral Theology: The Sacraments in General*, vol. III, 7th edition, Revised and Enlarged, L.W GEDDES (ed.), London, Sheed and Ward, 1958, 177-178.

stipend, which is borrowed from the world of business transactions, differs entirely in character from the gratuitous mandate and implies remuneration for services rendered.<sup>535</sup>

The position of De La Taille is untenable because we cannot equate the economy of sacrifice in the Old Law with the meaning of sacrifice of the new economy.<sup>536</sup> The economy of sacrifice in the new dispensation and in the Christian theology does not require that something be sacrificially handed over to God except the Body and Blood of Christ. Nothing else is sacrificed except the Divine victim.<sup>537</sup> It is not the offering of the individual Christian that is received by God, but the gift of Christ's body and blood, which is the sacrifice of Christ and his Church. Priests and people in the New Law all partake of the body and blood of Christ as a gift from God and through this participation they are spiritually nourished.

There are many more difficulties involved in De La Taille's historical solution. For instance, it is an essential part of his thesis that the stipend-donor receives his fruit, not by reason of the priest's application of the Mass for his benefit, but by reason of providing the matter of the sacrifice, and because that which is offered is initially that of the donor. No special intention of the priest is required since he merely consecrates the

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<sup>535</sup> M. de la TAILLE, *The Mystery of Faith and Human Opinion*, 168.

<sup>536</sup> For a criticism of De La Taille's position, see M.E. LEROUX "A new conception of the "Stipendium Missae" in *Nouvelle Revue Theologique*, 52 [1925], 133-146. Leroux believes that the origin of the mutual obligation between priest and faithful, in relation to the application of the Mass and the corresponding stipend, is not properly contractual, but must be a combination of two elements. First, it is a duty of justice obliging the faithful to support their priest in general, and secondly, it is a requirement of *ecclesiastical law* which has defined the fulfilment of that duty by means of the Mass-offering paid into the hands of the priest. The priest in turn is bound by the same law to let the faithful benefit from the application of the Mass. For a response to these criticisms, see M. de la TAILLE, *The Mystery of Faith and Human Opinion*, 172-197.

<sup>537</sup> "The oblation that presents to God His Divine Son does not surely present to Him also a sum of money" (T. McDONNELL, "Stipends and Simony, II, 54 [1939], 50).

gift of the donor. This is a strange conclusion which runs counter to popular theological opinion about the manner in which the fruits of the Mass are received by the special intention of the donor. Theologians are generally agreed that it is required of the priest who presides at Mass to make a positive act of the will to apply the Mass for the special intention that has been offered.<sup>538</sup> What if the bread and wine were provided by a third party and not the stipend donor? According to De la Taille's principle, it is the fact of providing bread and wine that merits the special fruit.<sup>539</sup> It would seem to follow that if a third party supplied the bread and wine freely, then it is the third party who secures the Mass fruit, and not the donor of the stipend. It follows from his theory that a priest may accept and fulfil the obligation of a stipend merely by consecrating the gifts of the donor, while at the same time applying the Mass for some other intention by the process by which it has always been applied.

De la Taille's views raise a number of difficulties, too, in the sphere of canon law. According to this author, the priest has charge of the stipend as a deposit which he must transmit to God. His contract is a mandate, a gratuitous contract. But such a contract

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<sup>538</sup> See Chapter One of our work on the history and theology of Mass stipends for a more complete overview. "The intention of applying the Mass must be made by the celebrant. It is commonly taught that for validity this intention must be *at least habitual* and *implicit* or equivalently such. The intention once made must not be retracted, since the application is made in the manner of a donation or transferral of the benefits or fruits, and thus remains valid until revoked. The intention must be made *at least before consecration*, since the essence of the Sacrifice is in the consecration of both species. An actual and explicit intention is always preferable; in practice a priest should always formulate his intention before beginning Mass (although he may do so some time in advance), so that all the prayers of the Mass might benefit the person or purpose for which the Mass is to be applied. The intention once made must not be retracted before consecration is completed, if it is to retain its validity and effectiveness" (HALLIGAN, *The Sacraments and their Celebration*, New York, Alba House, 1986, 73).

<sup>539</sup> "Hence we see that those who have offered gifts, or given a stipend, seeing that it is they who have provided for the sacrifice in this way, are properly and intimately connected with it, in a more special way, than others who have not done so; hence, too, the sacrifice is more affected by their offering, and their devotion and fervour is more efficacious than that of those who do not so contribute to secure abundant fruit from the sacrifice" (de la TAILLE, *The Mystery of Faith*, London, Sheed and Ward, 1950, 259).

would bind him only in fidelity to offer the Mass. An obligation in justice binds him to restore the property to the faithful if he does not transmit it to God, but it does not bind him to transmit it. The priest is bound in strict justice to offer Mass for every stipend accepted. This is what the 1917 code maintained in c. 829 and this is also what the 1983 code maintains in c. 948, that is, the priest is to apply separate Masses for the intentions of those for whom a single offering have been given and accepted. As c. 949 maintains, the priest is still bound by the obligation to celebrate and apply the Mass for the intention of those who gave an offering even if the offerings received have been lost through no fault of the priest. There will be no strict obligation to celebrate lost offerings if the stipends were a deposit. Neither as mandatory nor depository could the priest's obligation persist, according to juridical principles, if the stipend were only a deposit. Sometimes the obligation of offering Mass is condoned.<sup>540</sup> If the stipend is regarded as a deposit, then the whole idea of condoning Mass obligations will be unnecessary and unintelligible. If the stipends (i.e. the deposit) have perished without grave negligence on the part of the priest, then condonation is unnecessary. If this has not occurred, then condonation will mean transferring the ownership of the stipend from the faithful to the priest which is illegitimate. Stipends only become the property of the priest after he has discharged the obligations according to the law.

### **3.5 Bilateral Contract Theories**

Bilateral contract theories are so called because these contractual theories bind both parties in strict justice and because such contracts are mutual, i.e., they require the

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<sup>540</sup> "Condonation is the forgiveness granted for the past omission of Mass obligations, which defect is supplied from the treasury of the Church. The sacred Congregation for the Clergy may grant a total or partial condonation" (HALLIGAN, *The Sacraments and their Celebration*, 78).

consent of both parties to the contract. There are three such bilateral contract theories applicable to Mass stipends, namely: the innominate *do ut facias* contract, the *locatio operarum* or a contract of service, and the *locatio operis* or a contract for service.<sup>541</sup> We shall examine each of these theories.

### 3.5.1 The “Innominate Contract” Theory

The “innominate-contract” theory of the Mass stipend is by far the most widely accepted theory among theologians and canonists and has been accepted as such for a long time.<sup>542</sup> The innominate-contract theory, developed in late classical Roman law, refers to a contract which is not classifiable under any particular name.<sup>543</sup> Roman law developed four classes of innominate contracts, namely, *do ut des*, *do ut facias*, *facio ut*

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<sup>541</sup> "Priest and faithful enter an innominate contract such as “*do tibi (partialem sustentationem) ut facias sacrum mihi pro futurum*” (Suarez); or, “*dummodo pro me celebres et applices Missam*” (Gaspari), a bilateral onerous contract binding both parties in strict justice” (McDONNELL, "Stipends and Simony," 53 [1939], 600).

<sup>542</sup> Thomas McDonnell belongs to the class of theologians who hold that the innominate contract best describes the donor-priest relationship vis-a-vis the Mass stipend as one of natural justice since it binds from above. It is an obligation of strict justice. He states: "The defenders of the innominate contract hold (as we do) that the stipend is due by an obligation of natural justice, and that, nevertheless, a contract bearing upon the Mass and the stipend is necessary to make the obligation of paying the stipend arise" (T. McDONNELL, "Stipends and Simony," 54 [1939], 164). Similarly, de la Taille states: "As a consequence Suarez is not afraid of proposing a formal contract *do ut facias*, bearing directly on the application of the mass. 'Therefore', says he, 'we are facing a true obligation of justice, based on such mutual consent as is reciprocally onerous, and formulated in the words *do ut facias*. Now herein we have a claim in justice'" (M. de la TAILLE, *The Mystery of Faith and Human Opinion*, 98). Finally, Keller states: "Mass stipends belong to that class of bilateral innominate contracts which is known as 'do ut facias'. This means that one party agrees to do something in return [...] Mass stipends bespeak a strict contract which belongs to the innominate species[...]But the most common, as well as the most satisfactory, explanation of the nature of Mass stipends is the theory of the innominate contract, which was proposed by Suarez and defended by Cardinal Gasparri" (KELLER, *Mass Stipends*, 20-21, and 27-28).

<sup>543</sup> "The term 'unnamed' or 'innominate' contract (*contractus innominati*) was later introduced by jurists to describe enforceable agreements for reciprocal performances which unlike the recognized types of contract, did not have a name of their own. The most common examples of unnamed contracts encompassed exchange or barter (*permutatio*) whereby the parties agreed that each would transfer something to the other in ownership (e.g. an ox for a horse); the agreement of hawking (*aestimatum*), whereby the owner of the goods handed them over to another person on the understanding that the latter would, within a prescribed period of time, either return the goods or pay the sum agreed upon to the former, while retaining any profit he may have obtained from selling them; and the *precarium*, a gratuitous grant of the enjoyment of a thing revocable at will" (G. MOUSOURAKIS, *Roman Law*, 141).

*des*, and *facio ut facias*.<sup>544</sup> In an innominate contract, the law supplies nothing else in addition to the express agreement of the contracting parties.

Accordingly, the strength of this theory lies in the obligation of the faithful in general to support the clergy and the duty of the ministers to perform their ministry on behalf of the faithful. These mutual obligations precede any sanction of law which the Church might issue. In every particular case a new obligation does not arise, but the money for the stipend only goes to cover an obligation that already exists in addition to the fact that the stipend is due in strict justice. The agreements only become operational with at least one of the contracting parties beginning to perform an act, in this case, the donor gives the stipend so that the priest may say Mass, even if these agreements were reciprocal beforehand.<sup>545</sup>

The *do ut facias* theory holds that the priests and the faithful enter into a bilateral onerous contract that binds both parties in strict justice. The faithful give a partial sustenance for the priest, represented by the stipend and the priest celebrates and applies the Mass for their intention.<sup>546</sup>

Proponents of this theory argue, to its favour, that this theory gives an adequate source for the mutual obligations associated with the Mass stipend by ecclesiastical law

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<sup>544</sup> R. SOHM, *The Institutes of Roman Law*, fourth edition, J.C. LEDLIE (trans.), New Jersey, Gorgias Press, 2002, 294.

<sup>545</sup> S. WOYWOOD, "The Regulations of the New Code Relating to the Celebration of Holy Mass," in *Homiletic and Pastoral Review*, XXI (1921), 916-925.

<sup>546</sup> "The obligation is one of commutative justice arising from an onerous innominate contract 'do ut facias' by which the priest is bound in justice to say the Mass or to restore the stipend if he does not or will not celebrate, and the person who has promised a stipend is bound in justice to give it when the Mass has been celebrated. The priest's obligation to satisfy the stipend is certainly serious, regardless of the smallness or largeness of the stipend, since the privation of special or ministerial fruits is a notable damage" (HALLIGAN, *The Sacraments and their Celebration*, 75).

and by common acceptance, and it provides a straightforward explanation of these obligations making them co-relative to each other.<sup>547</sup> As such, the faithful are bound in strict justice and natural obligation defined by custom to give Mass stipends, and the priests are also obliged to celebrate for the donors intentions.<sup>548</sup> Because the faithful have already consented to the application of Mass for their intentions, there is no need for them to consent to pay the stipend, because they are already subject to these obligations from the requirements of natural justice.<sup>549</sup>

Proponents of this theory are not in agreement as to the source of this strict obligation. Thomas McDonnell is of the opinion that as soon as the relation of the sacrificing priest and beneficiary of sacrifice is established, the obligation of paying the stipend is also established.<sup>550</sup> De Lugo argues that just as bread and wine are necessary for the sacrifice, so too is the sustenance of the person of the priest necessary for the

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<sup>547</sup> "The first of these consequences is the corollary that Mass stipends do not come under the heading of contracts of sale (*contractus emptiois-venditionis*). The second corollary is there need not be any proportion between the value of the stipend and the value of the Mass [...] In virtue of his innominate contract, the priest, is bound in commutative justice and under penalty of mortal sin to apply the Mass according to the intention of the person who gave the stipend. The priest's serious obligation arises, not primarily from canon law nor from the monetary or exchange value of the stipend, but from the contract itself as regulated by ecclesiastical law" (KELLER, *Mass Stipends*, 21-22).

<sup>548</sup> T. McDONNELL, "Stipends and Simony," 53 [1939], 600. "For the priest who accepts a stipend agrees to do something very important for the other person, *viz.*: to apply to him the priceless fruit of Holy Mass. This agreement is not a mere unilateral promise; for the celebrant of the Mass accepts money from the other person. But even if the priest were bound by reason of his promise alone, he could and he actually does promise to say that *Mass es justitia*. Consequently, if a priest breaks the promise which binds him in justice to do something for the giver of the stipend, that priest causes the other person a serious loss or injury; and therefore, commits mortal sin" (KELLER, *Mass Stipends*, 23).

<sup>549</sup> T. McDONNELL, "Stipends and Simony," 54 (1939), 164.

<sup>550</sup> "[...] [T]here is the very same obligation of natural law (defined by custom) to pay the stipend for Mass [...] This latter relation is set up by consent to apply Mass and to accept the application of Mass. This much alone is sufficient to make the beneficiary of Mass subject to the obligation of paying the stipend (and therefore to bind the priest by a corresponding obligation); not because consent to accept the Mass-fruit implies consent to pay the stipend, but because such consent incurs the obligation of paying the stipend" (McDONNELL, "Stipends and Simony," 54 [1939], 166-167).

celebration of Mass.<sup>551</sup> Everyone admits that a priest's sustenance is necessary for his ministry, and that this support for his sustenance is due to him in strict justice by those to whom he ministers.<sup>552</sup> The fact of the gratuitousness and selfless service of the priest in administering the sacraments is not impaired by the necessity of his receiving the basic elements to be used for the sacrifice of the Mass, that is to say, bread, wine, candles, and also his own sustenance, and the priest may claim that sustenance in strict justice without impairing the gratuity or selflessness of his service.<sup>553</sup> In what sense then is a particular contribution for his sustenance "necessary"? Gaspari<sup>554</sup> maintains that a stipend is necessary in the same sense in which every contribution is necessary for every other ministration and might be secured by the priest by a contract. Sustenance is necessary for a priest in order that he might live and exercise his ministry. The priest's offering of Mass for a person then imposes on that person an obligation in natural law (some call it strict natural justice) of providing a partial sustenance for the priest. The principle of natural law is employed to emphasize the necessity of supporting the priest. But if natural law (those who serve others should be supported by those others) only makes Mass a title to partial sustenance, why does natural law not also make partial sustenance necessary for every other spiritual service of a priest? It is accepted that both natural and divine

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<sup>551</sup> "De Lugo maintains that the stipend is strictly due because it is necessary for the sacrifice" (McDONNEL, "Stipends and Simony," 53 [1939], 601).

<sup>552</sup> 1Tim. 5:18.

<sup>553</sup> "Everybody admits that a priest's sustenance is necessary for his ministry, and that it is therefore due to him in strict justice by those to whom he ministers [...] the flock owes his sustenance to the priest, and the priest may claim it without impairing the gratuity of his service. It does not follow that a priest may claim a particular contribution, in strict justice, in return for a particular ministration" (McDONNEL, "Stipends and Simony," 53 [1939], 601).

<sup>554</sup> P. GASPARI, *Tractatus Canonice de Sanctissima Eucharistia*, Paris, Delhomme et Briguet, 1897, 388-399. Gaspari points out that the general consideration is a good argument for justifying the sustenance of the clergy for ministrations in general, but it is the positive legislation of the Church which has allowed the particular obligations of a stipend, whereas it has forbidden several other forms.

positive law, that is, the revealed law of God,<sup>555</sup> lay down the priest's right to secure his maintenance from his flock, but these principles of natural law do not connect an individual kind of ministration with a particular contribution as a means of securing his sustenance. Vermeersch<sup>556</sup> maintains that the Church defines the system by which her ministers are to secure their support. Developing the thoughts of Suarez, he maintains that the Church by approving the custom of the Mass stipend has defined an obligation of natural law, by making the application of Mass an occasion on which the contribution to the priest's sustenance in form of Mass stipends may be claimed in strict justice. The stipend is due in strict justice because it is a custom defended by law. He proposes the necessity of a contract *do ut facias*.<sup>557</sup>

Vermeersch, like Suarez, maintains that this contract does not have the effect of begetting an obligation of justice, strictly so called, between the priest and the faithful respectively. The obligation to support the priest, they say, is anterior to the contract, which merely explains and declares what it is.<sup>558</sup>

How then is the theory of the innominate contract justified? Suarez maintains that the contract only serves to express obligations that are already there. It is a contract which is lawfully due on account of justice agreed upon in advance between the donor and the recipient. But there is simony if a priest would give a spiritual thing to his debtor in order

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<sup>555</sup> 1 Cor. 10.

<sup>556</sup> A. VERMEERSCH, I. CREUSEN, *Epitome Iuris Canonici*, Tomus II, H. Dessain, Romae, 1954, 64-73.

<sup>557</sup> McDONNEL, "Stipends and Simony," 53 [1939], 602-603.

<sup>558</sup> "It is impossible to account for the appearance of a bond of justice between the celebrant and the faithful as regards the application of the mass otherwise than by the force characteristic of a contract, and according to Suarez, of a strict contract (*do ut facias*)" (M. de la TAILLE, *The Mystery of Faith and Human Opinion*, 172).

to recover that which is his own. Here we have an independent obligation, the obligation of paying the debt, but it will not justify the mutual contract of connecting the debt with a spiritual thing. How then does the obligation of paying the stipend justify the Mass contract? How can the Mass contract be termed "contract," lawfully due on account of the justice agreed upon in advance, as long as it is admitted that a contract is necessary to make the obligation arise? Suarez argues that the stipend is not due until a contract makes it so. The conclusion is that either the non-contractual obligation does not exist, or the contract is not necessary to make it bind.

On the one hand, if the person who has Mass applied for his intention is strictly bound to pay the stipend, it seems that in all common sense there is nothing immoral in mutually consenting to pay the stipend and the priest to apply the Mass. On the other hand, there are great difficulties if such an explanation is to be maintained. Such an explanation borders very dangerously on simony. The theological principle enunciated is that every mutual contract is simoniacal if it bears upon a spiritual thing or a material thing connected with the spiritual, and it is the commonly accepted theological view that a priest cannot enter a contract to celebrate the Mass.<sup>559</sup> If Mass stipends are secured by means of a mutual contract, such transactions are simoniacal. There is much law concerned with the obligations connected with the stipend, but the law has never suggested that the source of these obligations is a contract. The Fathers of the Council of Trent seriously considered prohibiting Mass stipends altogether because of such numerous difficulties connected with the Mass stipend, and then passed a decree

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<sup>559</sup> "St. Thomas would not hear of such a contract [...] 'To enter a pact concerning the celebration of Mass is always simoniacal.'" (McDONNELL, "Stipends and Simony", 53 [1939], 604).

absolutely prohibiting every kind of conditions of compensation, or bargains, or agreements in connection with the celebration of Masses.<sup>560</sup>

C.F. Keller considers the question<sup>561</sup> and concludes that the most common as well as the most satisfactory explanation of the nature of Mass stipends and the source of obligations is the theory of the innominate contract, which was proposed by Suarez and defended by Cardinal Gaspari.<sup>562</sup>

McDonnell considers the question and concludes his study by denying that there is a contract.<sup>563</sup> The Mass stipend is due in strict justice because it is by reason of the

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<sup>560</sup> "Therefore, since either through the depravity of the times or through the indifference and corruption of men many things seem already to have crept in that are foreign to the dignity of so great a sacrifice, in order that the honor and worship due to it may for the glory of God and the edification of the faithful be restored, the holy council decrees that the local ordinaries shall be zealously concerned and be bound to prohibit and abolish all those things which either *covetousness, which is a serving of idols*, or irreverence, which can scarcely be separate from ungodliness, or superstition, a false imitation of true piety, have introduced [...] they shall in the first place, as regards avarice, absolutely forbid conditions of compensations of whatever kind, bargains, and whatever is given for the celebration of new masses; also importunate and unbecoming demands, rather than requests, for alms and other things of this kind which border on simoniacal taint or certainly savor of filthy lucre" (H.J. SCHROEDER [ed.], English translation, *Canons and Decrees of the Council of Trent*, Rockford, Illinois, Tan Books and Publishers Inc., 1978, 150-151). This can be seen in the reform decree of the Council of Trent, Sess. XXII, *de observandis et evitandis in celebrationem missae*.

