COMMUNION IN AN ONLINE MASS?

SACRAMENTAL QUESTIONS IN LIGHT OF THE COVID CRISIS

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SUMMARY — The COVID crisis has reignited an old debate on whether some sacraments can be administered from a distance. Due to lockdowns, the 1980s debate on penance by telephone has resurfaced, as has the question of whether it is possible to receive communion in an online mass. Both issues revolve around how we understand the sacraments and what emphasis we place on physical presence. The pandemic has encouraged us to examine more closely how essential is physicality with regard to sacramentality. Discussing sacramental doctrine and law with regard to validity shows that we are currently dealing with two approaches to sacramentality, one juridical and one liturgical. Depending on which we favour, we might come to a different conclusion on whether online sacraments are a realistic option.

RÉSUMÉ — La crise COVID a ravivé un vieux débat sur la question de savoir si quelques sacrements peuvent être administrés « à distance ». En raison du verrouillage de COVID, le débat des années 1980 sur la pénitence par téléphone a été à nouveau soulevé et aussi la question s'il est possible de recevoir la Sainte Communion lors d'une célébration eucharistique transmise en ligne. Les deux questions conduisent à la façon dont nous comprenons les sacrements et à l'accent que nous mettons sur la présence physique. La crise COVID nous a encouragés à examiner de plus près à quel point la présence physique est essentielle en ce qui concerne la sacramentalité. La discussion de la doctrine sacramentelle et légale de la validité sacramentelle indique que nous avons actuellement deux approches de la sacramentalité, une plus juridique et une plus ritualiste. Selon l'approche que nous privilégions, nous pourrions arriver à une conclusion différente sur la question de savoir si les sacrements en ligne sont une option réaliste.

Introduction

The recent COVID crisis has impacted people around the world. As a truly global phenomenon, it has also touched many Catholics and their religious practice, particularly in their liturgical and sacramental lives. While some of the faithful have come to interpret the crisis as a time to discover new forms of communal praying as constitutive moments for celebrating their faith,[1] others feel deprived of the Eucharist and their regular reception of communion. Many of the faithful have turned to canon law to identify the options the law provides with regard to sacramental celebrations when the people of God are prevented from meeting in person. Many questions revolve around the question of receiving communion when celebrating the Eucharist online. I would like to shed some light on these questions and suggest some answers from both a theological and a legal point of view.

1 — *Questions Addressing Canon Law*

Interestingly, many of the faithful rarely asked whether it was constitutional for the state to ban public worship for several months. This decision was accepted relatively uncritically, at least by most Catholics (including the Catholic bishops), although the state's decision was surprisingly radical given the fact that religious freedom has a prominent place among the fundamental rights of most constitutional law. It was therefore surprising for the state to restrict public worship so drastically to protect public health. However, most people's focus tended to be on the regulations *of the Church*, particularly on the issue of the online Eucharist. Besides some liceity questions, like the private celebration of Mass without the physical presence of a congregation (see c. 906), many faithful were primarily moved by issues of sacramental *effectiveness*, the subject that sacramental theology refers to as sacramental signification and canon law calls "sacramental validity."

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[1]   For example, in June 2020, ten religious sisters in Germany published a statement describing how surprised they were that they did not miss the Eucharist and other priest-centred liturgies during the lockdown but found the time empowering to discover their own liturgies, which they found more fulfilling than the Mass. They concluded that it is necessary to break with certain liturgical traditions, criticising the official understanding of the sacraments, particularly the Eucharist. ORDENSFRAUEN FÜR MENSCHENWÜRDE, "Fülle in der Leere: Was die Ostererfahrungen 2020 uns sagen," 22 June 2020, www.feinschwarz.net/fuelle_in_der_leere_was_die_ostererfahrungen_2020_uns_sagen (4.7.2020).

Two questions dominated the discussion with respect to the Eucharist. The first dealt with the issue of *long-distance transubstantiation*. Many faithful were eager to know whether it was conceivable for the transubstantiation of the Eucharistic species during a live stream Eucharist to include those matters which the people provided themselves at home.[2] The second question was on the issue of consecrated "take-away" hosts. People were eager to know whether they could pick up the consecrated hosts at a pre-arranged collection point and consume them at home while virtually participating in an online Mass.[3]

It is striking that these issues focused on the Eucharist, given that the ecclesiastical authorities appear to have had a different focus. Although the official Church did touch upon the Eucharist—many diocesan bishops, for example, suspended their subjects' obligation under canon 1247 to participate in the Sunday Mass—their main focus was on *penance*. In March, the

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[2]   This question was, to my surprise, the major issue which moved students at the University of Hamburg when we discussed the options of receiving communion during the pandemic in April 2020. I was invited to join a seminar meeting via ZOOM by a colleague from systematic theology after the students had repeatedly confronted him with questions concerning the online Eucharist. Interestingly, most of the students were open to the idea that a live stream transubstantiation of the species could include the species provided at home, as many of them had experienced "distance" transubstantiations during World Youth Days where the celebrant not only included those hosts in the transubstantiation which were right in front of him on the altar, but also hosts provided decentrally in several places among the gathered congregation. So the students brought forward the argument that if a transubstantiation might bridge some hundred meters to include hosts deposited there, it would be fair to assume that it might bridge further space, even virtual space.