<sup>561</sup> For the different opinions of canonist as to the source of the non-contractual obligation of the donor of Mass stipends, see KELLER, *Mass Stipends*, 23-28.

<sup>562</sup> KELLER, *Mass Stipends*, 27-28.

<sup>563</sup> The source of the strict obligation of paying the Mass stipend comes from the very inception of the custom itself although there was not at this time a custom of paying it, nor for the next six centuries. There really was no custom for the first six centuries, because for the first six centuries, the custom was that of common offerings which were given by all the faithful. The Mass stipend is a changed form of the common offerings and inevitably evolved from the common offerings and differs from it only accidentally. Those for whom Mass was specially offered had always given oblations. It follows that the individual who had Mass offered for himself alone was bound to make an offering, not only by reason of the already existing custom, but because, in the circumstances, having Mass offered for oneself alone was the same thing as depriving the priest of the right to accept any other offering but one's own. To deprive the priest of accepting any other offering but one's own mean the person requesting a special remembrance at Mass of one's personal intention incurred a corresponding responsibility or obligation of paying the Mass stipend (T. McDONNELL, "Stipends and Simony" in *The Irish Ecclesiastical Record*, 54 (1939), 159-175).

sustenance of the priest.<sup>564</sup> In conclusion, there is a contract, the agreement between the donor and the priest is *ad instar contractus*. There is an obligation in justice, which arises from the natural law as defined through approved custom. But strictly, there is no contract, hence, no mutual agreement, and hence, no simony.<sup>565</sup>

The theory of the “innominate contract” still does not differ from a wage contract, everything being equal. It still does not answer our basic question concerning the charge of simony. The difficulty with this explanation is in moving from the general obligation to a particular obligation of justice. This particular contract theory borders very dangerously on simony, which is expressly forbidden by the law.<sup>566</sup> The question, then, is how can it be shown that this bilateral contract theory does not involve the sale of the Mass? Is this not a sale of the Mass or commercializing with the Mass in exchange for obtaining the right over the application of the fruits of the Mass something expressly

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<sup>564</sup>The Mass stipend is due in strict justice again because the Mass stipend is due by reason of a distinct title to sustenance, as the saying goes, the priest lives from/by/through the altar. All other fees, dues, and offerings are due by reason of the title of a natural legal obligation in justice binding the flock as a whole. This obligation binds the whole flock in common and failure to pay the required stole fees and other dues puts the burden on the rest of the community. The application of Mass is a personal matter between the priest and the individual. The obligation of paying the stipend is between two individuals and as such it is one of commutative justice which is strict justice and therefore the stipend is due in strict justice. Those who avail themselves of the service of the priest in the application of Mass are each bound to contribute to the support of the priest, an obligation of strict natural justice defined by custom. Therefore, the obligation of paying the stipend for Mass is a strict obligation, which is apart from any contract, an obligation which is imposed by a custom which defines a priest's natural right to be supported by those whom he serves. This custom did not arise merely because priests were demanding such offerings. This custom has its roots in the practice of altar-oblations in the early Church (T. McDONNEL, "Stipends and Simony," 54[1939], 160).

<sup>565</sup> Ibid.

<sup>566</sup> "This contract is no simoniacal *jure divino*, because the stipend representing a partial sustenance of the priest, is not the price of the mass or of the *fructus medius*, but is necessary for the sacrifice asked for [... ] So then I procure for myself, in return for money, the fruit of the mass, by a contract which connects, through an obligation in strict justice, the acquisition of this fruit with a payment that has for its immediate object your sustenance [...] I have the right to require that you supply me with what is needed for the performance of that service" (M. de la TAILLE, *The Mystery of Faith and Human Opinion*, 99).

forbidden by the law?<sup>567</sup> The contract as it stands does not differ in any way from a wage contract, which is the price that is paid for doing a particular job. On the face value of it, the “innominate-contract” is a mutual exchange of money for the application of the Mass and is therefore simony according to divine law until the contrary can be shown.

### 3.5.2 The *locatio operarum*

The term *locatio operarum* is a contract of service or of employment. A contract of employment is usually defined to mean the same thing as a "contract of service."<sup>568</sup> A contract of service has been historically distinguished from "a contract for services," the latter expression is altered to imply the dividing line between a person who is "employed," as in the former and someone who is "self-employed," as in the latter. The purpose of the dividing line is to attribute rights to some kinds of people who work for others. This could be the right to a minimum wage, holiday pay, sick leave, fair dismissal, a written statement of the contract, the right to organize in a union and so forth. The assumption is that genuinely self-employed ("contract for services") people should be able to look after their own affairs and, therefore, the work they do for others should not carry with it an obligation to look after these rights. In Roman law, the equivalent dichotomy was that between *locatio conductio operarum* and *locatio conductio operis* (literally, a hiring contract of services and by services). The *locatio conductio*

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<sup>567</sup> "Mass stipends do not constitute simony of ecclesiastical law, because the Church, far from forbidding them, expressly permits them, and in stipends there is no simony of divine law, because they do not imply any will to buy or sell...They express a mere agreement by one party to give something and by the other party to do something" (KELLER, *Mass Stipends*, 23).

<sup>568</sup> B.A. GARNER (ed.), *Black's Law Dictionary*, 160.

*operarum* is a contract whereby one party agrees to supply the other with a certain amount or quantity of labour.

The *locatio operarum* theory, as all the others, is a way of explaining how a Mass intention can be conjoined with the payment of money without it being simony. The money is not for the Mass intention but for the priest's labour (some authors exclude the celebration of Mass as labour, but others consider it rather as everything extrinsic to the celebration of Mass, i.e., the preparation, and travel expenses, etc). The payment either in kind or in money of the stipend is by reason of inconveniences that the celebration of Mass may entail for the priest (discomfort, surrender of the freedom of movement),<sup>569</sup> but still more by reason of the compensation due for expenses to be incurred (for instance for a journey, or a stay at a hotel), or of losses to be suffered (as that of time which he might have spent in some lucrative occupation, working in his garden, etc.), and for all manner of reasons quite extrinsic to the celebration of Mass itself.<sup>570</sup> So, the Mass stipend is considered as a payment for the contract for these services, preparation and travel expenses, provided by the priest, and not for the application of the Mass intention.

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<sup>569</sup> Arendt, who advocates the theory of payment for the surrender of liberty, explains that the Mass stipend is valued in reference to the subjective inconvenience of the priest forfeiting his liberty, which is real and may be estimated in terms of a real price independent of the celebration of Mass with which it is forfeited. The mutual obligations which bind the priest and the faithful arise, therefore, out of a contract by which two things are exchanged, the priest's liberty and the stipend. The obligation cannot be separated from its object, and the forfeiture of liberty is just as inseparable from the obligation. To charge a price for the forfeiture of liberty is to charge for the assumption of the obligation, which is, in turn, to sell the object of the obligation, the Mass. The forfeiture of liberty is an inconvenience in itself to the priest, but this inconvenience cannot be sold without the obligation and its object also being sold. The priest's freedom is intrinsic to, and inseparable from, his obligation, and the obligation from its object. It follows from this that a priest who fails to apply Mass is not bound to restore the stipend (McDONNELL, "Stipends and Simony," 53 [1939], 596).

<sup>570</sup> M. de la TAILLE, *The Mystery of Faith and Human Opinion Contrasted and Defined*, London, Sheed & Ward, 1930, 84-85.

This was the earliest theory proposed in canon law. It is seen in the *Decretum Gratiani*, the Decretals, and it was favoured by Raymond of Penafort and by the Franciscan theologians: Alexander of Hales, Bonaventure, etc. It went out of favour after the Council of Trent, especially due to Suarez who developed the innominate *do ut facias* contract theory. This became the predominant theory thereafter, through the 1917 code and until the 1983 Code.

### 3.5.3 The *locatio operis*

According to *locatio conductio operis*, this theory maintains that it is a contract whereby one party agrees, in consideration of money payment, to supply the other not with labour, but with the *result* of labour, that is, a hiring contract for services. This is a more recent theory, favored by Zacharias Varalta,<sup>571</sup> and P. Daniele F. Galea.<sup>572</sup> Zacharias Varalta shows that many of the early authors actually held this opinion or theory, without calling it that. The main difference is that the contract for service(s) does not have the overtones of an employer/employee relationship, as does the *locatio operarum*. Consequently, the one giving the stipend is not an employer, nor is the priest an employee. The one who pays the stipend receives (pays for) the services of the priest (and is not buying a Mass intention), but the stipend is a compensation for the services of the priest celebrating Mass. In other words, the Mass stipend donor receives the results of these services. The subject matter of the *locatio conductio* will be the payment of a true

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<sup>571</sup> Z. VARALTA, *Natura iuridica di rapporto di offerta e accettazione di "stipendium Missae"*, Romae, Apud Custodiam Librariam Pont. Instituti Utriusque Iuris, 1942. He argues in favour of the Mass stipend being one kind of bilateral contract, the Roman *locatio operis*, that is, a hiring contract for services.

<sup>572</sup> P.D.F. GALEA, "Dottrina antica e problematica moderna sulla legittimazione dello 'Stipendium Missae'," in *Divinitas*, vol. II (1981), 183-205; 272-315.

salary and the payment of the extrinsic service<sup>573</sup> added to the celebration of the Mass.<sup>574</sup>

On the other hand, in order to stimulate the practice of religious worship, someone can pledge himself to pay a priest a fixed sum of money for every Mass celebrated by him, without specifying time and place, and without specifying any particular application of its fruits. There is no simony because there is no exchange of a spiritual matter for a temporal advantage, since the motivation is to stimulate religious practice and worship. In such a case, the Mass stipend is considered according to this theory as payment for the extrinsic service of labour for the celebration of Mass and not for the Mass intention itself.

Some authors maintain that the labour of the Mass may be priced and sold, and it is for this that the stipend is received. The labour is the physical labour intrinsic to the offering of the Mass. The labour for Mass cannot be set aside from the Mass and a price put on it. The labour for Mass is something essential to the task and intrinsically bound up with the celebration of Mass, so that the sale of the labour is also the sale of the service. Labour cannot be considered apart from the service to which it is directed, or it is not labour at all in the accepted sense of the word. The mere exertion of oneself has no value. If the stipend were remuneration for the labour of the Mass only, then the priest would not be bound or obliged to apply the Mass for the particular intention. To apply the Mass involves no physical labour, it only means to offer it for the particular intention.

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<sup>573</sup> Extrinsic service added to the celebration of Mass is the settlement of payment either in kind or in money for example when a priest is engaged to celebrate Mass in such place, at such and such an hour, before such a congregation. By reason of surrender of the freedom of his movements, inconveniences the affair may entail for the priest, and other expenses incurred by him for a journey or stay in a hotel, in short, all manner of reasons quite extrinsic to the celebration of Mass itself, is to be considered as extrinsic service for which remuneration is due. According to the *locatio operis* the priest is compensated or paid for the inconveniences incurred (M. de la TAILLE, *The Mystery of Faith and Human Opinion*, 84-85).

<sup>574</sup> M. de la TAILLE, *The Mystery of Faith and Human Opinion*, 85.

But the labour for the Mass may be considered as directed towards spiritual service in general. Thus, the labour of the Mass may be compensated in strict justice, the compensation not being the price for the service, but a contribution to the descent support or sustenance of the priest.<sup>575</sup>

The generic end of the labour is essentially and exclusively always realized in its specific determination of a spiritual benefit. Hence to pay for the labour as intended to render service is exactly the same as to pay for the labour as intended to bear spiritual fruit for the benefit of the donor. It means that the purpose for which the money is intended, which is the sustenance of the priest, has nothing to do with the question of labour. Labour may be entailing a disadvantage to the one who labours. Under this aspect, the labour of the Mass entitles the priest to remuneration which is not the price of the service.<sup>576</sup>

We cannot sell labour without selling it. The inconvenience of celebrating Mass is just as intrinsic to it as labour is to the service. To sell labour is to sell the service, the application of Mass. The priest receives the stipend for applying the Mass for the intention of the donor, and not just for the labour of celebrating Mass. The theories presented do not succeed in eliminating the charge of simony or casuistry involved with the Mass stipend transaction, and has not done honour to Catholic theology, for the distinctions adduced could as well be introduced to a contract of sale or hire contract. By the application of these distinctions, every spiritual service could become lucrative, so

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<sup>575</sup> De la Taille, *The Mystery of faith and Human Opinion*, 598.

<sup>576</sup> De la Taille, *The Mystery of faith and Human Opinion*, 98.

that it would be impossible to talk of the prohibition of simony by divine law, since every spiritual service involves labour.

### **3.6. Juridic Nature of Mass Stipends and Obligations**

Determining the nature of Mass stipends and the source of strict obligations revolves around the answer to the question whether the Mass stipend involves a contract or not. If the Mass stipend is a gift, as it has been adequately and repeatedly stated in the canons regulating this custom, and not a contract, what are we to make of the strict norms regulating the practice which may give the impression that some kind of contractual obligation is involved with the Mass stipend?

From the earliest days of this custom, Mass stipends have always been considered in the nature of voluntary, spontaneous freewill offerings and gifts of the faithful for the support of priests who celebrated and applied the Mass in accordance with the intentions of the donors. The present-day stipend is not a new species of the old offering but a changed form of it. The change today from presenting a common offering at Mass to giving an individual offering outside Mass and from the offering in kind to money-offerings is quite natural and accidental. The present-day Mass stipend is the direct descendant of the common altar-offerings of the apostolic era. The present-day transaction was contained, as it were, in embryo, in the practice of common offerings of the apostolic era. Under pressure from a developing theology of the Mass, (motivated by the restriction of one stipend per Mass) the one system evolved from the other as the faithful tried to secure the special fruits of the Mass to the exclusion of others. This made the stipend to have a new standing which it did not have, if it is considered merely as a

practice that started in the seventh or eighth century. The stipend in principle is as old as the Mass itself since it owes its origin to the nature of the sacrificial character of the Mass, and the one principle that those who serve at the altar should live by the altar.

The 1917 and the 1983 Codes, therefore, made no substantial legislative changes to the nature of Mass stipends, but merely restated the earlier teaching of the Church in this respect. This age-long custom of denominating Mass stipends as *stips* is continued and highlighted in both codes. *Stips*, or gifts, are without question voluntary contributions of the faithful.<sup>577</sup> Even if the present code denominates Mass stipends exclusively as *stips*, this understanding, however, was never absent from the former code. In fact, the former code used two other terms: *eleemosynae* and *stipendium* for Mass stipends which could leave an equivocation regarding the nature of Mass stipends, but it is also true that the former code used the term *stips* for Mass stipends. Consequently, the present law refers to this donation exclusively as an *offering (stips)*, that is, a freewill gift, by which the faithful donate or contribute for the celebration of Mass for their intention. This expression leaves no doubt or confusion as to the juridic nature of Mass stipends. Mass stipends are gifts in the truest sense of the word.

Commentators of both codes agree with this conclusion and describe Mass stipends as voluntary contributions. The practice whereby the faithful, in the early days of the Church, were accustomed to offer bread and wine at each Mass they attended and sometimes to lay money upon the altar which became universal by the twelfth century, represents the present day practice of the Mass stipends, and the present day Mass stipend

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<sup>577</sup> O'BRIEN, *The Nature of Support of Diocesan Priests*, 102-103.

merely takes the place of the common offerings which the early Christians were accustomed to give for the support of the priests on the occasion for the celebration of Mass.<sup>578</sup> This is the custom that has been received, approved and regulated by the Church.

Besides, it has also been argued in civil law that Mass stipends are reckoned as personal gifts to the priests. O'Brien maintains that the giving of Mass stipends to a priest constitutes a personal gift which has been recognized in civil law and it is certainly not a contract, or a sale, or hire.<sup>579</sup> Since Mass stipends are classified as personal gifts in civil law, both canon law and civil law are identical in this matter. It follows, then, that in civil law,<sup>580</sup> indeed as it ought to be, Mass stipends are to be reckoned in the nature of personal gifts to priests.<sup>581</sup>

In canon law, the reason for the strict norms governing this practice is not to leave any impression that some kind of contract is involved in Mass stipends, but the reason is as stated in c. 947 of the 1983 Code, to avoid the appearance of trafficking or trading with Mass stipends. The law forbids a priest to enter into any contract to celebrate Mass, otherwise this will be simony. The 1917 Code, largely due to a certain terminological ambivalence in the use of two ambiguous terms, *eleemosynae* and

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<sup>578</sup> "In Mass stipends the money is *not* received *for the Mass* itself, *or for the labor for the Mass*, but only for the support of the priest celebrant. The Mass is freely applied by the priest. The contribution to his support is not the price of the spiritual Mass. The fact of his receiving support is a condition requisite in order that the priest may be able to offer the Mass" (ibid., 103).

<sup>579</sup> "[...] [E]very American decision in courts of record, unanimously declare that the delivery of a Mass stipend constitutes a gift" (ibid., 105-107).

<sup>580</sup> Ontario income tax laws consider Mass offering as personal income and not gifts and, as such, the Mass offerings of priests are taxed under present Federal income tax laws.

<sup>581</sup> O'BRIEN, *The Nature of Support of Diocesan Priests*, 105-107.

*stipendium*, gave the impression that Mass stipends were some kind of quasi-contractual transactions, or an innominate *do ut facias* contract. That is why the 1983 Code eliminates any and all terminological inconsistencies and maintains exclusively that Mass stipends are personal gifts *stips* to priests, given by the faithful out of concern for their pastoral ministry. Accordingly, therefore, Mass stipends are to be rightly understood as freewill donations or gifts of the faithful given to priests out of consideration for their ministry, on the occasion of the celebration of Mass.<sup>582</sup> The present code, prefers the word *stips*. *Stips* clearly signifies that the offering or donation is freely given by the faithful, primarily out of concern for the material needs of the Church and her desire to assure a descent support of her ministers. Mass stipends are gifts to the Church or to its ministers on behalf of some intention, entrusted to a priest to be used for the Holy Sacrifice of the Mass and which upon the completion of the Sacrifice comes to the priest from the donor as a gratuitous gift. Any priest who freely chooses to abide by this custom, however, is morally obliged to fulfill the wishes of the donors of stipends. This strict obligation is imposed on him by the law. The priest is free not to accept stipends if he chooses to do so, even though this is a right given to him by the law, but he will still be bound by pastoral charity to celebrate Masses for the intentions of the faithful, even if he does not accept stipends for them. If he decides to accept stipends, he is legally bound to satisfy the wishes of the donors.

The source of the strict obligations, as can be seen, arises not from any prior contractual obligations but from the priest's acceptance of stipends and the strict positive

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<sup>582</sup> This explains why the word *stipend* is no longer retained in the present code. The words *eleemosynae* or *stipendium*, as used in the former code, suggested remuneration, a reward or payment for services in exchange for the application of Mass.

regulation of Church laws which has approved the custom.<sup>583</sup> Once a priest has accepted an offering, even if it is a very modest one, the strict obligation arises not from any contractual obligations between the priest and the donor, not even from the stipend itself, but from his acceptance and the law. He is obliged, he is bound to celebrate distinct Masses for each of the intentions for which stipends were given and accepted. The strict obligation arises from his acceptance and the law and not from the relative amount of the offering. This same obligation extends and persists even when the offerings have lost value or have been lost through no fault of the priest.<sup>584</sup> To guarantee the personal fulfillment of this strict obligation, therefore, the following temporal caution is established in c. 953. "No one is permitted to accept more offerings for Masses to be applied by himself than he can satisfy within one year." This means the priest is free to refuse to accept more stipends once he knows he will not be able to fulfill these obligations within the space of one year.