[3]   I would like to mention some examples from German-speaking countries of how priests responded to this need. The university chaplain of the University of Munich, for instance, provided his parish members with hygienically sealed liturgical kits ("Gottesdienst-Sets") for their domestic worship on Palm Sunday 2020. These sets contained a consecrated host, a palm leaf, holy water, and a prayer text; see https://mk-online.de/meldung/kommunion-empfang_auch_in_corona_zeiten.html (25.7.2020). A parish priest from the diocese of Limburg allowed his parish members to collect the communion "to go" for Easter Sunday, providing them with the required number of hosts for all members of their household and with an instruction booklet outlining how to conduct domestic communion. The priest explained his decision by drawing a parallel between the lockdown situation and *viaticum* as a symbol of giving strength to the suffering and dying; see "Im Glauben an die Auferstehung," 8 April 2020, https://bistumlimburg.de/beitrag/im_glauben_an_die_auferstehung (25.7.2020). The Apostolic Administrator of the Diocese of Chur, Switzerland, confronted with a proliferating "take-away" practice, issued a statement, stating that it was forbidden to hand over consecrated hosts to the faithful to take home, or to deposit them in mailboxes; see Diocese of Chur, "Spendung der Eucharistie ausserhalb der Messfeier in der gegenwärtigen Zeit der Pandemie," 21 April 2020, www.bistum-chur.ch/aktuelles/spendung_der_eucharistie_ausserhalb_der_messfeier (25.7.2020).

Apostolic Penitentiary stressed that diocesan bishops could give priests in their territory permission to grant general absolution if individual confessions were impossible.[4] In addition, the Penitentiary enabled those faithful suffering from COVID-19 and their caregivers to receive a plenary indulgence.[5]

2 — *Sacraments and Sacramentality*

As mentioned above, space prevents me from discussing all of the critical issues which are worthy of attention. Instead, I will restrict myself to questioning what these acute challenges to liturgical and sacramental law contribute to the debate on the Catholic understanding of the sacraments. While this topic can be approached from different angles, I have chosen the category of sacramentality, because the sanctifying function of the Church is one primary mission of the Church. In addition, sacramentality is at the heart of what humans may achieve *with words*. Therefore, sacramentality is not only fundamentally relevant for religion, but also for the law, politics, and other social fields.

Sacraments are performative actions, which bring about what they denote. Thomas Aquinas called sacraments *causae significandi* and *causae efficiendi*, insofar as they signify and effectuate divine grace in the here and now.[6] Because they change the world, they are ontologically relevant. Sacraments are human rituals which use symbols to describe an alternative reality and, by doing so, bring this reality into being. The change in reality which the sacraments bring about may be a spiritual reality like God's grace, but also a merely human change in status: they are both symbols of grace and symbols of the law.[7] Baptism effectuates baptismal grace and Church membership.

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[4]　See APOSTOLIC PENITENTIARY, Note on the Sacrament of Reconciliation in the Present Emergency of the Coronavirus, 19 March 2020, at www.vatican.va (= APOSTOLIC PENITENTIARY, Note).

[5]　See APOSTOLIC PENITENTIARY, Decree "The gift of Special Indulgences is granted to the faithful suffering from Covid-19 disease, commonly known as Coronavirus, as well as to health-care workers, family members and all those who in any capacity, including through prayer, care for them," 19 March 2020, at www.vatican.va.

[6]　See Summa Theologiae III, question 66 article 5, in *Sancti Thomae Aquinatis Doctoris Angelici opera omnia iussu impensaque Leonis XIII P. M. edita*, vol. 12: *Tertia Pars Summae Theologiae a Quaestione LX ad Quaestionem XC*, Rome, Typographia Polyglotta, 1906, 68.

[7]　On the interrelationship between the law and the sacraments from a canonist's perspective, see John M. HUELS, "A Juridical Notion of Sacramentals," in *Studia canonica*, 38 (2004), 345-368; idem, *Liturgy and Law: Liturgical Law in the System of Roman Catholic Canon*

Ordination effectuates grace and power. Marriage effectuates marital grace and brings about a contract. The same symbolic action has religious and legal effects.

This finding enabled Klaus Mörsdorf to identify the close relationship between legal and sacramental actions: "As a visible and effective symbol of an invisible reality of grace, the sacrament is kin with the legal symbol. Both are located on a deep layer facing the sacramental root of the law."[8] Mörsdorf explains the relationship between law and sacraments by referring to symbol theory.[9] Both legal and sacramental rituals rely on symbols, as they refer to a transcendent reality to make it real. Mörsdorf elucidates, "The legal symbol refers to an invisible reality in a community-related way."[10] Similarly, anthropologist Tomas Gerholm defined sacramental rituals as "ways of doing things with symbols."[11] It is no coincidence that Gerholm's definition echoes that of the founding father of speech theory, John Austin, who defined speech acts as "things we do in saying something."[12] The sacraments draw the reality they bring about from declarative speech. They signify what they effectuate, and they effectuate what they signify by *declaring* the reality of that which they signify.[13]

Law, Montréal, Wilson & Lafleur, 2006; idem, "Acts with a Juridic Effect in the Canons of Marriage," in *Studia canonica*, 49 (2015), 309-331; Éric BESSON, *La dimension juridique des sacrements*, Tesi Gregoriana, Serie Diritto Canonico 65, Rome, Editrice Pontificia Università Gregoriana, 2004; William DANIEL, "Juridic Acts in Book VII of the Codex Iuris Canonici," in *Studia canonica*, 40 (2006), 433-486.