Furthermore, it is the teaching of the Church that the Mass stipend practice is spiritually beneficial for those requesting the application of Mass for their intentions, that is, by adding (an oblation) something of their own sacrifice, to the spiritual sacrifice of the priest, even if this is a small contribution. By doing so, the faithful can more easily unite themselves with Christ who offers himself in the sacred Host, and with the priest,

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<sup>583</sup> "When a priest has accepted a stipend for the application of a Mass his obligation is [...] one of commutative justice" (H. DAVIS, *Moral and Pastoral Theology*, vol. III, London, Sheed and Ward, 1958, 179).

<sup>584</sup> "A person obliged to celebrate and apply Mass for the intention of those who gave an offering is bound by the obligation even if the offerings received have been lost through no fault of his own" (c. 949).

who offers the Mass, and thereby obtain more abundant fruits from the Mass.<sup>585</sup> Ideally, then, and to benefit more from the celebration of Mass, wherever and whenever possible, it is strongly recommended that the donor of the stipend should be present and take active part in the Mass, and also receive holy communion.

To be sure, there is no simony involved with the Mass stipend, because the faithful who offer a Mass stipend wish to participate actively at the Mass in which their intention is prayed for, thereby offering something of their own resources on the occasion, under a just title, for clergy sustenance and in consequence of a legitimate custom.<sup>586</sup>

Mass stipends are gifts of the faithful symbolizing their internal dispositions and total surrender to Christ. The code speaks of the custom of accepting stipends for the celebration of Mass as being lawful, because the priest receives the stipend under a just title – clergy sustenance. This practice is lawful, however, all forms of commercialism, negotiation, bargaining or trade, or semblances of trafficking with the Mass stipend should be completely avoided.

Furthermore, the ordinary regular sources of ecclesiastical income and revenues, which are treated under Book V (Temporal Goods of the Church), are subject to an

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<sup>585</sup> The Mass stipend "symbolizes the external expression of the internal participation of the faithful in the Eucharist[...] an external expression of their internal disposition to make a total sacrifice of themselves in sharing what they have for the needs of the Church" (S. THEKETHECHERIL, *Offering for the Celebration of Mass in Canonical Legislation: A Historico-Juridical Study*, JCD diss. Rome, Pontificia Universitas Urbaniana, 1989, 65 and 70).

<sup>586</sup> O'BRIEN, *The Nature of Support of Diocesan Priests*, 50. According to him, the Mass stipend transaction constitutes a quasi contract.

ecclesiastical tax and not Mass stipends, to point to the fact that Mass stipends are regulated differently because they are gifts.<sup>587</sup>

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<sup>587</sup> See chapter two, section 2.2.1.2 for the treatment of the prohibition of a tax on Mass stipends.

## Conclusion

An examination of the juridic theories about the nature of Mass stipends has revealed some merits and demerits of each of the theories in the different categories. Broadly divided into three categories: extra-contractual theories, unilateral contractual theories, and bilateral contractual theories, all these theories had as a common purpose the resolving of the appearance of simony in Mass stipends. With regards to the first category of theories, i.e. the non-contractual theories, we maintain that the source of the strict obligation in commutative justice, to celebrate Mass for each intention for which stipends were given and accepted, arises from the priest's acceptance and positive regulation of the Church of the custom. The priest is freed from this obligation in strict justice after he has discharged the obligations associated with the Mass stipend.

Unilateral contractual theories maintain that the Mass stipend is a unilateral contract in the sense that the donor makes a promise to pay the priest the stipend if he would celebrate Mass for his special intention, and when the priest does celebrate, the donor is obliged in strict justice to pay him the stipend because of the donor's promise. We maintain that there is no contract on the part of the donor because the Mass stipend is a voluntary freewill gift and, as such, begets no contract on the part of the donor to make the donation. The priest does not secure the Mass stipend by means of a contract, albeit unilateral, but by reason of the voluntary free will offering of the donor. It is clear that there is an obligation in strict justice binding the priest to the celebration of Mass from the donor's intention and not the donor to the payment of a stipend, because it is a gift. This obligation takes its source not from any contract between the donor and the priest, but from the priest's acceptance and the law. It is inadequate to attempt to solve the

problem of eliminating simony in the Mass stipend by considering the subjective intention of the donor and the priest, as advocates of the unilateral contract maintain, because the mere intention not to have a contract of sale does not prevent the transaction from being one.

Bilateral contract theories bind both parties in strict justice, the faithful to the payment of the stipend and the priest to the celebration of Mass. Clearly, bilateral contractual theories are simoniacal by the very notion of these theories themselves. Accordingly, the source of the strict obligation of the Mass stipend is based on a contract or agreement between the donor of the stipend and the priest. A priest cannot contract to celebrate Mass since this will be simony in virtue of divine law. For a similar reason, the payment either in kind or in money of the stipend by reason of compensating for the inconveniences that the celebration of Mass may entail for the priest is ineffective. The inconvenience of celebrating Mass is part and parcel of applying the Mass and this is merely a negative aspect of the obligation itself. Because of the same considerations, we reject the *locatio operarum* theory, since the physical labour in question is the celebration of Mass which cannot be detached from the application of the Mass.

The strict obligation that binds the priest to the celebration of Mass for each stipend received and the absence of simony in this transaction are based on the history of this custom and the regulation of the law. The law denominates Mass stipends exclusively as freewill offerings (*stips*), that is, a gift. The present-day Mass stipend merely takes the place of the offerings which the early Christians were accustomed to give for the support of the priests on the occasion for the celebration of Mass. The strict obligation is based on the priest's acceptance to celebrate Mass for the donor's intention

and the strict regulation of the positive laws of the Church of this custom. It is also a duty of conscience on the part of the priest to fulfill what he has accepted to do, namely, to celebration and application of Mass for the intention of the donor of the stipend. This is what accounts for the strict obligation. Mass stipends are legitimate customs, therefore, because the Church has approved this usage, because they are a source of financial support for the ministers of the Church and there is no simony involved in this practice. The practice is spiritually beneficial for those requesting the application of Mass for their intentions because through this usage the faithful symbolize the external expression of their internal participation at the Mass and the external expression of their internal disposition to make a total sacrifice of themselves in sharing what they have for the needs of the Church.

## CHAPTER FOUR

### PARTICULAR LAWS AND CUSTOMS IN THE DIOCESES OF CAMEROON

#### Introduction

The Catholic Church in Cameroon is made of five ecclesiastical provinces, with twenty-six dioceses. Cameroon speaks two official languages, English and French, including several other local languages. The Church hierarchy in Cameroon today is predominantly made up of the local clergy, although there are still a few expatriate bishops in some dioceses. The practice of Mass offerings in the universal Church<sup>588</sup> has not been without its practical problems, especially regarding the proper implementation<sup>589</sup> of the universal law<sup>590</sup> in particular laws and customs of certain particular Churches in Cameroon.<sup>591</sup>

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<sup>588</sup> Canon 12, §1. "Universal laws bind everywhere all those for whom they were issued. §2. All who are actually present in a certain territory, however, are exempted from universal laws which are not in force in that territory. §3. Laws established for a particular territory bind those for whom they were issued as well as those who have a domicile or quasi-domicile there and who at the same time are actually residing there, without prejudice to the prescript of can.13." Universal law "applies to Catholics of the Latin Church no matter where they happen to find themselves." (C.C. ANYANWU, *The Relationship Between Universal Law and Particular Law: An Analysis of the Particular Complimentary Norms of the Catholic Bishops' Conference of Nigeria (CBCN)*, JCD diss., Ottawa, Ontario, St. Paul University, 2008, 2).

<sup>589</sup> The first task of implementing the law is, first of all knowing with precision what the law says. It is also to receive the law and to let it shape the life of the community as well as letting the law also to be shaped by the forces of the life of the community (L. ORSY, "Reception and Non-Reception of Law: A Canonical and Theological Consideration," in *CLSA Proceedings*, 46 (1984), 66-70).

<sup>590</sup> "Universal laws are made for the Latin church by the supreme legislator – the pope or college of bishops (or their delegate) – and they bind those for whom they were made everywhere they go (e.g. clerics, pastors, all the faithful, etc.) If a particular territory has an exemption from a universal law, anyone present in the territory is exempt from that law, not only those with domicile and quasi-domicile but also travellers" (J.M. HUELS, "Ecclesiastical Laws [cc.7-22]," in *CLSA Comm2*, 65).

<sup>591</sup> Canon 368: "Particular churches, in which and from which the one and only Catholic Church exists, are first of all dioceses, to which, unless it is otherwise evident, are likened to a territorial prelature and territorial abbacy, an apostolic vicariate and an apostolic prefecture, and an apostolic administration erected in a stable manner." "A particular Church (diocese, c. 369) may be considered first as a community that is determined by a territorial unit or a territorially distinct portion within the entire Church, that is a portion of the people of God which is entrusted to a bishop with the assistance of the presbyterate" (J.R. LICARI, *The Diocese as a Particular Church According to the 1983 Code of Canon Law*, JCD diss., Ottawa, Ontario, St. Paul University, 1989, 154). "The persons who head these communities are equivalent

In some dioceses in Cameroon, one does not fail to notice either the lack of due canonical precepts in particular law, regulating the practice of Mass offerings, or insufficient prescriptions, resulting in some unorthodox practices with regard to the practice of Mass offering. Some of these practices have been in place for a long time. According to one such practice in the ecclesiastical province of Bamenda, for example, the celebrant of a Mass for which an intention is given by the people is not allowed to retain the stipend for himself, contrary to the precepts of c. 945, §1. The stipend received by the parish is divided as follows: of the sum given for the Mass intention, eighty percent (80%) is retained by the parish and the remaining twenty percent (20%) is submitted to the diocese. Thus, eighty percent (80%) of what is received by the parish as offerings for Masses is surrendered to the parish as the income for the parish, and the remaining twenty percent (20%) sent to the diocesan office to be used towards the upkeep of the diocesan office expenses and a small portion of it, namely five percent (5%), is set aside for *Opus securitatis*, that is, for the retirement fund (old age pension) for diocesan priests. It is also a noted fact that in some other dioceses in Cameroon that have subscribed to the *Opus securitatis* retirement scheme for diocesan priests, all diocesan priests who are still in active service are each obliged to celebrate two Masses every

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in law to a diocesan bishop even if they have not received episcopal ordination, unless the contrary is evident either from the nature of the matter or the precept of law (c. 381, §2)" (J.A. RENKEN, "Particular Churches [cc.368-374]," in *CLSA Comm2*, 504).

month for which they do not receive the Mass offering as a contribution for their old age pension, for the benefit of the same scheme.<sup>592</sup>

Furthermore, in the Bamenda ecclesiastical province, the offerings for Mass intentions received from abroad are retained by the diocesan office in their entirety and not given to priest celebrants as required by the universal law of the Church. Canon 135, §2 says that a law which is contrary (*contra legem*) to a higher law issued by the supreme legislator of the Church cannot be validly enacted by a lower level legislator.<sup>593</sup> This canon, therefore, has a notable restraint on a particular law that a diocesan bishop may issue, and as such, a diocesan bishop will be restricted by the law enacted by the Roman Pontiff, the supreme legislator of the universal Church regarding the implementation of the canons on Mass stipends.<sup>594</sup> A diocesan bishop cannot validly issue laws which are contrary to the universal laws<sup>595</sup> issued by the supreme pontiff following the principle of subsidiarity.<sup>596</sup> Such a principle ensures that there is legislative unity within the Church,

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<sup>592</sup> O. EONE EONE, "Le problème de la subsistance et de la sécurité social du clergé diocésain au Cameroun" in *Autonomie financière et gestion des biens dans le jeunes Églises d'Afrique*, Sous la direction de S. RECCHI, France, l'Harmattan, 2007, 66).

<sup>593</sup> Following the same principle, c. 33, §1 maintains that norms of executive authority cannot be contrary to the law of the comparable or higher legislator. A law is an obligatory norm of action, given by a person or group of persons possessing legislative authority (c.135, §1) for a community capable of receiving laws (J.A. CORIDEN, "Laws and Non-Laws," in *CLSA Proceedings CLSA*, 45 [1983], 86).

<sup>594</sup> "A universal law might not be binding in a specific territory for various reasons: (1) a contrary custom, including desuetude; (2) a contrary particular law, not expressly revoked, that was in force before the universal law went into force (cf. cc. 20, 135, §2), or a contrary particular law that the Holy See made or confirmed; (3) an apostolic privilege (c. 76) or other apostolic indult; or (4) a dispensation for a particular case (c. 85)" (J.M. HUELS, "Ecclesiastical Laws [cc.1-22]," in *CLSA Comm2*, 65).

<sup>595</sup> "[W]hen the meaning of universal law is construed, it should be understood in such a way that it can have universal application. In other terms, the very nature of a universal law postulates that it should be lifted out of the particular cultural context of the legislator and interpreted within the universal context of the Church spread all over the earth. It must be universally applicable. If it can be applied in only one or two places, then the law cannot be universal; it must be either particular or declared to be meaningless" (ORSY, "The Interpreter and his Art," 46).

<sup>596</sup> The fifth principle for revision of the code is based on the relationship between universal and particular law through the application of the principle of subsidiarity. This principle means that legislative

the common good of all is protected, and that the system of canon law is the same for the whole Church. Thus, this principle and system must be upheld everywhere within the universal Church.<sup>597</sup> Besides, c. 5, §1 of the present code reprobates (disapproves of in strong terms) and absolutely suppresses universal and particular customs which were in force at the time when the 1983 Code come into effect, customs which are contrary the prescripts of the law presently in force. As such, these customs are absolutely abolished and not permitted to revive in future. Only those customs expressly provided for by the code, centenary, or immemorial customs can be tolerated by the code if in the judgment of the ordinary they cannot be removed without causing much harm.<sup>598</sup>

In light of some of the questionable practices in some dioceses in Cameroon, we ask the following questions: How should particular law and custom regulate the institute

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unity is fundamental in all major legal statements, but also adaptation to local conditions by particular laws through the power of governance to which legislative power is attached. The application of the principle of subsidiarity is for the common good, and in a general manner the system of canon law must be the same for the whole Church in its highest principles with regard to fundamental institutions, the means proper to the Church for obtaining its end, and legislative technique. For further development and discussion on the principle of subsidiarity. See G. LESAGE, "Le principe de subsidiarité et l'état religieux," in *Studia canonica*, 2 (1968), 99-123; see also R. METZ, "La subsidiarité, principe régulateur des tensions dans l'Église," in *Revue de droit canonique*, 22 (1972), 155-176.

<sup>597</sup> "Given the expanse and diversity of the Church, it would be unrealistic to expect that all pronouncements and laws would be received and applied in the same way" (F.G. MORRISEY, "The Significance of Particular Law in the Proposed New Code of Canon Law," in *CLSA Proceedings*, 43 [1981], 15). For a discussion of the reception of law, see G. KING, "The Acceptance of Law by the Community: A Study in the Writings of Canonists and Theologians, 1500-1750," in *The Jurist*, 37 (1977), 233-265.

<sup>598</sup> Canon 5, §1: "Universal or particular customs presently in force which are contrary to the prescripts of these canons and are reprobated by the canons of this Code are absolutely suppressed and are not permitted to revive in the future. Other contrary customs are also considered suppressed unless the Code expressly provides otherwise or unless they are centenary or immemorial customs which can be tolerated if, in the judgement of the ordinary, they cannot be removed due to circumstances of places and persons."

of Mass offerings in order to safeguard the rights and obligations of the priest celebrant with respect to Mass offerings in light of the 1983 Code of Canon Law? What about Mass offerings coming from abroad? Whose competence is it to regulate the practice of Mass offerings and to safeguard the right of the priest celebrant to retain the Mass stipend which is also a grant of the universal law of the Church? What could possibly be done to right some of the questionable praxis presently prevailing in some of the dioceses in Cameroon vis-a-vis the Mass offering?

The last and fourth chapter of our study is a critical review of the issue of Mass stipends and its application in particular law and customs in dioceses in Cameroon. In order to achieve this objective, we have conducted a scientific survey in the twenty-six dioceses that make up the national territory of Cameroon. This survey is based on the implementation of the canons on Mass offerings in particular law and customs in Cameroon.<sup>599</sup> Based on this survey, we will be able to assess some of these practices in light of the canonical principles and praxis.

It is our hope to derive from our study canonical principles applicable to Cameroon so that the bishops of each of the five ecclesiastical provinces that make up the National Episcopal Conference of Cameroon may be offered proper canonical guidance in righting the inequitable situation currently prevalent in some dioceses with respect to the rights and obligations of the priest celebrant. The principal goal, then, will be to propose a uniform practice based on sound canonical principles that can be prudently and

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<sup>599</sup> The survey questions are included in the appendix.

equitably applied within the five ecclesiastical provinces that make up the National Episcopal Conference of Cameroon.

#### 4.1 Particular Law and Custom

The present code recognizes, in those who preside over particular Churches and other communities of the faithful that are equivalent in law to particular Churches, the possibility of these authorities to issue particular legislation.<sup>600</sup> The reference in the code to particular legislation is a principle that is co-essential to the mind of the legislator. Thanks to the possibility of issuing particular laws, the legislator can respond to specific cultural needs, protect and express the life of faith of different ecclesial communities. Particular legislators are all those within the Church who can issue laws for a part of the Church, for a determined territory, or for a community.<sup>601</sup> St. Thomas Aquinas defines law as “an ordinance of reason enacted for the common good by one who is in charge of the community, and promulgated.”<sup>602</sup> Law must be reasonable and not merely based on the will of the legislator.<sup>603</sup> Our primary focus will be on the kinds of laws that diocesan

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<sup>600</sup> *Lumen Gentium*, chapter three (nos. 18-29), provides the Catholic ecclesiological teaching on the hierarchical constitution of the Church. It states that Christ constituted the Church by divine delegation of power to the apostles and their successors, the bishops. The Church was not created by human consent, but by the direct will of Christ. Power and authority in the Church are based, therefore, on spiritual jurisdiction which the bishops possess, in virtue of being the successors of the apostles. "According to the nature of the matter, presbyteral leadership figures cannot place those acts which require episcopal ordination (e.g., the power to ordain). Presbyters who govern particular churches can perform other acts otherwise reserved in law to the diocesan bishop, unless a given law forbids this" (J.A. RENKEN, "Particular Churches [cc. 368-374]," in *CLSA Comm2*, 505).

<sup>601</sup> S. RECCHI, "La production du droit particulier pas les conférences épiscopales," in *L'année canonique*, 50 (2008), 53-61.

<sup>602</sup> "Ordinatio rationis ad bonum commune ab eo qui curam habet communitatis promulgata" (*Summa Theologica* I-II, q. 90, a.4).

<sup>603</sup> Law is reason bringing order into the life of the community, enacted by the one who is in charge of the community, for the sake of the common good, and properly promulgated. If a norm does not spring from reason it is not law hence it does not bind. If it is not for the common good it is not good at all.

bishops and the meeting of bishops of a province or the provincial council may issue regulating the practice of Mass stipends. In the application or implementation of the canons of Mass offerings, these particular laws must be reasonable, aimed at the common good of all, and establish right order.<sup>604</sup> We will also examine some of the existing customs that have developed in and around the practice of Mass offerings within the particular Churches. These also must have the quality of reasonableness, because custom is a source of law, and like law, custom should foster the common good of all.<sup>605</sup>

Particular legislation concerns the necessary adaptations of universal law into particular Churches, taking into consideration necessary circumstances of time and place.<sup>606</sup> In general, a particular law can be said to be a collection of laws and pastoral

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If it has not been duly promulgated, people should not pay attention to it. The rightful author of the law is always one who is in charge of the community (L. ORSY, "Reception and Non-Reception of Law," 66-67).

<sup>604</sup> The making of the rules is key to their effectiveness. In contemplating the prospect of particular legislation, the process followed in arriving at and drawing attention to norms is critical to their wisdom, suitability and acceptance. The better the participation in the rule-making process, the more likely the positive reception and effectiveness of the rules. The principle of consulting the presbyters and people is far more than a pragmatic strategy, it is a theological imperative. It is based on the implications of membership in the Church and the active sharing of all members in its mission (CORIDEN, "Laws and Non-Laws," 88).

<sup>605</sup> "Custom, which is a source of canon law (ius), must also have this quality of rationality [...] Like law, custom should foster the common good; it should not be offensive or divisive" (J.M. HUELS, *Liturgy and Law: Liturgical Law in the System of Roman Catholic Canon Law*, Montréal, Quebec, Wilson & Lafleur Ltée, 2006, 135). "Custom is a normative practice of the community that is adopted by the community itself. Custom is normative, that is, it is a practice that the community wants to be binding; it wants to maintain the practice and observance of it. This is to be distinguished from other practices that originate in the community, but which are not considered normative" (J. M. HUELS, "Back to the Future: The Role of Custom in a World Church," in *CLSA Proceedings*, 59 [1997], 1-25).

<sup>606</sup> Canon 381, §1: "A diocesan bishop in the diocese entrusted to him has all ordinary, proper, and immediate power which is required for the exercise of his pastoral function except for cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to another ecclesiastical authority." §2, "Those who preside over the other communities of the faithful mentioned in can. 368 are equivalent in law to a diocesan bishop unless it is otherwise apparent from the nature of the matter or from a prescript of law." The law, as long as it remains in books, is not yet a vital force in the community. It is not yet shaping

orientations, adopted by intermediate competent ecclesiastical authorities or bodies and duly sanctioned, which apply to certain categories of the faithful, either by reason of territory or by membership in associations or other groupings. Thus particular law need not be legislation in the strictest sense of the word, and as such, particular law could find various forms of expression.<sup>607</sup> While particular law is given to the community that is at least capable of receiving a law by the competent ecclesiastical legislative authority, custom, on the other hand, is a norm which has been introduced by the community itself, the chief difference between particular law and custom being their respective sources of origin, that is, the competent legislative ecclesiastical authority for particular law, and the community for a custom.<sup>608</sup> While laws must be promulgated and tested, customs have already been tested and, as such, the acts that created them are a witness to their reception or acceptance.<sup>609</sup> Intuition and experience are the decisive factors in the determination and the introduction of customs. It must be noted, however, that the leader of the

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the lives of the people. The existential element is missing. Thus, reception of the law, which is the intelligent and responsible accommodation of the law to the demands of concretely obtainable values by the community, belongs to the fullness of the law (L. ORSY, "Reception and Non-Reception of Law," 68).

<sup>607</sup> "Particular law is "a series of orientations or practical guidelines enabling those subject to the decisions to comply readily, without compulsion, except where absolutely necessary to proceed otherwise. It could also be a recognition of local initiatives fostering the life of the People of God in a given area" (F.G. MORRISEY, "The Significance of Particular Law in the Proposed New Code of Canon Law," in *CLSA Proceedings*, 43 [1981], 7-8).

<sup>608</sup> J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 86.

<sup>609</sup> Custom can be used to interpret laws. The Church, understood in its apostolic character, is governed by authority and by tradition, both general and particular. Local custom is not to depart from apostolic or papal tradition. Therefore, custom, so properly understood, interprets apostolic teachings and gives them local expression and determination. Customs also supply for the law when the matter is not regulated in the law, and custom can be used to abrogate laws (G.J. KING, *The Acceptance of Law by the Church Community as an Integral Element in the Formation of Canon Law: An Historical and Analytical Study*, CLS no. 498, Washington, DC, Catholic University of America, 1979).

community can also introduce a custom but on condition that the community welcomes it, through a concerted action of the whole group.

In canon law, particular law<sup>610</sup> is said to be a law issued for a specific place or a specific group of people. It can be for a particular Church (diocese), an ecclesiastical province or nation. Particular laws can be issued by the supreme authority of the Church and also by lesser authorities appropriate to the level of the church (diocesan, provincial, national). It is presumed to apply only to a territory unless otherwise stated<sup>611</sup> and binds those who belong there while they are in the territory, as well as transients. Travelers, however, are bound only to certain types of laws.<sup>612</sup> The code contains provisions for issuing several kinds of particular laws, but the focus of our study has to do with the provision made by the code for the diocesan bishop and/or the provincial council or meeting of bishops of a province to define by *decree*<sup>613</sup> particular laws within the territory of their competence.<sup>614</sup>

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<sup>610</sup> "[...] [P]articular laws are laws enacted for a particular territory. Particular laws are those enacted by particular councils for their territories, such as a plenary council (cc. 439, §2 and 440, §§ 1, 2), and conference of bishops (c. 455, §§1, 2), or lawful customs, statutes and other norms meant for a particular Church or a group of persons. Apart from the Roman Pontiff, the college of bishops united with the head, and the Roman Curia (when delegated by the Supreme Pontiff), those who can enact particular laws within the realm of their competence are, diocesan bishops and those equivalent to them in law, the conference of bishops, particular councils and the major superiors of clerical religious institutes of pontifical right" (C.C. ANYANWU, *The Relationship Between Universal Law and Particular Law: An Analysis of the Particular Complimentary Norms of the Catholic Bishops' Conference of Nigeria (CBCN)*, PhD diss. Ottawa, St. Paul University, 2008, 61).

<sup>611</sup> Canon 13, §1: "Particular laws are not presumed to be personal but territorial unless it is otherwise evident."

<sup>612</sup> Canons 12, §3; 13, §§2 and 3.

<sup>613</sup> "[T]he term decree signifies both laws and [the administrative acts which provide for the execution of laws]" (*Communicationes*, 3 [1971], 92; quoted in M.R. MOODIE, "General Decrees and Instructions [cc. 29-34]," in *CLSA Comm2*, 97).

<sup>614</sup> Canon 952, §1.

Particular laws are made by the diocesan bishop in a synod or on his own initiative, by a meeting with other bishops in provincial councils or issuing decrees at episcopal meetings for the province, and through plenary councils and the conference of bishops at the national level (c. 439). Provincial and plenary councils clearly have the powers to make laws.

Canons 951, §1, 952, §1, 956, 957, 958, § 2, call for particular legislation on Mass stipends either by the diocesan bishop, or the provincial council, or the meeting of bishops of a province.<sup>615</sup>

In addition to the particular laws that a diocesan bishop may issue, canon law also recognizes custom<sup>616</sup> as another source of *ius canonicum*,<sup>617</sup> because customs have never ceased to play a role in the life of the Church.<sup>618</sup> In every juridical order, the rules established by common habit have got a certain binding force. This is because a practice which has always been carried out by the community is a good indication of that which ought to be done.<sup>619</sup> Because custom is born from the accumulated wisdom of the

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<sup>615</sup> See chapter two of our study, sections 2.2.6; 2.2.8; 2.4.4 and 2.5.

<sup>616</sup> M. J. GUILFOYLE, *Custom: An Historical Synopsis and Commentary*, CLS, no. 105, Washington, DC, Catholic University of America, 1937. Orsy addresses the the importance of custom in the development of law: "[S]ome of the wisest structures and discipline of the early Christian Church came into existence and were developed not so much by statutory legislation as through customs, to which all made their contribution. Balanced structures and wise norms can be created by the cooperation of a whole community. The collective wisdom of the people can play an important part in the process of both the development and the implementation of the law" (L. ORSY, "Reception and Non-Reception of Law," 67).

<sup>617</sup> J.M. HUELS, "Custom" [cc. 23-28], in *CLSA Comm2*, 86. (L. ORSY, forward in J.P. MCINTYRE, *Customary Law in the Corpus Iuris Canonici*, San Francisco, Melen Research University Press, 1990, viii). For custom as a source of law, see A.G. CICOGNANI, *Canon Law*, J. O' HARA, F. BRENNAN, (trans.) 2nd rev. ed., Philadelphia, The Dolphin Press, 1935, 104.

<sup>618</sup> For the nature and role of custom in the Church, see J.M. HUELS, "Back to the Future: The Role of Custom in a World Church," in *CLSA Proceedings*, 59 (1997) 1-25.

<sup>619</sup> Some of the wisest structures and discipline of the early Christian Church came into existence and were developed not so much by statutory legislation as through customs, to which all made their

community, it has a great importance as a means of the adaptation (reception) of law into the concrete life situations and circumstances of a people.<sup>620</sup> As an integral part of every legal system, custom reflects the practices and values and wisdom of the community and as such the canonical system pays particular attention to particular custom in the process of the development and implementation of the law.<sup>621</sup> While customary law cannot contradict divine positive and natural law,<sup>622</sup> canon law provides that customs, as long as they are reasonable, can have the force of law, even if they contradict specific canons of the Code of Canon Law.<sup>623</sup> This normative expression of the common sentiment (*sensus*

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contribution. Balanced structures and wise norms can be created by the cooperation of a whole community. The collective wisdom of the people can play an important part in the process of both the development and the implementation of the law. The law as long as it remains in books is not yet a vital force in the community. It is not yet shaping the lives of the people. The existential element is missing. Thus, reception of the law, which is the intelligent and responsible accommodation of the law to the demands of concretely obtainable values, by the community belongs to the fullness of the law (L. ORSY, "Reception and Non-Reception of Law," 66-70). See also G.J. KING, *The Acceptance of Law by the Church Community as an Integral Element in the Formation of Canon Law: An Historical and Analytical Study*, CLS no. 498, Washington, DC, Catholic University of America, 1979.

<sup>620</sup> For the importance of custom in canon law, see J. GAUDEMET, "La coutume en droit canonique," in *Revue de droit canonique*, 38 (1988), 224-251. "Custom is an instrument of extraordinary value for the adaptation of canon law to the real needs of different communities, each of which has its own circumstances: geographical, social, cultural, etc." (P. LOMBARDIA, "Custom," in *CCLA*, 48).

<sup>621</sup> The process of the implementation of the law is first knowing with precision what the law says, that is, the right understanding of the law. It is to receive the law and to let it shape the life of the community as well as letting the law also be shaped by the forces of the life of the community (L. ORSY, "Reception and Non-Reception of Law," 66).

<sup>622</sup> Law is reason bringing order into the life of the community, enacted by the one who is in charge of the community, for the sake of the common good, and properly promulgated. If a norm does not spring from reason, it is not law hence it does not bind. If it is not for the common good, it is not good at all. If it has not been duly promulgated, people should not pay attention to it. The rightful author of the law is always one who is in charge of the community (ibid., 66-67).

<sup>623</sup> "The norm laid down for the future is that the legislator will not grant approval, explicitly or implicitly, to any custom which is not reasonable" (ORSY, "Custom [cc. 23-28]," in *CLSA CommI*, 39).

*fidei*) of the faithful in the Church<sup>624</sup> (custom) can acquire the force of law according to the prescripts of cc. 23-28 of the present code of canon law.<sup>625</sup> We now turn our attention to the doctrine and law on custom in the Church.

#### 4.2 The Law and Doctrine on Custom

In canon law, a legal custom<sup>626</sup> is a practice which has been introduced by the community itself,<sup>627</sup> and which after repeated and constant performance of the same acts for a definite period of time, has become the obligatory norm, that is, has acquired the force of law (*vis legis*)<sup>628</sup> with the approval<sup>629</sup> of the competent ecclesiastical legislator.<sup>630</sup>

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<sup>624</sup> *Lumen Gentium* indicates the following: "The body of the faithful as a whole, anointed as they are by the Holy One (cf. Jn 2:20, 27), cannot err in matters of belief. Thanks to a supernatural sense of the faith (*sensus fidei*) which characterises the people as a whole, it manifests this unerring quality when, 'from the bishops down to the last member of the laity,' it shows universal agreement in matters of faith and morals. [F]or, by this sense of faith which is aroused and sustained by the Spirit of truth, God's People accepts not the word of men but the very word of God (cf. 1Th. 2:13). It clings without fail to the faith once delivered to the saints (cf. Jude 3), penetrates it more deeply by accurate insights, and applies it more thoroughly to life. All this it does under the lead of a sacred teaching authority (*Magisterium*) to which it loyally defers" (*LG*, no. 12). See also *CCC*, no. 92-93.

<sup>625</sup> J.T. MARTÍN DE AGAR, *A Handbook on Canon Law*, Montréal, Quebec, Wilson & Lafleur Limitée, 1999, 23. For a historical development and the significance of custom as a source of law in the modern legal system, see D.J. BEDERMAN, *Custom as a Source of Law*, New York, Cambridge University Press, 2010.

<sup>626</sup> "Customary laws are norms of action, created by the community, through a process in which the laity and the hierarchy participate, each according to its own charism. Their purpose is to uphold the values commonly judged necessary or useful for the life, prosperity, and mandated mission of the group. They are critically tested through repeated actions until a peaceful uniformity in practice develops. they are received by the community through the very process of their creation, and they reach maturity when they are accepted as legally binding" (L. ORSY, forward in J.P. MCINTYRE, *Customary Law in the Corpus Iuris Canonici*, San Francisco, Melen Research University Press, 1990, viii).

<sup>627</sup> "[...][Customs are part of the life of men and of communities, and establish models of conduct commonly accepted as just, which, therefore must be respected" (MARTÍN DE AGAR, *A Handbook on Canon Law*, 23). For theories of communities able to induce legal customs, see J.P. COOK, *Ecclesiastical Communities and their Ability to Induce Legal Customs*, *CLS*, no. 300, Washington, DC, Catholic University of America, 1950, 65-126.

<sup>628</sup> "The force of law does not mean that the custom becomes a law but that it has the same juridic weight as the law itself" (HUELS, *Liturgy and Law*, 134).

<sup>629</sup> "Approval of a custom may be either specific or legal. With *specific* approval, the custom achieves the force of law immediately. Customs may be specifically (*specialiter*) approved (c. 26) either expressly or tacitly. The legislator *expressly* approves a custom by explicitly stating this fact in a public

Custom orders the life of the community in a normative fashion.<sup>631</sup> Custom is different from the law in that while the law is introduced by the competent legislator (on his own initiative), a custom is most often introduced by the community with the intention<sup>632</sup> of making the practice an obligatory norm,<sup>633</sup> though it must receive prior approbation from the competent ecclesiastical legislator<sup>634</sup> for it to acquire the force of law.<sup>635</sup> The

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document. He *tacitly* approves a custom when it is certain that he is aware of the custom's existence but does nothing to eliminate it, for example, when he celebrates the Eucharist at which the custom is observed. Specific approval may be given at any time within the thirty years it would have taken the custom to attain the force of law by legal approval" (J.M. HUELS, "Custom [cc. 22-28]," in *CLSA Comm2*, 88).

<sup>630</sup> Canon 23: "Only that custom introduced by a community of the faithful and approved by the legislator [...] has the force of law." "A custom, like law, is a general norm for the community, a norm that regulates a matter that also could be regulated by law [...] A legal custom is not a law; it remains a custom but has the force of law (*vis legis*). Where the legal custom is in force, the faithful are bound to observe it, unless the community is in the process of forming a custom contrary to it. Whether legal or factual, a custom is a normative practice of a community, that is, the community intends the custom to be binding. However, a legal custom has greater stability than a factual custom and cannot be removed except by a contrary law or custom[...] besides being introduced by an ecclesiastical community (c. 25), a custom must be approved by the legislator to attain the force of law" (J.M. HUELS, "Custom [cc. 22-28]," in *CLSA Comm 2*, 86-87).

<sup>631</sup> "[...] A true custom is something that the people want to be binding; they do not consider it optional. They hold dear their customs; they want to maintain them and hand them on to the next generation. They are disturbed by any attempt to change or eradicate their customs" (J.M. HUELS, "Back to the Future," 7).

<sup>632</sup> "It suffices that the community wants a certain practice and intends to observe it. The people want it to be part of their life. They consider this practice to be a positive good for now and for the future. Implicitly, without being conscious of it, they want the custom to last. If they were asked whether they will like to see this custom survive for thirty years and be binding on their community in the future, they would say yes. The desire that the custom be normative is not in their conscious mind, but the will for it exists; they truly intend to have this custom" (J.M. HUELS, "Back to the Future," 15).

<sup>633</sup> "This does not mean that the community's leader may not introduce it, but the community must want it. If a practice is imposed against the will of the majority of the community, it is not a custom and cannot attain the force of law" (*ibid.*, 87).

<sup>634</sup> "The supreme legislator may approve any custom, universal or particular. A plenary council or conference of bishops (in accord with canon 455) may approve customs particular to a region. The diocesan bishop may approve diocesan customs. With respect to customs contrary to the law, determination of the competent legislator depends on the extent of the law to which the custom relates. If the custom is contrary to the universal law, only the pope or the college of bishops may approve it. If it is contrary to a particular law, the competent particular legislator, or his hierarchical superior, is the competent legislator. For

community capable of forming a custom that could attain the force of law must be capable at least of receiving law, i.e., must be a community for whom an ecclesiastical legislator may enact a law. The key factor of a community capable of forming an ecclesiastical custom is that the community is subject to ecclesiastical supervision, namely, a community or institution which has been lawfully established in canon law and which is under the supervision of ecclesiastical hierarchy.<sup>636</sup>

Custom may also be considered as a fact and as a law.<sup>637</sup> As a fact (*factual custom*), custom simply means the frequent and free repetition of the same acts

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example, the diocesan bishop or the pope could approve a custom contrary to a diocesan law" (J.M. HUELS, "Custom [cc. 22-28]," in *CLSA Comm2*, 87).

<sup>635</sup> "The key difference between a law and a custom is their respective origins - the legislator for a law, the community for a custom" (J.M. HUELS, "Custom" [cc. 23-28]," in *CLSA Comm2*, 86).

<sup>636</sup> Canon 25. Communities that are capable of receiving a law may be divided into three categories: (1) the community that makes up a juridic person, for example, all churches *sui iuris*, all particular churches, institutes of consecrated life and societies of apostolic life and their provinces, personal prelatures, parishes, public associations, private associations that have acquired juridic personality after approval of their statutes (c. 322), formally established houses of religious institutes, seminaries etc. (2) Communities and institutions that, although not juridic persons as such, have been canonically established in some way subject to ecclesiastical regulation and supervision, for example, private associations that have been approved by ecclesiastical authority and are subject to its regulation; the community that makes up a Catholic institution (such as a university or hospital) which, though not a juridic person, is controlled by a juridic person or Catholic faithful and is subject to canon law; local communities of religious institutes whose members reside in a house that lacks juridic personality but has been established in accord with the proper law of the institute. (3) Homogenous groups of persons who belong to entities defined in 1 and 2, for example, the permanent deacons of a diocese, the lay brothers of a clerical religious institute, the faithful who belong to a parish organization, Catholic hospital chaplains in the diocese, etc. (J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 90). See also J.M. HUELS, "Back to the Future," 12-13.

<sup>637</sup> "The formation of a liturgical custom typically begins by an unauthorized adaptation. For example, the pastor invites the members of the assembly to raise their hands in the *orans* position while praying the Our Father at Mass. Over time, the majority of the people raise their hands at the Our Father without any invitation, no matter the celebrant. The community has made the practice its own. It is now a factual custom. The majority wants to keep observing it, even if a new pastor should come who dislikes it. If this custom is observed continuously for thirty years [...] a new pastor would no longer have the power to remove it. The custom has attained the force of law. As a legal custom, it could be removed only by a law

concerning the same thing which the majority of the community considers as binding but has not yet acquired the force of a law.<sup>638</sup> As a law (*legal custom*), custom means the result and consequence of that fact, such that the custom in question has acquired the force of a law by the specific approval of the competent legislator.<sup>639</sup> For custom to acquire the force of a law, it needs not only the legal approval of the competent ecclesiastical legislator, but for legal approval to be effective all conditions required must be demonstrated.<sup>640</sup> The custom must be reasonable, i.e., the product of careful and serious deliberation, the custom must not be contrary to divine positive and natural law. Similarly, the community that started the custom must be one that is capable of receiving a law, and the community must intend to introduce an obligatory or normative practice for everyone within the community. The custom must also have been observed by the community for at least thirty continuous and complete years without any interruption. These rules require no intervention from the legislator. Since it is impossible for the

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expressly revoking it or by the community itself ceasing to observe it" (J.M. HUELS, *Liturgy and Law*, 132-133).