[8] Author's translation; original quote, "Als sichtbares und wirksames Sinnbild einer unsichtbaren Heilswirklichkeit ist das Sakrament mit dem Rechtssymbol verwandt. Es liegt mit diesem in einer Tiefenschicht, die der sakramentalen Wurzel des Rechtes zugewandt ist.", Klaus MÖRSDORF, "Wort und Sakrament als Bauelemente der Kirchenverfassung," in *AkK*, 134 (1965), 72-79, 77 (= MÖRSDORF, "Wort und Sakrament").

[9] Mörsdorf argues similarly to his contemporary Karl Rahner, whose studies he leaves strangely unmentioned; see Karl RAHNER, "The Theology of the Symbol," in idem, *Theological Investigations*, vol. IV: *More Recent Writings*, translated by Kevin Smyth, London/New York, Darton, Longman & Todd/The Seabury Press, 1974, 221-252.

[10] Author's translation; original quote, "Das Rechtssymbol weist in gemeinschaftsbezogener Weise auf eine unsichtbare Wirklichkeit hin." MÖRSDORF, "Wort und Sakrament," 77-78.

[11] Tomas GERHOLM, "On Ritual: A Postmodernist View," in *Ethnos*, 53 (1988), 190-203, 198.

[12] John AUSTIN, *How to Do Things with Words*, The William James Lectures delivered at Harvard University in 1955, Oxford, Clarendon Press, 1962, 108 (= AUSTIN, *How to Do Things*).

[13] On sacraments as speech acts, see Joseph A. APPLEYARD, "How Does a Sacrament 'Cause by Signifying'?," in *Science et Esprit*, 23 (1971), 167-200, particularly 191-200; Aloysius P. MARTINICH, "Sacraments and Speech Acts," part 1 and part 2, in *The Heythrop Journal*, 16 (1975), 289-303 and 405-417; Louis-Marie CHAUVET, *Symbol and Sacrament: A Sacramental Reinterpretation of Christian Existence*, translated by Patrick Madigan and Madeleine Beaumont, Collegeville, MN, The Liturgical Press, 1995, particularly 130-135 and

Speech act theory and ritual theory strive to explain *how* this happens. Austin described the essential conditions of successful speech acts. "There must exist an accepted conventional procedure having a certain conventional effect, that procedure to include the uttering of certain words by certain persons in certain circumstances."[14] From the perspective of ritual theory, anthropologist Roy Rappaport made a similar observation about how rituals achieve their effect, with regard to highly formal rituals (which he, most interestingly, calls "liturgical orders"). "The formality of liturgical orders helps to ensure that whatever performatives they may incorporate are performed by authorized people with respect to eligible persons or entities under proper circumstances in accordance with proper procedures."[15] Hence, from the perspective of both speech act theory and ritual theory, sacramentality requires a conventionally determined procedure which brings about a conventionally determined effect, provided that the procedure determines who is competent to act, which words and gestures the action requires, and what kind of context there must be to embed the ritual.

3 — *The Doctrine on the Sacraments*

Despite coming to an understanding of the sacraments as various kinds of religious, legal, or other performative social acts, I will restrict my considerations to the *seven sacraments* which the Church celebrates. This sample is complex enough, given that the ecclesiastical conception of the sacraments amalgamates doctrine and law, the teaching of the Council of Trent with the doctrine of the Second Vatican Council, and a juridical understanding of the sacraments with a more liturgical perception. These manifold perspectives contribute to the multilayered phenomenon of Catholic sacramentality.

The Tridentine conception of the sacraments mostly refers to criteria for validity, focusing on a competent minister, a rightly-disposed receiver, an essential matter, and an essential form. It is not difficult to identify the competent minister using Austin's "certain persons" or Rappaport's "authorized people." "Eligible persons," in Rappaport's sense, are the rightly disposed receivers. Austin's "certain words" and Rappaport's

429-430; Mervyn DUFFY, *How Language, Ritual and Sacraments Work: According to John Austin, Jürgen Habermas and Louis-Marie Chauvet*, Tesi Gregoriana, Serie Teologia 123, Rome, Editrice Pontificia Università Gregoriana, 2005.

[14] AUSTIN, *How to Do Things*, 14.

[15] Roy A. RAPPAPORT, *Ecology, Meaning, and Religion*, Richmond, CA, North Atlantic Books, 1979, 190.

"proper procedures" allude to the sacramental form and matter as the words—sacramental formulas—and performative action which change the status of a thing or a person. Whenever the Tridentine conditions are fulfilled, the administration of the sacraments is valid as long as the act is correctly performed—*ex opere operato*. Grace flows. Whether the sacraments are also fruitful can only be answered individually, biographically, and from personal experience.

However, the Tridentine conception of sacramentality, with its focus on the essential validity criteria, was prone to "magical thinking." Interpreting the sacraments in a juridical light after the Council of Trent also brought forth a casuistry which focused on the minister and his effective acting, while losing touch with the fact that sacraments are *communal* celebrations and ecclesial rituals of the whole Church. The Second Vatican Council addressed this by emphasising the importance of active participation by the whole congregation.[16] In doing so, it emphasised the community and their acting as sacramental *essentials*. One could rephrase this thought in terms of speech act theory and ritual theory to argue that the Council found that sacraments not only require certain persons and certain words and actions, but also a specific *context*—"proper circumstances," as Austin und Rappaport call it. This context is the ecclesial community. Due to the Council's teaching on the relevance of congregations as liturgical communities, the view of the sacraments became more procedural and more liturgical over the second half of the twentieth century. Yet, it remains juridical insofar as the ecclesiastical doctrine on the sacraments continues to be based on Tridentine teaching.