<sup>638</sup> "[T]he majority of the community would not be opposed to the removal of the practice" (J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 86).

<sup>639</sup> *Ibid.*

<sup>640</sup> "A legal custom is one that meets all the requirements of canon law to be a custom that has the *vis legis*, the force of the law itself. A custom of fact has the same effect on the community's life as a legal custom, but it lacks one or more of the canonical requirements that would give it the same force as the law itself, e.g., a custom that has not yet been observed for thirty continuous and complete years. Legal customs and factual customs operate in exactly the same way within the community: they are both practices that the community wants to be normative. The difference is this: a custom that has the force of law is abrogated only by a contrary custom or law (c. 28), whereas a factual custom can be abolished by merely administrative action of a competent authority" (J.M. HUELS, "Back to the Future," 8).

legislator to be aware of every custom, through legal approval, the legislator enables custom to achieve the force of law without his specific approval.<sup>641</sup>

Custom can be categorized in several different ways:

a) When considered according to the extent of the custom, it is either a *universal* or a *general* custom if it is received by the whole Latin Church or the entire Catholic Church. For example, in many parishes around the world in the Latin Church, the faithful are accustomed to raising their hands during the recitation of “The Lord's Prayer,” the “Our Father,”<sup>642</sup> and/or the custom of decorating the Church during the celebration of Christmas.<sup>643</sup> *Particular customs*<sup>644</sup> are those that are in force or observed in an entire ecclesiastical region, province, or diocese.

b) When considered according to the duration, for a custom of fact to become a custom of law, it must have been observed for at least thirty continuous and uninterrupted complete years, without the intervention of the legislator, or from time immemorial. An immemorial custom is one that has been observed for as long as anyone can remember.<sup>645</sup>

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<sup>641</sup> J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 88.

<sup>642</sup> P. VERE and M. TRUEMAN, *Surprised by Canon Law: 150 Questions Catholics Ask about Canon Law*, Cincinnati, Servant Books, 2004, 10.

<sup>643</sup> J.M. HUELS, "Introductory Canons [cc. 1-6]," *CLSA Comm2*, 53.

<sup>644</sup> "Customs, by nature, are particular; by the time they become universal, they are usually taken up into law" (J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 88).

<sup>645</sup> J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 88. Canon 26: "Unless the competent legislator has specifically approved it, a custom contrary to the canon law now in force or one beyond a canonical law (*praeter legem canonicam*) obtains the force of law only if it has been legitimately observed for thirty continuous years. Only a centenary or immemorial custom, however, can prevail against a canonical law which contains a clause prohibiting future customs."

c) When considered according to the method of introduction, a custom can either be judicial or extrajudicial. A judicial custom is derived from an earlier custom. This is of great importance in ecclesiastical circles because the same prelates are usually both legislators and judges, i.e., the pope and bishops. Extrajudicial custom is introduced by the people, but its sanction becomes easier the larger the number of learned people who embrace it.

d) When custom is considered in relation to the law, a custom can either be according to the law (*secundum ius*), when it interprets or confirms an existing statute or the law,<sup>646</sup> or it can be beyond the law (*praeter ius*), when the specific custom regulates a matter not treated by the law, that is, as far as the matter is concerned there is no written legislation on the subject. A custom is against the law (*contra ius*) when it derogates from or abrogates a law already in force, that is, it conflicts with what the law states.<sup>647</sup>

#### 4.2.1 Legal Conditions for Custom

The legislators in the Church are the pope and the ecumenical council at the universal level; the conference of bishops, particular councils, and diocesan bishops at the regional, provincial, and diocesan levels. The faithful have no legislative authority either by divine mandate or by ecclesiastical law. Therefore, the explicit consent (a statement of the fact of the custom in a public document), or implicit consent (the competent ecclesiastical legislator is aware of the custom's existence but does nothing to eliminate

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<sup>646</sup> "So-called 'customs in accord with law' does not function as true custom, that is, it creates no new norm for the community. It is either simply a way of observing the law in force, or else it may properly be called a custom beyond the law" (Ibid., 86).

<sup>647</sup> J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 86.

it) of the constituted ecclesiastical hierarchy is necessary to give a custom the force of an ecclesiastical law. Such a reasonable custom becomes legal only when by decree it has received ecclesiastical approbation.<sup>648</sup> The entire juridical force of a custom is obtained in the Church, therefore, from the consent of ecclesiastical hierarchy alone.

A custom must also have a legitimate prescription, i.e., it must have been observed for a considerable length of time without interruption. Such prescription is obtained by a continuance of the act in question during a certain length of time. The *Code of Canon Law* (c. 26) has positively defined what this length of time is, and its determination for forming a legal custom. Unless the competent legislator has specifically approved it, for a custom to have the force of law, a custom contrary (*contra ius*) to law or one beyond a canonical law (*praeter legem canonicam*), the code demands a lapse of thirty years during which this custom must have been legitimately observed.<sup>649</sup> If a law prohibits a contrary custom from forming in the future, it could not attain the force of law unless it were legitimately observed for one hundred complete and continuous years, or unless it were observed for as long as anyone in the community could remember (immemorial).

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<sup>648</sup> "There are two ways. The first is special approval by the competent legislator (c. 26), which can be either express or tacit, i.e., he can expressly, whether explicitly or implicitly, refer to the custom he is approving, or he can tacitly accept it by being aware of its existence and allowing it to continue without making any public statements about it. With special approbation, a custom achieves the force of law immediately; there is no delay for thirty years. Who the competent legislator is depends on the kind of law the custom relates. If the custom is contrary to the *universal law*, only the pope or the college of bishops may specially approve it. If it is contrary to a *particular law*, the competent local legislator gives special approval, be it the diocesan bishop, a particular council, or the conference of bishops [...] The second way the legislator gives approval to a custom is called legal approval, also called general approval. This is the ordinary way that a custom obtains the force of law" (J.M. HUELS, "Back to the Future," 9-10).

<sup>649</sup> Canon 26.

For a custom which is against the law to prevail over the law forbidding it, it is generally required that the custom must have been observed for a space of one hundred years or from time immemorial. The reason given for the necessity of hundred years is that the community will only slowly persuade itself of the advantages of abrogating the old and embracing the new law. It is to be noted, however, that in practice the Roman Congregations scarcely tolerate or permit any custom, even an immemorial one, contrary to the sacred canons.<sup>650</sup> In the introduction of a law by prescription, it is assumed that the custom was introduced in good faith, or at least through ignorance of the opposite law. If, however, a custom be introduced through connivance, good faith is not required, for, as a matter of fact, bad faith must, at least in the beginning, be presupposed. When, however, there is a question of connivance, the proper legislator knowing of the formation of the custom and yet does not oppose it when he could easily do so, the contrary law is then supposed to be abrogated directly by the tacit revocation of the legislator.<sup>651</sup>

#### 4.2.2 Force of Custom

The effects of a custom with respect to the law varies with the nature of the act which caused the custom to be introduced, i.e., whether the act is in accord with (*juxta*), beside (*præter*), or against (*contra*) the written law.

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<sup>650</sup> "If a law prohibits a contrary custom from forming in the future, it could not attain the force of law unless it were legitimately observed for one hundred complete and continuous years (centenary), or unless it were observed as long as anyone in the community could remember (immemorial). A prohibition on future customs does not affect legal customs already existing, which may continue, but it does affect factual customs already in existence that have not yet attained the force of law" (J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 91).

<sup>651</sup> Canon 24 states two kinds of customs that are always unreasonable: those contrary to the divine law and those that are expressly reprobated in law. Reprobated customs may never revive some day and attain the force of law as long as the laws that reprobate them remain in force. Customs contrary to divine law are intrinsically unreasonable, but reprobated customs are not necessarily unreasonable by nature, and could be justified in certain circumstances. They are considered unreasonable simply because they are explicitly reprobated by the law (J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 88-89).

a) The first species of customs *according to the law (juxta legem)* do not constitute or create a new law in the strict sense of the word. Its effect is rather to confirm and strengthen an already existing law or to interpret it. Hence the axiom of jurists: "Custom is the best interpreter of laws."<sup>652</sup> Custom, indeed, considered as a fact, is a witness to the true sense of a law and to the intention of the legislator. If a particular custom of fact causes a particular meaning be obligatorily attached to a legal phrase, it takes rank as an authentic interpretation of the law and as such acquires true binding-force. This same principle is referred to in the often-recurring phrase in ecclesiastical documents, "the existing discipline of the Church, approved by the Holy See," and indicates a true norm and an obligatory law. However, not all canonists agree with this assessment that creates a category of customs *according to the law*. For example, John Huels writes:

However, this tradition needs to be reassessed for three reasons. (1) So-called "custom in accord with law" does not function as true custom, that is, it creates no new norm for the community. It is either simply a way of observing a law in force, or else it may properly be called a custom beyond the law. (2) The code does not mention customs in accord with the law. (3) All the canons can be literally and reasonably interpreted without positing a category of custom in accord with the law. Indeed, the law makes sense without this category.<sup>653</sup>

b) The second species of customs that are *beyond the law (praeter legem)* has the force of a new law, binding upon the entire community both in the internal and external forum, because the law says nothing about the specific matter regulated by the custom. Unless a special exception can be proven, the force of such a custom extends to the

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<sup>652</sup> J.L. CAVANAUGH, *Custom is the Best Interpreter of Laws*, JCD diss., Rome, Pontificia Universitas Lateranensis, 1961, 33. "Thus, to say that custom is the best interpreter of law means it is the surest and most reliable way of understanding how the law is to be understood and observed within the community... It is a particularly useful principle for interpreting a universal law in the diverse particular churches" (J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 92).

<sup>653</sup> J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 86-87.

introduction of law in the nature of prohibitions, permissions, and precepts, as well as penal and nullifying enactments.<sup>654</sup>

c) The third species of customs which are *against the law (contra)* have the effect of abrogating, entirely or in part, an already existing ordinance, for it has the force of a new and later law. Customs against the law conflict with what the law prescribes.<sup>655</sup> As regards penal ecclesiastical legislation, such a custom may directly remove an obligation in conscience, while the duty of submission to the punishment for transgressing the old precept may remain, provided the punishment in question is not a censure nor so severe a chastisement as necessarily presupposes a grave fault. On the other hand, this species of custom may also remove the punishment attached to a particular law, while the law itself remains obligatory as to its observance.<sup>656</sup>

#### 4.2.3 The Cessation of Legal Custom

Any custom is to be rejected whose existence as such can no longer be proven legally. A custom is a matter of fact, and therefore its existence must be tested in the same way as the existence of other alleged facts are tested. In this sense, the decrees of synods, the testimony of the diocesan Ordinary and of other persons worthy of credence are of great value. Proofs are considered the stronger the more closely they approximate public and official documents. If there be a question of proving an immemorial custom, the witnesses must be able to affirm that they themselves have been cognizant of the

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<sup>654</sup> "It is *beyond the law (praeter ius)* when the law says nothing about the specific matter regulated by the custom" (J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 86).

<sup>655</sup> Ibid.

<sup>656</sup> F.N. WERNZ, *Ius Decretalum*, tomus I., tertia editio recognita, Romae, Prati Giachetti, 1913, 295.

matter at issue for a space of at least thirty years or more, or that they have heard it referred to by their progenitors as something that has always been observed, and that neither they nor their fathers have ever been aware of any fact to the contrary. If the fact of the existence of an alleged custom is not sufficiently proven, it is to be rejected as not constituting a source of law. Customs may be revoked by a competent ecclesiastical legislator, in the same way and for the same reasons as other ordinances are abrogated. A later general law contrary to a general custom will nullify the latter expressly, but a particular custom will not be abrogated by a general law, unless there is a clause to that effect be inserted in the general law (cc. 5§1 and 28).<sup>657</sup> Even such a nullifying clause will not be sufficient for the abrogation of immemorial customs.<sup>658</sup> The latter must be mentioned explicitly, for they are held not to be included in any general legal phrase, however sweeping its terms may be.<sup>659</sup> Customs may likewise be abrogated by contrary customs, or they may lose their legal force by the mere fact that they have fallen into desuetude and no longer observed by the community. Factual customs may be removed

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<sup>657</sup> Canon 5, §1: "Universal or particular customs presently in force which are contrary to the precepts of these canons and are reprobated by the canons of this Code are absolutely suppressed and are not permitted to revive in the future. Other contrary customs are also considered suppressed unless the Code expressly provides otherwise or unless they are centenary or immemorial customs which can be tolerated if, in the judgment of the ordinary, they cannot be removed due to the circumstances of places and persons." Huels indicates: "A law expressly revokes a custom by naming the precise custom or, more commonly, by means of a general formula revoking contrary customs, such as 'anything to the contrary notwithstanding'" (J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 93).

<sup>658</sup> "Two categories of contrary customs may *not* be tacitly revoked by a contrary law but must be expressly revoked. (1) No law tacitly revokes centenary and immemorial customs. A general formula revoking contrary customs must refer specifically to centenary and immemorial customs, or they are not revoked. (2) Universal law does not tacitly revoke contrary particular customs that have the force of law. The universal law must expressly revoke contrary particular customs, either by explicitly stating this, or by means of a general formula that includes particular customs" (*ibid.*).

<sup>659</sup> Canon 28: "Without prejudice to the prescript of can. 5, a contrary custom or law revokes a custom which is contrary to or beyond the law (*praeter legem*). Unless it makes express mention of them, however, a law does not revoke centenary or immemorial customs, nor does a universal law revoke particular customs."

by executive authorities as well as by law or custom.<sup>660</sup> Finally, an authentic declaration that a custom is absolutely contrary to good morals and detrimental to the interests of the hierarchy or of the faithful deprives it of its supposed legal value.<sup>661</sup>

The revocation of particular customs by the legislator is a question which is disputed and not settled among canonists. Writing on this question, J.M. Huels maintains that a particular legislator can revoke, for that particular jurisdiction, any custom that is within the legislator's competence and jurisdiction that is *contrary* to law, whether the custom be contrary to universal or particular law. However, some authors maintain that the particular legislator cannot revoke a custom that is *beyond* the law (*praeter ius*), even within his own jurisdiction, if the custom is also in force in a higher legislator's jurisdiction. Since there is disagreement among canonists on this point, J.M. Huels concludes that the latter opinion must be followed, lest the community's right to observe a legal custom be denied by dubious means or by a broad interpretation of law since this has to do with either a doubt of fact or law and also the free exercise of rights to observe the said custom.<sup>662</sup>

A new legal custom tacitly (implicitly) revokes an older custom that is contrary to it even if the old custom is centenary and immemorial. However, general administrative

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<sup>660</sup> J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 93.

<sup>661</sup> "A later law *tacitly* revokes a custom simply by being contrary to it, such that the two are incompatible. The custom can no longer be observed at all or in part without conflicting with the new law, thus the abrogation or derogation of the custom by the new law. Likewise, a new legal custom, contrary to a previous custom, revokes the previous custom... [T]his is the new law or custom that is contrary to the old custom. The old custom may have been contrary to or beyond the law (*ius*) in force at that time; in either case, it is revoked (abrogated or derogated from) by the later law or legal custom contrary to it" (J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 93).

<sup>662</sup> J.M. HUELS, "Custom [cc. 23-28]," in *CLSA Comm2*, 94.

norms, as in documents of the Roman Curia, cannot revoke legal customs, as only the universal legislator can do this by expressly stating this fact with respect to a particular custom. The only curial documents that could revoke customs are legislative decrees (c. 29) or a document approved *in forma specifica* by the pope; in either case, the legislative power always comes from the pope.<sup>663</sup>

### **4.3 Survey of the Particular Laws and Customs in the Dioceses of Cameroon**

In order to obtain a clear picture of the particular laws and customs operative in the dioceses of Cameroon as regards the implementation of the canons on Mass stipends, we sent out a questionnaire, based on six survey questions to all the Vicars General of the twenty-six dioceses that make up the National Episcopal Conference of Cameroon.<sup>664</sup> We received a response from seventeen of these dioceses, giving a sixty five percent response rate (65%). Our survey report will not single out any one diocese or ecclesiastical province, but will provide a general overview in view of the responses received about the current situation of the practice of the Mass stipend system within dioceses in Cameroon.

#### **4.3.1 Announcement of the Mass Intention**

With regards to the publication of the Mass intention, our survey results revealed that, generally speaking, in all dioceses of Cameroon, pastors publicize the Mass intention of the Mass being celebrated by either using one or more methods identified in the survey. In several dioceses, at least one method of publicizing the Mass intention is used. Our survey results further revealed that in comparison to all the methods that could

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<sup>663</sup> Ibid.

<sup>664</sup> Survey questions and results can be seen in the appendices of this work.

be used to make public the Mass intention, the practice of announcing the Mass intention during the Eucharistic prayer was the most favoured method especially during the Masses for the dead and/or funeral Masses. This could be as a consequence of the fact that most Mass intentions which the priests celebrate are for the dead. The other methods of making public the Mass intention include the following: publishing the Mass intention in the parish bulletin, making an announcement at the beginning of Mass, mentioning the intention of the Mass during the prayers of the faithful. When it had to do with the celebration of Mass for another intention other than for the intention of the dead, the announcement at the beginning of Mass was the most preferred method of publication of the Mass intention.

#### **4.3.2 Awareness of Mass Offering**

Our survey responses revealed that the faithful in the various dioceses are generally aware of the custom of giving Mass offerings, however, this consciousness is mostly limited to making monetary offerings and donations, and very rarely did the faithful offer donations consisting of gifts in kind for the celebration of Masses. It was further revealed that in most of the dioceses of the country very few parishes receive sufficient Mass offerings (local Mass stipends) that the parish can possibly celebrate for the entire year. In most cases, only a few parishes, that are located in and around the big towns and cities, receive sufficient local Mass offerings that they could possibly celebrate for the entire year. Many other parishes, in the rural areas, have to rely on Mass offerings coming either from other parishes within the diocese or from parishes in other dioceses of the country, and most often from outside the country, and this is not very regular. One would say that, as a whole, the situation of local Mass intentions in the whole country is

about thirty percent (30%) self-reliance (local Mass intentions); the rest are coming from abroad, especially from Europe. In some dioceses, we found out that there was not even a single parish within the diocese that received sufficient local Mass offerings that pastors could celebrate for the entire year and, as such, these parishes depended heavily on Mass offerings coming either from other parishes in different dioceses within the country or from outside the country. The majority of the parishes in the country, especially those found in the rural areas, needed Mass intentions either from outside the diocese or even mostly from outside the country. This fact has already been alluded to by Oscar Eone Eone when he writes on the problem of material wellbeing and the social security of the diocesan clergy in Cameroon:

It is also a well-known fact that in almost every diocese in Cameroon, the intentions of Masses, coming largely from sister Churches, especially from Western Europe, constitute an important financial resource for the sustenance of the priests.<sup>665</sup>

There is a diversity of practices across the different dioceses of the country with regard to the retention of the Mass stipend, either in part or in whole, or not at all by the priest celebrant. While in some dioceses, the money received from the local Mass offerings is considered in total or in part to belong to the financial income for the parish, in some other dioceses, the money from Mass stipends belongs to the priest celebrants in its entirety. In some dioceses, the Mass offering is considered as the personal money of priest celebrants. In these dioceses, where the priests retain the Mass offering for himself, the income from Mass offerings becomes part of the financial sustainability of diocesan

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<sup>665</sup> "C'est aussi un fait notoire que dans presque tous les diocèses au Cameroun, les intentions des messes, provenant en grande partie des Églises sœurs notamment de l'Europe occidentale, constituent une ressource financière importante pour la subsistance des prêtres" (O. EONE EONE, "Le problème de la subsistance et de la sécurité social du clergé diocésain au Cameroun" in *Autonomie financière et gestion des biens dans les jeunes Églises d'Afrique*, Sous la direction de S. RECCHI, France, l'Harmattan, 2007, 60).

priests, i.e., part of the income which provides for his sustenance. In the dioceses where the money is surrendered in its entirety to the parish account, as ordinary income for the parish, and the priests working in those institutions live from this income, that is, from this common parish fund, the money from Mass stipends, together with all other ordinary income of the parish, is used for the ordinary running and upkeep of the parish including the life and the ministry of the priests that work in the given parish. Consequently, in dioceses where this is practiced, at the end of the month, a certain percentage of the parish income together with all the money from Mass stipends, is taxed by the diocesan bishop and used for the upkeep of the diocesan office and for other ordinary diocesan expenses, depending on what has been determined either by particular law or by common consensus. Some dioceses further mentioned that the money taxed from the Mass offering is used variously by the diocesan office for different expenses, for example, for the payment of the medical bills of priests, priests' annual pocket allowances, and priests' solidarity fund,<sup>666</sup> etc. Some other dioceses also mentioned that the priest celebrant keeps the entire Mass stipend money for himself which is considered to be some kind of diocesan remuneration.<sup>667</sup> For example, in one such diocese where the priest celebrant retains the entire money for the Mass offering, there is a diocesan custom or policy to the effect that all the money from Mass stipends from each of the parishes in the diocese is centralized in the parish account at the diocesan level, i.e., at the diocesan office. Each parish has a Mass offering account where all the money from Mass offerings in the parish

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<sup>666</sup> "La Conférence des évêques de la province ecclésiastique de Douala, par exemple, a pris la résolution de la création d'une caisse de solidarité pour les prêtres, alimentée par eux-mêmes et par les quêtes éventuelles" (EONE EONE, "Le problème de la subsistance et de la sécurité sociale du clergé diocésain au Cameroun," 61-62).

<sup>667</sup> "[...] [T]ous reçoivent du diocèse la somme de 90.000 FCFA par mois comme intentions de messes à célébrer[...] les prêtres reçoivent du diocèse une rémunération qui leur est versée sous forme d'honoraires de messes" (ibid., 64-65).

is deposited into the account, and then transferred into a common diocesan account specially set aside for Mass offerings. From this Mass offering account, all the money that has come in from all across the diocese from Mass offerings that have already been celebrated by all the priests across the diocese is then redistributed equally, to all the priests of the diocese three times a year.

Our survey results also revealed that in almost all dioceses, very frequently and sometimes occasionally, Masses are celebrated without any local offering due to either lack of sufficient local Mass stipends or no Mass offerings at all. We can say from the survey results that roughly in nine out of every ten parishes, Masses are said without any offering, while in six out of every ten parishes Masses are said occasionally without any Mass stipends; in four out of every ten parishes, Masses are said rarely without any Mass stipend and in two out of every ten parishes, Masses are never said without any Mass stipend.

### **4.3.3 Collective Mass Intentions**

To the question of whether there is a custom or a particular law permitting the celebration of Masses with collective or multi-intentional Masses, the responses gathered from the dioceses were as varied as there were dioceses in Cameroon. Generally, while in all dioceses there is a custom of one Mass being offered for several (collective) intentions of donors, and this happens especially when there is a funeral Mass, or on other such occasions that may bring together a large number of the faithful in Church at one time, like weddings, anniversaries of marriages, death and birth and the like, in most other dioceses, it was noticed that there is no particular law regulating the practice of collective

Mass intentions. In those dioceses where parishes receive sufficient Mass intentions that they could possibly celebrate for the entire year, there is particular law regulating the practice of collective intentions. Otherwise, most parishes are used to celebrating collective Mass intentions only during funerals where a number of donors offer Masses for the deceased and other such occasions that may bring together a large number of the faithful. In dioceses where there is particular law to regulate this practice, mostly those dioceses with urban and larger parishes which receive sufficient Mass offerings (local Mass stipends) that the parish can possibly celebrate for the entire year, there is particular law that regulates the practice of collective Mass intentions. In many other dioceses, even though there is a custom of celebrating collective Mass intentions, there is no particular regulation or policy governing this practice since such occurrences of celebrating collective Mass intentions is few. In these dioceses, where there is no particular policy regulating the practice of collective Mass intentions, the custom is for most priests to offer collective Mass intentions during the funeral Mass with no limitation in the number of intentions that could be combined, and thereafter, continue the celebration of the individual Mass intentions over time, or surrender the excess of the Mass intentions, to other priests in other parishes, or to the Ordinary. Generally, in most dioceses, one notices either the lack of clear canonical precepts in particular law regarding this practice or insufficient precepts, or simply a lack of knowledge about the 22 February 1991 decree *Mos iugiter* that regulates the practice of collective Mass intentions. One also notices that in some parishes the matter is left to the determination of the parish priest since such occasions are rare.

#### 4.3.4 Status of Mass Offerings for Binated or Trinated Masses

While some priests who minister, especially in those parishes where there are sufficient Mass offerings for the entire year, will regularly send to the Ordinary the offerings given for additional Masses celebrated the same day, many dioceses responded that priests do not regularly send to the ordinary the Mass offerings for binated and trinated Masses celebrated the same day. This practice is either due to the fact that most parishes lack sufficient Mass offerings that they could possibly celebrate for the entire year and/or because the income from the Mass offering is considered as part of the ordinary income for the parish. As such, a priest will not be obliged to forward to the Ordinary the offerings given for additional Masses celebrated on the same day since these belong to the parish. In most dioceses (parishes), the status of binated or trinated Masses are applied to the parish income and taxed monthly depending on the respective diocesan policies. For the dioceses that responded that priests regularly send to the Ordinary offerings for additional Masses celebrated the same day, some of the dioceses mentioned that the Ordinary applies these extra offerings for the payment of the hospital bills of priests, for annual pocket allowances of priests, or for solidarity fund for priests, such as the *Opus securitatis*, that is, for the retirement fund for diocesan priests.<sup>668</sup> Some dioceses responded that they did not know to what purpose the Ordinary applies the offerings for binated and trinated Masses but they forward them all the same.

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<sup>668</sup> "Il faut signaler néanmoins que tous [...] reçoivent en faveur des prêtres ayant atteint l'âge de 65ans une aide financière de *Missio* Aachen, organisme allemand d'entraide, à travers sa branche appelée *Opus securitatis*. Pour bénéficier de cette aide, les prêtres en activité son tenus de cotiser pour leur pension vieillesse en célébrant deux messes par mois au bénéfice de cet organisme, soit 24 messes par an pour lesquelles ils ne perçoivent pas d'honoraires" (EONE EONE, "Le problème de la subsistance et de la sécurité sociale du clergé diocésain au Cameroun," 64).

#### **4.3.5 The Authority Competent to Set the Amount for the Mass Offering**

To the question about the authority competent to determine the amount of the Mass offering, sixty-two percent (62.5%) of dioceses responded that it was the diocesan bishop who determines the amount of the offering, and that there is no exception to this rule, while the remaining thirty-seven percent (37.5%) said it was the provincial council or meeting of the bishops of the province to determine the amount of the offering for Masses. No diocese mentioned the existence of any legitimate custom of parishes and or religious institutes to determine the amount of the Mass offering, and no diocese mentioned the fact that it is the national Episcopal Conference that determines the amount of the offering.

#### **4.3.6 Proper Accounting of Mass Offerings Received**

Our survey results revealed that the larger parishes, because of the great number of requests for the celebration of Masses, generally possess a book in which the parish priest records the number of Masses to be celebrated, the intention of the Mass, the offering given and the fact of the celebration of Masses. The smaller parishes do not generally possess this book. A few other dioceses mentioned that this book is obligatory in every parish whether or not they normally have requests for many Masses, and that the Ordinary or his delegate regularly inspects this book one a year. Most other dioceses mentioned that the examination of this book takes place either during the pastoral visit of the Ordinary to the parish, which could be once in two, three, or even four years, or that this inspection only happens sporadically when the Ordinary or his delegate visits the parish. In other words, there was no set timeline or time limit which these records must

be inspected. However, a few other dioceses mentioned that at the end of each pastoral/financial year, the bishop or his delegate inspects this book at the same time that the pastor submits his annual budget for consideration.

#### **4.4 Analysis of the Survey Results in Light of the Universal Law**

Analyzing the survey results, one can see that pastors make proper publication of the intention of the Mass through using the various different methods by which the intention of the Mass can be made public, that is, in a parish bulletin or other written notice, in an announcement at the beginning of Mass, in the prayers of the faithful, and during the Eucharistic Prayer. This practice is to be encouraged and upheld everywhere especially when the faithful who have offered the Masses are present. Through such methods of publication, the donors become aware and are certain that their intention has actually been celebrated. This practice can also encourage the faithful to offer Masses since they are sure that their intentions will always be announced and their intention celebrated in the Mass. Insignificant as it appears to be, such a practice also helps the donors in properly participating in the Mass that has been offered for their intention and could possibly have a positive influence in the faithful's response in offering Masses.

Even though from the survey results it can be said that the faithful are aware of the custom of offering Masses, it can also be seen that their knowledge of making donations for the celebration of Masses is limited to making monetary donations. The whole area of offering gifts in kind for the same purpose, with the possible positive effects that this practice could have, has not yet been tried or exploited to the fullest by any of the dioceses that we surveyed. Therefore, it is suggested that the practice of

making gifts in kind be explored, especially within the context where many rural parishes do not have sufficient Mass stipends. If tried, it is likely that the positive outcome and benefits will be immediate. Priests will not have to wait for Mass intentions to come from other parishes of the diocese or even outside the diocese or the country before they celebrate Masses for the faithful. Besides, such a practice will give the opportunity to members of the faithful with limited financial means to request a Mass intention, which if only limited to financial donations will prejudice these kinds of people.

There is need for continuous and sustained catechesis both for the clergy and the faithful on the principal purposes for which Mass offerings are given. The faithful who give an offering to apply Mass for their intention contribute towards the financial and material support and well-being of the priests. Mass offerings are personal gifts of the faithful for the good of the Church, given to priests out of consideration for their ministry and for their support. Priests who have so accepted these generous donations from the faithful for the celebration of Masses for their intentions are bound to respect the wishes of the donors. Priests who have celebrated and applied the Mass in accordance with the intentions of the donors are given the right to retain the offering for their personal use by the grant of universal law of the Church. Particular legislation on Mass offerings must always take into consideration the principle of c. 135, §2, which maintains that a law which is contrary to a higher law issued by the supreme legislator of the Church cannot be validly enacted by a lower level legislator.

From this assertion, in almost every diocese of the country, there needs to be a distinct and clear separation of accounts, i.e., the separation of the Mass stipend money from the ordinary income of the parish. Almost every diocese in the country still

considers money from Mass offerings as belonging to the parish. The practice of considering income (money) from Mass offerings as part of parish income is not only confusing but is also against the universal law and practice of the Church, and as such should be discouraged wherever this is still carried out. Considering the income from Mass stipends as income for the parish is a violation both of the rights of priests to retain Mass stipend and of universal law. The practice of not retaining the Mass offerings, either in its entirety or at least in part by priest celebrants, due to specific considerations of time and place, is against law, as is the practice of levying a diocesan tax on the Mass offerings. This practice is also against the letter and the spirit of the law. Priests are also to be encouraged to forward the money from the extra Masses binated and trinated the same day, and the Ordinary is to define in particular law the purpose for which these offerings are applied.

There is a pressing and urgent need for particular law in most of the dioceses to regulate the practice of collective Mass intentions. While we can say that there is a custom in every diocese permitting one Mass to be offered for several (collective) intentions of donors, and this happens especially during funeral Masses or when there is a large gathering of the faithful in the Church at one time, we also noticed that there is a lack of proper regulation and canonical prescripts with regards to this practice. The 1991 document from the Congregation of the Clergy, *Mos iugiter*, has either not been understood properly, and as such has not been applied by most dioceses, or most dioceses may not even be aware that such a document exists. This reflects in the lack of particular legislation in many dioceses permitting the celebration of collective Mass intentions twice a week in Churches that have many requests for collective Masses. The custom of

offering collective Masses during the funeral Mass, which is already a lively practice in most dioceses, could become an opportunity to be exploited for catechesis on the importance of praying for the dead and of offering Masses, and also an occasion for the celebration of collective Mass intentions. But this also has to be defined in particular law. Through such initiatives, pastors could realize an increase in the number of Masses that the faithful could offer in a year and will have some Masses to celebrate for a considerable length of time of the year.

The provincial council or the meeting of the bishops of the province is the competent authority to determine by decree the amount of the Mass offering and no priest is permitted to seek a larger sum. The bishops of the different respective ecclesiastical provinces where this decree has not yet been issued ought to discuss the issue again and take necessary steps towards resolving what the law demands. This will ensure uniformity in practice in the different ecclesiastical provinces and will reduce any abuses or unorthodox practices that may be associated with the offering of Masses.

Finally, there is to be in every parish, irrespective of the number of local Mass intentions that the parish may receive, a special book in which the parish priest records the number of Masses to be celebrated, the intention of the Mass, the offering given, and the fact of their celebration. This book is to be examined each year either by the Ordinary or his delegate. This is a requirement of the law.

#### **4.5 Reasonable and Unreasonable Customs Identifiable in Survey Results**

Assessing the "reasonableness" of customs against the law, identifiable in the survey results, must be argued on the basis of the principles related to the nature of

custom. In other words, even though the custom identified in the survey results may be against the law, it must be shown to be reasonable in the given circumstances, and it must also be the product of careful and serious deliberation and reflection. The custom must aim at the common good of all priests and the institution of the Church, meaning that the custom could be justified in the given circumstances of time and place. Unreasonable customs will be shown to be against the law or not fit in the given circumstances of place and time.

#### **4.5.1 Reasonable Customs**

Our survey results revealed that a few dioceses have adopted a practice of keeping aside a small portion of the income from Mass stipends, that is, a given percentage of the money from Mass offerings for the retirement fund for diocesan priests, their medical bills, and priests' annual allowances, and the solidarity fund for priests. In these dioceses, for every Mass that a priest celebrates for which an offering was given, the diocesan office, through the parish, levies a tax on the Mass offering and the proceeds are directed to the retirement fund for diocesan priests. A number of other dioceses that subscribe to the retirement fund for diocesan priests under the organ of *Opus securitatis* also mentioned that priests who are in active service are obliged to each contribute for their old age pension by celebrating two Masses every month, and surrendering the entire amount of the stipend for the benefit of *Opus securitatis*, which is the retirement fund for diocesan priests. In all these dioceses, therefore, that are under the auspices of *Opus*

*securitatis*, a priest will be obliged to celebrate 24 Masses a year for this purpose.<sup>669</sup> This custom conforms to sound principles, for it is the right thing priests to do, i.e., to take responsibility for their old age pension and retirement and incapacity. This practice aims at the common good of all. Such a practice appears to be reasonable and responsible. Most dioceses in Cameroon have registered their diocesan clergy under the *Opus securitatis* retirement fund.

There is the custom in most parishes of celebrating collective Mass intentions during funerals, especially where there is a great number of donors who usually request Masses for the deceased. Given the circumstances and the condition of the country where there is scarcity of financial resources for Masses, this custom appears acceptable. In the case of funerals, Mass intentions could be combined in the same Mass for the deceased. The faithful spontaneously realize the need to pray for the dead and to offer Masses for them. However, it must be mentioned immediately that the 1991 document from the Congregation of the Clergy *Mos iugiter* that regulates this practice should be observed by pastors, otherwise abuses may creep into this practice.

Another practice which resembles the practice mentioned above is that of November Masses for the dead. In some dioceses, pastors will leave a book or a collection basket at the entrance to the Church on every second of November, the traditional day for the commemoration of all the faithful departed, inviting people to list

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<sup>669</sup> "[T]ous les prêtres sont enregistrés à l'*Opus securitatis*. Ils doivent célébrer chacun deux messes par mois au bénéfice de cet organisme comme apport personnel pour leur pension en cas d'invalidité et de vieillesse[...] les prêtres vivent des dons en nature offerts par les fidèles à leurs pasteurs, et perçoivent une rémunération mensuelle constituée d'honoraires de messes dont le montant oscille entre 40.000 FCFA et 60.000 FCFA..." (O. EONE EONE, "Le problème de la subsistance et de la sécurité sociale du clergé diocésain au Cameroun," 66-67).

special intentions for Masses for the dead and also an offering box alongside the book for free-will donations which do not necessarily correspond to the amount of a normal offering for one Mass.

Provided that it is clear that there is no question of an individual intention, and that the money from the collection will not be considered as a “collective intention,” there is nothing wrong with this practice and this does not appear to be a “collective” intention in terms of the 1991 decree. Such a custom is to be fostered on condition that the offerings are be distributed at the standard rate for the diocese, and an appropriate number of Masses celebrated for those who have requested Masses in this way. The principle that as many Masses must be offered as there are stipends received must be preserved. At the very least, this means that the total amount of money collected must be divided by the amount established in the diocese as usual amount for a stipend and the resulting number of Masses must be celebrated for those intentions by the priests who follow this kind of custom on the commemoration of all souls.

A majority of dioceses reported that it is the diocesan bishop who determines the amount of the offering for the Mass. The 1983 Code maintains that it is for the meeting of bishops of a province or the provincial council to define by a decree what offering is to be made for the celebration of Masses. Even though the majority of the dioceses reported that it is the diocesan bishop who determines the amount of the offering, such a custom is reasonably in the case where the provincial council or meeting of bishops of a province has not done so. The 1917 Code gave the local ordinary the power to determine what amount of offering was to be made for Masses.

#### 4.5.2 Unreasonable Customs

The custom in some dioceses in Cameroon is to consider the money received from the Mass offerings as financial income for the parish and not that of the priest celebrants according to the law. From this source (parish income money from Mass stipends and other ordinary income of the parish), the money is used for the ordinary running and upkeep of the parish and for the ministry and life of the priests who work under this institution. In dioceses where this is practiced, a determined percentage of the parish income (Mass stipends included) is taxed by the diocesan bishop in accordance with diocesan policy for the ordinary daily upkeep of the diocesan office. Some dioceses mentioned that some of the money from Mass stipends taxed from the parishes is used variously, for example, the medical bills of priests, priests' allowances, and priest's solidarity fund, and a small portion of it, is set aside for the *Opus securitatis*, that is, the retirement fund for diocesan priests. The first unreasonable custom is to consider the income from Mass stipends as income for the parish. This is not a custom according to law for the Mass stipend has never been, at any one time in history, considered as income for the parish but as a personal gift for the priest celebrant. There is nothing unreasonable for priests to set aside a small portion of each Mass celebrated with an offering for his own retirement. But for the diocesan office to levy a diocesan tax on Mass stipends (the same percentage of tax that levied on all other public juridic persons within the diocese) for the ordinary upkeep of the diocesan office and for other diocesan expenses is against the letter and spirit of the law on Mass stipends, and this is not a reasonable custom to follow. It is quite reasonable if the priests freely decide to start setting aside a small portion of every Mass offering celebrated for their retirement, solidarity fund, etc., but it

is a violation of the law for the same to be taxed for any other purposes other than for the good of the retirement fund of priests.