4 — *Juridical and Liturgical Conflicts*

The sacramental law of the Code is obviously shaped by Tridentine teaching. At its core, it revolves around the four criteria of sacramental validity. Using the Eucharist as an example, a priest serves as the competent minister (see c. 900); he also requires the minimal intention of doing what the Church does. The receivers must be baptised (see c. 912) and may not oppose the reception of the Eucharist by forming a positive act of will against it. The correct matter is wheat bread (unleavened, for liceity, in the Latin tradition) and grape wine (see c. 924). The liturgical books provide for the right

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[16] See SECOND VATICAN COUNCIL, Constitution *Sacrosanctum concilium*, 4 December 1963, nos. 14-20, in *AAS*, 56 (1964), 104-105.

formulas; the Code refers to the liturgical books (see c. 846 § 1) which contain the Eucharistic prayers.

The Code devotes little attention to ritual aspects. It does note that liturgical celebrations require a congregation and the congregation's action when paraphrasing conciliar teaching in canon 837 § 1. "Liturgical actions are not private actions but celebrations of the Church itself which is the sacrament of unity, that is, a holy people gathered and ordered under the bishops. Liturgical actions therefore belong to the whole body of the Church and manifest and affect it." Yet the legal consequences drawn from that observation are rather thin. The Code goes on to regulate: "as liturgical actions by their nature entail a common celebration, they are to be celebrated with the presence and active participation of the Christian faithful where possible" (§ 2). A concrete result of this norm is canon 906, disallowing priests to celebrate the Eucharist without the participation of at least a few members of the faithful, except for a just and reasonable cause. In any case, both canon 837 § 2 and canon 906 weaken the conciliar teaching on the essentiality of the community and their action by classifying the Mass as a communal action in *regular situations* but allowing exceptions. Moreover, the legal norms do not clearly regulate what active participation actually means, as they provide only the most rudimentary details for organising communal action. For example, the law allows laypeople to function as lectors, commentators, and cantors (see c. 230 § 2). However, it leaves open what the active part of active participation exactly is for those lay people who merely participate in the Mass as part of the assembly. One must look to the liturgical laws, particularly in the General Instruction on the Roman Missal, for some minimal treatment of this subject. How our communal action might become real and what form the "proper circumstances" might actually take that permit us to experience the Eucharist as a communal liturgy are liturgical desiderata which are neglected by the Code and treated summarily in the liturgical laws.

Sacramental theologian Joseph Martos offers an explanation why the law is silent when it comes to this key aspect of sacramentality by alluding to the twofold theological meaning of the term "sacrament." Martos observes that theologians, depending on their discipline, tend to understand the term "sacrament" differently depending on whether they focus either on the *ritual* itself or on the *effect* of the ritual. Liturgical scholars tend to emphasise the procedural and ritual character of sacramental celebration. Canon lawyers, on the contrary, focus primarily on the conditions of sacramental validity and, therefore, tend to study the *result* of sacramental action rather than the action itself. Martos states: "In the first sense of the word, a sacrament is a liturgical ritual such as a baptism or a religious wedding ceremony. In the

second sense of the word, a sacrament is something that is administered and received during the performance of the ritual, as when we talk about administering the sacrament of baptism or receiving the sacrament of marriage."[17] One discovers this tension in canonical texts whenever authors trying to find a suitable verb for sacramental acts either sound strikingly technical or fall prey to a certain verbiage as they notice that there are further layers of meaning behind the legal statement they are making. Alfred Hierold, for instance, used a typical phrase for canon lawyers when he observed "that the sacrament of penance is administered and received or—as one should say—is celebrated in the sacramental realm and in a certain ecclesial public."[18] This tension between "administered and received," on the one hand, and "celebrated," on the other, clearly reveals the two theological meanings connected with the term "sacrament".

We can detect the same tension between understanding sacraments as symbols or celebrations, as things or liturgies, when we examine *legal* symbols. In this context, Mörsdorf emphasised that legal symbols, which he tried to categorise according to sacramental categories, are either things or actions. He discerned that law is "either a thing which signifies something beyond its sensory appearance, or an action which brings about something invisible through symbolic action."[19] Mörsdorf obviously relies on the two meanings of sacramentality, which denote a sacred thing as the result of sacramental action or the ritual action itself. The term "Eucharist" might help us to see this difference in everyday Catholic terminology. What do we mean when we refer to the "Eucharist": the transubstantiated species or the liturgy of the Mass, the rite, the ritual? Depending on the answer, we either think in terms of a more juridical, "Tridentine" approach or a more liturgical approach.

According to Church doctrine, these meanings complement each other. Nevertheless, their union is rather conflictive, as Martos notes. He finds it

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[17] Joseph Martos, *Deconstructing Sacramental Theology and Reconstructing Catholic Ritual*, Eugene, OR, Resource Publications, 2015, XIII (= Martos, *Deconstructing Sacramental Theology*).

[18] Author's translation; original quote, "dass in der Regel das Bußsakrament in einem sakralen Raum und in einer gewissen kirchlichen Öffentlichkeit gespendet und empfangen oder— besser gesagt—gefeiert wird"; Alfred Hierold, "Beichte per Telefon? Bemerkungen zum 'Ort' für das Bußsakrament," in Winfried Aymans, Anna Egler and Joseph Listl (eds.), *Fides et Ius: Festschrift für Georg May zum 65. Geburtstag*, Regensburg, Friedrich Pustet, 1991, 163-176, 165 (= Hierold, "Beichte per Telefon").

[19] Author's translation; original quote, "ist entweder ein Gegenstand, der über seine sinnliche Erscheinung hinaus etwas aussagt, oder eine Handlung, die im sinnbildlichen Geschehen etwas Unsichtbares bewirkt." Mörsdorf, "Wort und Sakrament", 78.

difficult to reconcile the two meanings of "sacrament" and calls them a "source of problems in the Church."[20] Martos believes the unclear notion of "sacrament" is an obstacle to ecumenical dialogue and is problematic in pastoral contexts. I have come to find that this latter aspect, namely the existence of pastoral problems connected with the unclear meaning of "sacrament", also connects with the debates which have recently evolved around celebrating the sacraments online while being required to engage in social distancing. I would like to suggest that current questions regarding the online Eucharist are related to these twofold understandings of sacramentality. The faithful are uncertain about what is possible online because there is a conflict between a juridical and a ritual understanding of sacraments.

5 — *Confession and Absolution by Telephone*

I would like to substantiate my argument by referring to an earlier debate from the 1980s, which revolved around confessions by telephone. In German-speaking countries, the question of whether the sacrament of penance may be administered validly by telephone was raised by Rudolf Weigand in 1980. He argued in favour of a valid sacramental celebration by telephone by comparing it with papal blessings (like the *Urbi et Orbi*) by television, stating that one could not reasonably affirm the possibility of this blessing and the indulgence it conveys while rejecting the same effectiveness with regard to sacramental penance by telephone.[21] If we assume that the performative symbolic action of an indulgence may be granted validly from a distance, then this must also apply to sacramental symbolic action, according to Weigand. The key phrase "from a distance" has reappeared in the debates on the administration of the sacraments ever since. Even today, canonists rely on the term "distance" to denote the opposite of "presence" and "personal attendance,"[22] thus alluding to the fact that ministers and receivers of sacraments are not physically present in the same place. "Distance" therefore refers to *spatial* distance, but it has other obvious connotations as well.

In 1989, the Congregation for the Doctrine of the Faith dealt with the question of administering sacramental penance by telephone in response to an inquiry by the German Archbishop of Munich and Freising. The Archbishop

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[20] MARTOS, *Deconstructing Sacramental Theology*, XIII.

[21] See Rudolf WEIGAND, "Das Bußsakrament," in Joseph LISTL, Hubert MÜLLER and Heribert SCHMITZ (eds.), *Grundriß des nachkonziliaren Kirchenrechts*, Regensburg, Friedrich Pustet, 1980, 504-519, 519.

[22] E.g. HIEROLD, "Beichte per Telefon", 164.

received the Congregation's advice in the form of a *Note*,[23] which argued more cautiously than Weigand, but was affirmative in tendency. The *Note* specified that confession and absolution by telephone was probably *valid* under certain conditions, as some moral theologians consulted by the Congregation had taken an affirmative stance on this issue. Yet apart from grave necessity, the practice should be understood as *illicit*, as the *Note* states.

The Apostolic Penitentiary actually agreed with this opinion on the illiceity of sacramental penance via telephone in 2002 by alluding to the danger this practice poses to the sacramental seal.[24] This article will not go into detail regarding the problem of the sacramental seal as it presents itself distinctly with regard to telephone or online penance, not because it is not important, but because it is not directly connected with *validity* issues. As I focus on the validity of the administration of sacraments over a distance, I am more concerned with arguments for or against sacramental validity. However, it is precisely for this reason that I return to the Apostolic Penitentiary's Circular Letter in section seven, as it also provides some thoughts which contribute to the validity debate.

However, it seems advisable, particularly when the focus of attention is on conditions of sacramental validity, to study the Congregation for the Doctrine of the Faith's *Note* to the Archbishop of Munich and Freising first, as it contains a number of points which trigger the discussion. Whilst the document is interesting for its arguments, it is far from providing the Church with a definite answer to the issue of absolution by telephone (or by internet). As a reply to a single bishop's question, the *Note* has never achieved official status as a legal document which issues guidance for the universal Church. Yet as a piece of advice sent to the bishop as the Congregation's response to his inquiry, it is still a stimulating contribution. It does not resolve the dispute, but it adds to the debate. The text is thought-provoking as it opens up the possibility of a valid administration of the sacrament of penance via telephone on the one hand, while on the other hand it alludes to arguments why this should not become a regular practice.

In this respect, the document notes that administering the sacrament of penance not only requires the minister to utter the sacramental formula but

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[23] See Congregation for the Doctrine of the Faith, Note, 25 November 1989, in *AkK*, 158 (1989), 484 (= Congregation for the Doctrine of the Faith, Note).
The *Note* was never officially published; it was printed in the *Archiv für katholisches Kirchenrecht* as a document which the editors found to be of canonical interest.