Canon 135, §2 says that a law which is contrary (*contra legem*) to a higher law issued by the supreme legislator of the Church cannot be validly enacted by a lower level legislator. It is evident from our survey results that the practice of the priest not retaining the Mass stipend at all, either in part or in whole is contrary to the universal law of the Church. Custom must be reasonable because law is also an ordinance of reason. One can ask whether this practice was imposed on priests by ecclesiastical authority, against the will of the majority of priests, or whether it came from a majority of priests. Such a custom needs reassessment especially in view of the universal law of the Church, and especially due to the fact that for a custom to have the force of law, besides being reasonable, it must be welcomed by a majority of learned people within the community, all other conditions considered. This custom is against universal law that gives priests the right to retain the money from the celebration of Mass. The practice of surrendering the money from Mass stipends to the parish does not appear to be reasonable and hinders the ends of Mass stipends. It obscures the proper ends of the custom which is the financial support of the priest celebrant and the works of the Church. The money from the Mass stipend is not income for the parish. Such a custom, because it is clearly against the law, and also because it is unreasonable, cannot attain the force of law. It should be discouraged and eliminated.

### **4.5.3 Recommendations and Remarks**

It has already been said that it is for the provincial council or the meeting of the bishops of a province to define by decree the amount of the Mass offering. The bishops of the different five ecclesiastical provinces that make up the National Episcopal Conference of Cameroon need to reexamine the purpose for which the Mass offering is used, especially in those dioceses where the money is not surrendered to the priest celebrant somehow. The Mass offering is a gift to the priest celebrant, and this right granted by universal law of the Church cannot be taken away arbitrarily. Whatever particular customs and practices have developed in the meantime regarding priests making contributions towards their retirement fund, particular law should take into consideration any particular legislation that seeks to deprive priests of this right. Proper legislation should defend this right which is also a grant of the universal law of the Church.

It is highly recommended that the practice of surrendering the entire amount of the Mass offering money to the parish as income should be discouraged as much as possible and discontinued. The diocesan office is to look for a different source of financing the running of its affairs other than Mass offerings. The practice of levying a tax on the Mass offering for the ordinary expenses of the diocesan office, just as the diocesan bishop legally levies a tax on the ordinary income of public juridic persons under his governance, is neither in conformity with the universal law of the Church nor with the principal purposes for which Mass offerings are given. It is wrong to consider the Mass offering as income for the parish, and as such it is equally wrong to tax the Mass offering just as you will tax the income of the parish. It is understandable and can

be permitted if a small portion of every Mass offerings that a priest celebrates is directed to the retirement fund for priests only. The entire amount of the Mass offering cannot be surrendered to the parish as income without this being an abuse.

In this sense there could be centralization at the diocesan office of the Mass stipend account and, from this source, the money is redistributed to priests accordingly across the dioceses equally. This way no one is discriminated against because they happen to be serving in a rural parish. This is a practice that could be explored in every diocese that is not yet allowing the priests to retain the Mass offering. This is a practice ensures that priests who are deprived of Mass offerings do not suffer for lack of sufficient stipends to celebrate for the entire year. In this sense, no matter where the priests work, whether in wealthier or poorer parishes, or whether in other diocesan services and apostolates, everyone gets an equal remuneration annually from the income of Mass stipends. This system will ensure uniformity in practice across the entire diocese.

The custom of having collective Mass intentions celebrated during funeral Masses, where several donors offer Masses for the deceased, is to be fostered on condition that this is also defended and explained in particular law. Particular law, in cases where there are not sufficient Mass stipends, could define that during funeral Masses, priests are allowed to combine the intentions of the faithful. In this connection, the bishops can make use of the 1991 decree that regulates the celebration of collective Mass intentions.

Most parishes do not have a book in which the parish priest records the number of Masses to be celebrated, the intention of the Mass, the offering given and the fact of the

celebration of Masses. This book is obligatory and is to be inspected once every year by the Ordinary or his delegate. Each parish should have this record for proper accountability. The inspection of this book annually forms part of the duties of the Ordinary which may be during pastoral visitation of institutions and parishes within the diocese. There should be a timeline (once every year) for which the Ordinary or his delegate inspects the Mass records.

There are still dioceses that need to come up with particular laws stating clearly the status of binated and trinated Masses and the purposes for which the Ordinary applies these Masses. This depends on what the Ordinary sees fit to apply the money for binated and trinated Masses.

### General Conclusion

The focus of our thesis has been a study of the history of Mass stipends and the complex process of evolution it went through to give rise to the present-day practice whereby a single donor makes a monetary donation, and sometimes gifts in kind, to a priest requesting a special remembrance of an intention at the Mass. Originating from the communal offertory processions of bread and wine in the apostolic times, the growth of this practice over time experienced some external changes, especially concerning the replacement of the bread and wine processions with the donation of money, which became almost exclusively the only way of requesting a special remembrance at the Mass in later centuries, as it remains today. The new pastoral practice of celebrating distinct Masses for the special intention of the donor, together with the inclusion of money in Eucharistic transactions and praxis, led to a reflection on the theology of the efficacy of the Mass, which was expressed in economic terms. This led theologians to posit the threefold theology of the fruits of the Mass, and the existence of an objective quantity of grace which are derived *ex opere operato* by the donor of the stipend.

The term “fruits of the Mass” simply means the effects of the Mass, namely, actual graces we receive from the Mass. A presentation was made of the threefold theory of the various fruits of the Mass, a theory that is without solid theological foundation, and one that has been challenged by theologians like Karl Rahner. The custom of offering and accepting Mass stipends is still legitimate, if understood correctly. It is one of the most excellent ways by which the laity participate more actively in the celebration of the Mass. The Mass stipend should be viewed as analogous to, or a substitute of, the communal offertory procession of the early apostolic centuries, whereby the faithful provided the

material elements, bread and wine, for the Eucharistic celebration. Through the present Mass stipend system, the donor signifies his special participation and devotion and, if this be authentic and not just a formality, thereby derives graces for his particular intention through the gift given beforehand to the priest. A practical pastoral consequence of this outlook is that whenever possible the donor of the stipend should be present and participate in the Mass offered for his intention and, if possible, also receive Holy Communion. The application of a number of intentions at a particular Mass does not, in itself, necessarily result in a diminishing of the efficacy of the Mass for the intention of the individual donor. The efficacy of the Mass is measured by quality of the subjective devotion of those who take part actively in the Mass, including the donors.

Chapter two constitutes a study of the continuity between the old law and the present law, while also noting the remarkable shift in the presentation of the Mass offering system in the present law, a shift from the contractual language that characterized the treatment of Mass stipends in the former code to one that speaks more of offerings given for the celebration of Mass. This linguistic precision derives more from the significance of the custom which is at the origin of the Mass offering system, which had always been conceived as a gift. The present law, therefore, retains the word “gift” in describing the Mass offering system in order to affirm that Mass stipends are freewill donations of the faithful on the occasion of the celebration of Mass. The former code used the word “stipend” which could give the impression of a business transaction, or a *do ut facias* contract, an idea which is foreign to the very institution of the Mass offering system.

Furthermore, there is a considerable reduction in number of canons from twenty-one in the former code to just fourteen in the present code. In continuity with the strict discipline of the old law regarding the Mass offering, the present law reiterates and repeats the general fundamental principle that should govern the entire Mass stipend system that is, avoiding any and all appearances of trafficking with the Mass offering. Even as it is now legitimate, in the present law, to celebrate a “collective” Mass intention in certain given and determined circumstances, the priest is only allowed to retain the stipend for just one intention. Following logically and directly from such a principle, separate Masses are to be applied for the intentions of those for whom a single offering, although small, has been given and accepted so that there will be as many Masses celebrated as there were offerings given and accepted. Moreover, the law prescribes that the celebration of extra Mass offerings ought to be forwarded to other priests, whom one has no doubt will fulfill the obligation, and to whom also the corresponding amount for the Mass offerings must be transmitted. As such, the strong recommendation of the code is that each priest should keep a personal register of the Masses he has received, those he has duly celebrated and those he has forwarded to other priests with the corresponding amount for the Masses. The local ordinary or his delegate has the responsibility and duty to regularly inspect these registers.

In canon law as well as in civil law, prescription is a way of acquiring or losing a subjective right, or a way of freeing oneself from obligations. The Church establishes an exception to this rule as regards the Mass offerings. Once an offering has been given and accepted for the celebration of one or many Masses, the one who accepted such a responsibility is bound to fulfill this duty even if the offerings have been lost through no

fault of his own. No passage of time frees one from such an obligation. So also, it is the case with priests who have an obligation in justice to satisfy any obligations deriving from Masses celebrated with invalid matter regarding the application of Masses offered for the intentions promised by an offering.

In order to safeguard the strictness which should surround the Mass stipend system, the code contains appropriate canonical sanctions against all those who illegitimately profit from Mass stipends. They are to be punished with a just censure. The priest and all those involved with the handling of Mass intentions moneys are therefore encouraged to carefully observe the law and to celebrate Mass for the intentions of all the faithful, and even those from whom they have not received offerings.

The provincial council or the meeting of bishops of a province are to issue a decree regulating the amount of the Mass offering for their dioceses and also to determine the destinations of extra Mass offerings.

Chapter three of our study was an attempt at resolving the appearance of simony in Mass stipends. The priest does not secure the Mass stipend by means of a contract, albeit unilateral, which will make the transaction simoniacal, but by reason of the voluntary free will offering of the donor. It is clear that there is an obligation in strict justice binding the priest to the celebration of Mass for the donor's intention and not a corresponding strict obligation on the part of the donor to the payment of a stipend, because it is a free gift given spontaneously on the occasion of the celebration of Mass. This obligation on the part of the priest takes its source not from any prior contract, but from the priest's acceptance and because such a practice is regulated by the law. It is

inadequate to attempt to solve the problem of eliminating simony in the Mass stipend by considering the subjective intention of the donor and the priest, because the mere intention of not to have a contract of sale does not make the transaction not to be one.

The strict obligation that binds the priest to the celebration of Mass for each stipend received and the absence of simony in this transaction are based on the priest's acceptance and the positive regulation of the law; the Mass stipend is a personal gift to the priest celebrant. The present-day Mass stipend merely replaces the offerings which the early Christians were accustomed to give for the support of the priests on the occasion for the celebration of Mass. It is a duty of conscience on the part of the priest to fulfill what he has accepted to do, namely, to the celebration and application of Mass for the intention of the donor of the stipend. There is no simony involved in this practice, because such a practice is spiritually beneficial for those requesting the application of Mass for their intentions that they donate freely for this purpose. Through this usage, the faithful symbolize the external expression of their internal participation at the Mass and the external expression of their internal disposition to make a total sacrifice of themselves in sharing what they have for the needs of the Church, especially the support of its ministers.

We concluded our study in chapter four by focusing on the implementation of the canons on Mass stipends in particular law and customs within the dioceses of Cameroon. Based on the survey results, we were able to identify some questionable practices with regard to Mass stipends. In some dioceses, there is a lack of due canonical prescripts in particular law regulating the practice of Mass offerings, or insufficient prescriptions, and in some other cases, there exists some questionable practices with regard to the practice

of the destination of Mass stipends. The Mass stipend belongs to the priest by right. The first responsibility for an effective implementation of the law is awareness about what the law says regarding Mass offerings. It is for the meeting of bishops of a province or the provincial councils of the different ecclesiastical provinces to discuss the matter and, with the help of canonists and other experts, to provide prescripts regulating this practice.

The lack of adequate canonical legislation is reflected in the variety of differences with regards to the same practice across different dioceses in Cameroon. We have identified some of these questionable practices and offered suggestions to correct these abuses, so that the bishops, who are responsible for the proper implementation of universal law, may proceed in accordance with the norm of law.

Our study revealed that in most parishes, especially those in the rural areas, priests still lack sufficient Mass stipends that they could possibly celebrate during the entire year. Instead of waiting for Mass offerings to come from other parishes or from abroad, priests are encouraged to explore the possibility of accepting donations in kind for the celebration of Mass. This remains a possibility for those who do not have the money to request the celebration of Masses. Cameroon is largely rural and most of its people are subsistent farmers. Gifts in kind (agricultural produce and even live animals) could also be accepted for the celebration of Masses.

The practice of Mass stipends comes from the strong religious sense of the faithful that they should conjoin a kind of sacrifice of themselves with the celebration of the Eucharist and as such they more actively participate in it. Thus, providing for the needs of the Church especially the support of her ministers. Through this gift, the

baptized person is united with Christ as well as the priest celebrant. It is good therefore to explore ways in which the lay faithful can associate themselves intimately with the celebration of the Mass through the offering of gifts in kind for this celebration.

## APPENDIX

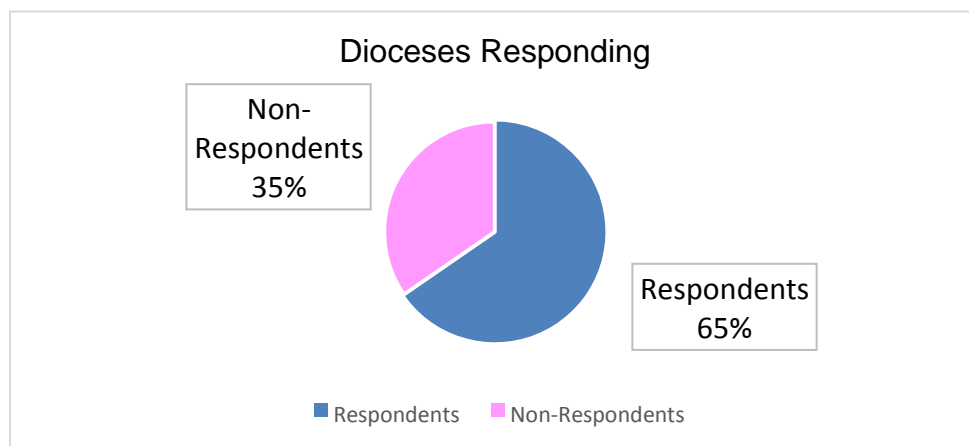
The questionnaire was originally distributed in April 2014. At that time, there were twenty-three dioceses that made up the National Episcopal Conference of Cameroon. Three more dioceses were subsequently erected, and the questionnaire was also sent to these newly created dioceses. We received information from two of them. That accounts for the increase in the total number of dioceses in Cameroon. Below is a visual representation of the survey results.

Total number of dioceses surveyed in Cameroon: 26 dioceses divided up into five ecclesiastical provinces.<sup>670</sup>

Total number of dioceses that responded to the survey: 17 dioceses

Total number of dioceses that did not respond: 9 dioceses

Response percentage: 65.38%



*Chart 1: Percentage of dioceses responding to the survey*

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<sup>670</sup> Ecclesiastical Province of Yaounde: The Archdiocese of Yaounde, the Dioceses of Bafia, Ebolowa, Kribi, Mbalmayo, Obala, Sangmelima. The Ecclesiastical Province of Douala: The Archdiocese of Douala, the Dioceses of Bafang, Bafoussam, Edea, Eseka, Nkongsamba. The Ecclesiastical Province of Bamenda: The Archdiocese of Bamenda, the Dioceses of Buea, Kumbo, Mamfe and Kumba. The Ecclesiastical Province of Garoua: The Archdiocese of Garoua, the Dioceses of Maroua-Mokolo, Ngaoundere, Yagoua. The Ecclesiastical Province of Bertoua: The Archdiocese of Bertoua, the Dioceses of Batouri, Doume-Abong'Mbang, Yokadouma.

## PART ONE

**1) Announcement of the Mass Intention**

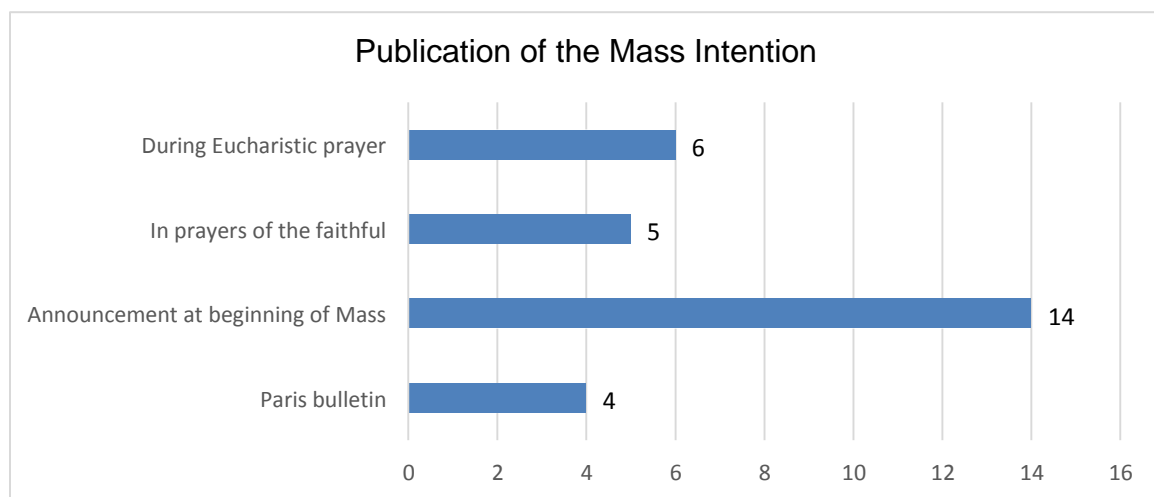
Generally speaking, do the pastors publicize the intention of the Mass being celebrated? Circle any and all that are applicable:

**a) in a parish bulletin or other written notice: 4 dioceses**

**b) in an announcement at the beginning of Mass: 14 dioceses**

**c) in the prayers of the faithful: 5 dioceses**

**d) during the Eucharistic Prayer: 6 dioceses**



*Chart 2: Methods for publishing Mass intentions*

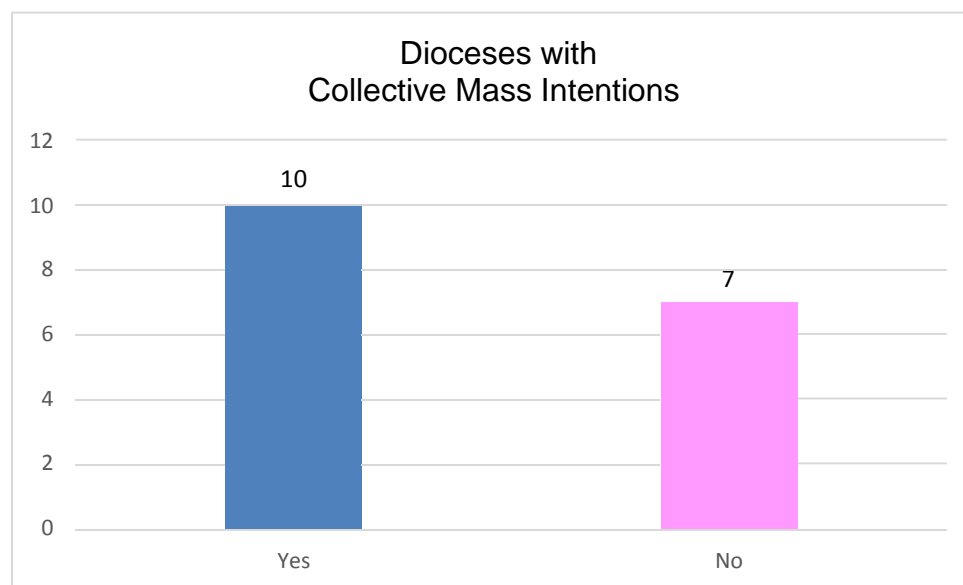
Remark: At least one of the methods of publicizing the Mass intention is used in all the dioceses that responded. The Mass intention is always made public in one way or the other.

### 3. Collective Mass Intentions

**a) Is there a custom or particular law permitting one Mass being offered for several (collective) intentions?**

**Yes:** 10 dioceses responded in the affirmative that there is either a custom and/or particular law permitting the celebration of collective Mass intentions.

**No:** 7 dioceses responded in the negative that there is neither a custom nor a particular law permitting the celebration of collective mass intentions.