[24] See Apostolic Penitentiary, Circular Letter *L'uso dei mezzi tecnologici*, Prot. N. 500/02, 23 October 2002, in *EV*, 21 (2002), 930-931 (= Apostolic Penitentiary, Circular Letter *L'uso dei mezzi tecnologici*).

also to use "ritual elements," such as when the priest extends his hands over the penitent's head when giving absolution. However, the *Note* does not view these gestures as essential, in accordance with Tridentine teaching, or it could not argue in favour of the sacrament's validity when administered by telephone. Yet, it points strongly at the relevance of gestures for the *fruitfulness* of the sacrament, noting that the priest's gesture "enables the faithful to receive the fruit of the sacrament, because ritual elements nourish the faith."[25] This is why the *Note* assumes that sacramental penance may be valid when administered by telephone but sees it as illicit insofar as it regards penance without its symbolic gestural elements as a problematic restriction of sacramental action which should be avoided as this practice might obstruct the fruitfulness of the sacrament.

The second reason the *Note* understands sacramental penance by telephone to be illicit is that this practice supports a "privatisation" of the sacrament, which contradicts the character of sacraments as communal and public celebrations. The document is concerned that administering the sacrament from a distance equates to losing touch with the ecclesial dimension of sacramental penance, which has already suffered from the modern restriction of sacramental penance to auricular confession. However, the document does not see this as an issue affecting the validity of the sacrament, instead understanding it as a reason to argue against a regular practice of confession by telephone.

In summary, the *Note*'s assessment of whether it is possible to administer and receive the sacrament of penance by telephone shifts between the poles of a Tridentine "yes" and a modern "maybe". The last sentence of the *Note* reflects this hesitance in a thought-provoking way by emphasising that the forgiveness of sins does not require *sacramental* penance. The document therefore reminds its readers that, in cases of grave necessity, perfect contrition combined with the intention of receiving sacramental penance as soon as possible reconciles the sinner with God. The Apostolic Penitentiary, in its March 2020 *Note* on the sacrament of penance during the COVID pandemic, expressed the same thought.

> Where individual faithful should be in the painful impossibility of receiving sacramental absolution, it should be remembered that perfect contrition, coming from the love of God, loved above all else, expressed by a sincere request for forgiveness (one which the penitent is able to express in that

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[25] Author's translation; original quote, "die Gläubigen befähigen, die Frucht des Sakramentes zu empfangen, weil die rituellen Elemente den Glauben nähren.", CONGREGATION FOR THE DOCTRINE OF THE FAITH, Note, 484.

moment) and accompanied by the *votum confessionis*, that is, by the firm resolution to receive sacramental confession as soon as possible, obtains the forgiveness of sins, even mortal ones (cf. *CCC*, n. 1452).[26]

6 — *Communicating the "Word" over a Distance*

Similarly, many bishops responded to the question of whether transubstantiation from a distance or a take-away service for consecrated hosts was admissible by pointing out the option of *spiritual communion*.[27] They stressed that devoutly participating in a live stream Eucharist could also be a source of grace for the participants even though they might not be receiving communion physically.

These pragmatic approaches argue in a very similar way. They try to avoid stating that, given the Tridentine doctrine and its sacramental juridism of correct administration, correct reception, correct matter, and correct form, it is possible to imagine both absolution from a distance and transubstantiation from a distance, where the act of transubstantiation followed via live stream includes those species (if the correct matter) which the faithful provide in their homes. Correspondingly, with Tridentine teaching in mind, one might also deem it possible to conceive of a take-away service for consecrated hosts if the Church can ensure that the faithful consume the hosts with dignity.

As neither the sacrament of penance nor the Eucharist require a minister's essential physical action to administer them, the reference to sacramental gestures is relevant with regard to liceity and fruitfulness but, from a Tridentine perspective, does not inhibit validity. The situation is obviously different with regard to baptism, confirmation, the anointing of the sick, and holy orders, all of which require the minister's physical action upon the receiver. Marriage, however, takes an interesting intermediate position; by permitting *marriage by proxy*, the law of the Church has instituted a *personal* concept for bridging the "distance" between absent spouses, allowing them to enter marriage without being present in the same place (see c. 1105). This finding might support the argument that canon law does not generally oppose the

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[26] APOSTOLIC PENITENTIARY, Note.
[27] E.g. DIOCESE OF REGENSBURG, "Geistliche Kommunion—Tipps für die Corona-Zeit," 17 March 2020, www.bistum-regensburg.de/news/geistliche_kommunion_tipps_fuer_die_corona_zeit_7328 (25.7.2020); Christoph Paul HARTMANN, "Andacht im Extremfall: Die geistige Kommunion," 27 March 2020, www.katholisch.de/artikel/24941_andacht_im_extremfall_die_geistige_kommunion (25.7.2020).

distant administration of sacraments when physical gestural elements between ministers and receivers are dispensable with regard to validity. As a consequence, marriage by proxy may well support the idea that the online administration of the sacrament of penance might also be deemed possible, as well as understanding transubstantiation as an event that might bridge physical distance, at least from a juridical point of view.

However, it is always somewhat difficult to draw on marriage as a model for other sacraments, as marriage is a special case among the sacraments and therefore defies comparison to some degree. Marriage is the only sacrament where, according to Western understanding, the ministers and receivers are the same people, namely the baptised spouses. As marriage does not essentially require an official representative of the Church to serve as a minister, it can be celebrated outside an official liturgical ceremony. A similar observation applies to baptism. However, unlike baptism, marriage is a sacrament where the matter is not a physical thing but the spouses' *consent*, and where the form does not depend on an exact formula, but on the *same* consent and on some way in which the spouses express it.

However, this observation links marriage with the sacrament of penance, as penance also lacks a physical matter and understands contrition, confession, and satisfaction as its matter. Systematic theologian Louis-Marie Chauvet observes this parallel between marriage and penance by dryly commenting that those "two sacraments whose 'quasi-matter' is the human person (penance and marriage) are those which have given theologians the most trouble."[28] In a similar vein, albeit in a more optimistic tone, Karl Rahner has emphasised the parallel by noting that the matters of marriage and penance have much in common insofar as they are both purely "words."[29] Rahner interprets the matter of marriage to be "words," as he understands the spouses' consent as a form of communication, expressing their will to marry as well as God's grace. In a similar way, the matter of penance, contrition, confession and satisfaction, does not encompass a material object but "words" only, in Rahner's broad understanding of the term. It consists of thoughts about one's actions, feelings of guilt, intentions and decisions to change, and expressions of remorse and repentance.

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[28] Louis-Marie CHAUVET, *Symbol and Sacrament*, 412.

[29] Karl RAHNER, "The Word and the Eucharist," in idem, *Theological Investigations*, vol. IV: *More Recent Writings*, translated by Kevin Smyth, London/New York, Darton, Longman & Todd/The Seabury Press, 1974, 253-286, 266 (= RAHNER, "The Word").

Rahner believes that the sacramental matter for the Eucharist also consists of "words," even though it seems more difficult to understand the Eucharistic matters of bread and wine as "words." Nevertheless, Rahner understands these matters as intrinsically connected with "words." Bread and wine depend on words to receive their symbolic quality, as it is only through the words of consecration that they signify and cause a symbolic reality to become Christ's body and blood. Furthermore, after being transubstantiated, bread and wine symbolise Christ's presence only insofar as they *remain* connected with the words of consecration.[30] Rahner is keen to avoid materialistic ideas which understand transubstantiation as the enclosure of Christ in the consecrated species. He is therefore careful to avoid giving the impression that the words of consecration are magical spells producing a sacred *thing*, a tendency which he sees in Catholic hylemorphism. Instead, he suggests understanding the sacred effect of the Eucharist as something enduringly connected with the words of consecration and understandable only in connection with these words.[31]

If we remain with this parallel between marriage and penance, and also keep the Eucharist in mind, as these sacraments essentially rely on "words" and revolve around "words" in Rahner's broad understanding of the term, it is only a short step to seeing how marriage by proxy supports the possibility of deeming an online administration of the sacrament of penance, and to understanding transubstantiation as an event that, whilst remaining essentially connected with the physical matter of bread and wine, might bridge physical distance. This is because one may understand the essential "word" as an event bridging physical space. The analogy is obviously limited. Yet if we understand the sacraments as "words" in Rahnerian terms, which communicate Christ the Word through words, we may find that words bridge distances, making Christ present through symbolic action even though the ministers and receivers are not in the same physical room.

7 — *Presence, Dialogue, and Community*

A similar observation might be made regarding the problematic privatisation of the sacraments, which the Congregation for the Doctrine of the Faith's *Note* raised in 1989 with regard to sacramental confession via

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[30]   See Karl RAHNER, "The Presence of Christ in the Sacrament of the Lord's Supper," in idem, *Theological Investigations*, vol IV: *More Recent Writings*, translated by Kevin Smyth, London/New York, Darton, Longman & Todd/The Seabury Press, 1974, 287-311.

[31]   See RAHNER, "The Word", 284.

telephone. While privatisation is a serious problem with regard to the sacraments, it is irrelevant for considerations of validity if one follows the Council of Trent. Furthermore, the problem is less grave with regard to a live stream liturgy than a mere audio communication by telephone. The privatisation argument cannot therefore be used to fundamentally dismiss online celebrations.

However, the Second Vatican Council's emphasis on the essential nature of the congregation's communal action raises more issues. That the congregation's active participation is indispensable for the liturgy does not completely disqualify online celebrations either—but it only qualifies them *insofar* as they allow for communal action and allow for the congregation to experience their community. It is open to debate whether online liturgies create true community spirit and allow for the faithful's active participation. Official ecclesiastical voices tend to be reluctant to acknowledge that digital media express this communal dimension sufficiently and allow for adequate communal experiences. The Pontifical Council for Social Communications emphasised in its 2002 document, *The Church and Internet*, the relevance of digital communication for the teaching function of the Church,[32] but did not attribute the same relevance to it with regard to the Church's *sanctifying function*. The Pontifical Council noted: "Virtual reality is no substitute for the Real Presence of Christ in the Eucharist, the sacramental reality of the other sacraments, and shared worship in a flesh-and-blood human community. There are no sacraments on the Internet; and even the religious experiences possible there by the grace of God are insufficient apart from real-world interaction with other persons of faith."[33] The Pontifical Council also referred to the "real interpersonal community, the incarnational reality of the sacraments and the liturgy, or the immediate and direct proclamation of the gospel," in contrast to an unreal or less real "virtual reality of cyberspace."[34] While it did take into account that virtual reality might be helpful in overcoming distances (e.g., the document referred to "persons living in remote areas"), it adjudged virtual reality to be less real by contrasting it with the "real interpersonal community" to which the Church invites the faithful.