*Chart 3: Dioceses with collective Mass intentions*

**b) Is there any diocesan regulation governing this practice?**

**c) Is there any custom within the diocese or parish with regard to this matter? If yes, please explain.**

One diocese said there is no custom or particular law. One diocese said the number of intentions allowed for collective Mass is three. One diocese mentioned that

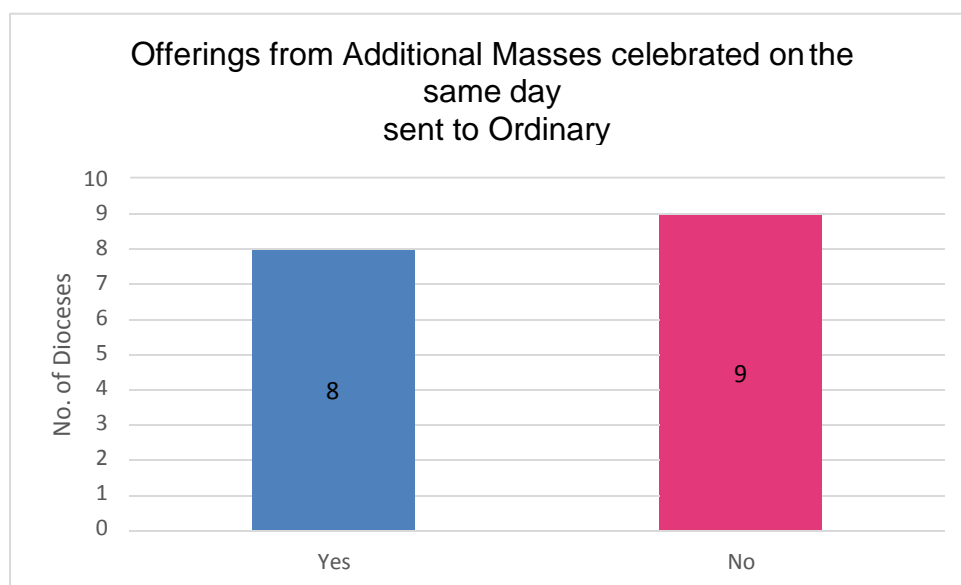
during November, the amount of the Mass offering is 1000 frs instead of the usual 2000 frs.

#### 4. Status of Mass offerings for binated or trinated Masses:

**a) Do the priests of your diocese regularly send to the Ordinary the offerings given for additional Masses celebrated the same day?**

**Yes:** 8 dioceses said priest regularly send offerings for additional Masses to the Ordinary celebrated the same day.

**No:** 9 dioceses said no that priests do not regularly send the offerings for binated and trinated Masses.



*Chart 4: Same day additional Mass offerings sent to Ordinary?*

#### 5. The authority competent to set the amount for the Mass offering:

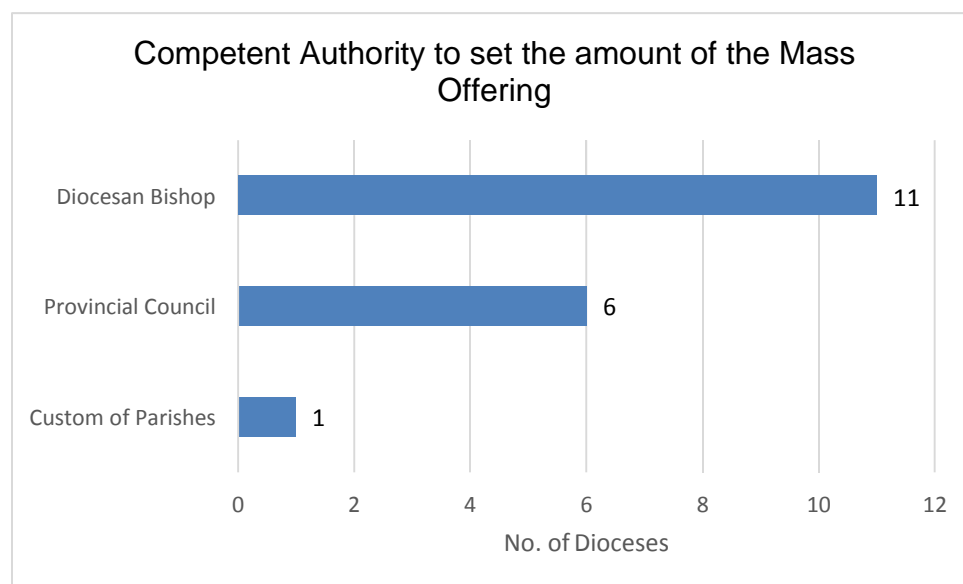
**Who is the authority that determines the amount of the Mass offering?**

a) **The provincial council or meeting of the bishops of the province:** 6 dioceses mentioned that this is the body that is competent to fix the amount of the offering.

b) **Diocesan Bishop:** 11 dioceses maintained that it was the diocesan bishop who is competent to set the amount of the offering.

c) **Legitimate custom of parishes and religious institutes:** One diocese responded that during the month of the commemoration of the dead in November, the Mass offering is set at 1000 frs instead of the usual 2000frs (\$1USD = 550 frs CFA).

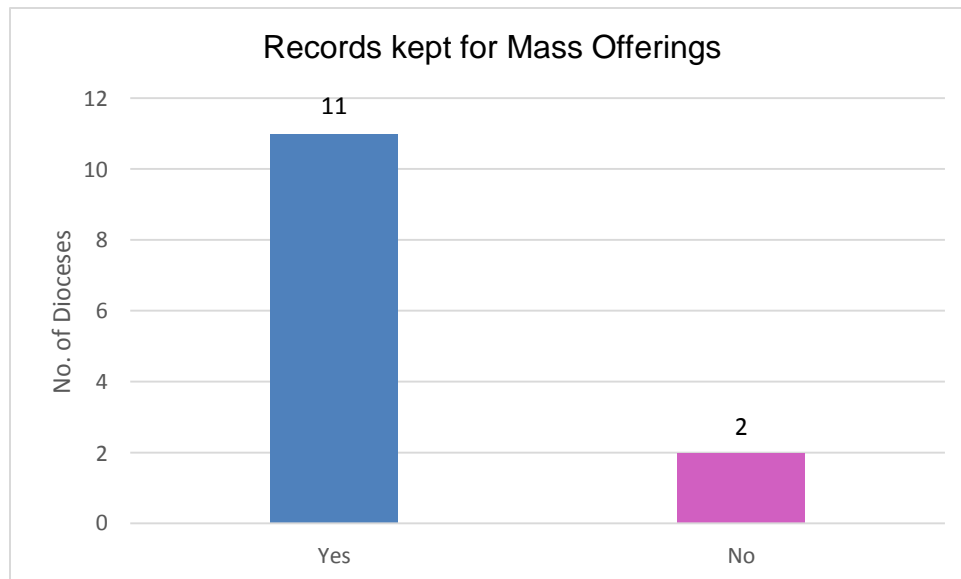
d) **Other (explain) National Episcopal Conference:** 0 diocese



*Chart 5: Who decides the amount of Mass Offerings?*

## 6. Proper accounting of Mass offerings received

a) **Does each parish have a book in which the parish priest records the number of Masses to be celebrated, the intention, the offering given, and the celebration of the Mass?**



*Chart 6: Records kept for Mass offerings*

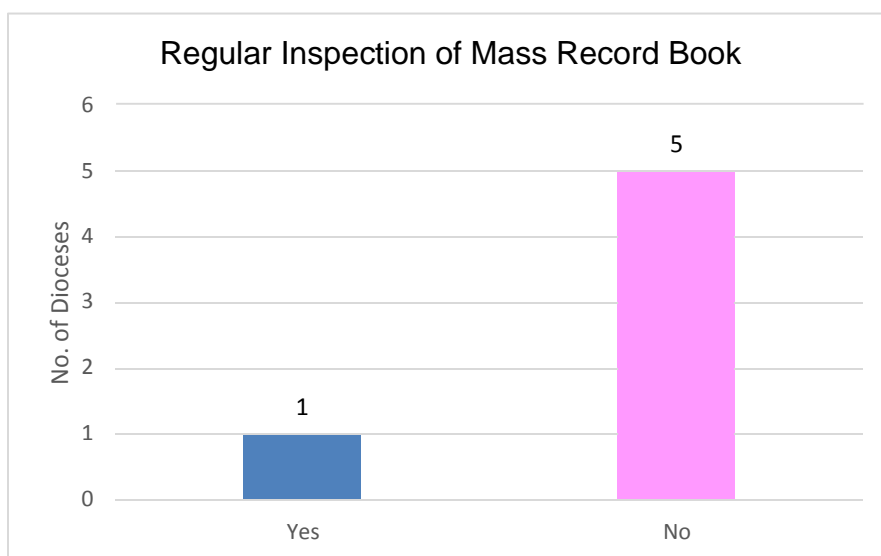
**Yes:** 11 dioceses responded that there is a book, even though some of these same dioceses mentioned that not every parish in the diocese makes use of it. One diocese responded that the book is obligatory in the diocese irrespective of the size of the parish or the number of local Mass intentions that the parish may receive. One other diocese responded that some parishes have this book but most parishes do not have this book. One other diocese responded that larger parishes that have to deal with many Mass intentions have the book but smaller parishes do not. Another diocese said the book is only to register the Mass intentions, and no place is provided in the book for the number of Masses to be celebrated, the offering given, and the celebration of the Mass. One other diocese mentioned that most parishes have a Mass record book, but not all.

**No:** 2 dioceses mentioned that parishes do not have this Mass record book.

**b) Is this book regularly examined by the Ordinary or his delegate each year?**

**Yes:** One diocese said yes, but that this book is examined only after three or four years during pastoral visits. Another diocese mentioned that the book is examined at the end of the pastoral year when each priest presents his annual financial report to the bishop. Another diocese mentioned that the control of the book is sporadic.

**No:** At least 5 dioceses said that the book is never inspected, even though the book exists.



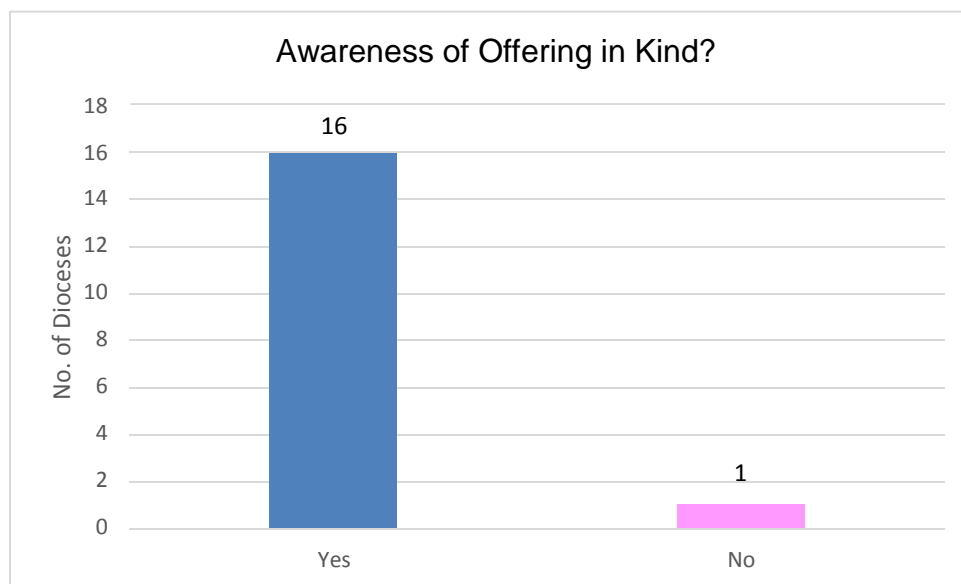
*Chart 7: Inspections of Mass Record Book*

## 2. Awareness of Mass Offering

a) **Are the faithful of your diocese aware of the custom of offering in kind (monetary or otherwise) for Masses offered for their intentions? Yes or No (circle one)**

Yes: 16 dioceses answered yes to this question. One diocese added that the awareness of the custom of making offerings in kind (monetary or otherwise) is becoming more and more perceptible. Two dioceses explained that money is the much-preferred method of making this offering.

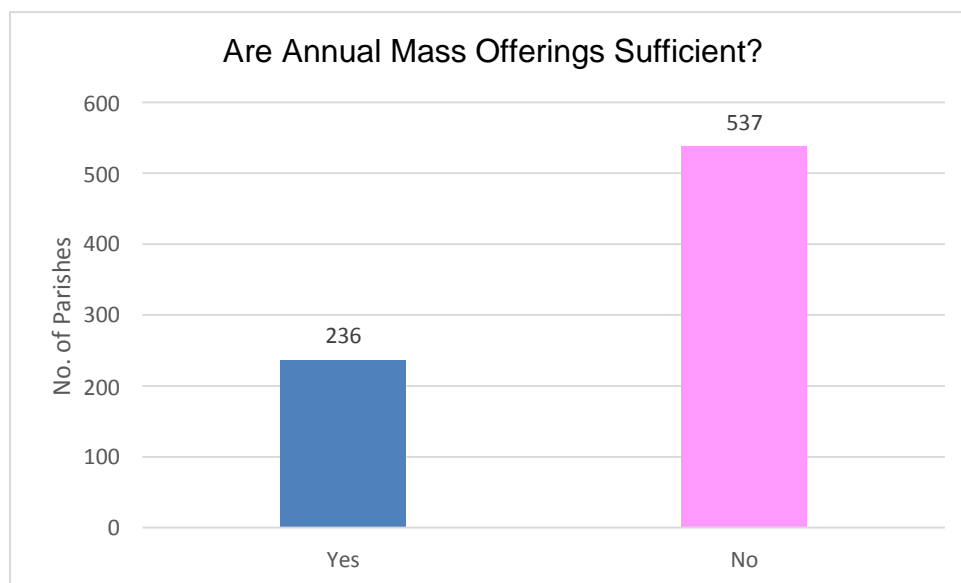
No: 1 diocese mentioned that the faithful are not aware of the custom of offering either in kind or cash.



b) **How many parishes within the diocese receive Mass offerings that are sufficient for the parish to celebrate Masses for the entire year?**

Statistics from all the dioceses surveyed show that there are 773 parishes in total. Judging by their responses, a total of 236 parishes receive sufficient Mass offerings that the parish can celebrate for the entire year, giving a percentage self reliance of 30.5% for local Mass offerings (intentions).

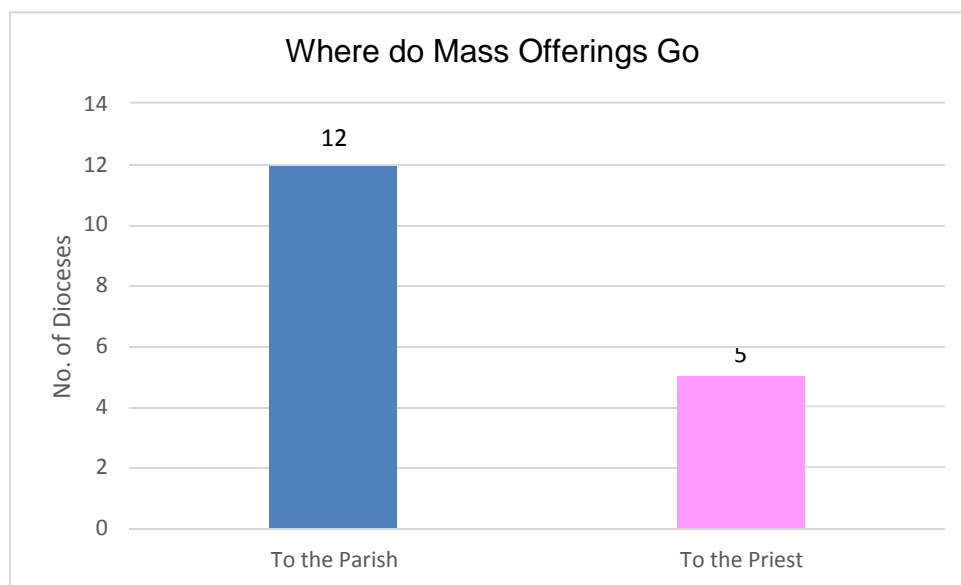
**c) How many parishes in your diocese need Mass offerings from other parishes or from outside the country?** 537 parishes need Mass offerings either from other parishes or from outside the country, giving a percentage dependency of 69.5%.



**d) Does the priest celebrant keep the entire Mass offering for himself or is some of it allocated for the needs of the parish or of the diocese?**

Twelve dioceses mentioned the money from the Mass stipends goes to the parish and five dioceses indicated that the priest celebrant keeps the money for himself. The answers, however, were not clear cut. For instance, one diocese mentioned that according to the principles laid down by the diocesan bishop, it is recommended that all priests

channel the offerings from Masses to a common fund for Mass intentions at the diocesan office for redistribution of Mass stipends between all the priests working in the diocese. Unfortunately, this disposition has never been respected and many priests prefer to keep their Mass stipends. Several other dioceses responded that the entire offering for Masses is surrendered to the parish account to be used for the life and ministry of priests. The entire Mass offering is surrendered to the parish. It is part of its financial resources. Some dioceses mentioned that a certain percentage of the amount of the Mass offering is sent to the bishop's house as part of diocesan dues (up keep of the bishop's house) and remaining percentage is handed over to the parish for the running of the parish. Another diocese mentioned that all Mass offerings are brought together at the level of a common fund at diocesan level, and redistributed equally to all priests in the diocese.



**f) Are Masses celebrated in parishes without any offering due to the lack of sufficient Mass offerings?**

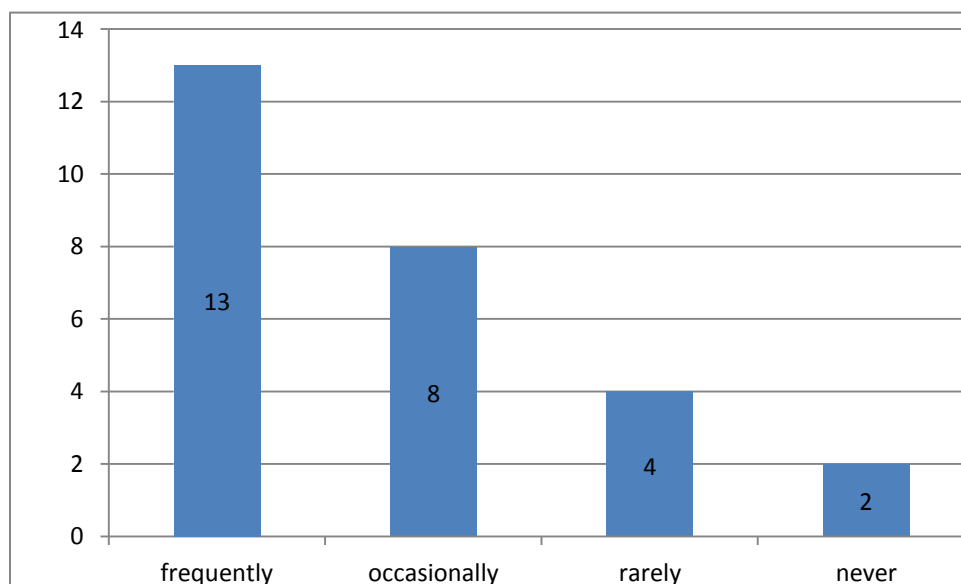
**i. frequently:** 13 times

**ii. occasionally:** 8 times

**iii. rarely:** 4 times,

**iv. never:** 2 times

Masses celebrated in parishes without sufficient Mass offerings



#### **4. Status of Mass offerings for binated or trinated Masses:**

**b) To what purpose(s) are offerings given for additional Masses celebrated the same day applied by the Ordinary in your diocese?**

Here are some of the responses gathered from the questionnaire:

- The money is used to supply the common fund of Mass offerings, and then redistributed to the priests.
- The money constitutes part of the personal allowances of priests and their medical care.
- These offerings constitute the solidarity fund of the priests, then the Ordinary of place uses them for the needs of these priests.

- The money is sent to the parish account in the diocesan procure.
- The money is used to support parishes in the rural zones.
- The money forms part of the ordinary income for the parish.
- The money is given to needy parishes, he uses to pay the hospital bills and allowances of priests.
- Everything is sent to a common fund at the procure and redistributed equally to all the priests in the diocese three times a year.
- A few dioceses either did not answer this particular question or simply said nothing.

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