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[32] On how to organise the teaching function of the Church online from a canonist's perspective, see Michael NOBEL, "To Proclaim the Gospel Online—Challenges and Difficulties: Towards a Possible Diocesan Protocol for Ministers of the Divine Word in the Online Environment," in *The Canonist*, 10 (2019), 87-126.

[33] PONTIFICAL COUNCIL FOR SOCIAL COMMUNICATIONS, The Church and Internet, 22 February 2002, at www.vatican.va; *EV*, 21 (2002), 48-78, no. 9 (= PONTIFICAL COUNCIL FOR SOCIAL COMMUNICATIONS, The Church and Internet).

[34] Ibid., no. 5.

Consequently, the Pontifical Council urged those in pastoral ministry to "consider how to lead people from cyberspace to true community."[35]

It is somewhat challenging to follow the "hierarchy of realities" the document uses to classify realities as being more or less "real". Yet, leaving these oddities aside, it is obvious that the document accords virtual reality a lower status in the hierarchy of realities compared to the "true community" of physical presence without a spatial distance between the community members. The Apostolic Penitentiary actually raised a similar thought in the very same year, when it sent its Circular Letter *L'uso dei mezzi tecnologici* to the diocesan bishops and major superiors. While the Penitentiary was primarily concerned with banning online penance because it endangered the sacramental seal, the letter also indicates that the problem might go somewhat deeper, as it might affect the issue of sacramental validity itself. The Penitentiary suspects that the online administration of penance might violate constitutive elements of the sacrament including sacramentality itself, the physical immediacy between the minister and the receiver, the quality of the sacrament as "dialogue", and consequences for the effectiveness of the sacrament including in the psychological sense.[36]

The Penitentiary avoids making a magisterial claim. It does not state that online celebrations endanger the validity and fruitfulness of sacraments, but raises concerns that this might be the case. Scholars who share this perception, in consequence, answer in the negative to whether a congregation may gather online to celebrate the sacraments. For instance, canonist Christoph Ohly argues against the validity of administering the sacrament of penance online,[37] despite mentioning that the Congregation for the Doctrine of the Faith's *Note* considers the sacrament by telephone to be valid. Canonist Ludger Müller supports this view, asking, "Does not the symbolic character of the sacrament require the worshipper's immediate personal presence? The sacrament of penance is worship. A medium like a letter, telephone, text message, or internet is unable to express this liturgical dimension."[38]

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[35] Ibid., no. 9.

[36] "… sacramentalità, immediatezza fisica dei soggetti, dialogicità, conseguente efficacia anche psicologica …"; APOSTOLIC PENITENTIARY, Circular Letter *L'Uso dei mezzi techologici*, 930.

[37] See Christoph OHLY, "Das Bußsakrament," in Stephan HAERING, Wilhelm REES and Heribert SCHMITZ (eds.), *Handbuch des katholischen Kirchenrechts*, 3rd ed., Regensburg, Friedrich Pustet, 2015, 1184-1205, 1195.

[38] Author's translation; original quote, "Erfordert die Zeichenhaftigkeit des Sakramentes nicht die unmittelbare persönliche Anwesenheit? Beim Bußsakrament handelt es sich um einen Gottesdienst. Ein Medium wie Brief, Telefon, SMS oder Internet ist nicht in der Lage, die gottesdienstliche Dimension […] zum Ausdruck zu bringen.", Ludger MÜLLER and Christoph OHLY, *Katholisches Kirchenrecht: Ein Studienbuch*, Paderborn, Ferdinand Schöningh, 2018, 179.

In contrast, those scholars who conceive of virtual spaces allowing for communal experience and active participation will be more open to imagining them serving as spaces of sacramental celebration. While it is undeniable that liturgies require "real interpersonal community", as the Pontifical Council for Social Communications phrased it, the question arises as to whether a real community as celebrated in the liturgies necessarily requires the worshippers' simultaneous physical presence in the same analogue room. The Apostolic Penitentiary, when raising its doubts with regard to online penance, gives a precise summary of the questions which need to be answered in order to come to a theological answer about whether this is possible. If it is true that sacramentality requires the ministers' and the receivers' simultaneous physical presence in the same analogue room, online sacraments are impossible. If, however, virtual presence also allows for a real dialogue between ministers and receivers, we might answer the question differently. If the receivers are unable to experience the minister's presence and if they cannot experience online communication as truly dialogical, online sacraments endanger sacramental fruitfulness. If, nevertheless, virtual presence allows the receivers to engage in a real dialogue with the ministers and if this leads them to truly experience community, we might answer this question differently.

Conclusion

There is general consensus that the sacraments are communal rituals. However, it has not been decided, either technologically or theologically, whether virtual rooms defy the experience of community. With regard to technology, recent years have shown an increase in participatory opportunities in digital media. This is an interesting development for a Church which finds active participation essential for sacramental communities. Even those voices which are reluctant to attribute a role to modern technology in communicating sacramental grace online might want to keep track of progress in the digital field. It might eventually increase participatory opportunities to a level at which we can view online communications as being real, true, and experience-related enough to qualify as spaces which can unite a sacramental community. With regard to theology, the analysis cannot stop at this point. The questions about the sacraments debated in light of the COVID crisis have proven to be of great service to the theological debate. They have highlighted the need to engage in a deeper discussion of what we mean when we speak of "community," "presence," "reality," and "experience," especially when we understand these criteria to be conditions of sacramentality.